

SOUTHWESTERN ENERGY CO

Form 8-K

May 12, 2008

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**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of report (Date of earliest event reported): May 12, 2008**

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**SOUTHWESTERN ENERGY COMPANY**

**(Exact name of registrant as specified in its charter)**

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**Delaware**

**(State or other jurisdiction of incorporation)**

**1-08246**  
**(Commission File Number)**

**71-0205415**  
**(IRS Employer Identification No.)**

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2350 N. Sam Houston Pkwy. E., Suite 125,

Houston, Texas

(Address of principal executive offices)

77032

(Zip Code)

(281) 618-4700

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Explanatory Note

The information in this report, including Exhibit 99.1 attached hereto, shall not be deemed to be "filed" for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section, and shall not be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

### SECTION 7. REGULATION FD

#### Item 7.01 Regulation FD Disclosure.

On May 12, 2008, Southwestern Energy Company (the "Company") made a presentation to investors. The presentation included financial information, operating information relating to the Fayetteville Shale play, and guidance regarding the Company's projected net income, operating income, earnings per share, net cash provided by operating activities before changes in operating assets and liabilities ("Net Cash Flow") and earnings before income taxes, depreciation, depletion and amortization ("EBITDA") for the fiscal year 2008. Net Cash Flow and EBITDA are non-GAAP measures that are reconciled on pages 33 and 34 of the presentation. A copy of the presentation is furnished herewith as Exhibit 99.1.

All statements in the presentation, other than historical financial information, may be deemed to be forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Although the Company believes the expectations expressed in such forward-looking statements are based on reasonable assumptions, such statements are not guarantees of future performance and actual results or developments may differ materially from those in the forward-looking statements. The Company disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Exhibits. The following exhibit is being furnished as part of this Report.

<b>Exhibit Number</b>	<b>Description</b>
<u>99.1</u>	<u>Transcript of slideshow accompanying the May 12, 2008 presentation.</u>

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**SOUTHWESTERN ENERGY COMPANY**

Dated: May 12, 2008

By: /s/ GREG D. KERLEY

Name: Greg D. Kerley  
 Title: Executive Vice President and  
 Chief Financial Officer

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**EXHIBIT INDEX**

**Exhibit  
 Number**

**Description**

99.1 Transcript of slideshow accompanying the May 12, 2008 presentation.

that appears on the Designated LIBOR Page as of 11:00 A.M., London time, on such Interest Determination Date. If fewer than two such offered rates so appear, or if no such rate so appears where the Designated LIBOR Page provides only for a single rate, LIBOR on such Interest Determination Date will be determined in accordance with the provisions described in the following paragraph. . With respect to a Interest Determination Date on which fewer offered rates appear than are required in the preceding paragraph, the Calculation Agent will request the principal London offices of each of four major reference banks (which may include the Agents or their affiliates) in the London interbank market as selected by the Calculation Agent, to provide the Calculation Agent with its offered quotation for deposits in U.S. dollars for the period of the Index Maturity specified in the applicable Note and pricing supplement, commencing on the applicable Interest Reset Date to prime banks in the London interbank market at approximately 11:00 A.M., London time, on such Interest Determination Date and in a principal amount that is representative for a single transaction in U.S. dollars in such market at such time. If at least two such quotations are so provided, then LIBOR on such Interest Determination Date will be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, then LIBOR on such Interest Determination Date will be the arithmetic mean of the rates quoted at approximately 11:00 A.M., New York City time, on such Interest Determination Date by three major banks in The City of New York selected by the Calculation Agent for loans in U.S. dollars to leading European banks, having the Index Maturity specified in the applicable Note and pricing supplement and in a principal amount that is representative for a single transaction in U.S. dollars in such market at such time. If the banks so selected by the Calculation Agent are not quoting rates as described in the preceding sentence, LIBOR determined as of such Interest Determination Date will be LIBOR in effect under the Note on such Interest Determination Date. "Designated LIBOR Page" means (a) if "LIBOR Reuters" is specified in the applicable pricing supplement, the display in the Reuter Monitor Money Rates Service (or any successor service) on the page specified in such pricing supplement (or any other page as may replace such page on such service) for the purpose of displaying the London interbank rates of major banks for U.S. dollars, or (b) if "LIBOR Telerate" is specified in the applicable pricing supplement or neither "LIBOR Reuters" nor "LIBOR Telerate" is specified in the applicable pricing supplement as the method for calculating LIBOR, the display on Moneyline Telerate (or any successor service) on the page specified in such pricing supplement (or any other page as may replace such page on such service) for the purpose of displaying the London

interbank rates of major banks for U.S. dollars. Treasury Rate Notes. Treasury Rate Notes will bear interest at the interest rates (calculated with reference to the Treasury Rate and the Spread and/or Spread Multiplier, if any) specified in the Treasury Rate Notes and in the applicable pricing supplement. The "Treasury Rate," with respect to each Interest Reset Date, will be determined by the Calculation Agent on the Calculation Date and will be the rate for the auction held on the Interest Determination Date (the "Auction") next preceding such Interest Reset Date of direct obligations of the United States ("Treasury bills") having the Index Maturity specified in the applicable Note and pricing supplement as published under the heading "INVESTMENT RATE" on the display on Moneyline Telerate (or any successor service) on page 56 (or any other page as may replace that page on that service) or page 57 (or any other page as may replace that page on that service). In the event that such rate is not published prior to 3:00 P.M., New York City time, on the related Calculation Date, then the Treasury Rate with respect to such Interest Reset Date will be the Bond Equivalent Yield (as defined below) of the rate for the applicable Treasury bills as published in H.15 Daily Update under the heading "U.S. Government Securities/Treasury Bills/Auction High." In the event that the rate referred to in the preceding sentence is not published prior to 3:00 P.M., New York City time, on the related Calculation Date, then the Treasury Rate with respect to such Interest Reset Date will be the Bond Equivalent Yield of the auction rate of the applicable Treasury bills as announced by the United States Department of the Treasury. In the event that the rate referred to in the preceding sentence is not so announced by the United States Department of the Treasury, or if the Auction is not held, then the Treasury Rate with respect to such Interest Reset Date will be the Bond Equivalent Yield of the rate for the applicable Treasury bills as published in H.15(519) under the heading "U.S. Government Securities/Treasury Bills/Secondary Market." In the event that the rate referred to in the preceding sentence is not published prior to 3:00 P.M., New York City time, on the related Calculation Date, then the Treasury Rate with respect to such Interest Reset Date will be the rate for the applicable Treasury Bills as published in H.15 Daily Update under the heading "U.S. Government Securities/Treasury Bills/Secondary Market." In the event that the rate referred to in the preceding sentence is not published prior to 3:00 P.M., New York City time, on the related Calculation Date, then the Treasury Rate will be calculated by the Calculation Agent and shall be the Bond Equivalent Yield of the arithmetic mean of the secondary market bid rates, as of approximately 3:30 P.M., New York City time, on such Interest Determination Date, of three primary United States government securities dealers selected by the Calculation Agent, in its discretion, for the issue of Treasury bills with a remaining maturity closest to the Index Maturity designated in the applicable Note and pricing supplement. If the dealers selected as aforesaid by the Calculation Agent are not quoting bid rates as described in the preceding sentence, the Treasury Rate with respect to such Interest Reset Date will be the Treasury Rate in effect under the Note on such Interest Determination Date.

"Bond Equivalent Yield" means a yield (expressed as a percentage) calculated in accordance with the following formula:  $\text{Bond Equivalent Yield} = D \times N \times 100 \text{ ----- } 360 - (D \times M)$  where "D" refers to the applicable per annum rate for Treasury Bills quoted on a bank discount basis and expressed as a decimal, "N" refers to 365 or 366, as the case may be, and "M" refers to the actual number of days in the applicable Interest Reset Period.

