

AVIALL JAPAN LTD  
Form S-3/A  
February 26, 2004  
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As filed with the Securities and Exchange Commission on February 26, 2004.

Registration No. 333-111816

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## AMENDMENT NO. 1

TO

Form S-3

## REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

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# AVIALL, INC.

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of

Incorporation or organization)

5080  
(Primary Standard Industrial

Classification Code Number)

65-0433083  
(IRS Employer Identification No.)

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(For Co-registrants, please see Table of Co-registrants on the following pages)

Aviall, Inc.

2750 Regent Boulevard

Jeffrey J. Murphy, Esq.

Senior Vice President of Law and Human Resources,

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DFW Airport, Texas 75261-9048

(972) 586-1000

(Address, including zip code, and telephone number,

including area code, of registrant s principal executive offices)

Secretary and General Counsel of Aviall, Inc.

2750 Regent Boulevard

DFW Airport, Texas 75261-9048

(972) 586-1000

(Name and address, including zip code, and telephone number,

including area code, of agent for service)

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*Copies of communications to:*

Janice V. Sharry, Esq.

Garrett A. DeVries, Esq.

Haynes and Boone, LLP

901 Main Street, Suite 3100

Dallas, Texas 75202

(214) 651-5000

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**Approximate date of commencement of proposed sale of securities to the public:** From time to time after the Registration Statement becomes effective.

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

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

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. "

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

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Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Debt Securities (2)				
Guarantees of Debt Securities (3)				
Preferred Stock, par value \$0.01 per share (4)				
Common Stock, par value \$0.01 per share (5)	(8)	(8)	(8)	(8)
Debt Warrants (6)				
Equity Warrants (7)				
Units				
<b>Subtotal</b>			\$200,000,000 (9)	\$16,180 (10)
Common Stock offerable by the selling stockholder named in this prospectus	7,000,000	\$15.215 (11)	\$106,505,000	\$8,617 (12)
<b>Total</b>			\$306,505,000	\$24,797 (13)

- (1) The proposed maximum aggregate offering price has been estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) and 457(c) under the Securities Act of 1933, as amended (the Securities Act). The proposed maximum offering price per unit will be determined from time to time by the registrant or the selling stockholder in connection with the issuance or sale of the securities registered hereunder by them. Securities registered for sale by the registrant and the selling stockholder hereunder may be sold separately, together or as units with other securities registered hereunder.
- (2) Subject to note (9) below, there is being registered hereunder an indeterminate principal amount of Debt Securities. If any Debt Securities are issued at an original issue discount, then the offering price shall be in such greater principal amount as shall result in an aggregate initial offering price not to exceed \$200,000,000 less the dollar amount of any securities previously issued hereunder. There are also being registered hereunder an indeterminate principal amount of Debt Securities as shall be (a) issuable (i) upon conversion or exchange of Preferred Stock or other Debt Securities registered hereunder and (ii) upon exercise of the Debt Warrants registered hereunder and (b) necessary to adjust the principal amount of Debt Securities from time to time reserved for issuance upon such exercise in accordance with the anti-dilution provisions of any convertible or exchangeable Preferred Stock or other Debt Securities or the Debt Warrants.
- (3) There is being registered an indeterminate amount of guarantees of the Debt Securities by the co-registrants named herein. No additional consideration will be received for the guarantees, if any, of Debt Securities. Pursuant to Rule 457(n) under the Securities Act, no additional filing fee is required in connection with guarantees of Debt Securities.
- (4) Subject to note (9) below, there is being registered hereunder an indeterminate number of shares of Preferred Stock as may be sold, from time to time, by the registrant. There are also being registered hereunder an indeterminate number of shares of Preferred Stock as shall be (a) issuable upon exchange of Debt Securities into Preferred Stock or exercise of the Equity Warrants registered hereunder and (b) necessary to adjust the number of shares of Preferred Stock from time to time reserved for issuance upon such exercise in accordance with the anti-dilution provisions of the Equity Warrants or exchangeable Debt Securities.

