

TEREX CORP  
Form 424B5  
May 28, 2009

**The information in this preliminary prospectus supplement and the accompanying prospectus relates to an effective registration statement under the Securities Act of 1933, but is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**Filed Pursuant to Rule 424(b)5**

**Registration No. 333-144796**

SUBJECT TO COMPLETION, DATED MAY 27, 2009

PRELIMINARY PROSPECTUS SUPPLEMENT TO PROSPECTUS DATED NOVEMBER 6, 2007

\$150,000,000

% Convertible Senior Subordinated Notes due 2015

We are offering \$150 million aggregate principal amount of our % Convertible Senior Subordinated Notes due 2015 (the notes ). We will pay interest on the notes semi-annually in arrears on each June 1 and December 1, commencing on December 1, 2009. The notes will mature on June 1, 2015, unless earlier repurchased or converted.

Holders may convert their notes at their option prior to the close of business on the business day immediately preceding December 1, 2014 only under the following circumstances: (1) during any fiscal quarter commencing after June 30, 2009, if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period in which the trading price per \$1,000 principal amount of notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the applicable conversion rate on each such day; or (3) upon the occurrence of specified corporate events. On and after December 1, 2014 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their notes at any time, regardless of the foregoing circumstances. Upon conversion, we will deliver cash up to the aggregate principal amount of the notes to be converted, and shares of our common stock in respect of the remainder, if any, of our convertible obligation in excess of the aggregate principal amount of the notes being converted. Holders will not receive any separate cash payment for interest or additional interest, if any, accrued and unpaid to the conversion date, except in limited circumstances. Instead, interest will be deemed paid by the delivery to the holders of cash and shares of our common stock, if any, upon conversion. We will deliver cash in lieu of any fractional shares of common stock issuable upon conversion. See Description of the Notes Conversion Rights.

The initial conversion rate will be shares of our common stock per \$1,000 principal amount of notes, equivalent to an initial conversion price of approximately \$ per share of common stock. The conversion rate will be subject to adjustment in some events but will not be adjusted for accrued interest. In addition, following certain corporate transactions that occur prior to the maturity date, we will increase the conversion rate for a holder who elects

to convert its notes in connection with such a corporate transaction in certain circumstances.

We may not redeem the notes at our option prior to maturity. If we undergo a fundamental change as described in this prospectus supplement, subject to certain exceptions, holders may require us to purchase the notes in whole or in part for cash at a price equal to 100% of the principal amount of the notes to be purchased plus any accrued and unpaid interest to, but excluding, the fundamental change purchase date.

The notes will be our unsecured obligations and will be subordinated in right of payment to all of our senior indebtedness and equal in right of payment with all of our senior subordinated indebtedness. The notes will be senior in right of payment to all of our subordinated indebtedness. The notes will be effectively junior to all of our secured indebtedness, to the extent of the value of the assets securing such debt, and will be effectively subordinated to indebtedness and other liabilities of our subsidiaries. See *Description of the Notes* for a complete description of the terms of the notes.

The notes are new securities, and there is currently no established market for the notes. Accordingly, we cannot assure you as to the development or liquidity of any market for the notes. We do not intend to apply for a listing of the notes on any securities exchange.

Concurrent with this offering of notes, under separate prospectus supplements, we are offering \$300 million aggregate principal amount of our % Senior Notes due 2016 and 11,000,000 shares of our common stock in an underwritten public offering (or 12,650,000 shares of our common stock if the underwriters exercise their over-allotment option in full).

Our common stock is listed on the New York Stock Exchange under the symbol *TEX*. On May 26, 2009, the closing sale price of our common stock on the New York Stock Exchange was \$15.36 per share.

The underwriters have an option to purchase up to an additional \$22.5 million principal amount of notes to cover over-allotments, if any.

**Investing in the notes or our common stock issuable upon conversion of the notes involves certain risks. See *Risk Factors* in our Annual Report on Form 10-K for the year ended December 31, 2008 and all subsequent filings under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, as well as the additional risk factors contained in this prospectus supplement beginning on page S-8.**

	Price to Public (1)	Underwriting Discounts and Commissions	Proceeds to the Company
Per Note	%	%	%
Total	\$	\$	\$
(1)			

Plus accrued interest, if any, from June , 2009, if settlement occurs after that date.

Delivery of the notes will be made to purchasers on or about June , 2009.

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

*Joint Book-Running Managers*

**UBS Investment Bank**

**Credit Suisse**

**Citi**

*Lead Manager*

**RBS**

*Co-Managers*

**Banc of America Securities LLC**

**Dresdner Kleinwort**

**CALYON**

**Morgan Stanley**

The date of this prospectus supplement is \_\_\_\_\_, 2009.

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**PROSPECTUS**

DESCRIPTION OF THE SECURITIES

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You should carefully read this prospectus supplement, the accompanying prospectus and any free writing prospectus delivered in connection with this offering. You should rely only on the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus and any free writing prospectus delivered in connection with this offering. We have not authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are offering to sell, and seeking offers to buy, the notes only in jurisdictions where such offers and sales are permitted. The information contained in this prospectus supplement and the accompanying prospectus is accurate only as of the date of this prospectus supplement or the date of the accompanying prospectus and the information in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus is accurate only as of the date of those respective documents, regardless of the time of delivery of this prospectus supplement and the accompanying prospectus or of any sale of the notes. If the information varies between this prospectus supplement and the accompanying prospectus, the information in this prospectus supplement supersedes the information in the accompanying prospectus.

This prospectus supplement and the accompanying prospectus are part of a shelf registration statement that we have filed with the Securities and Exchange Commission, or the SEC. By using a shelf registration statement, we may sell any combination of the securities described in the accompanying prospectus from time to time and in one or more offerings, including the offerings described under Summary Concurrent Offerings. Before purchasing any notes, you should carefully read both this prospectus supplement and the accompanying prospectus, together with the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and the additional information described under the heading Incorporation of Documents by Reference.

## FORWARD-LOOKING STATEMENTS

This prospectus supplement, including the sections entitled Summary and Risk Factors, and the accompanying prospectus, including the documents incorporated therein by reference, contain forward-looking statements that involve certain contingencies and uncertainties, including the concurrent offerings. Generally, the words may, expects, intends, anticipates, plans, projects, estimates and the negatives thereof and analogous or similar expressions are intended to identify forward-looking statements. However, the absence of these words does not mean that the statement is not forward-looking. We have based these forward-looking statements on our current expectations and projections about future events. These statements are not guarantees of future performance. Such statements are inherently subject to a variety of risks and uncertainties that could cause actual results to differ materially from those reflected in such forward-looking statements. For example, the financial outlook in the section entitled

Summary Recent Developments is based on our management's current expectations, estimates, forecasts and projections about the operative environment, economics and markets in which we operate. These statements are subject to important risks and uncertainties which are difficult to predict and actual results could differ materially from those statements. Such risks and uncertainties many of which are beyond our control, include, among others:

.  
our business is cyclical and weak general economic conditions, particularly in the key industries we serve, may affect the sales of our products and financial results;

.  
uncertainties regarding the duration or severity of the current global economic downturn and disruptions in the financial markets;

.  
our ability to access the capital markets to raise funds and provide liquidity;

.  
our business is sensitive to fluctuations in government spending;

.  
our business is very competitive and may be affected by our cost structure, pricing, product initiatives and other actions taken by competitors;

.  
a material disruption to one of our significant facilities;

.  
our retention of key management personnel;

.  
the financial condition of suppliers and customers, and their continued access to capital;

.  
our ability to obtain parts and components from suppliers on a timely basis at competitive prices;

.  
our ability to timely manufacture and deliver products to customers;

.  
the need to comply with restrictive covenants contained in our debt agreements;

.  
our business is global and subject to changes in exchange rates between currencies, as well as international politics, particularly in developing markets;

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the effects of changes in laws and regulations;

.  
possible work stoppages and other labor matters;

.  
compliance with applicable environmental laws and regulations;

.  
litigation and product liability claims and other liabilities;

.  
investigations by the United States Securities and Exchange Commission and the Department of Justice;

.  
our implementation of a global enterprise system and its performance;

.  
our expectations regarding the size and terms of the concurrent offerings of senior notes and common stock; and

.  
other factors, including those identified under the caption Risk Factors.

