

Primoris Services Corp  
Form S-3/A  
July 01, 2011  
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As filed with the Securities and Exchange Commission on July 1, 2011

Registration No. 333-174602

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

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Pre-effective Amendment No. 1

to

**FORM S-3/A**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

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**PRIMORIS SERVICES CORPORATION**

(Exact name of registrant as specified in its charter)

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

**20-4743916**  
(I.R.S. Employer  
Identification No.)

**2100 McKinney Avenue**

**Suite 1500**

**Dallas, Texas 75201**

**(214) 740-5600**

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

---

**Peter J. Moerbeek**

**Executive Vice President, Chief Financial Officer**

**Primoris Services Corporation**

**2100 McKinney Avenue**

**Suite 1500**

**Dallas, Texas 75201**

**(214) 740-5600**

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

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**Copies to:**

**Jeffrey P. Berg, Esq.**

Baker & Hostetler LLP

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12100 Wilshire Boulevard

15th Floor

Los Angeles, CA 90025

(310) 820-8800

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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.**

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

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

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

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.

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

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities To Be Registered</b>	<b>Amount to be Registered (1)(2)(3)</b>	<b>Proposed Maximum Offering Price per Unit(3)</b>	<b>Proposed Maximum Aggregate Offering Price (3)</b>	<b>Amount of Registration Fee (3)</b>
Common Stock, \$0.0001 par value per share	8,820,784	\$ 12.01	\$ 105,937,615(3)	\$ 12,299.36(3)

(1) Up to 8,820,784 shares of the registrant's common stock may be sold pursuant to this registration statement by the selling stockholders described herein.

(2) Pursuant to Rule 416 under the Securities Act of 1933, this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.

(3) Pursuant to Rule 457(c) under the Securities Act of 1933, the offering price and registration fee are computed based on the average of the high and low prices reported for the registrant's common stock traded on the NASDAQ Global Select Market on May 26, 2011 (the date on which the shares offered hereunder were first included in the registration statement). This amount has previously been paid with the filing of the registration statement.

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

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**Subject to Completion, Dated July 1, 2011**

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

**Prospectus**

**8,820,784**

**Shares of Common Stock**

**Offered by the Selling Stockholders**

The selling stockholders, as described in this prospectus, may offer and sell up to a total of 8,820,784 shares of our common stock. We will not receive any proceeds from the sale of shares by the selling stockholders. Certain of the selling stockholders may be our affiliates.

We will provide the specific terms of these offerings in one or more supplements to this prospectus. The prospectus supplement may also add, update or change information contained in this prospectus. You should carefully read this prospectus and the applicable prospectus supplement, as well as any documents incorporated by reference, before buying any of the securities being offered.

Our common stock is traded on the NASDAQ Global Select Market under the symbol PRIM. The last reported sale price of our common stock on June 30, 2011 was \$12.90 per share. The applicable prospectus supplement will contain information, where applicable, as to any other listing, if any, on the NASDAQ Global Select Market or any securities market or other exchange of the common stock covered by the applicable prospectus supplement.

*Investing in our common stock involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading Risk Factors on page 4 of this prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus.*

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The common stock may be offered and sold in the same offering or in separate offerings, to or through underwriters, dealers, and agents, or directly to purchasers. The names of any underwriters, dealers, or agents involved in the sale of our common stock, their compensation and any over-allotment options held by them will be described in the applicable prospectus supplement. For a more complete description of the plan of distribution of the common stock, see the section entitled "Plan of Distribution" beginning on page 14 of this prospectus.

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

The date of this prospectus is \_\_\_\_\_, 2011.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, utilizing a shelf registration process or continuous offering process, which allows the selling stockholders to offer and sell shares of our common stock in one or more offerings, from time to time at prices and on other terms to be determined at the time of the offering. Using this prospectus, the selling stockholders may offer to sell up 8,820,784 shares of our common stock.