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- (5) Subject to note (9) below, there is being registered hereunder an indeterminate number of shares of Common Stock as may be sold, from time to time, by the registrant. There are also being registered hereunder an indeterminate number of shares of Common Stock as shall be (a) issuable (i) upon conversion or redemption of Preferred Stock or Debt Securities registered hereunder and (ii) upon exercise of Equity Warrants registered hereunder, (b) necessary to adjust the number of shares of Common Stock from time to time reserved for issuance upon such conversion, redemption or exercise in accordance with the anti-dilution provisions of the Debt Securities, Preferred Stock or Equity Warrants, respectively, and (c) as a result of a stock split, stock dividend or other adjustment to or change in the outstanding shares of Common Stock.
  
- (6) Subject to note (9) below, there is being registered hereunder an indeterminate number of Debt Warrants as may be sold, from time to time, by the registrant.
  
- (7) Subject to note (9) below, there is being registered hereunder an indeterminate number of Equity Warrants as may be sold, from time to time, by the registrant.

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- (8) Not applicable pursuant to General Instruction II.D. of Form S-3.
- (9) In no event will the aggregate initial offering price of all securities issued from time to time by the registrant pursuant to this Registration Statement exceed \$200,000,000 or the equivalent thereof in one or more foreign currencies, foreign currency units or composite currencies. The aggregate amount of Common Stock registered hereunder is further limited to that which is permissible under Rule 415(a)(4) under the Securities Act. The securities registered hereunder may be sold separately or as units with other securities registered hereunder.
- (10) Determined pursuant to Rule 457(o) of the rules and regulations of the Securities Act.
- (11) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act. The proposed maximum offering price per share is based upon the average of the high and low prices per share of our common stock as quoted on the New York Stock Exchange on January 7, 2004 (within 5 business days prior to the initial filing of this registration statement).
- (12) Determined pursuant to Rule 457(c) of the rules and regulations of the Securities Act.
- (13) Previously paid.

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

**TABLE OF CO-REGISTRANTS**

<b>Exact name of co-registrant as specified in its charter</b>	<b>State or other jurisdiction of incorporation of organization</b>	<b>Primary Standard Industrial Classification Code Number</b>	<b>I.R.S. Employer Identification No.</b>
Aviall Services, Inc.	Delaware	5080	75-2401836
Aviall Product Repair Services, Inc.	Delaware	5080	75-2651747
Aviall Japan Limited	Delaware	5080	42-1568824
Inventory Locator Service, LLC	Delaware	5080	52-2303505
Inventory Locator Service-UK, Inc.	Delaware	5080	48-1285736

The address, including zip code, of each of the co-registrants is 2750 Regent Boulevard, DFW Airport, Texas 75261-9048 and the telephone number, including area code, of each of the co-registrants is (972) 586-1000. The name and address, including zip code, and the telephone number, including area code, of the agent for service of process for each of the co-registrants is the same as for Aviall, Inc.

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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 FEBRUARY 26, 2004**

**PROSPECTUS**

**[AVIALL, INC. LOGO]**

**\$200,000,000**

**Debt Securities, Preferred Stock, Common Stock,**

**Debt Warrants, Equity Warrants and Units**

**Offered by**

**Aviall, Inc.**

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**Guarantees of Debt Securities by**

**Aviall Services, Inc., Aviall Product Repair Services, Inc.,**

**Aviall Japan Limited, Inventory Locator Service, LLC and**

**Inventory Locator Service UK, Inc.**

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**7,000,000 Shares of Common Stock**

**Offered by the**

**Selling Stockholder**

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We may offer, from time to time, any combination of these securities, in one or more series or issuances, at prices we will determine at the time of offering. The total offering price of all of the securities that we may sell pursuant to this prospectus will not exceed \$200,000,000 (or the equivalent amount in other currencies).

This prospectus also covers guarantees of our payment obligations under any debt securities, which may be given by certain of our subsidiaries on terms to be determined at the time of the offering.