Actual events or our actual future results may differ materially from any forward-looking statement due to these and other risks, uncertainties and significant factors. The forward-looking statements contained in this prospectus

supplement speak only as of the date of this prospectus supplement and the forward-looking statements contained in the documents incorporated herein by reference speak only as of the date of the respective documents. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained or incorporated by reference in this prospectus supplement to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which we have based any forward-looking statement, except as required by law.

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## SUMMARY

*This summary highlights information contained elsewhere in this prospectus supplement. This summary is not complete and may not contain all of the information that you should consider before investing in the notes. You should read the entire prospectus supplement carefully, including the Risk Factors section and the financial statements and notes to these financial statements contained or incorporated by reference in this prospectus supplement or in our filings with the Securities and Exchange Commission. All references in this prospectus supplement to we, us, our, Terex or the Company mean Terex Corporation and its subsidiaries, unless indicated otherwise and references to dollars and \$ are to United States dollars. All financial information included or incorporated by reference herein excludes discontinued operations, unless the context otherwise requires or where otherwise indicated. In this prospectus supplement, including financial information incorporated by reference herein, we refer to certain financial measures that are not recognized under U.S. generally accepted accounting principles, or GAAP.*

### **Our Company**

We are a diversified global manufacturer of capital equipment with a mission to deliver value-added offerings that meet or exceed our customers' current and future needs. We manufacture a broad range of equipment for use in the construction, infrastructure, quarrying, recycling, mining, shipping, transportation, refining, utility and maintenance industries. We operate in four reportable segments: (i) Terex Aerial Work Platforms; (ii) Terex Construction; (iii) Terex Cranes; and (iv) Terex Materials Processing & Mining. Our products are manufactured at plants in North America, Europe, Australia, Asia and South America, and are sold worldwide.

We have grown since our incorporation in 1986, achieving \$9.9 billion of net sales in 2008, up from \$9.1 billion of net sales in 2007. For further discussion of our sales, see Recent Developments Financial Outlook. While much of our historic growth had been achieved through acquisitions, a majority of our recent growth has been generated from existing operations. Since 2004, we have focused on becoming a superb operating company under the Terex franchise. As we have grown, our business has become increasingly international in scope, with products manufactured in North and South America, Europe, Australia and Asia and sold worldwide. We are focusing on expanding our business globally, with an increased emphasis on developing markets such as China, India, Russia, the Middle East, Africa and Latin America.

We also continue to focus on integrating the companies that we have acquired. In the past, we operated in a decentralized manner. However, we have increasingly coordinated our operations to improve our business. We are becoming a more unified operating company, one that combines the strengths of many different people, products and technologies under one global umbrella.

### **Terex Aerial Work Platforms**

Our Aerial Work Platforms segment designs, manufactures, markets and refurbishes aerial work platform equipment, telehandlers, power equipment, construction trailers and utility equipment. Construction, building maintenance, government and utility customers use these products to build and/or maintain large physical assets and structures, construct and maintain utility lines, trim trees and for other commercial operations. Additionally, we own much of the North American distribution channel for our utility products group and operate a fleet of rental utility products in the United States and Canada.

### **Terex Construction**

Our Construction segment designs, manufactures and markets heavy and compact construction equipment, asphalt and concrete equipment, landfill compactors and bridge inspection equipment. Construction, logging, mining, industrial and government customers use these products in construction and infrastructure projects, in coal, minerals, sand and gravel operations and to build roads.

**Terex Cranes**

Our Cranes segment designs, manufactures and markets mobile telescopic cranes, tower cranes, lattice boom crawler cranes, truck-mounted cranes (boom trucks and loading cranes) and telescopic container stackers. These products are used primarily for construction, repair and maintenance of infrastructure, building and manufacturing facilities.

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### **Terex Materials Processing & Mining**

Our Materials Processing & Mining segment designs, manufactures and markets crushing and screening equipment, hydraulic mining excavators, highwall mining equipment, high capacity surface mining trucks, drilling equipment and other products. Construction, mining, quarrying and government customers use these products in construction and commodity mining.

We also assist customers in their rental, leasing and acquisition of our products through Terex Financial Services, Inc.

On January 1, 2009, we realigned certain operations in an effort to capture market synergies and streamline our cost structure. The Roadbuilding businesses, formerly part of our Roadbuilding, Utility Products and Other ( RBUO ) segment, are now consolidated within the Construction segment. The Utility Products businesses, formerly part of the RBUO segment, are now consolidated within the Aerial Work Platforms segment. Additionally, our truck-mounted articulated hydraulic crane line of business produced in Delmenhorst and Vechta, Germany, formerly part of the Construction segment, is now consolidated within the Cranes segment. Certain other businesses that were included in the RBUO segment are now reported in Corporate and Other, which includes eliminations among our segments.

We view our purpose as making products that will be used to improve the lives of people around the world. Our vision focuses on our commitments to our core constituencies of customers, stakeholders and team members by providing our customers with a superior ownership experience, our stakeholders with a profitable enterprise that increases value, and our team members with a preferred place to work.

### **Competitive Strengths**

We believe our competitive strengths, together with our balanced and comprehensive business strategy, provide us with the flexibility and capability to achieve our goals.

### **Diversified and Balanced Revenue Base**

Our business is highly diversified by products, end markets and geography. For the three months ended March 31, 2009, our Aerial Work Platforms, Construction, Cranes and Materials Processing & Mining segments accounted for approximately 17%, 20%, 35% and 28%, respectively, of total net sales, before eliminations.

Given our global scale, we benefit from strong growth in our markets outside of the United States and Canada, with sales in these markets accounting for approximately 65% of our total net sales for the year ended December 31, 2008.

While we have developed a geographically diverse revenue base with approximately 38% of our revenues for the year ended December 31, 2008 derived from the Americas, 42% from Europe, Africa and the Middle East and 20% from Asia and Australia, our long-term goal is a revenue base of 1/3 of our revenue from the Americas, 1/3 from Europe, Africa and the Middle East and 1/3 from Asia and Australia.

We remain focused on expanding the geographic reach of our businesses, emphasizing developing areas, including China, India, Russia, the Middle East, Africa and Latin America, which together accounted for more than 23% of our sales for the year ended December 31, 2008. While no market is immune to the effects of the current global financial and economic situation, we believe that developing markets will prove to be attractive places in which to operate and do business in the decades to come.