This prospectus provides you with a general description of the common stock the selling stockholders may offer. Each time the selling stockholders offer to sell common stock pursuant to this registration statement and the prospectus contained herein, we will provide a prospectus supplement that will contain specific information about the terms of that offering. That prospectus supplement may include additional risk factors about us and the terms of that particular offering. Prospectus supplements may also add to, update or change the information contained in this prospectus. To the extent that any statement that we make in a prospectus supplement is inconsistent with statements made in this prospectus, the statements made in this prospectus will be deemed modified or superseded by those made in such prospectus supplement. In addition, as we describe in the section entitled *Incorporation of Certain Information by Reference*, we have filed and plan to continue to file other documents with the SEC that contain information about us and the business conducted by us and our subsidiaries. Before you decide whether to invest in the shares of our common stock, you should read this prospectus, any applicable prospectus supplement that further describes the offering of these securities and the information we file with the SEC.

You should rely only on the information that we have provided or incorporated by reference in this prospectus and any applicable prospectus supplement that we may authorize to be provided to you. We have not authorized any other person to provide you with different or additional information. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus, any applicable prospectus supplement that we may authorize to be provided to you. You must not rely on any unauthorized information or representation. This prospectus or any applicable supplement to this prospectus do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus or any applicable supplement to this prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction.

You should assume that the information appearing in this prospectus or any applicable prospectus supplement is accurate only as of the date on the front of the document and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus or any applicable prospectus supplement, or any sale of a security. Our business, financial condition, results of operations and prospectus may have changed since those dates.

This prospectus may contain and incorporate by reference market data, industry statistics and other data that have been obtained from, or compiled from, information made available by third parties. This prospectus and the information incorporated herein by reference includes trademarks, service marks and trade names owned by us or other companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus or any applicable prospectus supplement are the property of their respective owners.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the section entitled *Where You Can Find Additional Information*.





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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus and the documents incorporated by reference in this prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, which we refer to as the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. Forward-looking statements include statements about:

- our business strategy and our expectations with respect to the implementation of our business strategy;
- our expectations with respect to our engineering and construction services; and
- our estimates regarding our capital requirements and our need for additional financing.

In some cases, you can identify forward-looking statements by terms such as may, will, should, expect, plan, anticipate, believe, estimate, predict, future, intend, or certain or the negative of these terms and similar expressions intended to identify forward-looking statements. Discussions containing these forward-looking statements may be found, among other places, in the Business and Management's Discussion and Analysis of Financial Condition and Results of Operations sections incorporated by reference from our most recent annual report on Form 10-K, as well as any amendments thereto reflected in subsequent filings with the SEC. Forward-looking statements reflect our current views with respect to future events, are based on assumptions and are subject to risks, uncertainties and other important factors. We discuss many of these risks, uncertainties and other important factors in greater detail under the heading Risk Factors contained in our most recent annual report on Form 10-K and in our most recent quarterly report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. Given these risks, uncertainties and other important factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date such forward-looking statements are made. You should carefully read this prospectus and any prospectus supplement, together with the information incorporated herein by reference as described under the section entitled Where You Can Find Additional Information, completely and with the understanding that our actual future results may be materially different from what we expect. We can give no assurances that any of the events anticipated by the forward-looking statements will occur or, if any of them do, what impact they will have on our results of operations and financial condition.

Except as required by law, we assume no obligation to update any forward-looking statements publicly, or to update the reasons why actual results could differ materially from those anticipated in any forward-looking statements, even if new information becomes available in the future.

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**ABOUT PRIMORIS SERVICES CORPORATION**

Unless otherwise mentioned or unless the context requires otherwise, all references in this prospectus to Primoris, the Company, we, our or similar references mean Primoris Services Corporation.

**Overview**

Primoris Services Corporation is a holding company of various subsidiaries, which form one of the larger specialty contractors and infrastructure companies in the United States. Serving diverse end-markets, we provide a wide range of construction, fabrication, maintenance, replacement, water and wastewater and product engineering services to major public utilities, petrochemical companies, energy companies, municipalities, state departments of transportation and other customers. Primoris or its predecessor companies have been in business since 1946, and the Company was incorporated in Delaware in 2006. Since our inception, we have actively pursued a diversification and expansion strategy. For most of our history, substantial portions of our activities were performed in the western United States, primarily in California. With our acquisitions of James Construction Group, L.L.C., or JCG, in December 2009 and Rockford Holdings Corporation, or Rockford, in November 2010, we have doubled in size and our national footprint now extends from Florida, along the Gulf Coast, through California, into the Pacific Northwest and Canada.