Up to 7,000,000 shares of our common stock may be offered from time to time in one or more offerings by the selling stockholder identified in this prospectus at prices that such selling stockholder will determine at the time of the offering. We will not receive any proceeds from sales of shares of our common stock by the selling stockholder.

We will provide the specific terms of the securities offered by us, including any guarantees by our subsidiaries or the selling stockholder in supplements to this prospectus, which we will deliver together with the prospectus at the time of sale.

This prospectus may not be used to offer and sell securities unless accompanied by a prospectus supplement. You should read this prospectus and any prospectus supplement carefully before you invest.

Our common stock is quoted on the New York Stock Exchange under the symbol AVL.

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**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.**

**The date of this prospectus is February      , 2004.**



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You should rely only on the information contained in or incorporated by reference in this prospectus and in any prospectus supplement. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information contained in or incorporated by reference in this prospectus is accurate as of any date other than the date on the front of this prospectus or the applicable prospectus supplement.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission, or the SEC, using a shelf registration process. Under this shelf registration process, we may sell from time to time any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$200,000,000. In addition, the selling stockholder referred to in this prospectus may offer and sell up to 7,000,000 shares of our common stock under this prospectus and any prospectus supplement. We will not receive any of the proceeds from any sale of shares by the selling stockholder.

This prospectus provides you with a general description of the securities we and the selling stockholder may offer and certain guarantees that may be provided by our subsidiaries. Each time we or the selling stockholder sell securities, we will provide a prospectus supplement containing specific information about the terms of those securities and any related subsidiary guarantees. The prospectus supplement may also add, update or change the information in this prospectus. If there is any inconsistency between the information in this prospectus and a prospectus supplement, you should rely on the information in the prospectus supplement. You should read this prospectus, the relevant prospectus supplement and the information described under the heading **Where You Can Find Additional Information**.

In this prospectus, the words **Aviall**, **Company**, **we**, **our**, **ours** and **us** refer to Aviall, Inc., and its subsidiaries, unless otherwise stated or the context requires.

**WHERE YOU CAN FIND ADDITIONAL INFORMATION**

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and, in accordance with the requirements of the Exchange Act, we file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available over the Internet at the SEC's website at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at the Public Reference Section of the SEC at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549. You may also obtain copies of the documents at prescribed rates by writing to the SEC at that address. Please call 1-800-SEC-0330 for further information on the operations of the public reference facilities. Our SEC filings are also available at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to these reports will be made available free of charge through the Investor Relations section of our Internet website, [www.aviall.com](http://www.aviall.com), as soon as practicable after the material is electronically filed with, or furnished to, the SEC.

**INCORPORATION BY REFERENCE**

We may incorporate by reference in this prospectus the information we file with the SEC, which means:

incorporated documents are considered part of this prospectus;

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we can disclose important information to you by referring you to those documents; and

information that we subsequently file with the SEC will automatically update and supersede the information in this prospectus and any information that was previously incorporated by reference in this prospectus. Any statement so updated or superseded shall not be deemed, except as so updated or superseded, to constitute part of this prospectus.

We incorporate by reference into this prospectus all documents filed by us pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this prospectus and prior to the termination of the

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exchange offer. In addition, except to the extent such information has been updated or superseded by the information in this prospectus, we incorporate by reference into this prospectus:

our Annual Report on Form 10-K for the year ended December 31, 2002;

our Quarterly Report on Form 10-Q for the quarter ended March 31, 2003;

our Quarterly Report on Form 10-Q for the quarter ended June 30, 2003, as amended on August 21, 2003 pursuant to Form 10-Q/A;

our Quarterly Report on Form 10-Q for the quarter ended September 30, 2003;

our Current Report on Form 8-K, dated June 12, 2003, regarding the conversion of all of our outstanding Series D Redeemable Preferred Stock into shares of our common stock;

our Current Report on Form 8-K, dated June 13, 2003, filing a press release regarding our Rule 144A offering of senior notes;

our Current Report on Form 8-K, dated June 25, 2003, regarding the pricing of our \$200 million senior note offering; and

our Current Report on Form 8-K, dated September 29, 2003, regarding our new contract with Honeywell Lighting and Electronics.