### **Leading Positions in Certain Construction Equipment Markets**

We compete and maintain leading market positions in certain construction equipment markets. Our markets are often characterized by high fragmentation with fewer well-capitalized participants, thereby enabling us to differentiate ourselves through our scale, diverse product offering and breadth of services. Additionally, in many markets we compete with smaller niche participants or with industrial conglomerates where construction equipment is not the primary focus, resulting in less direct competition with larger global construction equipment competitors.

**Driving Operating Excellence**

Driving operating excellence across the entire value chain is vital to our delivering high quality, reliable products on time and at a low cost to our customers. This means working with our suppliers to cut lead times and increase inventory turnover, improving the quality of our existing and new products, improving our order entry and scheduling activities, and developing effective management systems for all of our processes, products and people. To achieve

operating excellence in the supply chain, in design and in manufacturing, we promote a culture of continuous improvement and removing waste (anything that does not add value) at every organizational level of the Company, and we have established Terex learning centers to teach these principles to key team members throughout the Company.

### **Proven Ability to Identify and Integrate Acquisitions**

We have a history of successfully identifying and integrating acquisitions and continue to selectively consider acquisitions that meet our criteria, while maintaining our highly selective approach to acquisition opportunities. Over the last ten years, we have identified and successfully integrated over 30 acquisitions. We believe our scale, diversification and integration expertise allow us to consummate acquisitions resulting in synergies, high returns on invested capital and strong free cash flow generation.

### **Recent Developments**

#### **Financial Outlook**

We continue to experience many challenges in the current operating environment, as the deterioration in the fundamentals of the global economy, combined with the global credit constriction, is having a more significant impact on our business. Each of our segments experienced significantly weaker results in the first quarter of 2009 than in the comparable period in 2008. The turmoil from the global credit crisis and economic slowdown has quickly and deeply impacted sales for both the Company and the industry as a whole, with certain businesses down almost 75% from year ago levels. As a result, we continue to aggressively target and implement cost reduction activities. We are realigning our businesses for the current demand environment by reducing headcount, lowering production levels and production capacity, and consolidating facilities.

The global economy remains under stress and our expectations for the remainder of 2009 have been lowered as we expect the remainder of 2009 to continue to be challenging. The depth and duration of the global economic decline is not known, although some stability is beginning to develop in a number of our businesses. While we remain confident that our strategy of product and geographic diversity is the right one to deliver positive shareholder returns for the long term, the current environment presents unique challenges.

In response to the present economic environment, we have taken and will continue to take aggressive actions to reduce costs and preserve cash in all of our businesses. These actions have already resulted in a \$208 million quarterly manufacturing and selling, general and administrative spending reduction, as compared to peak spending levels in the second quarter of 2008, with a target to exceed a per quarter spending reduction of \$300 million by year-end 2009.

The marketplace for each of our businesses is somewhat different, but there is a common approach we are taking throughout the Company. In the remainder of 2009, we will be managing our business even more aggressively than normal for cash. We are operating with a build-to-order approach as we tightly manage inventory levels. All of our businesses are working closely with our suppliers to minimize raw material deliveries and with our customers and dealers to confirm existing orders in an effort to minimize the level of inventory in the distribution channel. We continue to operate at reduced production levels, in many instances at levels well below current demand, with the primary objective to reduce inventory. We believe that this strategy, along with significant reductions in production scheduling, should generate significant cash flow from operations during the remainder of 2009. We continue to expect to reduce inventory levels by more than \$500 million by the end of 2009 as compared to year-end 2008. With the actions we are taking to reduce costs and increase cash generated from operations together with the net proceeds

from this offering and the concurrent offerings, we expect to have sufficient liquidity to execute our key business plans.

Uncertainty around the depth and duration of the current economic decline makes it difficult to forecast our expectations for the remainder of 2009 with a reasonable degree of certainty. However, we are planning for continued softness in demand as a result of weak global end markets, combined with continued constrained credit availability worldwide. We expect our overall 2009 net sales to decline in the range of 40%-45% as compared to 2008, approximately 14% of which is the estimated translation effect of foreign currency exchange rate changes.

In light of the increasing weakness in market conditions, mainly in the Construction and Aerial Work Platforms Segments, ongoing significant restructuring activities and related charges, the reserve for the proposed SEC settlement, and our continued focus on operating the business for cash instead of earnings, we have limited visibility as to when our markets will begin to stabilize and are not providing any guidance or assurance regarding our earnings performance for the second quarter of 2009 or the balance of 2009 at this time.

### **SEC Investigation**

On May 27, 2009, we filed a Current Report on Form 8-K (which is incorporated by reference in this prospectus supplement, see Incorporation of Documents by Reference ) with respect to a proposed settlement of the previously disclosed private investigations by the SEC into our accounting and certain transactions involving us and our subsidiaries, on the one hand, and United Rentals, Inc., on the other, in 2000 and 2001.

### **Bank Facility Amendment**

We are currently seeking an amendment to our bank credit facility. Pursuant to the amendment, we would reduce our domestic revolving credit commitments under the credit facility by \$150 million, prepay approximately \$58.5 million principal amount of our term loans under the credit facility, and increase the interest rates charged under our credit facility. The amendment would also eliminate certain existing financial covenants dealing with our consolidated leverage ratio and consolidated fixed charge coverage ratio, and instead require us to (a) maintain liquidity (as defined in the amendment) of not less than \$250 million on the last day of each fiscal quarter through June 30, 2011, and (b) thereafter, maintain a senior secured leverage ratio (as defined in the amendment) not in excess of 3.50 to 1.00 at the end of each fiscal quarter, with the ratio declining to 3.00 to 1.00 effective October 1, 2012 and to 2.50 to 1.00 effective October 1, 2013. Under the amendment, at any time on or prior to June 30, 2011, if our consolidated leverage ratio is greater than 2.50 to 1.00, we will be prohibited from repurchasing shares of our common stock, paying dividends or redeeming or making payments on debt (other than regularly scheduled payments of debt and debt under our bank credit facility). Pursuant to the amendment, we added flexibility in various restrictive covenants and also agreed to provide certain collateral to secure our obligations under the credit facility. The amendment also includes certain other technical changes. The effectiveness of the amendment is conditioned on our successful completion of this offering, the senior notes offering and/or the common stock offering, with proceeds of at least \$300 million in the aggregate from any or all such offerings. See Description of Certain Indebtedness 2006 Credit Agreement Proposed Amendment.

### **Concurrent Offerings**

Concurrently with this offering, under separate prospectus supplements, we intend to offer up to \$300 million aggregate principal amount of % Senior Notes due 2016 and up to 11,000,000 shares of our common stock in an underwritten public offering (or 12,650,000 shares of our common stock if the underwriters exercise their over-allotment option with respect to that offering in full). We intend to use the net proceeds of this offering, the offering of senior notes and the offering of common stock for the repayment of certain indebtedness and general corporate purposes as described in Use of Proceeds.

### **Other Information**

Our principal executive offices are located at 200 Nyala Farm Road, Westport, Connecticut 06880, and our telephone number is (203) 222-7170.





## The Offering

*The following summary contains basic information about the notes and is not intended to be complete. It does not contain all of the information that may be important to you. For a more complete understanding of the notes, you should read the section of this prospectus supplement entitled Description of the Notes. For purposes of this summary and the Description of the Notes, references to the Company, Terex, issuer, we, our and us refer only to Terex and not to its subsidiaries.*

### Issuer

Terex Corporation.

