

CHURCH & DWIGHT CO INC /DE/

Form S-3ASR

May 12, 2010

Table of Contents

As filed with the Securities and Exchange Commission on May 12, 2010

Registration No. 333-

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

Washington, D.C. 20549

**FORM S-3**  
**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**CHURCH & DWIGHT CO., INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation)

469 North Harrison Street

13-4996950  
(I.R.S. Employer Identification No.)

Edgar Filing: CHURCH & DWIGHT CO INC /DE/ - Form S-3ASR

Princeton, NJ 08543-5297

(609) 683-5900

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

**Susan E. Goldy**

**Executive Vice President, General Counsel and Secretary**

**Church & Dwight Co., Inc.**

**469 North Harrison Street**

**Princeton, NJ 08543-5297**

**(609) 683-5900**

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

*Copies to:*

**Alan Singer**

**Morgan, Lewis & Bockius LLP**

**1701 Market Street**

**Philadelphia, PA 19103**

**(215) 963-5000**

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

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

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

## Edgar Filing: CHURCH & DWIGHT CO INC /DE/ - Form S-3ASR

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.   x

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

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

Large accelerated filer   x		Accelerated filer       "
Non-accelerated filer   "		Smaller reporting company   "

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Debt Securities				
Common Stock <sup>(2)</sup>			(1)	
Preferred Stock <sup>(2)</sup>				

- (1) An unspecified aggregate initial offering price or number of securities of each identified class is being registered as may from time to time be offered hereunder at indeterminate prices. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities. In accordance with Rules 456(b) and 457(r) under the Securities Act of 1933, the registrant is deferring payment of the entire registration fee.
- (2) Shares of preferred stock or common stock may be issued in primary offerings or upon conversion of debt securities or preferred stock registered hereby.

**Table of Contents**

**Church & Dwight Co., Inc.**

**Debt Securities**

**Preferred Stock**

**Common Stock**

Church & Dwight Co., Inc. from time to time may offer and sell debt securities, preferred stock and common stock in one or more classes or series. We may offer and sell these securities in amounts, at prices and on terms that we may determine at the time of the offering.

Each time securities are offered under this prospectus, we will provide a prospectus supplement and attach it to this prospectus. The prospectus supplement will contain more specific information about the terms of the offering and the offered securities. A prospectus supplement also may modify or supersede information contained in this prospectus. This prospectus may not be used to offer or sell securities unless accompanied by a prospectus supplement describing the method and terms of the applicable offering.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

Our common stock is listed on the New York Stock Exchange under the symbol CHD.

**Investing in these securities involves certain risks. See Risk Factors on page 3 of this Prospectus.**

You should read this prospectus and the applicable prospectus supplement, together with the documents incorporated by reference, carefully before you invest in our securities.

**Neither the Securities and Exchange Commission nor any state securities regulator 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 May 12, 2010.

**Table of Contents**

You should rely only on the information contained in this prospectus and the accompanying prospectus supplement, including the information incorporated by reference as described under "Where You Can Find More Information," and any free writing prospectus that we prepare and distribute. We have not authorized anyone to provide you with different information. If you receive any other information, you should not rely on it. You should not assume that the information in this prospectus or any prospectus supplement is truthful or complete at any date other than the date appearing on the cover page of those documents. We are not making an offer of these securities in any jurisdiction where the offer is not permitted.

**TABLE OF CONTENTS**

	<b>Page</b>
<u>RISK FACTORS</u>	3
<u>ABOUT THIS PROSPECTUS</u>	3
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	4
<u>DOCUMENTS INCORPORATED BY REFERENCE</u>	4
<u>SPECIAL NOTE ON FORWARD-LOOKING INFORMATION</u>	6
<u>CHURCH &amp; DWIGHT CO., INC.</u>	7
<u>USE OF PROCEEDS</u>	7
<u>DESCRIPTION OF SECURITIES WE MAY OFFER</u>	8
<u>DESCRIPTION OF DEBT SECURITIES</u>	8
<u>DESCRIPTION OF CAPITAL STOCK</u>	24
<u>PLAN OF DISTRIBUTION</u>	28
<u>VALIDITY OF SECURITIES</u>	30
<u>EXPERTS</u>	30

**Table of Contents**

**RISK FACTORS**

You should carefully consider the specific risks set forth under the caption **Risk Factors** in our periodic reports referred to in **Documents Incorporated by Reference** below and, if included in a prospectus supplement, under the caption **Risk Factors** in the prospectus supplement.