In addition, we incorporate by reference the description of our common stock, which is contained in our registration statement on Form 10, filed with the SEC on December 22, 1993, as updated or amended in any amendment or report filed for such purpose.

You can obtain any of the filings incorporated by reference in this prospectus through us or from the SEC through the SEC's website or at the address listed above. Documents incorporated by reference are available from us without charge, excluding any exhibits to those documents that are not specifically incorporated by reference in this prospectus. You can request a copy of the documents incorporated by reference in this prospectus and a copy of the indenture, and other documents and agreements referred to in this prospectus by requesting them in writing or by telephone from us at the following address:

Aviall, Inc.

P.O. Box 619048

Dallas, Texas 75261-9048

Attention: Shareholder Services

Telephone: (972) 586-1000

**CAUTIONARY LANGUAGE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements concerning our business, operations and financial performance and condition. When we use the words estimates, expects, forecasts, anticipates, projects, plans, intends, believes and variations of such words or similar expressions in this prospectus, we intend to identify forward-looking statements.

We have based our forward-looking statements on our current assumptions, expectations and projections about future events. We have expressed our assumptions, expectations and projections in good faith, and we believe there is a reasonable basis for them. However, we cannot assure you that our assumptions, expectations or projections will prove to be accurate.

A number of risks and uncertainties could cause our actual results to differ materially from the forward-looking statements contained in this prospectus. Important factors that could cause our actual results to differ

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materially from the forward-looking statements are set forth in this prospectus, including the factors described under the heading Risk Factors. These risks, uncertainties and other important factors include, among others:

- loss of key suppliers or significant customers;
- termination or curtailment of material contracts;
- changes in demand or prevailing market prices for the products and services we sell;
- changes in economic conditions;
- increased competition;
- failure to realize anticipated benefits from our agreements;
- changes in our business strategy;
- changes in government regulations and policies;
- limited operational flexibility due to our substantial leverage;
- foreign currency fluctuations and devaluations in our foreign markets; and
- foreign political instability and acts of war or terrorism.

Other factors may cause our actual results to differ materially from the forward-looking statements. These forward-looking statements speak only as of the date of this prospectus and, except as required by law, we do not undertake any obligation to publicly update or revise our forward-looking statements. We caution you not to place undue reliance on these forward-looking statements.

**AVIALL, INC.**

We are the largest independent global provider to the aerospace aftermarket of new aviation parts, supply-chain management and other related value-added services. We serve this market through our two wholly owned subsidiaries, Aviall Services, Inc., or Aviall Services, and Inventory Locator Service, LLC, or ILS. Through Aviall Services, we purchase new aviation parts, components and supplies from approximately 215 original equipment manufacturers, or OEMs, and resell them through our network of 41 customer service centers located in North America, Europe, Asia, Australia and New Zealand. In addition, through Inventory Locator Service, we operate an electronic marketplace for buying of and selling parts, equipment and services for the aviation, defense and marine industries.

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The global market for aerospace parts, components and supplies generally consists of two related segments: the new aircraft parts segment and the aftermarket parts segment. The new aircraft parts segment is comprised of parts, installed during the construction of new aircraft or engines. The aftermarket parts segment is comprised of parts needed for the scheduled and unscheduled maintenance, repair and modification of aircraft and engines already in use. Aviall Services primarily operates in the aftermarket segment's new parts group, providing new aerospace parts, components and supplies on behalf of OEMs to a diverse customer base. ILS principally operates in the aftermarket segment's redistribution group providing information and functionality for its subscribers and manages e-commerce technology for buyers and sellers of new and used, surplus and repaired aviation and aerospace parts and components, as well as repair services.

Aviall, Inc. is a Delaware corporation.

### USE OF PROCEEDS

Unless otherwise set forth in the applicable prospectus supplement, net proceeds from the sale of the securities sold by us will be used for general corporate purposes. These purposes may include acquisitions,

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working capital, capital expenditures, the repurchase of outstanding securities and the repayment of indebtedness. Pending these applications, net proceeds from the sale of securities may be temporarily invested in short-term interest-bearing securities or other investment-grade securities. We will not receive any proceeds from sales of shares of our common stock by the selling stockholder.