### Securities Offered

\$150 million aggregate principal amount (and \$172.5 million if the underwriters exercise their over-allotment option in full) of % Convertible Senior Subordinated Notes due 2015.

### Maturity

June 1, 2015, unless earlier repurchased or converted.

### Issue Price

%, plus accrued interest, if any, from , 2009.

### Interest Payment Dates

We will pay interest on the notes semi-annually on June 1 and December 1 of each year, beginning December 1, 2009.

### Conversion Rights

Prior to the close of business on the business day immediately preceding December 1, 2014, holders may convert their notes in multiples of \$1,000 principal amount, only under the following circumstances: (1) during any fiscal quarter commencing after June 30, 2009, if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period in which the trading price per \$1,000 principal amount of notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the applicable conversion rate on each such day; or (3) upon the occurrence of specified corporate events. See Description of the Notes Conversion Rights.

On and after December 1, 2014 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their notes at any time, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

The initial conversion rate for the notes is shares of our common stock per \$1,000 principal amount of notes, equivalent to an initial conversion price of approximately \$ per share. The conversion rate is subject to adjustment

if certain events occur as described in this prospectus supplement. Upon conversion of a note, we will pay cash up to the aggregate principal amount of the note to be exchanged and shares of our common stock in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the note being converted, based upon a daily conversion value calculated on a proportionate basis for each trading day in the applicable 25 trading-day observation period as described under [Description of the Notes](#) [Conversion Rights](#) [Payment upon conversion](#).

In addition, following certain corporate transactions that occur prior to maturity, we will increase the conversion rate for a holder who elects to convert its notes in connection with such a corporate transaction in certain circumstances as described under Description of the Notes Conversion Rights Adjustment to shares delivered upon conversion upon a make-whole fundamental change.

Holders will not receive any separate cash payment for interest or additional interest, if any, accrued and unpaid to the conversion date, except in limited circumstances. Instead, interest will be deemed paid by the delivery to holders of cash and shares of our common stock, if any, upon conversion.

### Ranking

The notes will be our senior subordinated unsecured obligations. They will rank senior in right of payment to all of our future subordinated indebtedness, equal in right of payment with all of our existing and future senior subordinated indebtedness, and subordinated in right of payment to all of our existing and future senior indebtedness. The notes will be effectively junior to all of our existing and future secured indebtedness, to the extent of the value of the assets securing such debt, and will be effectively subordinated to indebtedness and other liabilities of our subsidiaries, including guarantees of our 7-3/8% Senior Subordinated Notes due 2014 (the 2014 Notes ).

As of March 31, 2009, on an adjusted basis after giving effect to the offering (assuming no exercise of the underwriters over-allotment option), the concurrent offerings of senior notes and common stock (assuming no exercise of the underwriters over-allotment option in the common stock offering), the application of the net proceeds from the offering and the concurrent offerings of senior notes and common stock for the repayment of certain indebtedness as described in Use of Proceeds and the effectiveness of the bank credit facility amendment as described in Bank Facility Amendment, we would have had (i) approximately \$429 million of senior indebtedness, which includes approximately \$136 million of outstanding borrowings under our bank credit facility and approximately \$293 million of our senior notes offered concurrently, which assumes the proceeds from the \$300 million in aggregate principal amount of senior notes at an issue price of 97.625%, (ii) approximately \$146 million of outstanding secured indebtedness and (iii) approximately \$1,249 million of senior subordinated indebtedness, of which \$800 million consists of our 8% Senior Subordinated Notes Due 2017 (the 2017 Notes ), approximately \$299 million consists of our 2014 Notes and approximately \$150 million consists of the notes offered hereby. Our bank credit facility and the 2014 Notes have been guaranteed by certain of our domestic subsidiaries and, accordingly, are structurally senior to the notes. The 2017 Notes are not currently guaranteed by any of our subsidiaries, but under specified limited circumstances could be guaranteed by certain of our domestic subsidiaries in the future. For the year ended December 31, 2008, before intercompany eliminations, our guarantors under our bank

credit facility and/or the 2014 Notes contributed approximately \$3,465.0 million to our net sales and held approximately \$1,319.6 million of our total assets. See [Risk Factors](#) [Risks Related to this Offering](#). The notes will be structurally subordinated to all liabilities of our subsidiaries. In addition, our obligations under our bank credit facility and our 2014 Notes are guaranteed by certain of our domestic subsidiaries. The notes offered hereby initially will not have the benefit of any guarantees. The notes will be subordinated in right of payment to the senior notes.

#### Fundamental Change

If we undergo a fundamental change (as defined under [Description of the Notes](#) [Fundamental Change Permits Holders to Require Us to Purchase Notes](#) ), each holder may require us to repurchase for cash all or a portion of the notes at a price equal to 100% of the principal amount of the notes to be repurchased plus accrued and unpaid interest, including any additional interest to, but excluding, the fundamental change purchase date. See [Description of the Notes](#) [Fundamental Change Permits Holders to Require Us to Purchase Notes](#).

#### Guarantees

The notes will not initially be guaranteed by any of our subsidiaries. If any of our subsidiaries guarantees certain senior subordinated indebtedness, including the 2017 Notes, we will cause such of our domestic subsidiaries to fully and unconditionally guarantee the notes. See [Description of the Notes](#) [Certain Covenants](#) [Future Subsidiary Guarantors](#).

#### Use of Proceeds

We intend to use the net proceeds from this offering, and the concurrent offerings of senior notes and common stock (including any proceeds resulting from any exercise by the underwriters of their over-allotment option for either offering) for the repayment of existing debt, fees and expenses and general corporate purposes. See [Use of Proceeds](#).

#### Trustee, Paying Agent and Conversion Agent

HSBC Bank USA, National Association.

#### Form

The notes will initially be issued in book-entry form through the facilities of DTC and Euroclear. Such notes will be issued in the form of one or more permanent global notes.

#### NYSE Symbol for Our Common Stock

Our common stock is quoted on the NYSE under the symbol [TEX](#).

#### Risk Factors

Your investment in the notes or our common stock issuable upon conversion of the notes will involve certain risks. See [Risk Factors](#) and other information included or incorporated by reference in this prospectus supplement for a discussion of the factors you should consider carefully before deciding to invest in the notes or our common stock issuable upon conversion of the notes.

For more complete information about the notes, see the Description of the Notes section of this prospectus supplement.

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## RISK FACTORS

*You should carefully consider the risk factors described in our Annual Report on Form 10-K for the year ended December 31, 2008, as well as the other information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus, and the risk factors set forth below before deciding to invest in the notes. Such risks and uncertainties are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. The occurrence of any of the events or actions described in these risk factors may have a material adverse effect on our business or financial performance. This prospectus supplement and the accompanying prospectus contain or incorporate statements that constitute forward-looking statements regarding, among other matters, our intent, belief or current expectations about our business. These forward-looking statements are subject to risks, uncertainties and assumptions. See *Forward-Looking Statements* on page S-ii of this prospectus supplement.*

### **Risks Related to This Offering**

***We reported a net loss for the first quarter of 2009 and remain subject to the effects of the global economic downturn.***

During the first quarter of 2009, we recorded a net loss of \$74.9 million. We believe our results will continue to be adversely affected by the global economic downturn, which has materially and adversely affected sales for our industry. In light of the increasing weakness in market conditions, mainly in the Construction and Aerial Work Platforms Segments, ongoing significant restructuring activities and related charges, the reserve for the proposed SEC settlement, and our continued focus on operating the business for cash instead of earnings, we have limited visibility as to when our markets will begin to stabilize and are not providing any guidance or assurance regarding our earnings performance for the second quarter of 2009 or the balance of 2009 at this time. For additional information concerning our current operating and market conditions, see *Summary Recent Developments Financial Outlook* beginning on page S-3 of this prospectus supplement.