**ABOUT THIS PROSPECTUS**

*All references in this prospectus to Church & Dwight, we, our, and us refer to Church & Dwight Co., Inc. and its consolidated subsidiaries unless the context otherwise requires.*

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, which we refer to as the SEC, using a shelf registration process. Under this shelf registration process, we may sell the securities described in this prospectus in one or more offerings. Each time we sell securities under this shelf registration, we will provide a prospectus supplement that will contain specific information about the terms of the offering. The prospectus supplement may also modify or supersede the information contained in this prospectus. You should read both this prospectus and the applicable prospectus supplement together with the additional information referred to below under **Where You Can Find More Information**.

**Table of Contents**

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document that we file at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. Our SEC filings also are available to you at the SEC's web site at *www.sec.gov*.

We have filed with the SEC a registration statement on Form S-3 relating to the securities offered by this prospectus. This prospectus is a part of that registration statement, which includes additional information. Whenever a reference is made in this prospectus to a contract or other document of ours, please be aware that the reference is only a summary and that you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room in Washington, D.C., as well as through the SEC's web site.

**DOCUMENTS INCORPORATED BY REFERENCE**

The SEC allows us to incorporate by reference into this prospectus the information we file with the SEC. This enables us to disclose important information to you by referring you to these documents. The information incorporated by reference is deemed to be part of this prospectus, and the information we file with the SEC after the date of this prospectus will automatically update, modify and, where applicable, supersede any information included in this prospectus or incorporated by reference in this prospectus. We incorporate by reference into this prospectus the following documents filed with the SEC (other than, in each case, documents or information deemed to be furnished and not filed in accordance with SEC rules). The SEC file number for these documents is 1-10585.

Annual Report on Form 10-K for the fiscal year ended December 31, 2009;

Quarterly Report on Form 10-Q for the fiscal quarter ended April 2, 2010;

Current Reports on Form 8-K filed on February 2, 2010, March 18, 2010, March 23, 2010, April 30, 2010 and May 10, 2010; and

The description of our common stock set forth in our Current Report on Form 8-K, filed on April 30, 2010.

**Table of Contents**

We also incorporate by reference into this prospectus all documents filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 between the date of this prospectus and the termination of the offering of securities under this prospectus. To the extent that any information contained in any current report on Form 8-K, or any exhibit to the report, was furnished to, rather than filed with the SEC, the information or exhibit is specifically not incorporated by reference in this prospectus. Any statement made in a document incorporated by reference will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or in any subsequently filed document that also is or is deemed to be incorporated by reference in this prospectus modifies or supersedes such statement. Any statement made in this prospectus will be deemed to be modified or superseded to the extent that a statement contained in any subsequently filed document that also is or is deemed to be incorporated by reference in this prospectus modifies or supersedes such statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

To obtain a copy of any or all of the documents incorporated by reference in this prospectus, you may write or telephone us at the following address and telephone number:

Church & Dwight Co., Inc.

469 North Harrison Street

Princeton, NJ 08543-5297

Attention: General Counsel

(609) 683-5900

Exhibits to the documents will not be sent, however, unless those exhibits have specifically been incorporated by reference into such document.



**Table of Contents**

**SPECIAL NOTE ON FORWARD-LOOKING INFORMATION**

This prospectus and documents incorporated by reference in this prospectus may contain forward-looking statements relating to, among other things, short-term and long-term financial objectives, sales and earnings growth, operating expenditures, pricing changes, new product introductions, our competitive position, potential growth strategies, financing plans, litigation and other legal matters, the effect of acquisitions and the timing of the integration of acquired businesses, margin improvement, marketing spending, assets held for sale, our hedge program, the impact of currency fluctuations, our effective tax rate, unrecognized tax benefits, pension plan contributions, our recently completed York, Pennsylvania laundry detergent and warehouse facility, facility restructuring charges, the sufficiency of cash flow to meet capital expenditure needs, our ability to comply with financial covenants relating to our debt obligations, the effect of the credit environment on our liquidity, and our ability to renew our accounts receivable facility. Forward-looking statements include all statements that are not historical facts and can be identified by the use of forward-looking terminology such as the words believe, expect, anticipate, estimate, predict, will, or similar expressions. These statements represent our intentions, plans, expectations and beliefs, and are subject to risks and uncertainties, many of which are outside our control and could cause actual results to differ materially from such forward-looking statements. The risks and uncertainties relate to, among other things, a decline in market growth and consumer demand (including the effect of political, economic and marketplace conditions and events on consumer demand); unanticipated increases in raw material and energy prices; adverse developments affecting the financial condition of major customers; competition; the impact of retailer actions in response to changes in consumer demand and the economy, including increasing shelf space dedicated to private label products; consumer reaction to new product introductions and features; disruptions in the banking system and financial markets; and the outcome of contingencies, including litigation, pending regulatory proceedings and environmental remediation.

