

PRIMUS GUARANTY LTD

Form S-1/A

September 29, 2004

As filed with the Securities and Exchange Commission on September 29, 2004.

Registration No. 333-114818

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

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AMENDMENT No. 6  
TO  
FORM S-1

REGISTRATION STATEMENT  
Under  
THE SECURITIES ACT OF 1933

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PRIMUS GUARANTY, LTD.

(Exact name of registrant as specified in its charter)

Bermuda  
(State or other jurisdiction of  
incorporation or organization)

6199  
(Primary Standard Industrial  
Classification Code Number)

N/A  
(I.R.S. employer  
Identification Number)

Primus Guaranty, Ltd.  
Clarendon House, 2 Church Street  
Hamilton HM 11, Bermuda  
441-296-0519

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

Zachary Snow, Esq.  
Primus Asset Management, Inc.  
360 Madison Avenue, 23rd Floor  
New York, New York 10017  
212-697-2227  
Fax: 212-697-3731

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

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this Registration Statement is declared effective.

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 (the Securities Act), check the following box:

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box.

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

Subject to Completion, dated September 29, 2004

PROSPECTUS

10,344,828 Shares

Primus Guaranty, Ltd.

Common Shares

This is our initial public offering of common shares. We are offering 9,143,493 common shares and the selling shareholders identified in this prospectus are offering 1,201,335 common shares. No public market currently exists for our common shares. We will not receive any proceeds from the sale of the common shares offered by the selling shareholders.

Our common shares have been approved for listing on the New York Stock Exchange under the symbol "PRS". We currently estimate that the initial public offering price will be between \$13.50 and \$15.50 per share.

Investing in the shares involves risks. Risk Factors begin on page 9.

	Per Share	Total
Public offering price	\$	\$
Underwriting discount	\$	\$
Proceeds to Primus Guaranty, Ltd. (before expenses)	\$	\$
Proceeds to selling shareholders (before expenses)	\$	\$

The selling shareholders have granted the underwriters a 30-day option to purchase up to an aggregate of 1,551,724 additional common shares on the same terms and conditions as set forth above to cover over-allotments, if any.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Lehman Brothers, on behalf of the underwriters, expects to deliver the shares on or about \_\_\_\_\_, 2004.

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LEHMAN BROTHERS MORGAN STANLEY

CREDIT SUISSE FIRST BOSTON

UBS INVESTMENT BANK

WILLIAM BLAIR & COMPANY

KEEFE, BRUYETTE & WOODS

, 2004

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**Through and including** \_\_\_\_\_, 2004 (the 25th day after the date of this prospectus), all dealers effecting transactions in our common shares, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligations to deliver a prospectus when acting as underwriters and with respect to their unsold allotment or subscriptions.

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## PROSPECTUS SUMMARY

This summary does not contain all of the information that you should consider before investing in our common shares. You should read the entire prospectus carefully, including the "Risk Factors" section beginning on page 9 and our consolidated financial statements and related notes to these financial statements beginning on page F-1 before making an investment decision. Unless otherwise indicated or the context requires otherwise, references in this prospectus to "we", "us" or "our" refer to the consolidated operations of Primus Guaranty, Ltd., or Primus Guaranty, and references to a company name refer solely to such company. Unless otherwise indicated, all information in this prospectus (1) reflects the automatic conversion upon consummation of this offering of all outstanding Series A convertible voting preferred shares, or Series A preferred shares, into an aggregate of 29,980,691 common shares, (2) reflects a one for eight reverse share split of our common shares to be effected immediately prior to the completion of this offering (with fractional shares satisfied in cash) and (3) assumes no exercise of the underwriters' over-allotment option.

## Our Company

### Overview

Our principal business is selling credit protection under which we assume the risk of default on investment grade credit obligations. The protection we sell takes the form of a credit default swap, or credit swap. In exchange for a fixed quarterly premium we agree, upon a default or other credit event (e.g., bankruptcy, moratorium or repudiation) affecting a designated issuer, which we refer to as a Reference Entity, to pay our customer, which we refer to as a counterparty, an agreed amount. We pay this agreed amount, which we call a notional amount, upon our counterparty's delivery to us of the Reference Entity's debt obligation. Credit swaps are an efficient and standardized mechanism to reduce credit risk exposure arising from the ownership of financial obligations such as bonds, loans and receivables. See "Industry Overview—Overview of Credit Swaps" for additional information regarding credit swaps. The primary purchasers of credit swaps are commercial and investment banks as well as credit portfolio managers, insurance companies and other financial institutions.