***Our level of indebtedness could impair our financial flexibility, competitive position, financial condition and could prevent us from fulfilling our obligations under the notes offered hereby.***

As a result of offering these notes and the concurrent offering of senior notes as described in *Summary Concurrent Offerings*, we will have substantial debt. On an adjusted basis as of March 31, 2009, after giving effect to the offering (assuming no exercise of the underwriters' over-allotment option), the concurrent offerings of senior notes and common stock as described in *Summary Concurrent Offerings* (assuming no exercise of the underwriters' over-allotment option in the common stock offering) and the application of the net proceeds from the offering and the concurrent offerings of senior notes and common stock for the repayment of certain indebtedness as described in *Use of Proceeds*, we would have had approximately \$1,786 million of indebtedness. We would also have had significant availability under our revolving credit facility. See *Capitalization*.

We are not restricted under the terms of the notes offered hereby from incurring additional indebtedness or from having our subsidiaries incur any debt. We are permitted by the terms of our other indebtedness to incur substantial additional indebtedness, subject to the restrictions therein. See *Description of Certain Indebtedness*. Our inability to generate sufficient cash flow to satisfy our debt obligations, or to refinance our obligations on commercially reasonable terms, could have a material adverse effect on our business, financial condition and results of operations.

Our substantial indebtedness could have important consequences for you. For example, it could:

.  
make it more difficult for us to satisfy our obligations under our indebtedness, including the notes offered hereby;

.  
limit our ability to borrow money or to sell or transfer assets in order to fund future working capital, capital expenditures, any future acquisitions, debt service requirements and other general business requirements;

.  
require us to dedicate a substantial portion of our cash flow to payments on our indebtedness, which would reduce the amount of cash flow available to fund working capital, capital expenditures, product development and other corporate requirements;

.  
increase our vulnerability to general adverse economic and industry conditions;

.  
limit our ability to respond to business opportunities; and

.  
subject us to financial and other restrictive covenants, which, if we fail to comply with these covenants and our failure is not waived or cured, could result in an event of default under our indebtedness.

Any of the above listed factors could materially adversely affect our business, financial condition and results of operations.

***The terms of our bank credit facility and the indentures governing our Existing Notes may restrict our current and future operations, particularly our ability to respond to changes in our business or to take certain actions.***

The notes offered hereby do not contain restrictive covenants or require us to achieve or maintain any minimum financial results relating to our financial position or results of operations. Our ability to recapitalize, incur additional debt, secure existing or future debt, or take a number of other actions, including repaying indebtedness or repurchasing common stock or paying dividends, are not limited by the notes offered hereby. However, our bank credit facility and the indentures governing the 2014 Notes, the 2017 Notes, and the senior notes offered concurrently contain, and any future indebtedness of ours would likely contain, a number of restrictive covenants that will impose significant operating and financial restrictions on us, including restrictions on our ability to, among other things:

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incur or guarantee additional debt;

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pay dividends and make other restricted payments;

.

create or incur certain liens;

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make certain investments and capital expenditures;

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acquire new businesses;

.

engage in sales of assets and subsidiary stock;

.

enter into transactions with affiliates; and

.

transfer all or substantially all of our assets or enter into merger or consolidation transactions.

We have debt outstanding and must comply with restrictive covenants in our debt agreements.

These covenants also require us to meet certain financial tests. Specifically, these financial tests are a consolidated leverage ratio test and a consolidated fixed charge coverage ratio test, as such tests are defined in our debt agreements.



While we are currently in compliance with both of the foregoing tests, we sought and received an amendment to our bank credit facility on February 24, 2009. This amendment was necessary because of continued deteriorating business conditions in certain of our operating segments and the impact of historical fixed charges incurred on a trailing twelve months basis (for example, interest expense, cash taxes, share repurchases and capital expenditures) causing us to believe there was a likelihood that we would be in violation of the consolidated fixed charge coverage ratio covenant under our credit agreement as early as the end of the first quarter of 2009 without such an amendment. Increases in our debt, increases in our fixed charges, decreases in our earnings or any combination of the above, could cause us to be in default of these financial covenants during 2009 or beyond. A failure to comply with our debt covenants could result in an event of default that, if not cured or waived, could have a material adverse effect on our business, financial condition and results of operations. We are currently seeking to further amend our bank credit facility to eliminate certain existing financial covenants dealing with consolidated leverage ratio and consolidated fixed charge coverage ratio. See Description of Certain Indebtedness 2006 Credit Agreement Proposed Amendment.

If we default on our bank credit facility or the indentures governing the Existing Notes or our other indebtedness, the lenders thereunder:

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will not be required to lend any additional amounts to us; and

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could in certain circumstances elect to declare all borrowings outstanding, together with accrued and unpaid interest and fees, to be due and payable,

either of which could result in an event of default under the indenture governing the notes offered hereby. In addition, changes in economic or business conditions, results of operations or other factors could cause us to default under our debt agreements. A default, if not waived by our lenders, could result in acceleration of our debt and possibly bankruptcy.

***Servicing our debt will require a significant amount of cash. Our ability to generate sufficient cash depends on numerous factors beyond our control, and we may be unable to generate sufficient cash flow to service our debt obligations, including making payments on the notes.***

Our business may not generate sufficient cash flow from operating activities. Our ability to make payments on and to refinance our debt, including the notes offered hereby, and to fund planned capital expenditures will depend on our ability to generate cash in the future. To some extent, this is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. Lower revenues, or uncollectible receivables, generally will reduce our cash flow.

We cannot assure you that our business will generate sufficient cash flow from operations, or that future borrowings will be available to us under our bank credit facility or otherwise, in an amount sufficient to fund our liquidity needs, including the payment of principal and interest on the notes offered hereby. See Our access to borrowing capacity has been and could continue to be affected by the uncertainty impacting credit markets generally. We cannot guarantee you that we will be able to obtain enough capital to service our debt and fund our planned capital expenditures and business plan.

If our cash flows and capital resources are insufficient to service our indebtedness, we may be forced to reduce or delay capital expenditures, sell assets, seek additional capital or restructure or refinance our indebtedness, including the notes offered hereby. These alternative measures may not be successful and may not permit us to meet our scheduled debt service obligations. Our ability to restructure or refinance our debt will depend on the condition of the capital markets and our financial condition at such time. See Our access to borrowing capacity has been and could continue to be affected by the uncertainty impacting credit markets generally. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. In addition, the terms of existing or future debt agreements, including our bank credit facility and the indentures governing the Existing Notes and the senior notes as described in Summary Concurrent Offerings, may restrict us from adopting some of these alternatives. In the absence of such operating results and resources, we could face substantial liquidity problems and might be required to dispose of material assets or operations to meet our debt service and other obligations. We may not be able to consummate these dispositions for fair market value or at all. Furthermore, any proceeds that we could realize from any dispositions may not be adequate to meet our debt service obligations then due.