CD Rate Notes. CD Rate Notes will bear interest at the interest rates (calculated with reference to the CD Rate and the Spread and/or Spread Multiplier, if any) specified in the CD Rate Notes and in the applicable pricing supplement. The "CD Rate," with respect to each Interest Reset Date, will be determined by the Calculation Agent on the Calculation Date and will be the rate as of the Interest Determination Date next preceding such Interest Reset Date for negotiable United States dollar certificates of deposit having the Index Maturity specified in the applicable Note and pricing supplement as published in H.15(519) under the heading "CDs (secondary market)". In the event that such rate is not published prior to 3:00 P.M., New York City time, on the related Calculation Date, then the CD Rate with respect to such Interest Reset Date shall be the rate on such Interest Determination Date for negotiable United States dollar certificates of deposit having the Index Maturity specified in the applicable Note and pricing supplement as published in H.15 Daily Update under the heading "CDs (secondary market)". If by 3:00 P.M., New York City time, on such Calculation Date such rate is not published in either H.15(519) or H.15 Daily Update, the CD Rate with respect to such Interest Reset Date shall be calculated by the Calculation Agent and shall be the arithmetic mean of the secondary market offered rates, as of 10:00 A.M., New York City time, on such Interest Determination Date, of three leading nonbank dealers in negotiable United States dollar certificates of deposit in The City of New York selected by the Calculation Agent for negotiable United States certificates of deposit of major United States money center banks with a remaining maturity closest to the Index Maturity specified in the applicable Note and pricing supplement in United States dollars. If the dealers selected as aforesaid by the Calculation Agent are not quoting rates as described in the preceding sentence, the

CD Rate with respect to such Interest Reset Date will be the CD Rate in effect under the Note on such Interest Determination Date. 23 Federal Funds Rate Notes. Federal Funds Rate Notes will bear interest at the interest rates (calculated with reference to the Federal Funds Rate and the Spread and/or Spread Multiplier, if any) specified in the Federal Funds Rate Notes and in the applicable pricing supplement. The "Federal Funds Rate," with respect to each Interest Reset Date, will be determined by the Calculation Agent on the Calculation Date and will be the rate as of the Interest Determination Date next preceding such Interest Reset Date for United States dollar federal funds as published in H.15(519) under the heading "Federal Funds (Effective)" and displayed on Moneyline Telerate (or any successor service) on page 120 (or any other page as may replace that page on that service). In the event that such rate does not appear on such page 120 or is not published prior to 3:00 P.M., New York City time, on the relevant Calculation Date, then the Federal Funds Rate with respect to such Interest Reset Date will be the rate on such Interest Determination Date as published in H.15 Daily Update under the heading "Federal Funds (Effective)". If by 3:00 P.M., New York City time, on such Calculation Date such rate is not published in either H.15(519) or H.15 Daily Update, the Federal Funds Rate with respect to such Interest Reset Date shall be calculated by the Calculation Agent and shall be the arithmetic mean of the rates, as of 9:00 A.M., New York City time, on the applicable Interest Determination Date, for the last transaction in overnight United States dollar federal funds arranged by three leading brokers of United States dollar federal funds transactions in The City of New York selected by the Calculation Agent. If the brokers selected as aforesaid by the Calculation Agent are not quoting rates as described in the preceding sentence, the Federal Funds Rate with respect to such Interest Reset Date will be the Federal Funds Rate in effect under the Note on such Interest Determination Date. Book-Entry Notes Except as described below, the Notes will be issued as Book-Entry Notes and represented by one or more global securities (each, a "Global Security") that will be deposited with, or on behalf of, The Depository Trust Company, New York, New York ("DTC"), or such other Depository as is designated by HEI, and registered in the name of a nominee of the Depository. DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct participants ("Direct Participants") include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. The Agents are Direct Participants of the Depository. Access to the DTC system is also available to others such as securities brokers and dealers, banks and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The rules applicable to DTC and its Participants are on file with the SEC. Upon issuance, all Book-Entry Notes having the same issue price, issue date, maturity date, interest rate, redemption and repayment provisions, if any, and interest payment dates will be represented by one or more Global Securities and will be deposited with DTC or its custodian. So long as the Depository or its nominee is the registered owner of a Global Security, the Depository or its nominee, as the case may be, will be the sole holder of the Book-Entry Notes represented thereby for all purposes under the Indenture. Except as otherwise provided below, the beneficial owners of the Global Security or Securities representing Book-Entry Notes will not be entitled to receive physical delivery of Definitive Notes and will not be considered the holders thereof for any purpose under the Indenture, and no Global Security 24 representing Book-Entry Notes shall be so exchangeable or transferable. Accordingly, each beneficial owner must rely on the procedures of the Depository and, if such beneficial owner is not a Participant, on the procedures of the Participant through which such beneficial owner owns its interest in order to exercise any rights of a holder under such Global Security or the Indenture. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of such securities in certificated form. Such limits and laws may impair the ability to transfer beneficial interests in a Global Security representing Book-Entry Notes. Purchases of Book-Entry Notes under the DTC system must be made by or through Direct Participants, which will receive a credit for such Book-Entry Notes on DTC's records. The ownership interest of each actual purchaser of each Book-Entry Note ("beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial owners will not receive

written confirmation from DTC of their purchase, but beneficial owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the beneficial owner entered into the transaction. Transfers of ownership interests in a Global Security representing Book-Entry Notes are to be accomplished by entries made on the books of Participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests of a Global Security representing Book-Entry Notes, except in the event that use of the book-entry system for such Book-Entry Notes is discontinued. To facilitate subsequent transfers, all Global Securities representing Book-Entry Notes which are deposited with, or on behalf of, the Depository are registered in the name of the Depository's nominee, Cede & Co. The deposit of Global Securities with, or on behalf of, the Depository and their registration in the name of Cede & Co. will effect no change in beneficial ownership. DTC has no knowledge of the actual beneficial owners of the Global Securities representing the Book-Entry Notes. DTC's records reflect only the identity of the Direct Participants to whose accounts such Book-Entry Notes are credited, which may or may not be the beneficial owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers. If applicable, redemption notices will be sent to Cede & Co. as registered holder of the Book-Entry Notes. If less than all of the Notes within an issue are being redeemed, DTC will determine in accordance with its usual procedures the amount of the interest of each Direct Participant to be redeemed. Neither DTC nor Cede & Co. will itself consent or vote with respect to the Global Securities representing Book-Entry Notes. Under its usual procedures, DTC mails an omnibus proxy (the "Omnibus Proxy") to HEI as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Book-Entry Notes are credited on the record date (identified in a listing attached to the Omnibus Proxy). Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. So long as the Notes are Book-Entry Notes, principal, premium (if any) and interest payments on such Book-Entry Notes will be made by HEI in immediately available funds through the Trustee to DTC. DTC's practice is to credit Direct Participants' accounts on the date on which interest is payable in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on such date. Payments by Participants to beneficial owners will be governed by standing instructions and customary practices as is the case with securities held for the accounts of customers in bearer form or registered in "street name" and will be the responsibility of such Participant and not of DTC, the Agents or HEI, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium (if any) and interest to DTC is the responsibility of HEI and the Trustee. Disbursement of such payments to Direct Participants is the responsibility of DTC and disbursement of such payments to the beneficial owners is the responsibility of Direct and Indirect Participants. 25 A beneficial owner shall give notice of its exercise of any option it may have to elect to have its Book-Entry Notes repaid by HEI, through its Participant, to the Trustee, and shall effect delivery of such Book-Entry Notes by causing the Direct Participant to transfer to the Trustee the Participant's interest in the Global Security or Securities representing such Book-Entry Notes on the Depository's records. The requirement for physical delivery of Book-Entry Notes in connection with the exercise of a beneficial owner's option for repayment will be deemed satisfied when the ownership rights in the Global Security or Securities representing such Book-Entry Notes are transferred by Direct Participants to the Trustee on the Depository's records. Each Global Security representing Book-Entry Notes will be exchangeable for Definitive Notes of like tenor and terms and of differing authorized denominations in a like aggregate principal amount, only if (i) the Depository notifies HEI that it is unwilling or unable to continue as Depository for the Global Securities or HEI becomes aware that the Depository has ceased to be a clearing agency registered under the Exchange Act and, in either such case, HEI shall not have appointed a successor to the Depository within 90 days thereafter, (ii) HEI, in its sole discretion, determines that the Global Securities will be exchangeable for Definitive Notes or (iii) an Event of Default will have occurred and be continuing with respect to the Notes under the Indenture. Upon any such exchange, the Definitive Notes will be registered in the names of the beneficial owners of the Global Security or Securities representing Book-Entry Notes, which names will be provided by the Depository's relevant Participants (as identified by the Depository) to the Trustee. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources (including DTC) that HEI believes to be accurate, but HEI assumes no responsibility for the accuracy thereof. HEI assumes no responsibility for the performance by DTC or its Participants of their respective