Primus Financial Products, LLC, or Primus Financial, our principal subsidiary, has the highest counterparty credit ratings offered by Standard & Poor's Rating Services (AAA), or S&P, and Moody's Investors Service, Inc. (Aaa), or Moody's, and is managed by an experienced team of professionals who have expertise in credit analysis, trading, risk management and market analysis. At June 30, 2004, we had relationships with 34 counterparties to which we were prepared to sell credit protection. At June 30, 2004, Primus Financial had sold credit protection with respect to \$8.7 billion (in notional amount) of referenced obligations representing 453 Reference Entities spread across 40 industries and 22 countries. Our credit swap portfolio had a weighted average credit rating of A ("strong"; sixth of 21 categories) by S&P and A3 ("good financial security"; seventh of 21 categories) by Moody's and had an average maturity of 2.8 years at June 30, 2004.

We were capitalized in March 2002 and sold our first credit swaps in June 2002.

### Growth In The Credit Swap Market

The credit swap market has been transformed from a small, niche segment of the capital markets to a global market that is rapidly growing with diverse product applications and a wide range of participants. The notional amount referenced by outstanding credit swaps (excluding asset swaps) is estimated by the British Bankers Association, a trade association in the banking and financial services industry, and the International Swaps and Derivatives Association, Inc., or ISDA, to have grown from \$180.0 billion at December 31, 1997, to \$3.6 trillion at December 31, 2003. There are approximately 1,200 Reference Entities that have investment grade credit ratings by both S&P and Moody's. We believe that the credit swap market will continue to grow as commercial and investment banks and other credit portfolio managers more actively manage their credit and investment portfolios.

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### Competitive Strengths

We believe we are well-positioned to continue to compete effectively in the credit swap market. The following are our competitive strengths:

**Highest Available Counterparty Credit Ratings.** Primus Financial has a AAA ("extremely strong") counterparty credit rating from S&P and a Aaa ("exceptional") counterparty credit rating from Moody's, the highest of their

respective twenty-one rating levels. These ratings are based on an analysis of the risks of Primus Financial's business of selling credit swaps in relation to its capital.

**Experienced Management Team with Strong Market Relationships.** Our management team has extensive industry experience with strong and long-standing market relationships with participants and counterparties in the credit swap market.

**Disciplined Underwriting and Risk Management.** We underwrite credit risks using a rigorous credit analysis that allows us to sell credit protection on Reference Entities that we believe offer attractive risk-adjusted returns.

**Efficient and Scalable Operations.** We believe that our scalable operations enable us to leverage our management's expertise and provide opportunities to realize increased profitability as our business grows and matures.

Our competitive strengths are more fully discussed on pages 47 through 48.

### Business Strategy

The major elements of our strategy are:

**Continue to Expand our Credit Swap Business.** We intend to leverage our competitive strengths to continue to build a diversified credit risk portfolio and increase and efficiently utilize our capital resources to support our growth.

**Maintain Primus Financial's AAA/Aaa Ratings.** We believe that having the highest ratings from S&P and Moody's gives Primus Financial the ability to attract large and growing amounts of business with a wide range of counterparties and the ability to select Reference Entities along the full spectrum of investment grade credits.

**Pursue Opportunities in Complementary Businesses.** We intend to diversify our sources of revenue by expanding into complementary businesses.

The proceeds from this offering will facilitate executing our business strategy by increasing our capital resources and enabling us to expand our business, maintain our highest counterparty credit ratings and pursue opportunities in complementary businesses. In particular, we will provide at least \$60.0 million of proceeds received from this offering to Primus Financial to enhance its capital and enable it to sell additional credit swaps.

Our business strategy is more fully discussed on page 48.