The risks and uncertainties referenced above are not intended to be exhaustive. Our Annual Report on Form 10-K, including the information in Item 1A, Risk Factors, and other documents filed with the SEC contain both expanded discussion of the risks and uncertainties described above and additional risks and uncertainties that could cause actual results to differ materially from the forward-looking statements. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

**Table of Contents**

**CHURCH & DWIGHT CO., INC.**

Our company, founded in 1846, develops, manufactures and markets a broad range of household, personal care and specialty products. We focus our marketing efforts principally on our eight power brands. These well-recognized brand names include ARM & HAMMER, which is used in a number of product categories such as baking soda, carpet deodorization and laundry detergent; TROJAN condoms; XTRA laundry detergent; OXYCLEAN pre-wash laundry additive; NAIR depilatories; FIRST RESPONSE home pregnancy and ovulation test kits; ORAJEL oral analgesics; and SPINBRUSH battery-operated toothbrushes. Our business is divided into three primary segments, Consumer Domestic, Consumer International and Specialty Products. The Consumer Domestic segment includes the eight power brands and other household and personal care products such as SCRUB FREE, KABOOM, and ORANGE GLO cleaning products; ANSWER home pregnancy and ovulation test kits; ARRID antiperspirant; and CLOSE-UP and AIM toothpastes. The Consumer International segment primarily sells a variety of personal care products, some of which use the same brands as our domestic product lines, in international markets, including France, the United Kingdom, Canada, Mexico, Australia, Brazil and China. The Specialty Products segment is the largest U.S. producer of sodium bicarbonate, which it sells together with other specialty inorganic chemicals for a variety of industrial, institutional, medical and food applications. This segment also sells a range of animal nutrition and specialty cleaning products.

**USE OF PROCEEDS**

Unless we inform you otherwise in a prospectus supplement or free writing prospectus, the net proceeds from the sale of the securities will be used for general corporate purposes, including working capital, acquisitions, repurchases of common stock, capital expenditures and the repayment of indebtedness.

**Table of Contents**

**DESCRIPTION OF SECURITIES WE MAY OFFER**

We may use this prospectus to offer from time to time:

*Senior and subordinated debt securities.* These debt securities may be convertible or exchangeable into our common stock, preferred stock or other securities. Our senior debt will rank equally with any of our other unsubordinated and unsecured indebtedness, and our subordinated debt will rank junior in right of payment and priority to any senior indebtedness.

*Preferred stock, par value \$1.00 per share.* The preferred stock may be convertible or exchangeable into other series of preferred stock or our common stock. We can offer different series of preferred stock with different dividend, liquidation, redemption and voting rights.

*Common stock, par value \$1.00 per share.*

A prospectus supplement will describe the specific types, amounts, prices and detailed terms of any of these securities.

**DESCRIPTION OF DEBT SECURITIES**

In this section, references to holders mean those who own debt securities registered in their own names on the books that we or the trustee maintains for this purpose, and not those who own beneficial interests in debt securities registered in street name or in debt securities issued in book-entry form through one or more depositaries. Owners of beneficial interests in the debt securities should read the section below entitled Legal Ownership of Debt Securities.

**General**

The debt securities offered by this prospectus will be either senior or subordinated debt. We will issue senior debt under a senior debt indenture, and we will issue subordinated debt under a subordinated debt indenture. We sometimes refer to the senior debt indenture and the subordinated debt indenture individually as an indenture and collectively as the indentures. The trustee under each of the senior debt indenture and the subordinated debt indenture will be The Bank of New York Mellon Trust Company, N.A., Pittsburgh, Pennsylvania. We have filed forms of the indentures with the SEC as exhibits to the registration statement of which this prospectus forms a part. You can obtain copies of the indentures by following the directions outlined in Where You Can Find More Information, and by contacting the trustee.