obligations as described herein or under the rules and procedures governing their respective operations. Redemption at the Option of HEI The Notes will not be subject to any sinking fund. The Notes will be redeemable at the option of HEI prior to the Stated Maturity only if a Redemption Commencement Date and an Initial Redemption Percentage are specified in the applicable Note and pricing supplement. If so specified, the Notes will be subject to redemption at the option of HEI on any date on and after the applicable Redemption Commencement Date in whole or from time to time in part in increments of \$1,000 or such other minimum denomination specified in such pricing supplement (provided that any remaining principal amount thereof shall be at least \$1,000 or such other minimum denomination), at the applicable Redemption Price (as defined below), together with unpaid interest accrued thereon to the date of redemption, on written notice given to the holders thereof not less than 30 nor more than 60 calendar days prior to the date of redemption and in accordance with the provisions of the Indenture. "Redemption Price", with respect to a Note, means an amount equal to the Initial Redemption Percentage specified in the applicable Note and pricing supplement (as adjusted by the Annual Redemption Percentage Reduction, if applicable) multiplied by the unpaid principal amount to be redeemed. The Initial Redemption Percentage, if any, applicable to a Note shall decline at each anniversary of the Redemption Commencement Date by an amount equal to the Annual Redemption Percentage Reduction (if any) specified in the applicable Note and pricing supplement, until the Redemption Price is equal to 100% of the unpaid principal amount to be redeemed. If any Note is redeemed in part, a new Note of like tenor for the unredeemed portion and otherwise having the same terms as the partially redeemed Note will be issued in the name of the holder upon presentation and surrender of the partially redeemed Note. For a discussion of the redemption of Discount Notes, see "Discount Notes." Repayment at the Option of the Holder The Notes will be repayable by HEI at the option of the holders thereof prior to the Stated Maturity only if one or more Optional Repayment Dates are specified in the applicable Note and pricing supplement. If so specified, the Notes will be subject to repayment at the option of the holders thereof on any Optional Repayment Date in whole or from time to time in part in increments of \$1,000 or such other minimum denomination as is specified in the applicable pricing supplement (provided that any remaining principal amount thereof shall be at least \$1,000 or such minimum denomination), at a repayment price equal to 100% of the unpaid principal amount to be repaid, together with unpaid interest accrued thereon to the date of repayment. For any Note to be repaid, such Note must be received, together with the form entitled "Option to Elect Repayment" duly completed, by the Trustee at its office maintained for such purpose in the Borough of Manhattan in The City of New York, or in such other location as HEI selects in conformity with the Indenture, not less than 30 nor more than 60 calendar days prior to the date of repayment. If any Note is repaid in part, a new Note of like tenor for the unpaid portion and otherwise having the same terms as the partially repaid Note will be issued in the name of the holder upon presentation and surrender of the partially repaid Note. For a discussion of the repayment of Discount Notes, see "Discount Notes." Only the Depository may exercise a repayment option in respect of Global Securities representing Book-Entry Notes. Accordingly, beneficial owners of Global Securities that desire to exercise their repayment option, if any, with respect to all or any portion of the Book-Entry Notes represented by such Global Securities, must instruct the Participant through which they own their interest to direct the Depository to exercise the repayment option on their behalf by delivering the related Global Security and duly completed election form to the Trustee as aforesaid. In order to ensure that such Global Security and election form are received by the Trustee on a particular day, the applicable beneficial owner must so instruct the Participant through which it owns its interest before such Participant's deadline for accepting instructions for that day. Participants may have different deadlines for accepting instructions from their customers. Accordingly, a beneficial owner should consult the Participant through which it owns an interest in a Global Security for the Participant's deadline for receiving repayment instructions. In addition, at the time such instructions are given, each such beneficial owner shall cause the Participant through which it owns its interest to transfer such beneficial owner's interest in the Global Security or Securities representing the related Book-Entry Notes, on the Depository's records, to the Trustee. The exercise of an option to elect repayment shall be irrevocable. See "Book-Entry Notes." If applicable, HEI will comply with the requirements of Section 14(e) of the Exchange Act and the rules promulgated thereunder, and any other securities laws or regulations, in connection with any such repayment. Discount Notes HEI may offer Discount Notes from time to time that have an Issue Price (as specified in the applicable pricing supplement) that is less than 100% of the principal amount thereof (i.e., par) by more than a percentage equal to the product of 0.25% and the number of full years to the Stated Maturity. Such Discount Notes will bear no interest or will bear interest at a rate that is below market rates at the time of issuance. The difference between the Issue Price of a Discount Note and 100% of the principal amount of the Note is referred to



as the "Discount." In the event of redemption, repayment or acceleration of maturity of a Discount Note, the amount payable to the holder of such Discount Note will be equal to the sum of (i) the Issue Price (increased by an accrual of Discount) and, in the event of any redemption of such Discount Note (if applicable), multiplied by the Initial Redemption Percentage (as adjusted by the Annual Redemption Percentage Reduction, if applicable) and (ii) any unpaid interest accrued thereon to the date of such redemption, repayment or acceleration of maturity, as the case may be. For purposes of determining the amount of Discount that has accrued as of any date on which redemption, repayment or acceleration of maturity occurs for a Discount Note, such Discount will be accrued using a constant yield method. The constant yield will be calculated using a 30-day month, 360-day year convention, a compounding period that, except for the Initial Period (as defined below), corresponds to the shortest period between Interest Payment Dates for the applicable Discount Note (with ratable accruals within a compounded period), a coupon rate equal to the initial coupon rate applicable to such Discount Note and an assumption that the maturity of such Discount Note will not be accelerated. If the period from the date of issue to the initial Interest Payment Date for a Discount Note (the "Initial Period") is shorter than the compounded period for such Discount Note, a proportionate amount of the yield for an entire compounding period will be accrued. If the Initial Period is longer than the compounding period, then such period will be divided into a regular compounding period and a short period with the short period being treated as provided above. 27 The accrual of the applicable Discount may differ from the accrual of original issue discount, certain Discount Notes may not be treated as having original issue discount, and Notes other than Discount Notes may be treated as issued with original issue discount, in each case for United States federal income tax purposes. See "Certain United States Federal Income Tax Consequences." Amortizing Notes HEI may from time to time offer Notes with the amount of principal thereof and interest thereon payable in installments over the term of such Notes ("Amortizing Notes"). Interest on each Amortizing Note will be computed on the basis of a 360-day year of twelve 30-day months. Payments with respect to Amortizing Notes will be applied first to interest due and payable thereon and then to the reduction of the unpaid principal amount thereof. Further information concerning additional terms and provisions of Amortizing Notes will be specified in the applicable pricing supplement, including a table setting forth a principal repayment schedule for such Amortizing Notes. Other Provisions; Addenda Any provisions of a Note, including but not limited to the specification and determination of one or more Base Rates, the calculation of the interest rate applicable to a Floating Rate Note, the Interest Payment Dates, the Stated Maturity and any redemption or repayment provisions, may be modified by the terms specified under "Other Provisions" in the Note or in an Addendum to the Note, if so specified in the Note (or any Addendum to the Note) and in the applicable pricing supplement. Restriction on Liens Except as described below, HEI will not create, incur, issue, assume, permit or suffer to exist any Indebtedness (as defined below) secured after the date of the Indenture by any security interest on any property of HEI (including, without limitation, property of HEI consisting of any share or shares of capital stock or indebtedness of any subsidiary of HEI), whether such property, shares or indebtedness are owned by HEI at the date of the Indenture or thereafter acquired, without effectively providing concurrently therewith that the Securities, including the Notes (together, at the option of HEI, with any other indebtedness ranking equally with the Securities and then existing or thereafter created), shall be secured equally and ratably with (or prior to) the Indebtedness so created, incurred, issued, assumed, permitted or suffered to exist. The foregoing restrictions do not limit the ability of any subsidiary of HEI to incur, issue, assume, permit or suffer to exist any of its own indebtedness or to grant security interests on any of its properties. The foregoing restrictions also do not apply to: (1) security interests on any property acquired, constructed or improved by HEI or on any shares of capital stock or indebtedness of any subsidiary acquired by HEI after the date of the Indenture which security interests are created or assumed at the time of or within 270 days after the acquisition of, or the expenditure of the costs of construction or improvements of, and which secure the payment of all or any part of the purchase price of, such property, shares of capital stock or indebtedness, or which secure payment of all or any part of the cost of any such construction or improvements, provided that, in the case of any such acquisition, construction or improvement, such security interest does not apply to any property or shares of capital stock or indebtedness owned by HEI other than that acquired, constructed or improved except, in the case of any such construction or improvement, any real property on which the property is so constructed or the improvement is located; (2) security interests which exist on any property, shares of capital stock or indebtedness at the time of acquisition of such property, shares or indebtedness by HEI; (3) security interests which exist on any property of a corporation or other Person (as defined below) at the time such corporation is merged with or into or consolidated with HEI or at the time of a sale or 28 transfer of the properties of such corporation or other Person as an entirety or

