

AAR CORP  
Form S-3  
December 04, 2008

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As filed with the Securities and Exchange Commission on December 4, 2008

Registration No. 333-

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

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

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**AAR CORP.**

(Exact name of registrant as specified in its charter)

**Delaware** **36-2334820**  
(State or other jurisdiction of incorporation or (I.R.S. Employer Identification Number)  
organization)

**One AAR Place**  
**1100 N. Wood Dale Road**  
**Wood Dale, Illinois 60191**  
**630-227-2000**

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

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**Robert J. Regan, Esq.**  
**Vice President and General Counsel**  
**AAR CORP.**  
**One AAR Place**  
**1100 N. Wood Dale Road**  
**Wood Dale, Illinois 60191**  
**(630) 227-2000**

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

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Copy to:  
Robert J. Minkus, Esq.  
Schiff Hardin LLP  
6600 Sears Tower  
Chicago, Illinois 60606  
(312) 258-5500

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

If the only securities being registered on this Form are 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, as amended, other than securities offered only in connection with dividend or interest reinvestment plans, please 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, as amended, 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, as amended, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a 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 definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

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

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)	Proposed Maximum Aggregate Offering Price(2)(3)	Amount of Registration Fee(4)
Common Stock, par value \$1.00 per share, and related common stock purchase rights	(5)	
Preferred Stock, par value \$1.00 per share	(5)	
Debt Securities	(5)	
Warrants	(5)	
Stock Purchase Contracts	(5)	
Stock Purchase Units	(5)	
<b>Total:</b>	<b>\$300,000,000</b>	<b>\$11,790</b>

- (1) We are registering hereunder such indeterminate number of shares of Common Stock and Preferred Stock, such indeterminate principal amount of Debt Securities, such indeterminate number of Warrants to purchase Common Stock, Preferred Stock or Debt Securities, such indeterminate number of contracts relating to the purchase or sale of Common Stock or Preferred Stock, and such number of units of contracts relating to purchase or sale of Common Stock or Preferred Stock offered in conjunction with beneficial interests in Debt Securities or third-party debt securities as shall have an aggregate initial offering price not to exceed \$300,000,000. If any Debt Securities are issued at an original issue discount, then the offering price of such Debt Securities shall be in such greater principal amount as shall result in an aggregate initial offering price not to exceed \$300,000,000, less the aggregate dollar amount of all securities previously issued hereunder. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. The securities registered also include such indeterminate numbers of shares of Common Stock and Preferred Stock, and principal amounts of Debt Securities, as may be issued upon conversion of or exchange for Preferred Stock or Debt Securities that provide for conversion or exchange, upon exercise of Warrants or pursuant to the antidilution provisions of any such securities.
- (2) In United States dollars or the equivalent thereof in any other currency, currency unit or units, or composite currency or currencies.
- (3) The proposed maximum per unit and aggregate offering prices per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder.
- (4) Pursuant to Rule 457(o) under the Securities Act of 1933, the registration fee is calculated on the maximum offering price of all securities listed, and the table does not specify information by each class about the amount to be registered.
- (5) Not required to be included in accordance with General Instruction II.D. of Form S-3.

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

Subject to Completion, dated December 3, 2008

PROSPECTUS

**\$300,000,000**

**AAR CORP.**

**Common Stock**

**Preferred Stock**

**Debt Securities**

**Warrants**

**Stock Purchase Contracts**

**Stock Purchase Units**

We may from time to time issue up to \$300,000,000 aggregate dollar amount of common stock, preferred stock, debt securities, warrants, stock purchase contracts or stock purchase units. We will specify in the accompanying prospectus supplement the terms of the securities to be offered and sold. We may sell these securities directly to you, through underwriters, dealers or agents we select, or through a combination of these methods. You can find additional information about our plan of distribution for the securities under the heading "Plan of Distribution" beginning on page 22 of this prospectus. We will also describe the plan of distribution for any particular offering of these securities in the applicable prospectus supplement. This prospectus may not be used to sell our securities unless it is accompanied by a prospectus supplement.

Our common stock is listed on the New York Stock Exchange and traded under the symbol "AIR".

Investing in our securities involves risks that are described in the "Risk Factors" section beginning on page 3 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 \_\_\_\_\_,

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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. Under this shelf registration process, we may sell the securities described in this prospectus in one or more offerings up to a total dollar amount of \$300,000,000.

We have provided to you in this prospectus a general description of the securities we may offer. Each time we sell securities under this shelf registration process, 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 or other special considerations applicable to the securities being offered. We may also add, update or change in the prospectus supplement any of the information contained in this prospectus. To the extent there is a conflict between the information contained in this prospectus and the prospectus supplement, you should rely on the information in the prospectus supplement, provided that if a statement in any document is inconsistent with a statement in another document having a later date for example, a document incorporated by reference in this prospectus or any prospectus supplement the statement in the document having the later date modifies or supersedes the earlier statement. You should read both this prospectus and the prospectus supplement together with the additional information described under "Where You Can Find More Information."