The following summary briefly describes the material provisions of the indentures and the debt securities, other than pricing and related terms, which will be disclosed for a particular issuance in the applicable prospectus supplement. The summary is not complete. You should read the more detailed provisions of the applicable indenture, including the defined terms, for provisions that may be important to you. The summary below and that contained in any prospectus supplement are qualified in their entirety by reference to the applicable indenture. You should also read the particular terms of a series of debt securities, which will be described

## **Table of Contents**

in more detail in an applicable prospectus supplement. Throughout the summary we have included parenthetical references to the indenture sections, which, except for subordination provisions addressed only in the subordinated debt, are the same in each document, to help you locate the provisions being discussed.

The indentures provide that our unsecured senior or subordinated debt securities may be issued in one or more series, with different terms, in each case as we authorize from time to time. We also have the right, from time to time, to issue debt securities of any series previously issued. (Section 3.01)

## **Information in the Prospectus Supplement**

The prospectus supplement for any offered series of debt securities will describe the following terms, as applicable:

the title or designation;

whether the debt is senior or subordinated;

the aggregate principal amount offered and authorized denominations;

the initial public offering price;

the maturity date or dates;

any sinking fund or other provision for payment of the debt securities prior to their stated maturity;

whether the debt securities are fixed rate debt securities or floating rate debt securities or original issue discount debt securities;

if the debt securities are fixed rate debt securities, the yearly rate at which the debt security will bear interest, if any;

if the debt securities are floating rate debt securities, the method of calculating the interest rate;

if the debt securities are original issue discount debt securities, their yield to maturity;

the date or dates from which any interest will accrue, or how such date or dates will be determined, and the interest payment dates and any related record dates;

if other than in U.S. Dollars, the currency or currency unit in which payment will be made;

**Table of Contents**

any provisions for the payment of additional amounts for taxes;

the denominations in which the currency or currency unit of the securities will be issuable if other than denominations of \$1,000 and integral multiples thereof;

whether the debt securities will be convertible into or exchangeable for other securities and, if so, the terms and conditions upon which such debt securities will be convertible;

the terms and conditions on which the debt securities may be redeemed at our option;

any obligation we may have to redeem, purchase or repay the debt securities at the option of a holder upon the happening of any event and the terms and conditions of redemption, purchase or repayment;

the names and duties of any co-indenture trustees, depositaries, auction agents, authenticating agents, calculation agents, paying agents, transfer agents or registrars for the debt securities;

any material provisions of the applicable indenture described in this prospectus that do not apply to the debt securities;

the ranking of the specific series of debt securities relative to other outstanding indebtedness, including subsidiaries' debt;

if the debt securities are subordinated, the aggregate amount of outstanding indebtedness, as of a recent date, that is senior to the subordinated securities, and any limitation on the issuance of additional senior debt;

the place where we will pay principal and interest;

additional provisions, if any, relating to the defeasance of the debt securities;

any United States federal income tax consequences relating to the offered securities, if material;

the dates on which premiums, if any, will be paid;

our right, if any, to defer payment of interest and the maximum length of this deferral period;

**Table of Contents**

any listing of the debt securities on a securities exchange; and

any other specific terms of the debt securities.

We will issue the debt securities only in registered form. (Section 3.02) As currently anticipated, debt securities of a series will trade in book-entry form, and global securities will be issued in physical (paper) form, as described below under **What Is a Global Security?**

We will issue senior debt securities under the senior debt indenture. These senior debt securities will rank on an equal basis with all our other unsecured debt and unsubordinated debt.

We will issue subordinated debt securities under the subordinated debt indenture. Subordinated debt will rank subordinate and junior in right of payment, to the extent and in the manner set forth in the subordinated debt indenture, to all our senior indebtedness (both secured and unsecured). (Section 15.01)

In general, the holders of all senior debt securities are first entitled to receive payment of the full amount unpaid on senior indebtedness before the holders of any of the subordinated debt securities are entitled to receive a payment on account of the principal or interest on the indebtedness evidenced by the subordinated debt securities in certain events.