substantially as an entirety to HEI; (4) security interests in favor of the United States of America or any State thereof, or any department, agency or instrumentality or political subdivision of the United States of America or any State thereof, or in favor of any other country or political subdivision, (A) to secure partial progress, advance or other payments pursuant to any contract or statute, (B) to secure any indebtedness incurred or guaranteed for the purpose of financing or refinancing all or any part of the purchase price of any property, shares of capital stock or indebtedness subject to such security interests, or (C) to secure the cost of constructing or improving any property subject to such security interests (including, without limitation, security interests incurred in connection with pollution control, industrial revenue or similar financings); (5) security interests on any property arising in connection with any defeasance, covenant defeasance or in substance defeasance of any Indebtedness pursuant to express contractual provisions or generally accepted accounting principles; (6) security interests on any capital stock of any corporation which is registered in the name of HEI or otherwise owned by or held for the benefit of HEI which may constitute "margin stock" as such term is defined in Section 207.2(i) of Title 12 of the Code of Federal Regulations (or any successor provisions); and (7) any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part of any security interest referred to above in clauses (1)-(6), inclusive; provided, however, that the principal amount of Indebtedness secured thereby shall not exceed the original principal amount of Indebtedness and that such extension, renewal or replacement shall be limited to all or a part of the property (plus improvements and construction on such property), shares of capital stock or indebtedness which was subject to the security interest so extended, renewed or replaced. Notwithstanding the foregoing, HEI may, without equally and ratably securing the Securities, create, incur, issue, assume, permit or suffer to exist Indebtedness secured by any security interest not excepted by the foregoing clauses (1) through (7), inclusive, if the aggregate amount of such Indebtedness, together with all other Indebtedness of HEI existing at such time and secured by security interests not so excepted, does not exceed 10% of Consolidated Net Tangible Assets (as defined below). "Indebtedness" means (1) any indebtedness, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, (2) all deferred indebtedness (including, without limitation, capitalized leases) for the payment of the purchase price of property or assets purchased, and (3) all guaranties, endorsements, assumptions or other contingent obligations in respect of, or to purchase or otherwise to acquire, indebtedness of the types described in clauses (1) and (2) above. "Consolidated Net Tangible Assets" means the total amount of assets appearing on the consolidated balance sheet of HEI and its subsidiaries less, without duplication: (a) all current liabilities (excluding any thereof which are by their terms extendable or renewable at the sole option of the obligor without requiring the consent of the obligee to a date more than 12 months after the date of determination); (b) all reserves for depreciation and other asset valuation reserves but excluding any reserves for deferred federal income taxes arising from accelerated amortization or otherwise; (c) all intangible assets such as goodwill, trademarks, trade names, patents and unamortized debt discount and expense carried as an asset on such balance sheet; and (d) all appropriate adjustments on account of minority interests of other persons holding common stock in any subsidiary. The Indenture states that Consolidated Net Tangible Assets are determined in accordance with generally accepted accounting principles and as of a date not more than 90 days prior to the happening of the event for which such determination is being made. 29 "Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any governmental agency or political subdivision. Restriction on Sale-Leaseback Transactions HEI may not engage in any Sale-Leaseback Transaction unless the amount of Sale-Leaseback Debt resulting from such transaction plus the aggregate of all other Sale-Leaseback Debt then existing, does not exceed 5% of Consolidated Net Tangible Assets. However, if a Sale-Leaseback Transaction would result in the amount of Sale-Leaseback Debt exceeding the foregoing limitation, then such transaction is permitted, but only if the excess amount of Sale-Leaseback Debt, if treated as Indebtedness secured by a security interest for the purposes of the restrictions described under "Restriction on Liens", would be permissible under such restrictions, and provided further that the amount of such excess shall be treated as Indebtedness for such purpose and not as Sale-Leaseback Debt. "Sale-Leaseback Transaction" means any sale by HEI to any person (other than HEI or a subsidiary) after the date of the Indenture of any property owned by HEI, which sale occurs more than 270 days after the later of the acquisition, completion of construction or commencement of commercial operations of such property by HEI, if, as part of the same transaction or series of transactions, HEI leases as lessee for a period of three years or longer the same property or other substantially equivalent property which it intends to use for substantially the same purposes pursuant to a lease which contains an option or right to repurchase said property. "Sale-Leaseback Debt"

means, as to any particular lease entered into in a Sale-Leaseback Transaction, at any date as of which the amount thereof is to be determined, the total net amount of rent (determined in accordance with generally accepted accounting principles) required to be paid under such lease during the remaining term thereof, discounted from the respective due dates thereof to such date at the rate per annum which would then be used to determine lease classification under generally accepted accounting principles. The net amount of rent required to be paid under any such lease for any such period shall be the aggregate amount of the rent payable by the lessee with respect to such period after excluding amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, water rates and similar charges. The term "Sale-Leaseback Debt" excludes any part thereof representing any extension, renewal or replacements (or successive extensions, renewals or replacements) of Indebtedness secured by any security interest existing at the date of the Indenture, provided that the Sale-Leaseback Transaction resulting in such Sale-Leaseback Debt is limited to all or a part of the property (plus improvements and construction on such property) which was subject to the security interest securing the Indebtedness so extended, renewed or replaced. Restriction on Dispositions of HECO Shares HEI currently holds 100% of the outstanding common stock of HECO. HEI will not sell, transfer or otherwise dispose of, and will not permit HECO to issue, sell, transfer or otherwise dispose of, any shares of capital stock of any class or classes of HECO ordinarily having voting power for the election of HECO's board of directors. This covenant will not restrict the issuance, sale, transfer or other disposition of HECO's voting shares to HEI or to any of HEI's direct or indirect wholly-owned subsidiaries. The covenant also will not restrict (i) sales or transfers by HECO of preferred stock or other classes of capital stock of HECO which do not ordinarily have voting power in the election of HECO's Board of Directors or of the capital stock of its subsidiaries, (ii) consolidations of HECO or mergers of HECO with or into HEI or any of its direct or indirect wholly-owned subsidiaries, or (iii) consolidations or mergers of HECO with or into any other corporation if the corporation formed by such consolidation or merger is a direct or indirect wholly-owned subsidiary of HEI. Consolidations, Mergers, Conveyances, Transfers or Leases HEI will not consolidate with or merge into any other corporation or convey, transfer or lease its properties and assets substantially as an entirety to any Person or permit any Person to consolidate with or merge into HEI or convey, transfer or lease its properties and assets substantially as an entirety to HEI unless certain conditions are met, including the conditions that: . the corporation formed by such consolidation or into which HEI is merged, or the Person which acquires by conveyance or transfer or which leases the property and assets of HEI substantially as an entirety, is a Person organized and existing in corporate form under the laws of the United States of America, any State thereof or the District of Columbia, and such Person expressly assumes, by supplemental indenture, the due and punctual payment of the principal of (and premium, if any) and interest (if any) on all the Securities and the performance of all of the covenants of HEI under the Indenture; . immediately after giving effect to such transaction no Event of Default, and no event which after notice and lapse of time would become an Event of Default, has occurred and is continuing; and . HEI has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, as provided in the Indenture. Absence of Restrictions on Certain Transactions Other than the restrictions on liens, sale and leaseback transactions and consolidations, mergers, conveyances, transfers and leases described above, the Indenture and the Notes do not contain any covenants or other provisions designed to afford holders of the Notes protection in the event of a highly leveraged transaction involving HEI or in the event of a recapitalization, merger or other transaction (leveraged or otherwise) involving HEI, its affiliates or its management. Events of Default Each of the following is an Event of Default under the Indenture with respect to the Notes as a series of Securities under the Indenture: . failure to pay any interest on any Note when due and payable and continuation of such failure for 30 days; . failure to pay any principal of (or premium, if any, on) any Note when due and payable and continuance of such failure for a period of three Business Days; . failure to deposit any sinking fund payment, when and as due by the terms of a Note, and continuance of such failure for a period of three Business Days; . failure to perform or the breach of any covenant or warranty of HEI made in or pursuant to the Indenture (other than a covenant or warranty of HEI made in or pursuant to the Indenture solely for the benefit of one or more series of Securities other than the Notes), continued for 60 days after written notice to HEI by the Trustee, or to HEI and the Trustee by the holders of at least 10% in principal amount of the Notes or of the Securities of another series outstanding under the Indenture as provided in the Indenture; . failure to pay when due and payable after the expiration of any applicable grace period, any portion of the principal of indebtedness of HEI pursuant to a bond, debenture, note or other evidence of indebtedness in excess of \$5,000,000 (including a default with respect to Securities of any series other than the Notes), or acceleration of such indebtedness for other default thereunder, without such Indebtedness having been discharged,