We install, replace, repair and rehabilitate natural gas, refined product, water and wastewater pipeline systems, large diameter gas and liquid pipeline facilities, heavy civil projects, earthwork and site development and also construct mechanical facilities and other structures, including power plants, petrochemical facilities, refineries and parking structures. In addition, we provide maintenance services, including inspection, overhaul and emergency repair services, to cogeneration plants, refineries and similar mechanical facilities. Through our subsidiary Onquest, Inc., we provide engineering and design services for fired heaters and furnaces primarily used in refinery applications. Through our subsidiary Cardinal Contractors, Inc., we construct water and wastewater facilities in the southeast United States.

On December 18, 2009, we acquired JCG. JCG is one of the largest general contractors based in the Gulf Coast states, and is engaged in highway, industrial and environmental construction, primarily in Louisiana, Texas and Florida. JCG is the successor company to T. L. James and Company, Inc., a well-known Louisiana company that has been in business for over 80 years. Headquartered in Baton Rouge, Louisiana, JCG serves government and private clients in a broad geographical region that includes the entire Gulf Coast region of the United States. JCG's heavy civil division provides services in heavy civil construction projects, including highway and bridge construction, concrete paving, levee construction, airport runway and taxiway construction and marine facility construction. JCG's infrastructure and maintenance division provides large earthwork and site development, landfill construction, site remediation and mining support services. JCG's industrial division, with a client base comprised primarily of private industrial companies, provides all phases of civil and structural construction, mechanical equipment erection, process pipe installation and boiler, furnace and heater installation and repair.

On November 12, 2010, we completed the acquisition of Rockford. Based in Hillsboro (Portland), Oregon, Rockford specializes in large diameter natural gas and liquid pipeline projects and related facilities construction. Rockford's business adds to our major underground project bidding and performance capabilities. Rockford also adds to our California underground capacity and provides a northwest United States location to expand our geographic presence.

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On October 3, 2009, we acquired certain assets and assumed certain liabilities of Cravens Partners, Ltd., or Cravens, a Houston, Texas based provider of civil and utility infrastructure services. As of January 1, 2011, we merged Cravens into JCG.

Our principal offices are located at 2100 McKinney Avenue, Suite 1500, Dallas, Texas 75201. Our telephone number is (214) 740-5600. Our Internet address is [www.primoriscorp.com](http://www.primoriscorp.com). We do not incorporate the information on our website into this prospectus (other than documents we file with the SEC), and you should not consider it part of this prospectus. For further information regarding us and our financial information, you should refer to our recent filings with the SEC. See [Where You Can Find More Information](#).

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**RISK FACTORS**

Investing in our common stock involves a high degree of risk. You should carefully review the risks and uncertainties contained in the applicable prospectus supplement and in the other documents that are incorporated by reference into this prospectus before deciding whether to purchase any of the shares of common stock being registered pursuant to the registration statement of which this prospectus is a part. Each of the risk factors could adversely affect our business, operating results and financial condition, as well as adversely affect the value of an investment in our common stock, and the occurrence of any of these risks might cause you to lose all or part of your investment.

**USE OF PROCEEDS**

We will not receive any proceeds from the sale of the shares of our common stock by the selling stockholders.

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**DESCRIPTION OF COMMON STOCK THAT MAY BE OFFERED**

The selling stockholders may, from time to time, sell our common stock in one or more offerings, up to a total of 8,820,784 shares of our common stock. This prospectus provides you with a general description of our common stock. See Description of Capital Stock. Each time we offer our common stock, we will provide a prospectus supplement that will describe the specific amounts, prices and other important terms of the offering, including, to the extent applicable:

- offering price; and
- important federal income tax considerations.