If we default in the payment of any principal of, or premium, if any, or interest or other monetary amounts on any senior indebtedness when it becomes due and payable after any applicable grace period, then, unless and until the default is cured or waived or ceases to exist, we cannot make a payment on account of or redeem or otherwise acquire the subordinated debt securities. (Section 15.04)

If there is any insolvency, bankruptcy, liquidation or other similar proceeding relating to us or our property, then all senior indebtedness must be paid in full before any payment may be made to any holders of subordinated debt securities. (Section 15.02)

Furthermore, if we default in the payment of the principal of and accrued interest on any subordinated debt securities that are declared due and payable upon an event of default under the subordinated debt indenture, holders of all our senior indebtedness will first be entitled to receive payment in full in cash before holders of such subordinated debt can receive any payments. (Section 15.03)

Senior indebtedness means:

the principal, interest and any other amounts owing in respect of our indebtedness for borrowed money or indebtedness of others that we guarantee and indebtedness evidenced by bonds, notes, debentures or other similar instruments or letters of credit issued by us, including any senior debt securities issued under any senior debt security or letters of credit;

all capitalized lease obligations;

**Table of Contents**

all hedging obligations;

all obligations representing the deferred purchase price of property; and

all deferrals, renewals, extensions and refundings of obligations of the type referred to above;  
but senior indebtedness does not include:

subordinated debt securities; and

any indebtedness that by its terms is subordinated to, or ranks on an equal basis with, our subordinated debt securities.

**Covenants**

*Merger and Sale of Assets*

We may not, in a single transaction or a series of related transactions:

consolidate or merge with or into any other person or permit any other person to consolidate or merge with or into us; or

transfer, sell, lease or otherwise dispose of all or substantially all of our assets,  
unless, in either such case:

in a transaction in which we do not survive or in which we sell, lease or otherwise dispose of all or substantially all of our assets, the successor entity to us is organized under the laws of the United States, or any state thereof or the District of Columbia, and expressly assumes, by supplemental indentures, all of our obligations under the indentures;

immediately after giving effect to the transaction, no default on the debt securities exists; and

an officer's certificate and an opinion of counsel concerning certain matters are delivered to the trustee. (Section 8.01)

*Other Covenants*

In addition, any offered series of debt securities may have additional covenants which will be described in the prospectus supplement, limiting or restricting, among other things:

our ability to incur indebtedness;

**Table of Contents**

our ability to pay dividends or to repurchase or redeem our share capital;

our ability to create dividend and other payment restrictions affecting our subsidiaries;

sales of assets by us;

our ability to enter into transactions with affiliates; and

our ability to incur liens.

**Modification of the Indentures**

Under the indentures, we and the relevant trustee may amend the indentures, without the consent of any holder of the debt securities to:

evidence the succession of another obligor to the company and the assumption of the covenants in the indentures and in the debt securities by such successor;

add to our covenants for the benefit of the holders of all or any series of debt securities (and if such covenants are to be for the benefit of less than all series of debt securities, stating that such covenants are expressly being included for the benefit of such series) or to surrender any rights or power conferred upon us;

add any additional events of default;

add or change any provision of the indentures to permit the issuance of the debt securities in bearer form, registrable or not registrable as to principal, with or without interest coupons;

add to, change or eliminate any of the provisions of the indentures in respect of one or more series of debt securities, provided that any such addition, change or elimination (i) will neither apply to any debt security created prior to the execution of the supplemental indenture nor adversely affect the rights of the holders thereof in any material respect or (ii) will become effective only when no such debt securities are outstanding;

secure the debt securities;

establish the form or terms of debt securities of any series as permitted in the indentures;

establish provisions with respect to conversion rights, if any;



**Table of Contents**

reflect our consolidation or merger with or into any other person or permit the consolidation or merger of any other person with or into us, or the transfer, sale, lease or other disposition of all or substantially all of our assets, in conformity with the limitations set forth in the indentures;

permit the issuance of uncertificated debt securities in addition to, or in place of, certificated debt securities;

appoint a successor trustee under either indenture;

cure ambiguities, defects or inconsistencies, provided that the amendment may not adversely affect the interests of holders of debt securities in any material respect;

conform any provisions of the indentures to the Description of Debt Securities contained in this prospectus or any similar provision in an applicable prospectus supplement; or

maintain the qualification of the indentures under the Trust Indenture Act. (Section 9.01).