The registration statement containing this prospectus, including the exhibits to the registration statement, provides additional information about us and the securities offered under this prospectus. The registration statement, including the exhibits, can be read at the SEC website or at the SEC offices mentioned under the heading "Where You Can Find More Information."

You should rely only on the information incorporated by reference or provided in this prospectus and the accompanying prospectus supplement. We have not authorized anyone to provide you with different information. We are not making an offer to sell or soliciting an offer to buy these securities in any jurisdiction in which the offer or solicitation is not authorized or in which the person making the offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make the offer or solicitation. You should not assume that the information in this prospectus or the accompanying prospectus supplement is accurate as of any date other than the date on the front of the document.

Unless the context otherwise requires, the terms "AAR", the "company", "we," "us" and "our" refer to AAR CORP. and to its subsidiaries. References to "securities" refer collectively to the common stock, preferred stock, debt securities, warrants, stock purchase contracts and stock purchase units registered hereunder.

**WHERE YOU CAN FIND MORE INFORMATION**

AAR files 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. You may obtain additional information about the public reference room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains a site on the Internet (<http://www.sec.gov>) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC, including AAR.

The SEC allows us to "incorporate by reference" information into this prospectus. This means that we can disclose important information to you by referring you to another document that AAR has filed separately with the SEC. The information incorporated by reference is considered to be part of this prospectus. Information that AAR files with the SEC after the date of this prospectus will automatically modify and supersede the information included or incorporated by reference in this prospectus to the extent that the subsequently filed information modifies or supersedes the existing information. We incorporate by reference the following documents filed with the SEC:

Annual Report on Form 10-K for the fiscal year ended May 31, 2008;

Quarterly Report on Form 10-Q for the fiscal quarter ended August 31, 2008;

Current Report on Form 8-K filed on September 17, 2008; and

The descriptions of our common stock and the common stock purchase rights included in our registration statements on Form 8-A filed with the SEC on July 29, 1987 and July 13, 2007, respectively, pursuant to Section 12(d) of the Exchange Act, including any amendments or reports filed for the purpose of updating such descriptions.

We also incorporate by reference any future filings we make with the SEC under sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until we sell all of the securities.

You may request a copy of these filings at no cost, by writing or telephoning AAR CORP. at One AAR Place, 1100 North Wood Dale Road, Wood Dale, Illinois 60191, Attention: Corporate Secretary, (630) 227-2000.

We maintain an Internet site at [www.aarcorp.com](http://www.aarcorp.com) which contains information concerning AAR and its subsidiaries. The information contained at our Internet site is not incorporated by reference in this prospectus, and you should not consider it a part of this prospectus.

We have filed this prospectus with the SEC as part of a registration statement on Form S-3 under the Securities Act of 1933. This prospectus does not contain all of the information included in the registration statement. Any statement made in this prospectus concerning the contents of any contract, agreement or other document is only a summary of the actual document. If we have filed any contract, agreement or other document as an exhibit to the registration statement, you should read the exhibit for a more complete understanding of the document or matter involved. Each statement regarding a contract, agreement or other document is qualified in its entirety by reference to the actual document.

## RISK FACTORS

*Investing in the securities involves risk. Please see the "Risk Factors" section in our most recent Annual Report on Form 10-K, along with the disclosure related to risk factors contained in our subsequent Quarterly Reports on Form 10-Q, which are incorporated by reference in this prospectus, as updated by our future filings with the SEC. Before making an investment decision, you should carefully consider these risks as well as other information contained or incorporated by reference in this prospectus. The risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations, our financial results and the value of our securities. The accompanying prospectus supplement may contain a discussion of additional risks applicable to an investment in us and the particular type of securities we are offering under that prospectus supplement.*

## FORWARD-LOOKING STATEMENTS

This prospectus, the prospectus supplement and the documents incorporated herein by reference contain statements that we believe are "forward-looking statements" under the meaning of the Private Securities Litigation Reform Act of 1995 and are intended to enjoy protection of the safe harbor for forward-looking statements provided by that act. These forward-looking statements relate to, among other things, our strategic and business initiatives and plans for growth or operating changes; our financial condition and results of operation; future events, developments or performance; and management's expectations, beliefs, plans, estimates and projections. These forward-looking statements generally can be identified by use of phrases such as "believe," "plan," "expect," "anticipate," "intend," "forecast" or other similar words or phrases.