**DESCRIPTION OF CAPITAL STOCK**

**General**

Our authorized capital stock consists of 90,000,000 shares of common stock, \$0.0001 par value per share, and 1,000,000 shares of preferred stock, \$0.001 par value per share. As of June 29, 2011, there were 51,044,307 shares of our common stock outstanding and no shares of preferred stock outstanding.

The description below of our capital stock and provisions of our certificate of incorporation and bylaws are summaries and are qualified by reference to the certificate of incorporation and bylaws. These documents are filed as exhibits to the registration statement of which this prospectus is a part. For information on how to obtain copies of our certificate of incorporation and bylaws, see the section entitled Where You Can Find Additional Information in this prospectus.

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**Common Stock**

*Voting Rights.* Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our amended and restated certificate of incorporation and bylaws do not provide for cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

*Dividends.* Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

*Liquidation.* In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then outstanding shares of preferred stock.

*Rights and Preferences.* Holders of common stock have no preemptive, conversion or subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which we may designate in the future.

*Fully Paid and Nonassessable.* All of our outstanding shares of common stock are, and the shares of common stock to be issued in this offering, if any, will be, fully paid and nonassessable.

**Preferred Stock**

Pursuant to our certificate of incorporation, our board of directors has the authority, without further action by the stockholders (unless such stockholder action is required by applicable law or the rules of any stock exchange or market on which our securities are then traded), to designate and issue up to 1,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the designations, voting powers, preferences and rights of the shares of each wholly unissued series, and any qualifications, limitations or restrictions thereof, and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding.

We will fix the designations, voting powers, preferences and rights of the preferred stock of each series, as well as the qualifications, limitations or restrictions thereof, in a certificate of designation relating to that series.

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The General Corporation Law of the State of Delaware, or the DGCL, provides that the holders of preferred stock will have the right to vote separately as a class (or, in some cases, as a series) on an amendment to our certificate of incorporation if the amendment would change the par value or, unless the certificate of incorporation provided otherwise, the number of authorized shares of the class or change the powers, preferences or special rights of the class or series so as to adversely affect the class or series, as the case may be. This right is in addition to any voting rights that may be provided for in the applicable certificate of designation.

Our board of directors may authorize the issuance of preferred stock with voting, exchange or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. Preferred stock could be issued quickly with terms designed to delay or prevent a change in control of our company or make removal of management more difficult. Additionally, the issuance of preferred stock may have the effect of decreasing the market price of our common stock.

### **Registration Rights**

The holders of 1,125,000 shares of our common stock purchased by certain of our initial stockholders and affiliates, are entitled to certain registration rights pursuant to a registration rights agreement. The holders of the majority of these securities are entitled to make up to two demands that we register such securities. We previously have filed a registration statement with respect to the resale of such securities. The holders of the majority of the initial shares can elect to exercise these registration rights at any time. In addition, the holders have certain piggy-back registration rights. We will bear the expenses incurred in connection with the filing of any such registration statements.



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The holders of an aggregate of 11,554,430 shares of our common stock acquired by the former owners of JCG, Rockford and Cravens Partners, Ltd. (and related entities), are entitled to certain piggyback registration rights pursuant to the acquisition agreements in those transactions. Of those shares, 258,779 shares are held in escrow and subject to restriction on resale. We will bear the expenses incurred in connection with the filing of any such registration statements.

**Anti-Takeover Effects of Provisions of Our Certificate of Incorporation and Bylaws**

Certain provisions of our certificate of incorporation and bylaws may have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, control of us. Such provisions could limit the price that certain investors might be willing to pay in the future for shares of our common stock and may limit the ability of stockholders to remove current management or directors or approve transactions that stockholders may deem to be in their best interest and, therefore, could adversely affect the price of our common stock.

*Classified Board.* Our certificate of incorporation and bylaws provide for our board of directors to be divided into three classes, with staggered three-year terms. Only one class of directors is elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms.

*No Cumulative Voting.* The DGCL provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless our certificate of incorporation provides otherwise. Our certificate of incorporation does not provide for cumulative voting.

*Board Vacancies Filled Only by Majority of Directors Then in Office.* Vacancies and newly created seats on our board may be filled only by our board of directors. Further, only our board of directors may determine the number of directors on our board. The inability of stockholders to determine the number of directors or to fill vacancies or newly created seats on the board makes it more difficult to change the composition of our board of directors.