We and the trustee may, with the consent of the holders of at least a majority in aggregate principal amount of the debt securities of a series or such other percentage as may be specified in the applicable prospectus supplement, modify the applicable indenture or the rights of the holders of the securities of such series. However, no such modification may, without the consent of each holder of an affected debt security:

change the fixed maturity of any such debt securities or the date on which any payment of interest on the debt securities is due and payable;

reduce the principal amount or interest rate on any debt security;

reduce the premium payable upon any redemption of the debt securities;

reduce the amount of principal payable on the acceleration of any securities issued originally at a discount;

change the place of payment of, or type of currency for payment of, debt securities;

impair the right to sue for the enforcement of any payment of principal, any installment of interest or premium on or after the maturity (including in connection with a redemption, on or after the redemption date) of the debt securities;

**Table of Contents**

adversely affect the right, if any, to convert such debt securities, or modify the provisions of the indentures with respect to the ranking of the debt securities in a manner adverse to the holder thereof;

reduce the percentage of debt securities of a series whose holders need to consent to a modification or a waiver;

modify any of the provisions in the applicable indentures related to modifications that require the consent of the holders of at least a majority in aggregate principal amount of the debt securities of a series or provisions in the applicable indentures related to the waiver of past defaults by the holders of debt securities, except to increase any such percentage or provide that certain other provisions may not be modified without the consent of each holder of the debt securities;

adversely affect any right of repayment or repurchase at the option of the holder of debt securities; or

reduce or postpone any sinking fund. (Section 9.02)

**Defaults**

Each indenture provides that events of default regarding any series of debt securities will be:

our failure to pay interest on any debt security of such series for 30 days after such payment is due;

our failure to pay principal on any debt security of such series when due;

our failure to make any deposit of any sinking fund payment when due on debt securities of such series;

our failure to perform for 60 days after notice given by the trustee or the holders of at least 25% in principal amount of the outstanding debt securities any other covenant in the relevant indenture other than a covenant (i) included in the relevant indenture solely for the benefit of a series of debt securities other than such series or (ii) expressly excluded from events giving rise to a default, including the obligation to file SEC filings with the trustee;

our failure to pay beyond any applicable grace period, or the acceleration (which is not rescinded or cured within 30 days of notice of acceleration) of, indebtedness in excess of \$100,000,000; or

certain events of bankruptcy or insolvency, whether voluntary or not, with respect to us or any material subsidiary. (Section 5.01)

## **Table of Contents**

In addition, the applicable prospectus supplement will describe any other event of default set forth in the applicable prospectus supplement.

If an event of default regarding debt securities of any series issued under the indentures should occur and be continuing, either the trustee or the holders of at least 25% in the principal amount of outstanding debt securities of such series may declare the principal amount, together with all accrued and unpaid interest, if any, of each debt security of that series due and payable. If an event of default regarding debt securities results from certain events of bankruptcy, insolvency or reorganization with respect to us or any material subsidiary, such amount with respect to the debt securities will be due and payable immediately without any declaration or other act on the part of the holders of outstanding debt securities or the trustee. (Section 5.02)

No event of default regarding one series of debt securities issued under an indenture is necessarily an event of default regarding any other series of debt securities.

Holders of a majority in principal amount of the outstanding debt securities of any series will be entitled to control certain actions of the trustee under the indentures and to waive certain past defaults regarding such series. (Sections 5.12 and 5.13) The trustee generally cannot be required by any of the holders of debt securities to take any action, unless one or more of such holders shall have provided to the trustee security or indemnity reasonably satisfactory to the trustee. (Section 6.02)

If an event of default occurs and is continuing regarding a series of debt securities, the trustee may use any sums that it holds under the relevant indenture for its own reasonable compensation and expenses incurred prior to paying the holders of debt securities of such series. (Section 5.06)

Before any holder of any series of debt securities may institute action for any remedy, the holders of not less than 25% in principal amount of the debt securities of that series outstanding must request the trustee to take action. Holders must also offer indemnity reasonably satisfactory to the trustee against liabilities incurred by the trustee for taking such action, and the trustee must have failed to institute any proceeding within 60 days after receiving such notice and offer of indemnity. These limitations do not apply if the holders of a majority of debt securities of the applicable series give an inconsistent direction. (Section 5.07) In addition, these limitations also do not apply, however, to a suit by a holder of any series of debt securities to enforce payment of principal, interest or premium, if any, and the right to convert such debt security, if applicable. (Section 5.08)