### Risks Relating to Our Business and this Offering

As part of your evaluation of an investment in our common shares, you should take into account the various risks to which our business is subject. We may incur significant losses on the credit protection we sell; the operating guidelines we agreed upon with the rating agencies may change and may restrict our future growth; we have only a limited operating history; and the continued perception of our creditworthiness is critical to rating agencies and our counterparties. The credit swap industry, in which we are a very recent and comparatively small entrant, is highly competitive and includes significantly more diversified and better capitalized participants. You should also be aware that there are various risks specific to owning our common shares, including the continued voting control by our existing shareholders, future potential sales by such shareholders of substantial amounts of our common shares, potential share price volatility and the significant United States income tax consequences to holders of our common shares. For more information about these and other risks, see "Risk Factors" beginning on page 9. You should consider carefully these risks before making an investment in our common shares.

## Corporate Structure

We are a Bermuda company. Primus Financial is our principal subsidiary and a AAA/Aaa rated seller of credit swaps. Primus Asset Management, Inc., or Primus Asset Management, another of our subsidiaries, manages Primus Financial's credit swap business and intends to manage the credit swap portfolios of third parties. We also have a Bermuda registered financial guaranty insurance company, Primus Re, Ltd., or Primus Re, that offers credit insurance protection to companies that prefer insurance products to credit swaps. See "Business—Corporate Structure" for additional information regarding our structure. We are currently owned primarily by XL Insurance (Bermuda) Ltd, a subsidiary of XL Capital Ltd, Transamerica Life Insurance Company, an indirect wholly-owned subsidiary of AEGON, N.V., a Netherlands based holding company, CalPERS/PCG Corporate Partners Fund, LLC, Radian Group Inc. and management. Executives of our institutional shareholders serve on our board of directors and these directors provide us valuable assistance and expertise in conducting and expanding our business.

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Our registered office is at Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda and our telephone number is 441-296-0519. The offices of our principal operating subsidiary, Primus Financial, are located at 360 Madison Avenue, 23rd Floor, New York, New York 10017 and its telephone number is 212-697-2227.

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## Recent Events

On July 23, 2004, Primus Financial issued \$75.0 million of AAA/Aaa rated subordinated deferrable interest notes with a 30-year maturity to increase its capital base in order to permit it to sell additional credit swaps. The initial interest rate for the notes is 2.57%. This interest rate will remain in effect through July 25, 2005. Thereafter, the interest rate will be reset every 28 days through a Dutch auction process.

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## Potential Conflicts

Some of our principal shareholders sell products and offer services that compete with ours. In addition, they may hire us to provide credit risk advisory and asset management services. Our board of directors monitors transactions with our principal shareholders and their affiliates to ensure that such transactions are conducted on an arm's-length basis. Additionally, our directors customarily recuse themselves when transactions with our shareholders with whom they are associated are discussed or approved by the board of directors. For more information concerning the potential conflicts that may arise, please see the section "Business—Potential Conflicts With Certain Shareholders".

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## Notice to United States Investors—Tax Consequences of Owning Our Common Shares

We and our subsidiary, Primus (Barbados), Ltd., or Primus Barbados, are likely to be and remain passive foreign investment companies, or PFICs, for United States federal income tax purposes. There are potentially adverse United States federal income tax consequences of investing in a PFIC for a shareholder who is a United States taxpayer. These consequences include the following:

- if a shareholder makes a qualified electing fund election, or QEF election, with respect to Primus Guaranty and Primus Barbados, the shareholder will have to include annually in his or her taxable income an amount reflecting an allocable share of the income of Primus Guaranty or Primus Barbados, regardless of whether dividends are paid by Primus Guaranty to the

shareholder;

- if a shareholder makes a mark-to-market election with respect to Primus Guaranty, the shareholder will have to include annually in his or her taxable income an amount reflecting any year-end increases in the price of our common shares, regardless of whether dividends are paid by Primus Guaranty to the shareholder; it is unclear how such an election would affect the shareholder with respect to Primus Barbados; and

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- if a shareholder does not make a QEF election or a mark-to-market election, he or she may incur significant additional United States federal income taxes with respect to dividends on, or gain from, the sale or other disposition of, our common shares, or with respect to dividends from Primus Barbados to us, or with respect to our gain on any sale or other disposition of Primus Barbados shares.

Please review carefully "Risk Factors—Risks Related to Taxation" and "Tax Considerations—Taxation of Shareholders—United States Holders—Passive Foreign Investment Companies".