*Requirements for Advance Notification of Stockholder Nominations and Proposals.* Our bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors. Our bylaws provide that in order for a proposal to be properly brought before an annual meeting of stockholders, it must be either (1) specified in the notice of the meeting given by us, (2) otherwise brought before the meeting by or at the direction of our board, or (3) properly brought before the meeting by a stockholder entitled to vote at the meeting and who complies with the following notice procedures: (i) the stockholder must give timely notice thereof in writing of the business to be brought before such meeting to our Secretary, and (ii) such business must be a proper matter for stockholder action under the DGCL. Our bylaws provide that to be timely, a stockholder's notice must be delivered to our Secretary at our principal executive offices not less than 45 days prior to the first anniversary of the date on which we first mailed our proxy materials for the preceding year's annual meeting. If the date of the subsequent year's annual meeting of stockholders is changed by more than 30 days from the date of the prior year's meeting, notice by the stockholder for the subsequent year's annual meeting must be delivered to our Secretary within a reasonable time prior to our mailing of the proxy materials for the subsequent year's annual meeting of stockholders. If a stockholder proposes to nominate for election or reelection a director, the stockholder's notice must include all information relating to such director nominee that is required to be disclosed in solicitation of proxies for election of directors in an election contest, or otherwise required, in each case, pursuant to Regulation 14A and Rule 14a-11 under the Exchange Act.

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Our bylaws may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed. Any proposed business other than the nomination of persons for election to our board of directors must constitute a proper matter for stockholder action pursuant to the notice of meeting delivered to us. These provisions may also discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of our company.

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*Undesignated Preferred Stock.* As discussed above, our board of directors has the ability to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of our company. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of us.

These provisions of Delaware law, our certificate of incorporation and our bylaws may have the effect of deterring hostile takeovers or delaying changes in our control or in our management. These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and in the policies they implement, and to discourage certain types of transactions that may involve an actual or threatened change of our control. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts.

**Section 203 of the DGCL**

We are subject to Section 203 of the DGCL, or Section 203, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;

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- any sale, lease, transfer, pledge or other disposition of 10% or more of the assets of the corporation to or with the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines interested stockholder as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation or any entity or person affiliated with or controlling or controlled by such entity or person.

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**Limitation of Liability and Indemnification**

Our certificate of incorporation contains provisions that limit the personal liability of each of our directors for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL. The inclusion of this provision in our certificate of incorporation may have the effect of reducing the likelihood of derivative litigation against directors, and may discourage or deter stockholders or management from bringing a lawsuit against directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefited us and our stockholders.

Our certificate of incorporation further provides that we may indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of our company to the fullest extent permitted by the DGCL. Our bylaws provide that we must indemnify any director or officer of the corporation, and may indemnify any other person, who (a) was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by that person in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, and (b) was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by that person in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Our bylaws provide a right of indemnification that includes the right to have paid by us the expenses, including attorneys' fees, incurred by any of our officers or directors in defending any such proceeding in advance of its final disposition. If Delaware law so requires, however, the advancement of such expenses incurred by a director or officer in such person's capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person) will only be made upon the delivery to us of an undertaking by or on behalf of such person to repay all amounts so advanced if it shall ultimately be determined by final judicial decision that such person is not entitled to be indemnified for such expenses by us.

We have entered into indemnity agreements with our directors and certain of our executive officers for the indemnification and advancement of expenses to these persons. We believe that these provisions and agreements are necessary to attract and retain qualified directors and executive officers. We also intend to enter into these agreements with our future directors and certain of our executive officers. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling our company pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

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There is currently no pending material litigation or proceeding involving any director, executive officer, employee or agent where indemnification will be required or permitted. We are not aware of any threatened litigation or proceeding that might result in a claim for such indemnification.

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**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Continental Stock Transfer & Trust Company. Its address is 17 Battery Place, New York, New York 10004. Its phone number is (212) 509-4000.

**NASDAQ Global Select Ma**