Each trustee will, within 90 days after any default occurs, give notice of the default to the holders of the debt securities of that series, unless the default was already cured or waived. Unless there is a default in paying principal, interest or any premium when due, the trustee can withhold giving notice to the holders if it determines in good faith that the withholding of notice is in the interest of the holders. (Section 6.05)

We are required to furnish to each trustee an annual statement as to compliance with all conditions and covenants under the indenture. (Section 10.05)

## Table of Contents

### **Defeasance**

After we have irrevocably deposited with the trustee cash or U.S. government securities, in trust for the benefit of the holders, sufficient to pay the principal of, premium, if any, and interest on the debt securities of such series when due, and satisfied certain other conditions described below, we may elect to have our obligations under the applicable indenture discharged with respect to the outstanding debt securities of any series ( legal defeasance and discharge ). Legal defeasance and discharge means that we will be deemed to have paid and discharged the entire indebtedness represented by the outstanding debt securities of such series under the applicable indenture, except for:

the rights of holders of the debt securities to receive principal, interest and any premium when due from amounts deposited with the trustee, which will be held in trust funds for the purpose of such payments;

our obligations with respect to the debt securities concerning issuing temporary debt securities, registration of transfer of debt securities, mutilated, destroyed, lost or stolen debt securities and the maintenance of an office or agency where securities may be presented for payment, transfer, exchange or, if applicable, conversion for security payments held in trust;

the rights, powers, trusts, duties and immunities of the trustee; and

the defeasance provisions of the indenture.

Alternatively, we may elect to have our obligations released with respect to certain covenants in the applicable indenture ( covenant defeasance ). The released obligations include:

our obligations regarding delivery of reports to the trustee and holders of debt securities;

our obligations relating to a merger, consolidation or sale of all or substantially all of our assets; and

our obligation to present and keep in full force and effect our corporate existence.

Any omission to comply with these obligations so released will not constitute a default or an event of default with respect to the debt securities of any series. In the event covenant defeasance occurs, certain events relating to these obligations, as well as the failure to deposit a sinking fund payment when due and the failure to pay or acceleration of indebtedness in excess of \$100,000,000, as described above under Events of Default, will no longer constitute an event of default for that series.

**Table of Contents**

In order to exercise either legal defeasance or covenant defeasance with respect to outstanding debt securities of any series, we must irrevocably have deposited or caused to be deposited with the trustee as trust funds cash or specified United States government obligations in an amount, in each case, sufficient without reinvestment, in the written opinion of an nationally recognized firm of independent certified public accountants, to pay and discharge all of the principal, interest and any premium at due date or maturity. In addition:

in the case of legal defeasance, we must have delivered to the trustee an opinion of counsel confirming that (i) we have received from, or there has been published by, the Internal Revenue Service, a ruling or (ii) since the date of the indenture, there has been a change in the applicable Federal income tax law, in either case, to the effect that the holders of the debt securities of that series will not recognize gain or loss for federal income tax purposes as a result of the deposit, defeasance and discharge to be effected and will be subject to the same federal income tax as would be the case if the deposit, defeasance and discharge did not occur;

in the case of covenant defeasance and discharge, we must have delivered to the trustee an opinion of counsel stating that, under then applicable federal income tax law, the holders of the debt securities of that series will not recognize gain or loss for U.S. federal income tax purposes as a result of the deposit and covenant defeasance to be effected and will be subject to the same federal income tax as would be the case if the deposit and covenant defeasance did not occur;

no default with respect to the outstanding debt securities of that series may have occurred and be continuing at the time of such deposit after giving effect to the deposit or, in the case of legal defeasance and discharge, no default relating to bankruptcy or insolvency may have occurred and be continuing at any time on or before the 90th day after the date of such deposit, it being understood that this condition is not deemed satisfied until after the 90th day;

the legal defeasance and discharge or covenant defeasance must not cause the trustee to have a conflicting interest within the meaning of the Trust Indenture Act, assuming all debt securities of a series were in default within the meaning of such Act;

the legal defeasance and discharge or covenant defeasance must not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which we are a party;

we must deliver to the trustee an opinion of counsel that any trust arising from such deposit does not require registration under the Investment Company Act of 1940, as amended;

**Table of Contents**

no event or condition may exist that, under the defeasance provisions of the indentures, would prevent us from making payments of principal, premium, if any, or interest on the applicable debt securities on the date of deposit or at any time on or before the 90th day after the date of such deposit, it being understood that this condition is not deemed satisfied until after the 90th day; and