Forward-looking statements are our current estimates or expectations of future events or future results. Actual results could differ materially from the results indicated by these statements because the realization of those results is subject to many risks and uncertainties including:

impact on our customers of recent severe disruptions in the financial markets and the continued tightening of the credit markets;

declining demand for our products and services and the ability of certain of our airline customers to meet their financial obligations due to their precarious financial position;

declining market values for aviation products and equipment caused by various factors, including airline bankruptcies, consolidations and fleet reductions;

the risk of significant cost issues associated with the A400M Cargo system;

cost overruns on fixed-price contracts;

difficulties in re-leasing or selling aircraft and engines that are currently being leased;

inability to integrate acquisitions effectively and execute our operational and financial plan related to the acquisitions;

lack of assurance that sales to the U.S. defense department, its agencies and its contractors (which were 31.7% of total sales in fiscal 2008) will continue at levels previously experienced, including the mix of products sold;

a reduction in outsourcing by airlines necessary for continued success in our Maintenance, Repair and Overhaul segment;

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limitations on our ability to access the debt and equity capital markets or to draw down funds under financing agreements;

a need to make significant capital expenditures to keep pace with technological developments in our industry;

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non-compliance with restrictive and financial covenants contained in certain of our loan agreements;

changes in or non-compliance with laws and regulations that may affect certain of our aviation related activities that are subject to licensing, certification and other regulatory requirements imposed by the FAA and other regulatory agencies, both domestic and foreign;

competition from other companies, including original equipment manufacturers, some of which have greater financial resources than we do;

reliance on skilled personnel and the risk that our operations could be adversely affected by a shortage of such skilled personnel or work stoppages;

exposure to product liability and property claims that may be in excess of our substantial liability insurance coverage; and

the outcome of any pending or future material litigation or environmental proceedings.

For a discussion of these and other risks and uncertainties, refer to "Risk Factors" in our most recent Annual Report on Form 10-K. You should read these factors and other cautionary statements made in this prospectus, the prospectus supplement and in the documents we incorporate by reference as being applicable to all related forward-looking statements wherever they appear in the prospectus, the prospectus supplement and in the documents incorporated by reference. While management believes these forward-looking statements are accurate and reasonable, uncertainties, risks and factors, including those described above, could cause actual results to differ materially from those reflected in the forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management's judgment only as of the date of this prospectus or the date of the document incorporated by reference. Neither we nor our management undertakes an obligation to revise or update these forward-looking statements to reflect events and circumstances that arise after the date of this prospectus.

**AAR CORP.**

*Overview.* AAR was founded in 1951, organized in 1955, and reincorporated in Delaware in 1966. We are a diversified provider of products and services to the worldwide aviation/aerospace and defense industries. We conduct our business activities primarily through six principal operating subsidiaries: AAR Parts Trading, Inc., AAR Aircraft & Engine Sales & Leasing, Inc., AAR Services, Inc., AAR Aircraft Services, Inc., AAR Manufacturing, Inc., and AAR International, Inc. Our international business activities are conducted primarily through AAR International, Inc.

*Business Segments.* We report our activities in four business segments:

**Aviation Supply Chain:** Activities include the purchase and sale of a wide variety of new, overhauled and repaired engine and airframe parts and components for our aviation and defense customers. We also repair and overhaul a wide variety of avionics, electrical, electronic, fuel, hydraulic and pneumatic components and instruments and a broad range of internal airframe components for the same customer categories. We provide customized inventory supply and management programs for engine and airframe parts and components in support of customer maintenance activities. We are an authorized distributor for more than 125 leading aviation products manufacturers. In addition, we sell and lease commercial jet engines.

**Maintenance, Repair and Overhaul:** Activities include airframe maintenance services and the repair and overhaul of most types of landing gear for commercial and defense customers. We have a long-term lease to occupy a significant portion of an airframe maintenance facility in Indianapolis, Indiana, which also has backshop, warehouse and office space. We operate aircraft maintenance facilities in Oklahoma City, Oklahoma and Miami, Florida providing airframe maintenance, modification, special equipment installation, painting services and aircraft terminal services for various models of commercial, defense, regional business and general aviation aircraft. We also operate a regional maintenance, repair, and overhaul facility in Hot Springs, Arkansas.

**Structures and Systems:** Activities include the design, manufacture and repair of a wide array of containers, shelters and pallets in support of military and humanitarian tactical deployment activities and complex machined and fabricated parts, components and sub-systems for various aerospace and defense programs and other applications. We also design, manufacture and install in-plane cargo loading and handling systems for commercial and military aircraft and helicopters, and we design and manufacture advanced composite materials for commercial, business and military aircraft as well as for the transportation industry.

**Aircraft Sales and Leasing:** Activities include the sale or lease of used commercial jet aircraft. In this segment, we purchase aircraft from airlines and aircraft leasing companies for our own account or in partnership with strategic or financial partners typically under joint venture agreements. We also provide advisory services, which consist of assistance with the remarketing of aircraft, records management and storage maintenance.

**USE OF PROCEEDS**

We expect to use the net proceeds from the sale of securities offered by this prospectus and the prospectus supplement for general corporate purposes. These may include additions to working capital, repayment of existing indebtedness and acquisitions. If we decide to use the net proceeds of any offering of securities other than for general corporate purposes, we will describe the use of the net proceeds in the prospectus supplement for that offering.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth the ratio of earnings to fixed charges for the periods indicated:

<b>Three Months Ended</b>	<b>For the Fiscal Year Ended May 31,</b>					
<b>August 31,</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	
2008	5.1	5.1	4.8	3.0	1.8	1.1

For the purpose of calculating the ratio of earnings to fixed charges, earnings consist of income from continuing operations before provision (benefit) for income taxes, adjusted for fixed charges. Fixed charges consist of interest, whether expensed or capitalized, amortization of debt expenses and one-third of rent expense under operating leases (estimated by management to be the interest factor of such rent expense).