Our ratio of earnings to fixed charges was 3.5x and less than 1.0x, respectively, for the twelve months ended December 31, 2008 and the three months ended March 31, 2009. On an adjusted basis after giving effect to the offering (assuming no exercise of the underwriters over-allotment option), the concurrent offerings of senior notes and common stock as described in Summary Concurrent Offerings (assuming no exercise of the underwriters over-allotment option in the common stock offering) and the application of the net proceeds from the offering and the concurrent offerings of senior notes and common stock for the repayment of certain indebtedness as described in Use of Proceeds, our ratio of earnings to fixed charges would have been 2.5x and less than 1.0x, respectively, during such periods.

We expect our interest expense on borrowings will increase \$24.5 million for fiscal 2009 based on the assumed interest rates set forth below and after giving effect to this offering (assuming no exercise of the underwriters over-allotment option), the concurrent offerings of senior notes and common stock (assuming no exercise of the underwriters over-allotment option in the common stock offering) and the application of the net proceeds from this offering and the concurrent offerings of senior notes and common stock for the repayment of certain indebtedness as described under Use of Proceeds. The annual interest expense associated with the notes is assumed to be \$11.5 million based on a cash interest rate of 4% and additional interest accounted for under FSP APB 14-1, *Accounting for Convertible Debt Instruments that May be Settled in Cash Upon Conversion (Including Partial Cash Settlement)* and assuming no exercise of the underwriters over-allotment option. The annual interest expense associated with the senior notes is assumed to be \$30.8 million based on an interest rate of 10.25%. A 1/8% change in the assumed interest rate would change the annual debt service obligations with respect to the notes and the senior notes by \$0.2 million and \$0.4 million, respectively.

***We depend upon the operations of our subsidiaries.***

Our ability to make interest and principal payments when due to holders of the notes depends upon the receipt of sufficient funds from our subsidiaries. The notes are not currently guaranteed by any of our subsidiaries, but under specified limited circumstances could be guaranteed by certain of our domestic subsidiaries in the future. See The notes will be structurally subordinated to all liabilities of our subsidiaries. In addition, our obligations under our bank credit facility and our 2014 Notes are guaranteed by certain of our domestic subsidiaries. The notes offered hereby initially will not have the benefit of any guarantees. Substantially all of our consolidated assets are held by our subsidiaries and substantially all of our cash flow and net income are generated by our subsidiaries. For year ended December 31, 2008, before intercompany eliminations, our guarantors under the 2014 Notes contributed approximately \$3,465.0 million to our net sales and held approximately \$1,319.6 million of our total assets.

Substantially all of our remaining net sales were contributed by subsidiaries that are not guarantors under the 2014 Notes.

***Our access to borrowing capacity has been and could continue to be affected by the uncertainty impacting credit markets generally.***

Our ability to access the capital markets to raise funds through the sale of equity or debt securities is subject to various factors, including general economic and/or financial market conditions. As a result of current economic conditions, including turmoil and uncertainty in the capital markets, credit markets have tightened significantly, which makes obtaining new capital more challenging and more expensive. The current conditions of the financial markets have adversely affected the availability of credit and liquidity resources and our access to capital markets is limited and subject to increased costs until stability re-emerges.

In addition, several large financial institutions have either recently failed or been dependent on the assistance of the U.S. federal government to continue to operate as a going concern. Although we believe that the banks participating in our bank credit facility have adequate capital and resources, we can provide no assurance that all of these banks will continue to operate as a going concern in the future. If any of the banks in our lending group were to fail, it is possible that the borrowing capacity under our bank credit facility would be reduced. In the event that the availability under our bank credit facility was reduced significantly, we could be required to obtain capital from alternate sources in order to finance our capital needs. Our options for addressing such capital constraints would include, but not be limited to (i) obtaining commitments from the remaining banks in the lending group or from new banks to fund increased amounts under the terms of our bank credit facility, or (ii) accessing the public capital markets. If it becomes necessary to access additional capital, it is likely that any such alternatives in the current market would be on terms less favorable than under our existing bank credit facility terms, which could have a negative impact on our consolidated financial position, results of operations, or cash flows.

***Your right to receive payments on the notes offered hereby is junior to our existing and future senior debt.***

The notes will be unsecured and subordinated in right of payment to all of our existing and future senior indebtedness. As of March 31, 2009, on an adjusted basis after giving effect to the offering (assuming no exercise of the underwriters' over-allotment option), the concurrent offerings of senior notes and common stock (assuming no exercise of the underwriters' over-allotment option in the common stock offering) and the application of the net proceeds from the offering and the concurrent offerings of senior notes and common stock for the repayment of certain indebtedness as described in Use of Proceeds, we would have had approximately \$429 million of senior indebtedness, which includes approximately \$136 million of outstanding borrowings under our bank credit facility and approximately \$293 million from the concurrent offering of our senior notes, which assumes the proceeds from the \$300 million in aggregate principal amount of the senior notes at an issue price of 97.625%. In the event of our bankruptcy, liquidation or reorganization or upon acceleration of the bank credit facility due to an event of default under the indenture and in specified other events, our assets will be available to pay obligations on the notes only after all senior indebtedness has been paid. In these cases, we may not have sufficient funds to pay all of our creditors, and holders of the notes offered hereby may receive less, ratably, than holders of our senior debt. In addition, all payments on the notes will be blocked in the event of a payment default on certain senior indebtedness. Accordingly, we will not be able to satisfy our obligation to deliver cash during any such blockage period or comply with our obligation to repurchase notes as described under Fundamental Change Permits Holders to Require Us to Purchase Notes. Our failure to comply with such obligation would constitute an event of default under the indenture. In addition, we may incur additional debt, including senior debt, in the future as permitted by the indentures governing the Existing Notes and the notes offered hereby and the credit agreement governing our bank credit facility. For a description of our credit facility, see Description of Certain Indebtedness.

***Your right to receive payments on the notes offered hereby is junior to our existing and future secured debt***

In addition to being subordinated to all of our senior indebtedness, the notes will not be secured by any of our assets. Our obligations under our bank credit facility are secured by a security interest in substantially all of our property, including inventory, equipment, receivables and intangible assets such as licenses, trademarks and customer lists. As of March 31, 2009, on an adjusted basis after giving effect to the offering (assuming no exercise of the underwriters' over-allotment option), the concurrent offerings of senior notes and common stock (assuming no exercise of the underwriters' over-allotment option in the common stock offering), the application of the net proceeds from the offering and the concurrent offerings of senior notes and common stock for the repayment of certain indebtedness as described in Use of Proceeds and the effectiveness of the bank credit facility amendment as described in Summary Bank Facility Amendment, we would have had approximately \$146 million of outstanding secured

indebtedness. We can also incur additional secured debt in the future. If we become insolvent or are liquidated, or if payment under our bank credit facility or future secured debt is accelerated, lenders under the bank credit facility and holders of the future secured debt would be entitled to exercise the remedies available to a secured lender. Therefore, our bank lenders and such future secured debtholders would have a claim on such assets before the holders of the notes offered hereby. We cannot assure you that the liquidation value of our assets would be sufficient to repay in full the indebtedness under the bank credit facility and our other indebtedness, including the notes offered hereby.