or such acceleration having been rescinded or annulled, within 10 days after written notice to HEI by the Trustee or to HEI and the Trustee by the holders of at least 10% in principal amount of the Notes outstanding under the Indenture (provided that this Event of Default shall be inapplicable if and so long as HEI is contesting in good faith such payment obligation or such acceleration and HEI has received the written opinion of counsel that it has a meritorious position with respect thereto); 31 . certain events of bankruptcy, insolvency or reorganization; and . any other Event of Default specified with respect to the Notes. An Event of Default with respect to any other series of Securities issued under the Indenture will not necessarily constitute an Event of Default with respect to the Notes. The Trustee must, within 90 days after a default occurs with respect to the Notes, transmit by mail to all holders of the Notes, notice of such default, unless it has been cured or waived (default is defined to include the events specified above without the grace periods or notice). The Trustee may withhold notice of a default, except a default in the payment of principal, premium, if any, or interest, if and so long as the Trustee determines in good faith (through its board, executive committee, trust committee or certain officers specified in the Indenture) that the withholding of such notice is in the interest of such holders. In the case of any default or breach of any covenant or warranty, except for a default or breach that is specifically addressed in the Indenture, no notice of such default or breach shall be given to holders for at least 30 days after the occurrence of such default or breach. If an Event of Default with respect to the outstanding Notes issued under the Indenture shall occur and be continuing, then either the Trustee or the holders of not less than 25% in principal amount of the outstanding Notes may declare the principal amount (or if any of the Notes are Discount Notes or similar securities, such portion of the principal amount as may be specified thereon) of all of the Notes to be due and payable immediately; provided, however, that at any time after a declaration of acceleration of the Notes and before a judgment or decree for payment has been obtained, the holders of a majority in principal amount of the outstanding Notes may, under certain circumstances, rescind and annul such acceleration and its consequences if all Events of Default with respect to the Notes, other than the nonpayment of the principal of the Notes which has become due solely by such declaration of acceleration, have been cured or waived as provided in the Indenture. Any money collected by the Trustee pursuant to the exercise of its rights upon an Event of Default shall be applied first to amounts owing to the Trustee under the Indenture. No holder of any Note will have any right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee or for any remedy thereunder, unless such holder shall have previously given to the Trustee written notice of a continuing Event of Default and the holders of at least 25% in aggregate principal amount of the outstanding Notes shall have made written request, and offered reasonable indemnity, to the Trustee to institute such proceeding as trustee, and the Trustee shall not have received from the holders of a majority in aggregate principal amount of the outstanding Notes a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days. However, such limitations do not apply to a suit instituted by a holder of a Note for enforcement of payment of the principal of and premium, if any, or interest on such Note on or after the respective due dates expressed in such Note. For purposes of the preceding two paragraphs the Notes will not be deemed to be outstanding if HEI takes certain steps to discharge its obligations relating to the Notes. See "Defeasance". HEI will be required to furnish to the Trustee annually a statement as to the performance by HEI of certain of its obligations under the Indenture and as to any default in such performance. Defeasance Defeasance and Discharge Subject to election by HEI, which election HEI has made with respect to the Notes, the Indenture provides that HEI will be discharged from any and all obligations in respect of a series of Securities (except for certain obligations to register the transfer or exchange of Securities of such series, to replace stolen, lost or mutilated Securities, to maintain paying agencies and to hold monies for payment in trust) upon the deposit with the Trustee or any other trustee, in trust, of money and/or U.S. Government Obligations which through the 32 payment of interest and principal in respect thereof in accordance with their terms will provide money in an amount sufficient to pay the principal of (and premium, if any) and each installment of interest on such Securities at least one day prior to the dates on which such payments are due in accordance with the terms of the Indenture and such Securities. Such a trust may only be established if, among other things required by the Indenture, HEI delivers to the Trustee an opinion of counsel to the effect that HEI has received from, or there has been published by, the Internal Revenue Service a ruling or there has been a change in applicable federal income tax laws and regulations (including a change in the official interpretation by the Internal Revenue Service) to the effect that holders of such Securities will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred. Defeasance of Certain

Covenants and Certain Events of Default Subject to election by HEI, which election HEI has made with respect to the Notes, the Indenture provides that with respect to a series of the Securities HEI may omit to comply with certain restrictive covenants, including those described under "Restrictions on Liens" and "Restriction on Sale-Leaseback Transactions" above, and the Event of Default described in the fourth bullet point under "Events of Default" above, shall be inapplicable to Securities of such series, upon the deposit with the Trustee, in trust, of money and/or U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide money in an amount sufficient to pay the principal of (and premium, if any) and each installment of interest on such Securities at least one day prior to the date on which such payments are due in accordance with the terms of the Indenture and such Securities. The obligations of HEI under the Indenture and such Securities other than with respect to the covenants referred to above and the Events of Default other than the Event of Default referred to above shall remain in full force and effect. Such a trust may only be established if, among other things required by the Indenture, HEI has delivered to the Trustee an opinion of counsel to the effect that the holders of such Securities will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and defeasance of certain obligations and will be subject to federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred.

**Designation of a Portion of a Series as a New Series** It is contemplated that a single series of the Securities, such as the Notes, will be created which would include Securities with sufficiently different terms that some of them (e.g., fixed rate Securities), but not others of them (e.g., floating rate Securities), would readily be the subject of defeasance and discharge or covenant defeasance, as described below. In order to facilitate such defeasance or covenant defeasance, HEI acting by board resolution of its Board of Directors shall have the right, at any time or from time to time, unilaterally to designate a portion of the Securities of any series, which is to be the subject of such defeasance or covenant defeasance, as a separate series under the Indenture, with the remainder to be unaffected as to series designation by such action, and to assign a new series designation thereto to distinguish the Securities of such new series from all other Securities. Thereafter, the Securities included in such new series, on the one hand, and the remainder of such Securities, on the other hand, shall be of different series for all purposes under the Indenture, and provisions in the Indenture or in any Security which apply to each series separately or otherwise depend upon or relate to series designation, shall give effect to such action by HEI, but the provisions of the Indenture and of any Security shall otherwise be unaffected thereby.