**DESCRIPTION OF COMMON STOCK**

**General**

The following is a description of certain terms of our common stock. This description does not purport to be complete and is subject to and qualified in its entirety by reference to the provisions of our restated certificate of incorporation, bylaws and the Delaware General Corporation Law.

Our authorized common stock consists of 100,000,000 shares of common stock, \$1.00 par value per share. As of November 28, 2008, there were 38,670,275 shares of common stock outstanding.

*Voting.* Holders of common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. Holders of a majority of the shares of common stock entitled to vote in any election of directors may elect all of the directors standing for election.

*Dividend Rights.* Holders of common stock are entitled to receive dividends when, as and if declared by our board of directors, in its discretion, out of funds legally available for the payment of dividends. Our board of directors currently intends to reinvest all future earnings in our business rather than pay cash dividends.

*Liquidation Rights.* Upon the liquidation, dissolution or winding up of our company, the holders of common stock are entitled to receive ratably the net assets of our company available after the payment of all debts and other liabilities.

*Rights Subject to Preferred Stock.* The rights, preferences and privileges of 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 that we may designate and issue in the future.

*No Preemptive Rights; Redemption.* Holders of common stock have no preemptive, subscription, redemption or conversion rights.

*Transfer Agent and Registrar.* The transfer agent and registrar for our common stock is Computershare Trust Company, N.A., c/o Computershare Investor Services, P.O. Box 43078, Providence, RI 02940-3078. Its telephone number is 1-877-282-1168.

**Certain Charter and By-Law Provisions**

*General.* We have implemented certain measures designed to enhance the board of directors' ability to protect our stockholders against, among other things, unsolicited attempts to acquire a significant interest in us or to influence our management (whether through open market purchases, tender offers or otherwise) that do not offer an adequate price to all stockholders or that the board of directors otherwise considers not in the best interests of our company and its stockholders.

Certain provisions in our restated certificate of incorporation may have a significant impact on the stockholders' ability to change the composition of the incumbent board of directors or the ability of a substantial holder of the common stock to acquire control of, or to remove, the incumbent board of directors, and might discourage certain types of transactions that involve an actual or threatened change of control of us.

The provisions of our restated certificate of incorporation are intended to encourage persons seeking to acquire control of us to initiate such an acquisition through arm's-length negotiations with our management and board of directors. These provisions could have the effect of discouraging a third party from making a tender offer to or otherwise attempting to obtain control of us, even though such an attempt might be beneficial to our stockholders. At the same time, these provisions help ensure that the board of directors, if confronted by an unsolicited proposal from a third party who recently

acquired a block of common stock, will have sufficient time to review the proposal and alternatives to it and to seek better proposals for its stockholders, employees, suppliers, customers and others. These provisions are discussed below.

*Preferred Stock.* Our restated certificate of incorporation allows the board of directors, without stockholder approval, to issue up to 250,000 shares of preferred stock with voting, liquidation and conversion rights that could be superior to and adversely affect the voting power of holders of common stock. The issuance of preferred stock could have the effect of delaying, deferring or preventing a change in control of our company.

*Classified Board of Directors.* Our restated certificate of incorporation provides that our board of directors shall be divided into three classes of directors serving staggered three-year terms. The classification of directors has the effect of making it more difficult for stockholders to change the composition of the board of directors in a relatively short period of time.

*Voting Restriction on Certain Business Combinations.* An affirmative vote of the holders of at least 80% of the outstanding shares of our capital stock entitled to vote generally in the election of directors is required to adopt certain business combinations, including mergers, consolidations, asset and securities sales, plans of liquidation or dissolution and certain reclassifications, involving any related party. A related party is defined as the beneficial owner, directly or indirectly, of at least 10% of our voting stock.

The 80% affirmative voting requirement is not applicable to business combinations approved by (i) a majority of our board of directors prior to the related party's acquisition of at least 10% of our voting stock or (ii) a majority of those members of the board of directors who are not related to the related party.

*Special Stockholders' Meeting.* Our restated certificate of incorporation and bylaws allow only the Chairman of the board of directors or a majority of the board of directors then in office to call a special meeting of the stockholders.

*No Action by Stockholder Consent.* Our restated certificate of incorporation prohibits action that is required or permitted to be taken at any annual or special meeting of our stockholders from being taken by the written consent of stockholders without a meeting.