***The notes will be structurally subordinated to all liabilities of our subsidiaries. In addition, our obligations under our bank credit facility and the 2014 Notes are guaranteed by certain of our domestic subsidiaries. The notes offered hereby initially will not have the benefit of any guarantees.***

The notes are structurally subordinated to indebtedness and other liabilities of our subsidiaries. Our bank credit facility and our 2014 Notes are guaranteed by certain of our domestic subsidiaries. For year ended December 31, 2008, before intercompany eliminations, our guarantors under the 2014 Notes contributed approximately \$3,465.0 million to our net sales and held approximately \$1,319.6 million of our total assets. Substantially all of our remaining net sales were contributed by subsidiaries that are not guarantors under the 2014 Notes. In the event of a bankruptcy, liquidation or reorganization of any of our subsidiaries, these subsidiaries would pay the holders of their debts, preferred equity interests and their trade creditors

before they would be able to distribute any of their assets to us. Initially, the notes offered hereby will not have the benefit of guarantees by our subsidiaries and may never have the benefit of these guarantees. See Description of the Notes. As a result of the guarantees of our bank credit facility and the 2014 Notes, holders of the notes offered by this prospectus supplement are structurally subordinated to the lenders under our bank credit facility and the holders of our 2014 Notes, with respect to the assets of the subsidiaries providing a guarantee. See Capitalization. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due pursuant to the notes, or to make any funds available therefor, whether by dividends, loans, distributions or other payments. Any right that we have to receive any assets of any of the subsidiaries upon the liquidation or reorganization of those subsidiaries, and the consequent rights of holders of notes to realize proceeds from the sale of any of those subsidiaries' assets, will be subordinated to the claims of those subsidiaries' creditors, including trade creditors and holders of preferred equity interests of those subsidiaries.

***If we default on our obligations to pay our other indebtedness, we may not be able to make payments on the notes offered hereby.***

Any default under the agreements governing our indebtedness could prohibit us from making payments of principal, premium, if any, or interest on the notes and could substantially decrease the market value of the notes offered hereby. If we are unable to generate sufficient cash flow and are otherwise unable to obtain funds necessary to meet required payments of principal, premium, if any, or interest on our indebtedness, or if we otherwise fail to comply with the various covenants, including financial and operating covenants, in the instruments governing our indebtedness, we could be in default under the terms of the agreements governing such indebtedness. In the event of such default, the holders of such indebtedness could elect to declare all the funds borrowed thereunder to be due and payable, together with accrued and unpaid interest. More specifically, the lenders under our revolving credit facility could elect to terminate their commitments, cease making further loans and institute foreclosure proceedings against our assets, and we could be forced into bankruptcy or litigation.

***Despite our current levels of debt, we may still incur substantially more debt and increase the risks associated with our proposed leverage.***

We are not restricted under the terms of the notes offered hereby from incurring additional indebtedness or from having our subsidiaries incur any debt. The provisions contained or to be contained in the agreements relating to our other indebtedness limit but do not prohibit our ability to incur additional indebtedness and the amount of indebtedness that we could incur could be substantial. Accordingly, we or our subsidiaries could incur significant additional indebtedness in the future, much of which could constitute secured or senior indebtedness. If we incur any additional debt that ranks equally with the notes offered hereby, the holders of that debt will be entitled to share ratably with the holders of these notes in any proceeds distributed in connection with any bankruptcy, liquidation, reorganization or similar proceedings. If new debt is added to our current debt levels, the related risks that we now face could intensify. See Description of Other Indebtedness.

***The conversion rate of the notes may not be adjusted for all dilutive events.***

The conversion rate of the notes will be subject to adjustment for certain specified events, including, but not limited to, the issuance of stock dividends on our common stock, the issuance of certain rights or warrants, subdivisions, combinations, distributions of common stock, indebtedness or assets, specified cash dividends and certain issuer tender or exchange offers as described under Description of the Notes Conversion Rights Conversion Rate Adjustments. However, the conversion rate will not be adjusted for other events, such as a third-party tender or exchange offer or an issuance of common stock for cash, that may adversely affect the trading price of the notes or the

common stock. An event that adversely affects the value of the notes may occur, and that event may not result in an adjustment to the conversion rate.

***The notes are not protected by restrictive covenants.***

The indenture governing the notes does not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or liens or the issuance or repurchase of securities by us or any of our subsidiaries. The indenture contains no covenants or other provisions to afford protection to holders of the notes in the event of a fundamental change involving us except to the extent described under Description of the Notes Fundamental Change Permits Holders to Require Us to Purchase Notes, Description of the Notes Conversion Rights Adjustment to shares delivered upon conversion upon a make-whole fundamental change and Description of the Notes Consolidation, Merger and Sale of Assets.

***As a noteholder, you will not be entitled to any rights with respect to our common stock, but you will be subject to all changes made with respect to our common stock.***

If you hold notes, you are not entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but you are subject to all changes affecting the common stock. You will only be entitled to rights on the common stock if and when we deliver shares of common stock to you upon conversion of your notes and in limited cases under the anti-dilution adjustments of the notes. For example, in the event that an amendment is proposed to our certificate of incorporation or amended and restated bylaws

requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to delivery of the common stock, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock. See Risks Related to the Shares of Common Stock.

***We may not have the ability to raise funds necessary to repurchase or settle conversion of the notes upon a fundamental change.***

Upon the occurrence of certain specific kinds of fundamental changes as described under Description of the Notes, we will be required to offer to repurchase all outstanding notes at 100% of the principal amount thereof plus accrued and unpaid interest, including any additional interest, if any, to but excluding the date of repurchase. In addition, upon conversion of the notes, we will be required to make cash payments of up to the principal amount of the note surrendered for conversion as described in under Description of the Notes Conversion Rights Payment upon conversion. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of surrendered notes or settlement of converted notes. Our failure to repurchase surrendered notes at a time when the repurchase is required by the indenture or to pay any cash payable on future conversions of the notes as required by the indenture would constitute a default under the indenture. In addition, a fundamental change under the indenture governing the notes offered hereby may also constitute a change of control under the indentures governing the Existing Notes and the credit agreement governing the bank credit facility. We may not have sufficient financial resources to repurchase all of the notes, the Existing Notes and/or the senior notes that are tendered upon a fundamental change or prepay loans under our bank credit facility. A failure to repurchase the notes, the Existing Notes and/or the senior notes when required would result in a default under the indentures governing the notes offered hereby, the Existing Notes and the senior notes as well as the credit agreement governing the bank credit facility. See Description of the Notes Fundamental Change Permits Holders to Require Us to Purchase Notes.

***The adjustment to the conversion rate for notes converted in connection with certain fundamental changes may not adequately compensate you for any lost value of your notes as a result of such transaction.***

If a fundamental change occurs, under certain circumstances we will increase the conversion rate by a number of additional shares of our common stock for notes converted in connection with such fundamental change. The increase in the conversion rate will be determined based on the date on which the fundamental change occurs or becomes effective and the price paid or deemed paid per share of our common stock in such transaction, as described below under Description of the Notes Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon Make-Whole Fundamental Change. The adjustment to the conversion rate for notes converted in connection with a fundamental change may not adequately compensate you for any lost value of your notes as a result of such transaction. In addition, if the price of our common stock in the transaction is greater than \$ per share or less than \$ per share (in each case, subject to adjustment), no adjustment will be made to the conversion rate. Moreover, in no event will the total number of shares of common stock issuable upon conversion as a result of this adjustment exceed per \$1,000 principal amount of notes, subject to adjustments in the same manner as the conversion rate as set forth under Description of the Notes Conversion Rights Conversion Rate Adjustments.