**Covenant Defeasance and Certain Other Events of Default** In the event that HEI exercises its option to omit compliance with certain covenants of the Indenture with respect to the Notes as described above and the Notes are declared due and payable prior to the Stated Maturity because of the occurrence of any then-applicable Event of Default, the amount of money and U.S. Government Obligations on deposit with the Trustee will be sufficient to pay amounts due on the Notes at their 33 Stated Maturity but may not be sufficient to pay amounts due on the Notes at the time of the acceleration resulting from such Event of Default. However, HEI shall remain liable for such payments.

**Modification of Indenture and Waiver** Without the consent of any holders of Securities, HEI and the Trustee may enter into one or more supplemental indentures for certain purposes enumerated in the Indenture, such as to evidence succession to HEI of another corporation, to cure ambiguities in the Indenture or to make any other provisions that shall not adversely affect the interests of the holders of Securities of any series in any material respect. The consent of the holders of not less than 66 2/3 % in principal amount of the Securities of each series affected by a supplemental indenture is required for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, the Indenture pursuant to such supplemental indenture. No such supplemental indenture will, however, without the consent of the holders of each outstanding Security under the Indenture of each such series directly affected thereby: . change the Stated Maturity of, or any installment of, principal of or interest on, any Security, or reduce the principal thereof or the rate of interest thereon or redemption premium payable thereon, or shorten the time period during which such Security may not be redeemed at the option of HEI, or reduce the amount of principal of a Discount Note that would be due and payable upon a declaration of acceleration of the Stated Maturity, or otherwise modify the terms of payment of or the place of payment for the principal thereof or interest or redemption premium thereon; . reduce the percentage of principal amount of the outstanding Securities of such series required to consent to any supplemental indenture or to any waiver provided for in the Indenture; . change any obligation of HEI to maintain an office or agency at the place or places where the principal of and premium, if any, and interest, if any, on the Securities of such series are payable; or . modify certain of the provisions in the Indenture relating to supplemental indentures, waivers of certain covenants and waivers of past defaults. A

supplemental indenture which changes or eliminates any covenant or other provision of the Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under the Indenture of the holders of any other Securities. The holders of 66 2/3 % in aggregate principal amount of the outstanding Securities of a series may waive compliance by HEI with the provisions of the Indenture restricting liens and sale-leaseback transactions insofar as they relate to the Securities of such series. The holders of a majority in aggregate principal amount of the outstanding Securities of a series may waive any past default under the Indenture, except a default in the payment of principal, premium, if any, or interest or in respect of any covenant or provision of the Indenture referred to in the second preceding paragraph above. Regarding the Trustee HEI and its affiliates may, from time to time, enter into commercial banking and other transactions with the Trustee in the ordinary course of business. Listing The Notes will not be listed on any national or regional securities exchange. Governing Law The Indenture and the Notes will be governed by the laws of the State of New York. 34 UNITED STATES FEDERAL INCOME TAX CONSEQUENCES General The following summary describes the material United States federal income tax consequences of the purchase, ownership and disposition of Notes. Except where noted, it deals only with Notes held as capital assets by holders that are United States Persons ("U.S. Holders") and that purchased Notes at their original issuance, and assumes that the holder is the beneficial owner of the Note. For this purpose, "United States Person" means a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, an estate the income of which is subject to United States federal income taxation regardless of its source, or a trust the administration of which is subject to the primary jurisdiction of a court within the United States and with respect to which one or more United States persons have authority to control all substantial decisions. This summary does not deal with special situations, such as those of dealers in securities, financial institutions, insurance companies, individual retirement or other tax-deferred accounts, tax exempt organizations, persons who hold Notes as a hedge against currency risk, persons who have otherwise hedged the risk of ownership of a Note or persons who hold Notes as part of a straddle with other investments or whose "functional currency" is not the U.S. dollar. Finally, it does not purport to cover any foreign, state or local tax consequences associated with the purchase, ownership or disposition of Notes or all of the possible United States federal income tax consequences of the purchase, ownership or disposition of Notes. The discussion is based upon the Internal Revenue Code of 1986, as amended (the "Code"), including the regulations, rulings and judicial decisions thereunder as of the date hereof. Such authorities may be repealed, revoked or modified so as to result in United States federal income tax consequences different from those discussed below. There is no assurance that the Internal Revenue Service ("IRS") will not take a contrary view. Payments of Interest Interest on a Note will generally be taxable to a U.S. Holder as ordinary interest income from domestic sources at the time it is paid or accrued in accordance with the holder's method of accounting for United States federal income tax purposes. However, different rules apply with respect to Original Issue Discount Notes (as defined below). Original Issue Discount An "Original Issue Discount Note" is a Note whose stated redemption price at maturity (i.e., the sum of its principal amount plus all other payments to be made on the Note other than "qualified stated interest") exceeds its issue price (i.e., the first price at which a substantial amount of the Notes in the issuance is sold, excluding sales to bond houses, brokers and others acting as underwriters, placement agents or wholesalers) by more than 0.25 percent of the stated redemption price at maturity multiplied by the number of complete years to maturity. The term "Original Issue Discount Note" does not necessarily include all Notes identified as Discount Notes, and may include Notes that are not otherwise Discount Notes but that have been issued with original issue discount ("OID") for United States federal income tax purposes. "Qualified stated interest" is stated interest that is unconditionally payable in cash or in property (other than debt instruments of the issuer) at least annually at a single fixed rate, provided that the rate appropriately takes into account the length of intervals between payments, or at certain variable rates of interest or certain combinations thereof. U.S. Holders of Original Issue Discount Notes with maturities of more than one year will be required to include OID in gross income as interest income before receiving cash to which such interest income is attributable. The amount of OID annually includible in income by a U.S. Holder is the sum of the daily portions of OID with respect to each Original Issue Discount Note held by such U.S. Holder for each day during the taxable year or portion of a taxable year that the U.S. Holder holds such Original Issue Discount Note. The daily 35 portion is determined by allocating to each day of any accrual period a pro rata portion of an amount equal to the "adjusted issue price" of the Original Issue Discount Note at the beginning of the accrual period multiplied by the