*Supermajority Voting.* The provisions relating to the classified board, right to call a special meeting and prohibition on stockholder consent, as well as certain other provisions of the restated certificate of incorporation, may be altered, amended, or repealed only by the affirmative vote of the holders of 80% or more of the outstanding shares of voting stock. Our bylaws may be amended, altered, changed or replaced by the affirmative vote of the holders of at least 80% or more of the outstanding shares of voting stock entitled to vote in the election of directors or by a majority of board of directors then in office.

## **Rights Agreement**

Each outstanding share of our common stock carries with it a right to purchase from us one additional share at a purchase price of \$140.00 per share, subject to adjustment. The description and terms of the rights are set forth in a Rights Agreement, dated as of July 11, 2007, between us and Computershare Trust Company, N.A., as Rights Agent. The rights replace the common stock purchase rights that we distributed to our stockholders in 1997.

The rights agreement provides that, unless earlier redeemed, the rights will separate from the common stock and a "distribution date" will occur upon the earlier of the tenth business day after:

A "stock acquisition date" or

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The commencement or announcement of an intention to make a tender offer or exchange offer which would result in any person or group of affiliated or associated persons becoming an "acquiring person."

"Stock acquisition date" means the date of first public announcement that a person or group of affiliated or associated persons has become an "acquiring person," and an "acquiring person" is a person or group of affiliated or associated persons that has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of our common stock.

The rights are not exercisable until the distribution date. The rights will expire on August 6, 2017, unless we redeem them earlier as described below.

*Flip-In Right.* In the event that a person becomes an "acquiring person," each right, other than rights beneficially owned by the "acquiring person" (which will be void), entitles its holder to receive upon exercise thereof, that number of shares of our common stock having a market value of two times the purchase price of the right.

*Flip-Over Right.* In the event that, on or after the "stock acquisition date," we were acquired in a merger or other business combination, or 50% or more of our assets or earning power were sold, proper provision will be made so that each holder of a right will have the right to receive, upon the exercise thereof at the then current purchase price of the right, that number of shares of common stock of the acquiring company which would have a market value of two times the purchase price of the right. In the event that we were the surviving corporation in a merger involving the "acquiring person" and our common stock were not changed or exchanged, proper provision will be made so that each holder of a right, other than rights beneficially owned by the "acquiring person" (which will be void), will thereafter have the right to receive upon exercise that number of shares of the common stock having a market value of two times the purchase price of the right.

At any time prior to the tenth day after the time that there is an "acquiring person," we may, at our option, redeem the rights in whole but not in part, at a price of \$0.01 per right. Immediately upon the authorization of the redemption of the rights by our board of directors, the rights will terminate and the only right of the holders of rights will be to receive the redemption price.

Our board of directors may amend the rights agreement from time to time, provided that any such changes do not adversely affect the interest of the holders of the rights, and provided further that the rights agreement may not be supplemented or amended in any way after a person has become an "acquiring person."

**DESCRIPTION OF THE PREFERRED STOCK**

**General**

Under our restated certificate of incorporation, our board of directors has the authority, without further stockholder action, to issue up to 250,000 shares of preferred stock, par value \$1.00 per share. As of the date of this prospectus, no shares of preferred stock are outstanding.

The following description sets forth general terms that will apply to our preferred stock. We will describe the particular terms of any preferred stock that we offer in the prospectus supplement relating to those shares of preferred stock. Those terms may include:

the maximum number of shares to constitute the series;

any annual dividend rate on the shares, whether the rate is fixed or variable or both, the date or dates from which dividends will accrue, whether the dividends will be cumulative and any dividend preference;

whether the shares will be redeemable and, if so, the price at and the terms and conditions on which the shares may be redeemed;

any liquidation preference applicable to the shares;

the terms of any sinking fund;

any terms and conditions on which the shares of the series will be convertible into, or exchangeable for, shares of any other capital stock;

any voting rights of the shares of the series; and

any other preferences or special rights or limitations on the shares of the series.

**Voting**

Unless required by law or specifically provided for by our board of directors, the holders of our preferred stock have no voting power on any matter.

**Dividends**

Before declaration and payment of any dividends on our classes of stock that rank junior to preferred stock, the holders of shares of preferred stock will receive any cash dividends to which they are entitled out of legally available funds.

**DESCRIPTION OF THE DEBT SECURITIES**

**General**

The following description sets forth general terms that will apply to the debt securities. We will describe the particular terms of any debt securities that we offer in the prospectus supplement relating to those debt securities.

The debt securities will be either our senior debt securities or our subordinated debt securities. The senior debt securities will be issued under an indenture between us and U.S. Bank National Association, as trustee. We refer to this indenture as the "senior indenture." The subordinated debt securities will be issued under a separate Subordinated Indenture between us and U.S. Bank National Association, as trustee. We refer to this indenture as the "subordinated indenture" and, together with the senior indenture, as the "indentures." The indentures have been qualified under the Trust Indenture Act of 1939.

We have filed the forms of the indentures as exhibits to the registration statement. For your convenience, we have included references to specific sections of the indentures in the descriptions below. Capitalized terms not otherwise defined in this prospectus will have the meanings given in the indenture to which they relate.