Our obligation to increase the conversion rate in connection with any such fundamental change could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness and equitable remedies.

***Recent developments in the convertible debt markets may adversely affect the market value of the notes.***



The convertible debt markets are currently experiencing unprecedented disruptions resulting from, among other things, the recent instability in the credit and capital markets and the emergency orders issued by the SEC on September 17 and 18, 2008 (and extended on October 1, 2008). These orders were issued as a stop-gap measure while Congress worked to provide a comprehensive legislative plan to stabilize the credit and capital markets. Among other things, these orders temporarily imposed a prohibition on effecting short sales of common stock of certain financial companies. As a result, the SEC orders made the arbitrage strategy that many convertible notes investors employ difficult to execute for outstanding convertible notes of those companies whose common stock was subject to the short sale prohibition. The SEC orders expired at 11:59 p.m., New York City Time, on Wednesday, October 8, 2008. However, the SEC has recently proposed certain amendments to Regulation SHO under the Securities Exchange Act, which if implemented will place limitations on effecting short sales based on certain short sales price tests. Any future governmental actions that interfere with the ability of convertible notes investors to effect short sales on the underlying common stock would significantly affect the market value of the notes.

***The conditional conversion feature of the notes may prevent the conversion of the notes prior to December 1, 2014.***

The notes are convertible prior to the close of business on the second scheduled trading day preceding the maturity date at any time on or after December 1, 2014. Prior to the close of business on the business day immediately preceding December 1, 2014, the notes are convertible only under the following circumstances: (1) during any fiscal quarter (and

only during such fiscal quarter) commencing after June 30, 2009, if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five business day period after any ten consecutive trading day period (the measurement period) in which the trading price (as defined under Description of the Notes Conversion Rights Conversion upon satisfaction of trading price condition) per \$1,000 principal amount of notes for each trading day of such measurement period was less than 98% of the product of the last reported sale price of our common stock and the applicable conversion rate on each such day; or (3) upon the occurrence of specified corporate transactions described under Description of the Notes Conversion Rights Conversion upon specified corporate transactions. See Description of the Notes Conversion Rights. If these conditions to convert are not met, holders of the notes will not be able to convert their notes prior to December 1, 2014 and, therefore, may not be able to receive the value of the consideration for which the notes would otherwise be convertible.

***The conditional conversion feature of the notes, if satisfied, may adversely affect our financial condition and operating results.***

In the event that the conversion conditions of the notes are satisfied, holders of the notes will be entitled to surrender their notes for conversion at any time during specified periods at their option. See Description of the Notes Conversion rights. If one or more holders elect to surrender their notes for conversion, we would be required to settle the principal amount of the notes through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the notes as a current rather than a long-term liability, which would result in a material reduction of our net working capital.

***Upon conversion of the notes, you may receive less valuable consideration than expected because the value of our common stock may decline after you exercise your conversion right.***

Under the notes, a converting holder will be exposed to fluctuations in the value of our common stock during the period from the date such holder surrenders notes for conversion until the date we settle the conversion obligation.

Under the notes, the amount of consideration that you will receive upon conversion of your notes is in part determined by reference to the volume weighted average prices of our common shares for each trading day in a 25 trading-day observation period. As described under Description of notes Conversion rights Payment upon conversion, this period means, for notes with a conversion date occurring on or after the 30th scheduled trading day preceding the maturity date, the 25 consecutive trading-day period beginning on, and including, the 27th scheduled trading day prior to the maturity date, and in all other instances, the 25 consecutive trading-day period beginning on, and including, the second scheduled trading day immediately following the relevant conversion date. Accordingly, if the price of our common stock decreases during this period, the amount and/or value of consideration you receive will be adversely affected. In addition, if the market price of our common stock at the end of such period is below the average of the volume weighted average price of our common stock during such period, the value of any of our common stock that you will receive will be less than the value used to determine the number of shares you will receive.

***If any of our subsidiaries are permitted to guarantee the notes, a court could cancel the guarantees of the notes under fraudulent transfer law.***

The notes will not initially be guaranteed by any of our subsidiaries. If any of our subsidiaries guarantees certain senior subordinated indebtedness, we will cause certain of our domestic subsidiaries to fully and unconditionally guarantee the notes. See Description of the Notes Future Subsidiary Guarantors. Under federal bankruptcy law and

comparable provisions of state fraudulent transfer laws, in certain circumstances a court could cancel a guarantee and order the return of any payments made thereunder to the subsidiary or to a fund for the benefit of its creditors.

A court might take these actions if it found, among other things, that when the guarantor incurred the debt evidenced by its guarantee (i) it received less than reasonably equivalent value or fair consideration for the incurrence of the debt and (ii) any one of the following conditions was satisfied:

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the guarantor was insolvent or rendered insolvent by reason of the incurrence;

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the guarantor was engaged in a business or transaction for which its remaining assets constituted unreasonably small capital; or

.

the guarantor intended to incur, or believed (or reasonably should have believed) that it would incur, debts beyond its ability to pay as those debts matured.

In applying the above factors, a court would likely find that a guarantor did not receive fair consideration or reasonably equivalent value for its guarantee, except to the extent that it benefited directly or indirectly from the notes issuance. The

determination of whether a guarantor was or was not rendered insolvent when it entered into its guarantee will vary depending on the law of the jurisdiction being applied. Generally, an entity would be considered insolvent if the sum of its debts (including contingent or unliquidated debts) is greater than all of its assets at a fair valuation or if the present fair salable value of its assets is less than the amount that will be required to pay its probable liability on its existing debts, including contingent or unliquidated debts, as they mature.

If a court canceled a guarantor's guarantee, you would no longer have a claim against that guarantor or its assets. Our assets and the assets of the remaining guarantors may not be sufficient to pay the amount then due under the notes.

***There may be no active trading market for the notes offered hereby, and if one develops, it may not be liquid.***

The notes are new issues of securities for which there currently are no trading markets. We do not intend to apply for a listing of the notes on any securities exchange or to arrange for quotation on any automated dealer quotation system. As a result, we cannot assure you that a market will develop for the notes or that you will be able to sell your notes. If any of the notes are traded after their initial issuance, they may trade at a discount from their initial offering price. Future trading prices of the notes will depend on many factors, including prevailing interest rates, the market for similar securities, the price of our underlying common stock, general economic conditions and our financial condition, performance and prospects. The underwriters have advised us that they intend to make markets in the notes, but they are not obligated to do so. The underwriters may terminate their market making activities at any time, in their sole discretion, which could negatively impact your ability to sell the notes or the prevailing market price at the time you choose to sell.

***You may be deemed to receive a taxable distribution without the receipt of any cash or property.***

The conversion rate of the notes will be adjusted in certain circumstances. See Description of Notes Conversion Rights Conversion rate adjustments and Description of the Notes Conversion Rights Adjustments to shares delivered upon conversion upon a make-whole fundamental change. Adjustments (or the failure to make adjustments) to the conversion rate of the notes that have the effect of increasing your proportionate interest in our earnings and profits or assets may result in a taxable deemed distribution to you for United States federal income tax purposes, even though you do not receive an actual distribution of cash or property. In addition, you may be subject to United States federal withholding tax in connection with such a deemed distribution. Any withholding tax applicable to any deemed distribution received by you may be withheld from interest on your notes, distributions on your common stock or shares of commo