**Prospective investors are urged to consult their own tax advisors concerning their particular circumstances and the United States federal, state, local and non-United States tax consequences to them of owning and disposing of our common shares. In particular, prospective United States holders of our common shares are urged to consult with their tax advisors as to the tax consequences of holding shares of PFICs directly and indirectly (in the case of Primus Barbados) and the possible advisability of electing to have each of Primus Guaranty and Primus Barbados treated as a "qualified electing fund", or QEF, or of making a mark-to-market election with respect to Primus Guaranty.**

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You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized any other person to provide you with different information. If anyone provides you with different or insufficient information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where an offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate as of the date on the front cover of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.

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#### The Offering

Common shares offered by Primus Guaranty	9,143,493 shares
Common shares offered by selling shareholders	1,201,335 shares
Common shares to be outstanding after this offering	42,787,843 shares



Use of proceeds and purposes of the offering

We intend to use a portion of the net proceeds from this offering to provide at least \$60.0 million in additional capital to Primus Financial to expand its capacity to enter into credit swaps and to use the remainder as working capital and for general corporate purposes, including expanding our credit swap business and pursuing opportunities in complementary businesses. We will not receive any of the proceeds from the sale of common shares by the selling shareholders.

Dividend policy

We do not intend to pay dividends on our common shares for the foreseeable future. We plan to retain our earnings for use in the operation of our business and to fund future growth.

New York Stock Exchange symbol

"PRS"

Except as otherwise indicated, the number of common shares stated to be outstanding after this offering gives effect to the common shares being sold by us in this offering, a one for eight reverse share split that we intend to effect immediately prior to the completion of this offering (with fractional shares satisfied in cash), the automatic conversion of all outstanding shares of our Series A preferred shares into an aggregate of 29,980,691 common shares upon completion of this offering and the proposed issuance by us of an aggregate of 9,372 common shares to our non-employee directors upon completion of this offering. Such number of common shares excludes:

- 519,375 common shares issuable upon exercise of options outstanding as of September 23, 2004, under our 2002 stock incentive plan, with a weighted average exercise price of \$8.65 per share;
- 1,414,746 common shares issuable upon exercise of warrants outstanding as of September 23, 2004, with an exercise price of \$5.18 per share and an expiration date of March 14, 2007;
- 715,348 common shares issuable upon exercise of restricted share units outstanding as of September 23, 2004; and
- 5,134,541 additional common shares reserved for issuance under our employee incentive plan.

You should read the discussion under "Management—Share Option and Other Benefit Plans" for additional information about our employee option plans.

There has been no public market for our common shares prior to this offering. We and the underwriters will negotiate the initial public offering price at which our common shares will be sold in this offering. Factors that we and the underwriters will consider include: prevailing conditions in the securities markets at the time of this offering; the history of and prospects for our industry; an

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assessment of our management; our present operations; our historical results of operations; the trend of our revenues and earnings; our earnings prospects; recent market prices of, and the demand for, publicly traded common stock of generally comparable companies; and any other relevant factors.

We cannot be sure that the initial public offering price will correspond to the price at which the common shares will trade in the public market following this offering or that an active trading market for the common shares will develop and continue after this offering.

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### Summary Historical Financial Data

The following tables summarize our historical financial and operating data as of the dates or for the periods indicated. We derived the summary for each of the three years ended December 31, 2003, 2002 and 2001 from our consolidated financial statements, which have been prepared in accordance with United States generally accepted accounting principles, or United States GAAP, and audited by Ernst & Young LLP. The statement of operations data for the six months ended June 30, 2004 and 2003, and the balance sheet data as of June 30, 2004, are derived from, and are qualified by reference to, our unaudited consolidated financial statements included elsewhere in this prospectus. The unaudited consolidated financial statements include all adjustments, consisting only of normal recurring adjustments, that we consider necessary for the fair presentation of our financial position and results of operations for these periods. The results of operations for prior accounting periods are not necessarily indicative of the results to be expected for any future accounting periods. Until March 2002, we were in a development stage. We were capitalized on March 14, 2002 and began to sell credit swaps in June 2002. You should read this summary in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and related notes appearing elsewhere in this prospectus.

	Six Months Ended June 30,		Year Ended December 31,		
	2004	2003	2003	2002	2001
(\$ in thousands, except per share data)					
<b>Consolidated Statement of Operations:</b>					
<b>Revenues:</b>					
Net credit swap revenue	\$ 2,835	\$ 57,746	\$ 103,326	\$ 14,761	\$ —
Interest income earned	1,368	1,308	2,617		