The following summaries of provisions of the debt securities and the indentures are not complete and are qualified in their entirety by reference to the provisions of the indentures and the debt securities.

Neither of the indentures limits the principal amount of debt securities that we may issue. Each indenture provides that debt securities may be issued in one or more series up to the principal amount that we may authorize from time to time. Each indenture also provides that the debt securities may be denominated in any currency or currency unit that we designate. In addition, each series of debt securities may be reopened in order to issue additional debt securities of that series in the future without the consent of the holders of debt securities of that series. Unless otherwise described in the prospectus supplement relating to a particular offering, neither the indentures nor the debt securities will contain any provisions to afford holders of any debt securities protection in the event of a takeover, recapitalization or similar restructuring of our business.

The senior debt securities will rank equally with all of our other unsecured and unsubordinated debt. The subordinated debt securities will be subordinated to the prior payment in full of our senior debt securities. (Subordinated Indenture Section 15.1) We will describe the particular terms of the subordinated debt securities that we offer in the prospectus supplement relating to those subordinated debt securities.

We will describe the specific terms relating to each particular series of debt securities in the prospectus supplement relating to the offering of those debt securities. The terms we will describe in the prospectus supplement will include some or all of the following:

the title and type of the debt securities;

the total principal amount or initial offering price of the debt securities;

the date or dates when the principal of the debt securities will be payable;

whether we will have the right to extend the stated maturity of the debt securities;

whether the debt securities will bear interest and, if so, the rate or rates, or the method for calculating the rate or rates, of interest;

if the debt securities will bear interest, the date from which interest will accrue, the dates when interest will be payable and the regular record dates for these interest payment dates;

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the place where the principal, premium, if any, and interest, if any, on the debt securities will be paid, registered debt securities may be surrendered for registration of transfer, and debt securities may be surrendered for exchange;

any sinking fund or other provisions that would obligate us to repurchase or otherwise redeem the debt securities;

the terms and conditions upon which we will have the option or the obligation to redeem the debt securities;

the denominations in which any registered debt securities will be issuable;

the identity of each security registrar and paying agent, and the designation of the exchange rate agent, if any, if other than the trustee;

the portion of the principal amount of debt securities that will be payable upon acceleration of the maturity of the debt securities;

the currency used to pay principal, premium, if any, and interest, if any, on the debt securities, if other than U.S. dollars, and whether you or we may elect to have principal, premium and interest paid in a currency other than the currency in which the debt securities are denominated;

any index, formula or other method used to determine the amount of principal, premium or interest on the debt securities;

any changes or additions to the events of default, defaults or our covenants made in the applicable indenture;

whether the debt securities are issuable as registered debt securities or bearer debt securities, whether there are any restrictions relating to the form in which they are issued and whether bearer and registered debt securities may be exchanged for each other;

to whom interest will be payable

if other than the registered holder (for registered debt securities),

if other than upon presentation and surrender of the related coupons (for bearer debt securities), or

if other than as specified in the indentures (for global debt securities);

whether the debt securities are to be convertible or exchangeable for other securities and, if so, the terms of conversion or exchange;

particular terms of subordination with respect to subordinated debt securities; and

any other terms of the debt securities consistent with the provisions of the applicable indenture. (Section 3.1)

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We may issue debt securities as original issue discount securities to be sold at a substantial discount below their principal amount. If we issue original issue discount securities, then we will describe the material U.S. federal income tax consequences that apply to those debt securities in the applicable prospectus supplement.

### **Registration and Transfer**

We presently plan to issue each series of debt securities only as registered securities. However, we may issue a series of debt securities as bearer securities, or a combination of both registered securities and bearer securities. If we issue senior debt securities as bearer securities, they will have interest coupons attached unless we elect to issue them as zero coupon securities. (Section 2.1) If we issue

bearer securities, we may describe material U.S. federal income tax consequences and other material considerations, procedures and limitations in the applicable prospectus supplement.

Holders of registered debt securities may present the debt securities for exchange for different authorized amounts of other debt securities of the same series and in the same aggregate principal amount at the corporate trust office of the trustee or at the office of any other transfer agent we may designate for the purpose and describe in the applicable prospectus supplement. The registered securities must be duly endorsed or accompanied by a written instrument of transfer. The agent will not impose a service charge on you for the transfer or exchange. We may, however, require that you pay any applicable tax or other governmental charge. If we issue bearer securities, we will describe any procedures for exchanging those bearer securities for other senior debt securities of the same series in the applicable prospectus supplement. Generally, we will not allow you to exchange registered securities for bearer securities. (Section 3.5)

In general, unless otherwise specified in the applicable prospectus supplement, we will issue registered securities without coupons and in denominations of \$1,000 or integral multiples, and bearer securities in denominations of \$5,000. We may issue both registered and bearer securities in global form. (Section 3.5) See "Global Securities."