yield to maturity of the Original Issue Discount Note less the amount, if any, of qualified stated interest allocable to the accrual period. The "accrual period" for an Original Issue Discount Note may be of any length and may vary in length over the term of the Original Issue Discount Note, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs on either the first or final day of an accrual period. The "adjusted issue price" is the issue price of the Original Issue Discount Note increased by the accrued OID for all prior accrual periods (and decreased by the amount of all payments previously made on the Original Issue Discount Note, other than qualified stated interest payments). Sections 1271 through 1275 of the Code and the regulations thereunder (the "OID Regulations") provide detailed rules for computing OID. Under the OID Regulations, a Floating Rate Note will qualify as a "variable rate debt instrument" if (a) its issue price does not exceed the total noncontingent principal payments due under the Floating Rate Note by more than a specified de minimis amount, (b) it does not provide for any principal payments that are contingent, and (c) it provides for stated interest, paid or compounded at least annually, at current values of (i) one or more qualified floating rates, (ii) a single fixed rate and one or more qualified floating rates, (iii) a single objective rate, or (iv) a single fixed rate and a single objective rate that is a qualified inverse floating rate. Any qualified floating rate or objective rate must be set at current value. The meanings of the terms "qualified floating rates," "single objective rate," "qualified inverse floating rate," "current value" and other terms are contained in the OID Regulations. If a Floating Rate Note that provides for stated interest at a single qualified floating rate (or a single objective rate) throughout the term thereof qualifies as a "variable rate debt instrument" under the OID Regulations, then any stated interest on such Note which is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually during the term of the Note will constitute qualified stated interest and will be taxed accordingly. Thus, such a Floating Rate will generally not be treated as having been issued with OID unless the Floating Rate Note is issued at a "true" discount (i.e., at a price below the Note's stated principal amount) in excess of a specified de minimis amount. OID on such a Floating Rate Note arising from "true" discount is allocated to an accrual period using the constant yield method described above by assuming that the variable rate is a fixed rate equal to, in the case of a qualified floating rate or qualified inverse floating rate, the value as of the issue date of the qualified floating rate or qualified inverse floating rate. In general, any other Floating Rate Note that qualifies as a "variable rate debt instrument" will be converted into an "equivalent" fixed rate debt instrument for purposes of determining the amount and accrual of OID and qualified stated interest on the Floating Rate Note. The OID Regulations generally require that such a Floating Rate Note be converted into an "equivalent" fixed rate debt instrument by substituting any qualified floating rate or qualified inverse floating rate provided for under the terms of the Floating Rate Note with a fixed rate equal to the value of the qualified floating rate or qualified inverse floating rate, as the case may be, as of the Floating Rate Note's issue date. Once the Floating Rate Note is converted into an "equivalent" fixed rate debt instrument pursuant to the foregoing rules, the amount of OID and qualified stated interest, if any, are determined for the "equivalent" fixed rate debt instrument by applying the general OID rules to the "equivalent" fixed rate debt instrument. A U.S. Holder of the Floating Rate Note will account for such OID and qualified stated interest as if the U.S. Holder held the "equivalent" fixed rate debt instrument. In each accrual period, appropriate adjustments will be made to the amount of qualified stated interest or OID assumed to have been accrued or paid with respect to the "equivalent" fixed rate debt instrument in the event that such amounts differ from the actual amount of interest accrued or paid on the Floating Rate Note during the accrual period. If a Floating Rate Note does not qualify as a "variable rate debt instrument" under the OID Regulations, then the Floating Rate Note would be treated as a contingent payment debt obligation (a "CP Note"). U.S. Holders of CP Notes would be required to take amounts treated as interest into income, under the noncontingent bond method, as described in the OID Regulations, whether or not any payment thereon is fixed or determinable in the taxable year. HEI would be required to determine the "comparable yield" for the CP Note, which is the yield at which HEI would issue a fixed rate instrument with similar terms and conditions, such as the level of subordination. In no event may this yield be less than the applicable federal rate, which is periodically published in IRS revenue rulings. In addition, HEI would be required to construct a projected payment schedule, including the amount of all noncontingent payments and each contingent payment. These scheduled payments must produce the comparable yield for the CP Note. A U.S. Holder will be required to use this projected payment schedule to determine its interest (all of which is accrued as OID, as described above) and adjustments thereto with respect to a CP Note, unless it determines its own schedule and explicitly discloses that fact to the IRS. In such an event, HEI would provide the projected payment schedule for any CP Note with the relevant pricing supplement. If the amount of a contingent payment on a CP Note is more than the

projected amount of the contingent payment, as reflected in the projected payment schedule, the excess constitutes a positive adjustment, generally on the date of payment. If the amount of the contingent payment is less than the projected amount thereof, the difference is a negative adjustment. The amount by which the positive adjustments on a CP Note in a taxable year exceeds the negative adjustments in that year constitutes a net positive adjustment, which is treated as additional interest for the taxable year. The amount by which negative adjustments on a CP Note in a taxable year exceed the positive adjustments in that year constitutes a net negative adjustment. A U.S. Holder's net negative adjustment for a taxable year first reduces the U.S. Holders' amount otherwise includible as interest on the CP Note for the taxable year. Second, to the extent the negative adjustment exceeds the U.S. Holder's amount of interest for the taxable year, the excess constitutes an ordinary loss, limited to the amount of interest on the CP Note included by the U.S. Holder in prior taxable years reduced by any amount of net negative adjustments from prior taxable years which were previously treated as ordinary losses. Third, any remainder of net negative adjustments is a carryforward to the extent of the U.S. Holder's interest on the CP Note in subsequent taxable years or, if the U.S. Holder has a negative adjustment carryforward in the year of retirement, sale or disposition, it reduces the amount realized on such retirement, sale or disposition. In general, any gain recognized by a U.S. Holder on the sale, exchange or retirement of a CP Note will be treated as ordinary income and all or a portion of any loss recognized will be treated as ordinary loss.

**Short-Term Notes** In the case of Original Issue Discount Notes having a term of one year or less ("Short-Term Notes"), all payments (including stated interest) are included in the stated redemption price at maturity. The excess of the stated redemption price at maturity over the issue price of a Short-Term Note generally constitutes OID. In general, individuals and certain other cash-method U.S. Holders of Short-Term Notes are not required to include OID in income as it accrues unless they elect to do so. However, accrual-method taxpayers and certain other holders are required to include OID in income. Unless such holder makes an election to accrue OID according to a constant yield method based on daily compounding, it must be included on a straight-line basis. In the case of a U.S. Holder who is not required (and does not elect) to include OID in income currently, any gain realized on the sale, exchange or retirement of a Short-Term Note will be ordinary income to the extent of the OID accrued through the date of sale, exchange or retirement. In addition, U.S. Holders who do not elect to currently include OID may be required to defer deductions for a portion of the interest expense on any indebtedness incurred or continued to purchase or carry the Short-Term Notes in an amount not exceeding the deferred interest income, until such deferred interest income is recognized. <sup>37</sup> In addition, U.S. Holders may elect to determine the amount of discount, referred to as acquisition discount, to be included in gross income by using their tax basis instead of the issue price. If such an election is made, it applies to all obligations acquired in or after the first taxable year to which the election applies, which election may be revoked only with the consent of the IRS. This acquisition discount constitutes ordinary income and not capital gain.

**Market Discount** If a U.S. Holder purchases a Note, other than an Original Issue Discount Note, for an amount that is less than its stated redemption price at maturity or, in the case of an Original Issue Discount Note, for an amount that is less than its adjusted issue price, such U.S. Holder will be treated as having purchased such Note at a "market discount," unless such market discount is less than a specified de minimis amount. Under the market discount rules, a U.S. Holder will be required to treat any partial principal payment (or, in the case of an Original Issue Discount Note, any payment that does not constitute qualified stated interest) on, or any gain realized on the sale, exchange, retirement or other disposition of, a Note as ordinary income to the extent of the lesser of (i) the amount of such payment or realized gain or (ii) the market discount which has not previously been included in income and is treated as having accrued on such Note at the time of such payment or disposition. Market discount will be considered to accrue ratably during the period from the date of acquisition to the maturity date of the Note, unless the U.S. Holder elects to accrue market discount under a constant yield method. A U.S. Holder may be required to defer the deduction of all or a portion of the interest paid or accrued on any indebtedness incurred or maintained to purchase or carry a Note with market discount until the maturity of the Note or certain earlier dispositions. A U.S. Holder may elect to include market discount in income currently as it accrues (either ratably or under a constant yield method), in which case the rules described above regarding the treatment as ordinary income of gain upon the disposition of the Note and upon the receipt of certain cash payments and regarding the deferral of interest deductions will not apply. Generally, such currently included market discount is treated as ordinary interest for United States federal income tax purposes. Such an election will apply to all debt instruments acquired by the U.S. Holder on or after the first day of the first taxable year to which such election applies and may be revoked only with the consent of the IRS.