### **Conversion and Exchange**

If any debt securities will be convertible into or exchangeable for our common stock, preferred stock or other securities, the applicable prospectus supplement will set forth the terms and conditions of the conversion or exchange, including:

the conversion price or exchange ratio;

the conversion or exchange period;

whether the conversion or exchange will be mandatory or at the option of the holder or us;

provisions for adjustment of the conversion price or exchange ratio; and

provisions that may affect the conversion or exchange if the debt securities are redeemed.

### **Redemption**

Unless otherwise indicated in the applicable prospectus supplement, we may, at our option, redeem any series of debt securities in whole at any time or in part from time to time. If any series of debt securities are redeemable only on or after a certain date or only upon satisfaction of additional conditions, the applicable prospectus supplement will specify the date or the additional conditions. Unless otherwise specified in the applicable prospectus supplement, the redemption price for debt securities will equal 100% of the principal amount plus any accrued and unpaid interest on those debt securities.

The applicable prospectus supplement will contain the specific terms on which we may redeem a series of debt securities prior to its stated maturity. We will send a notice of redemption to holders at least 30 days but not more than 60 days prior to the redemption date. The notice will state:

the redemption date;

the redemption price;

if less than all of the debt securities of the series are being redeemed, the particular debt securities to be redeemed (and the principal amounts, in the case of a partial redemption);

that on the redemption date, the redemption price will become due and payable and any applicable interest will cease to accrue on and after that date;

the place or places of payment;

whether the redemption is for a sinking fund; and

any other provisions required by the terms of the debt securities of the series that are being redeemed. (Section 11.4)

On or before any redemption date, we will deposit an amount of money with the trustee or with a paying agent sufficient to pay the redemption price. (Section 11.5)

If we are redeeming less than all the debt securities, the trustee will select the debt securities to be redeemed using a method it considers fair and appropriate. After the redemption date, holders of redeemed debt securities will have no rights with respect to the debt securities except the right to receive the redemption price and any unpaid interest to the redemption date.

#### **Events of Default**

An "event of default" regarding any series of debt securities is any one of the following events:

default for 30 days in the payment of any interest installment when due and payable;

default in the making of any sinking fund payment when due;

default in the payment of principal or premium (if any) when due at its stated maturity, by declaration, when called for redemption or otherwise;

default in the performance of any covenant in the debt securities of that series or in the applicable indenture for 60 days after notice to us by the trustee or by the holders of 25% in principal amount of the outstanding debt securities of that series;

certain events of bankruptcy, insolvency and reorganization; and

any other event of default provided with respect to that series of debt securities. (Section 5.1)

We are required to file every year with each trustee an officers' certificate stating whether any default exists and specifying any default that exists. (Section 10.4)

#### **Acceleration of Maturity**

If an event of default has occurred and is continuing with respect to debt securities of a particular series (except, in the case of subordinated debt securities, defaults relating to bankruptcy events), the trustee or the holders of not less than 25% in principal amount of outstanding debt securities of that series may declare the principal amount of outstanding debt securities of that series due and payable immediately. (Section 5.2)

At any time after a declaration of acceleration of maturity with respect to debt securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of a majority in principal amount of the outstanding debt securities of that series by written notice to us and the trustee, may rescind and annul the declaration and its consequences if:

we have paid or deposited with the trustee a sum sufficient to pay:

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all overdue interest on all outstanding debt securities of that series and any related coupons,

all unpaid principal of and premium, if any, on any of the debt securities which has become due otherwise than by the declaration of acceleration, and interest on the unpaid principal at the rate or rates prescribed in the debt securities,

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to the extent lawful, interest on overdue interest at the rate or rates prescribed in the debt securities, and

all sums paid or advanced by the trustee and the reasonable compensation, expenses, disbursements and advances of the trustee, its agents and counsel; and

all events of default with respect to debt securities of that series, other than the non-payment of amounts of principal, interest or any premium on the debt securities which have become due solely by the declaration of acceleration, have been cured or waived. (Section 5.2)

No rescission will affect any subsequent default or impair any right consequent thereon.

### **Waiver of Defaults**

The holders of not less than a majority in principal amount of the outstanding debt securities of any series may, on behalf of the holders of all the debt securities of the series and any related coupons, waive any past default under the applicable indenture with respect to the series and its consequences, except a default:

in the payment of the principal of or premium, if any, or interest on any debt security of the series or any related coupon, or

in respect of a covenant or provision that cannot be modified or amended without the consent of the holder of each outstanding debt security of the series affected thereby. (Section 5.13)

If an event of default with respect to debt securities of a particular series occurs and is continuing, the trustee will not be obligated to exercise any of its rights or powers under the applicable indenture at the request or direction of any of the holders of debt securities of the series, unless the holders have offered to the trustee reasonable indemnity and security against the costs, expenses and liabilities that might be incurred by it in compliance with the request. (Section 6.3)