**Amortizable Bond Premium** A U.S. Holder who purchases a Note for an amount in excess of the sum of all



amounts, other than qualified stated interest, payable on the Note after the purchase date will be considered to have purchased the Note at a "premium" and, in the case of an Original Issue Discount Note, will not be required to include any OID in income. A U.S. Holder generally may elect to amortize the premium over the remaining term of the Note under a constant yield method. For any Floating Rate Note that is a "variable rate debt instrument" under the OID Regulations, that method is implemented by constructing an "equivalent fixed rate instrument," as provided in the OID Regulations. The amount amortized in any year reduces both the U.S. Holder's adjusted basis in the Note and interest income from the Note. Any excess bond premium allocable to an accrual period is deductible by the holder for that accrual period. The amount deductible, however, is limited by the amount of the holder's prior income inclusions on the instrument, and any excess is carried forward to the next accrual period. In addition, in the case of instruments that have alternative payment schedules that are predicated on the unilateral exercise of an option by the issuer or the holder, the amount of bond premium that is amortizable in an accrual period is calculated by assuming that both the issuer and the holder will exercise or not exercise options in a manner that maximizes the holder's yield. Thus, a holder may be required to amortize bond premium by reference to the Stated Maturity, even if it appears likely that the Note will be called. The final regulations also contain rules applicable if such contingency occurs or fails to occur contrary to the assumption utilized. 38 U.S. Holders not making an election to amortize bond premium are not required to reduce the adjusted basis of their Notes and consequently may recognize less gain or more loss upon their disposition. The election to amortize premium, once made, applies to all debt instruments held or subsequently acquired by the electing U.S. Holder on or after the first day of the taxable year to which the election applies and may not be revoked without the consent of the IRS. Holders should consult with their own tax advisors about this election. Election to Treat All Interest as OID Subject to certain limitations, U.S. Holders may elect to treat all interest and discount on Notes as OID and calculate the amount includible in gross income under the constant yield method described above. For purposes of this election, interest includes stated interest, OID, de minimis OID, market discount, acquisition discount and other unstated interest, as adjusted by any amortizable bond premium. If a U.S. Holder makes this election for a Note with amortizable bond premium, the election is treated also as an election under the amortizable bond premium provisions, described above, and the electing U.S. Holder will be required to amortize bond premium currently for all of the U.S. Holder's other debt instruments with amortizable bond premium. The election is to be made for the taxable year in which the U.S. Holder acquired the Note, and may not be revoked without the consent of the IRS. Sale, Exchange and Retirement of Notes A U.S. Holder's tax basis of a Note will, in general, be the U.S. Holder's cost thereof, increased by OID previously included in income of the U.S. Holder but reduced by any amortizable bond premium to the extent amortized and any payments, other than qualified stated interest, while held by the U.S. Holder. Upon the sale, exchange, retirement or other taxable disposition of a Note, gain or loss will be recognized equal to the difference between (i) the amount of cash and fair market value of property received (excluding an amount attributable to accrued and unpaid stated interest not previously included in income, which will be taxed as ordinary income) and (ii) the U.S. Holder's tax basis in the Note. Except as described above with respect to Short-Term Notes and the OID, market discount and amortizable bond premium rules, the gain or loss will be capital gain or loss and will be long-term capital gain or loss if the Note was held for more than one year. Net capital gains of individuals are, under certain circumstances, taxed at lower rates than items of ordinary income, and the deductibility of capital losses of U.S. Holders is subject to limitations. Backup Withholding and Information Reporting In general, information reporting requirements will apply to certain payments of principal, interest, OID and premium on Notes and the proceeds of a sale of a Note made to U.S. Holders other than certain exempt recipients (such as corporations). A 30 percent backup withholding tax (subject to phased-in rate reductions) will apply to such payments if the holder fails to provide its taxpayer identification number or certification of its exempt status or fails to report in full dividend and interest income. The amount of accrued OID on Original Issue Discount Notes held of record by persons other than corporations and other exempt holders will be reported to the extent required by applicable law. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a U.S. Holder's federal income tax liability provided the required information is furnished to the IRS. 39 PLAN OF DISTRIBUTION The Notes are being offered on a continuing basis for sale by HEI, to or through the Agents, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman, Sachs & Co., Robert W. Baird & Co. Incorporated, Janney Montgomery Scott LLC, U.S. Bancorp Piper Jaffray Inc. or one or more other Agents appointed from time to time by HEI pursuant to the terms of the Distribution Agreement relating to the offering of the Notes. The Agents, individually or in a syndicate, may purchase Notes, as principal, from HEI from

time to time for resale to investors and other purchasers at varying prices relating to prevailing market prices at the time of resale as determined by the applicable Agent, or, if so specified in the applicable pricing supplement, for resale at a fixed offering price. If agreed to by HEI and the applicable Agent, such Agent may utilize its reasonable efforts on an agency basis to solicit offers to purchase the Notes at 100% of the principal amount thereof, unless the applicable pricing supplement states otherwise. HEI will pay a commission to each such Agent, ranging from .125 % to .750% of the principal amount of a Note, depending upon its Stated Maturity, sold through such Agent, as agent. The following table describes the potential proceeds HEI will receive if it sells all of the Notes but does not include expenses payable by HEI, which are estimated to be \$240,000: Price to Public Agents' Commissions and Discounts Proceeds to HEI ----- Per Note.... 100% .125% to .750% 99.250% to 99.875% Total..... \$300,000,000 \$375,000 to \$2,250,000 \$297,750,000 to \$299,625,000 HEI may also sell the Notes directly to purchasers in those jurisdictions in which it is permitted to do so. No commission or discount will be payable by HEI on Notes sold directly by HEI. Any Note sold to an Agent as principal will be purchased by such Agent at a price equal to 100% of the principal amount thereof less a percentage of the principal amount equal to the commission applicable to an agency sale of a Note of identical maturity. An Agent may sell Notes it has purchased from HEI as principal to certain dealers less a concession equal to all or any portion of the discount it received in connection with such purchase. Such Agent may allow, and such dealers may reallow, any portion of the discount received in connection with such purchase. After the initial offering of Notes, the offering price (in the case of Notes to be resold on a fixed offering price basis), the concession and the reallowance may be changed. HEI reserves the right to withdraw, cancel or modify the offer made hereby without notice and may reject orders in whole or in part (whether placed directly with HEI or through an Agent). Each Agent will have the right, in its discretion, reasonably exercised, to reject in whole or in part any offer to purchase Notes received by it on an agency basis. Payment of the purchase price of the Notes will be required to be made in immediately available funds in New York City on the date of settlement. No Note will have an established trading market when issued. The Notes will not be listed on any securities exchange. Each of the Agents may from time to time purchase and sell Notes in the secondary market, but no Agent is obligated to do so, and there can be no assurance that there will be a secondary market for the Notes or liquidity in the secondary market if one develops. From time to time, each of the Agents may make a market in the Notes, but no Agent is obligated to do so and the Agents may discontinue any such market-making activity at any time. In connection with an offering of Notes purchased by one or more Agents as principal on a fixed price basis, each such Agent will be permitted to engage in certain transactions that stabilize the price of such Notes. Such transactions may consist of bids or purchases for the purpose of pegging, fixing or maintaining the price of such Notes. If an Agent creates a short position in such Notes (i.e., if it sells Notes in an aggregate principal amount exceeding that set forth in the applicable pricing supplement), such Agent may reduce that short position by purchasing Notes in the open market. 40 In general, purchases of Notes for the purpose of stabilization or to reduce a short position could cause the price of Notes to be higher than it might be in the absence of such purchases. Neither HEI nor any of the Agents makes any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the Notes. In addition, neither HEI nor any of the Agents makes any representation that the Agents will engage in any such transactions or that such transactions once commenced will not be discontinued without notice. Each Agent may be deemed to be an "underwriter" within the meaning of the Securities Act. HEI has agreed to indemnify the Agents against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the Agents may be required to make in respect thereof. HEI has agreed to reimburse each of the Agents for certain other expenses. The Agents from time to time provide investment banking services to HEI and may from time to time engage in transactions with and perform other services for HEI in the ordinary course of business. VALIDITY OF NOTES The validity of the Notes will be passed upon for HEI by Goodsell Anderson Quinn & Stifel LLP, Honolulu, Hawaii, and for the Agents by Pillsbury Winthrop LLP, New York, New York. The opinions of counsel will be delivered at the commencement date for HEI's Series D medium-term note program (and under certain circumstances at intervals thereafter) and will assume that each future issuance of the Notes complies with the Indenture and laws, agreements and instruments then binding on HEI. Goodsell Anderson Quinn & Stifel LLP will rely as to all matters of New York law upon the opinion of Pillsbury Winthrop LLP, and Pillsbury Winthrop LLP will rely as to all matters of Hawaii law upon the opinion of Goodsell Anderson Quinn & Stifel LLP. EXPERTS The consolidated financial statements and schedules of HEI and subsidiaries as of December 31, 2001 and 2000, and for each of the years in the three-year period ended December 31,

2001, have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent accountants, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing. The audit reports covering the December 31, 2001 consolidated financial statements and schedules refer to a change to the accounting method for derivative instruments and hedging activities. 41

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\$300,000,000 [LOGO] Hawaiian Electric Industries, Inc. Medium-Term Notes, Series D ----- PROSPECTUS  
----- Merrill Lynch & Co. Goldman, Sachs & Co. Robert W. Baird & Co. Janney Montgomery Scott LLC  
U.S. Bancorp Piper Jaffray Inc. August 16, 2002

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