The holders of a majority in principal amount of the outstanding debt securities of any series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee under the applicable indenture, or exercising any trust or power conferred on the trustee with respect to the debt securities of that series. The trustee may refuse to follow directions in conflict with law or the indenture that may expose the trustee to personal liability or may be unduly prejudicial to the other, non-directing holders. Additionally, the trustee may take any other action the trustee deems proper which is not inconsistent with the direction. (Section 5.12)

### **Modification of Indenture**

We and the trustee may, without the consent of any holders of debt securities, enter into supplemental indentures for various purposes, including:

to evidence the succession of another entity to us and the assumption by the successor of our covenants and obligations under the debt securities and the indenture;

establishing the form or terms of any series of debt securities issued under the supplemental indentures;

adding to our covenants for the benefit of the holders or to surrender any of our rights or powers under the indenture;

adding additional events of default for the benefit of the holders;

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to change or eliminate any provisions of the indenture provided that the change or elimination becomes effective only when there is no debt security outstanding entitled to the benefit of any changed or eliminated provision;

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to secure the debt securities;

to cure any ambiguities or correct defective or inconsistent provisions of the indenture, provided that holders of debt securities are not materially affected by the change;

to evidence and provide for acceptance of a successor trustee; and

to comply with the requirements of the Trust Indenture Act of 1939. (Section 9.1)

We and the trustee may, with the consent of the holders of not less than a majority in principal amount of the outstanding debt securities of all affected series acting as one class, execute supplemental indentures adding any provisions to or changing or eliminating any of the provisions of the indenture or modifying the rights of the holders of the debt securities of the series. (Section 9.2) Without the consent of the holders of all the outstanding debt securities affected thereby, no supplemental indenture may:

change the stated maturity of the principal of, or any installment of principal of or interest on, any debt security;

reduce the principal amount of, the rate of interest on or any premium payable upon the redemption of, or change the manner of calculating the rate of interest on, any debt security;

reduce the amount of the principal of any original issue discount security that would be due and payable upon acceleration of the maturity of the debt security;

change the place of payment where, or the currency in which, principal or interest on any debt security is payable;

impair the right to institute suit for enforcement of payments;

reduce the percentage in principal amount of the outstanding debt securities of any series, the holders of which must consent to a supplemental indenture or any waiver of compliance with various provisions of, or defaults and covenants under, the indenture; or

modify any of the provisions described in this section. (Section 9.2)

### **Consolidation, Merger and Sale of Assets**

As provided in the indentures, we may not consolidate with or merge into any other person, or convey, transfer or lease all or substantially all of our assets to any other person, unless:

the person surviving or formed by the transaction is organized and validly existing under the laws of any United States jurisdiction and expressly assumes our obligations under the debt securities and the indentures;

immediately after giving effect to the transaction, no event of default will have occurred and be continuing under the indentures; and

the trustees under the indentures receive certain officers' certificates and opinions of counsel. (Section 8.1)

**Satisfaction and Discharge**

We may terminate our obligations with respect to debt securities of any series not previously delivered to the trustee for cancellation when those debt securities:

have become due and payable;

will become due and payable at their stated maturity within one year; or

are to be called for redemption within one year under arrangements satisfactory to the indenture trustee for giving notice of redemption.

We may terminate our obligations with respect to the debt securities of a series by depositing with the trustee, as trust funds in trust dedicated solely for that purpose, an amount sufficient to pay and discharge the entire indebtedness on the debt securities of that series. In that case, the applicable indenture will cease to be of further effect, and our obligations will be satisfied and discharged with respect to that series (except our obligations to pay all other amounts due under the indenture and to provide certain officers' certificates and opinions of counsel to the trustee). At our expense, the trustee will execute proper instruments acknowledging the satisfaction and discharge. (See Section 4.1)

**The Trustees**

U.S. Bank National Association is the trustee under the each of the indentures.

Any trustee may be deemed to have a conflicting interest for purposes of the Trust Indenture Act and may be required to resign as trustee if there is an event of default under the applicable indenture and, as more fully described in Section 310(b) of the Trust Indenture Act, one or more of the following occurs:

the trustee is a trustee under another indenture under which our securities are outstanding;

the trustee is a trustee for more than one outstanding series of debt securities under a single indenture;

we or our affiliates or underwriters hold certain threshold ownership beneficial ownership interest in the trustee;

the trustee holds certain threshold beneficial ownership interests in us or in securities of ours that are in default;

the trustee is one of our creditors; or

the trustee or one of its affiliates acts as an underwriter or agent for us.

Because U.S. Bank National Association is the trustee under the senior indenture and the subordinated indenture, it may be required to resign as trustee under one of those indentures if there is an event of default under an indenture.

We may appoint an alternative trustee for any series of debt securities. The appointment of an alternative trustee would be described in the applicable prospectus supplement.

We and our affiliates engage in transactions with the trustee and its affiliates in the ordinary course of business.

**Governing Law**

Each of the indentures are, and the related senior debt securities and subordinated debt securities will be, governed by and construed under the internal laws of the State of New York. (Section 1.13)