**RATIO OF EARNINGS TO FIXED CHARGES**

Our ratio of earnings to combined fixed charges and preferred stock dividends for the periods indicated below as calculated under SEC rules is as follows:

	Nine Months	Year Ended December 31,				
	Ended					
	September 30,					
	2003	2002	2001	2000	1999	1998
Ratio of earnings to fixed charges	1.7x	2.2x	1.3x	2.6x	2.9x	6.8x

For the purposes of calculating the ratio of earnings to fixed charges, earnings represents earnings from continuing operations before taxes plus fixed charges. Fixed charges include interest expense, amortization of deferred debt issuance cost, the portion of operating rental expense that management believes is representative of the appropriate interest component of rent expense, currently deemed to be one third, and the amount of pre-tax earnings required to pay preferred stock dividends.



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**RISK FACTORS**

The prospectus supplement applicable to each type or series of securities we or the selling stockholder offer will contain a discussion of risks applicable to an investment in our company and industry and to the particular types of securities that we or the selling stockholder are offering under that supplement. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the caption Risk Factors in the applicable prospectus supplement, together with all of the other information contained in the prospectus supplement or appearing or incorporated by reference in the registration statement of which this prospectus is a part.

**DESCRIPTION OF DEBT SECURITIES**

The following description sets forth some general terms and provisions of the debt securities to which any prospectus supplement may relate. The particular terms of the debt securities offered by any prospectus supplement and the extent, if any, to which such general provisions may not apply to the debt securities so offered will be described in the prospectus supplement relating to such debt securities. For more information please refer to the applicable indenture. Capitalized terms used in this prospectus that are not defined will have the meanings given to them in these documents.

Any senior debt securities will be issued under a senior indenture to be entered into among us, any of our subsidiaries guaranteeing such senior debt securities and the trustee named in the senior indenture, also referred to as the senior trustee. Any subordinated debt securities will be issued under a subordinated indenture to be entered into among us, any of our subsidiaries guaranteeing such subordinated debt securities and the trustee named in the subordinated indenture, also referred to as the subordinated trustee. As used in this registration statement, the term indentures refers to both the senior indenture and the subordinated indenture, as applicable. Both indentures will be qualified under the Trust Indenture Act. As used in this registration statement, the term trustee refers to either the senior trustee or the subordinated trustee, as applicable.

We currently conduct substantially all of our operations through our subsidiaries, and the holders of debt securities (whether senior debt securities or subordinated debt securities) will be effectively subordinated to the creditors of our subsidiaries except to the extent of any guarantee issued by our subsidiaries with respect to such debt securities as described in the applicable prospectus supplement.

If specified in the prospectus supplement, certain of our subsidiaries (each a Subsidiary Guarantor) will unconditionally guarantee (each such guarantee, a Subsidiary Guarantee) the debt securities as described under Guarantees and in the applicable prospectus supplement. The Subsidiary Guarantee will be an unsecured obligation of the Subsidiary Guarantor. Subsidiary Guarantees of subordinated debt securities will be subordinated to the senior debt of the subsidiary guarantor on the same basis as our subordinated debt securities are subordinated to our senior debt.

The following summaries of some material provisions of the senior debt securities, the subordinated debt securities, any related subsidiary guarantees and the indentures are subject to, and qualified in their entirety by reference to, all the provisions of the indenture and any supplemental indenture applicable to a particular series of debt securities, including the definitions in this registration statement of some terms. Except as otherwise indicated, the terms of any senior indenture and subordinated indenture, as applicable, will be identical.

**General**

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The terms of each series of debt securities will be established by or pursuant to a resolution of our board of directors and by a supplemental indenture. We will describe the particular terms of each series of debt securities in a prospectus supplement relating to that series.

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In particular, each prospectus supplement will describe the following terms relating to a series of debt securities as specified in a supplemental indenture:

the title and aggregate principal amount of the debt securities;

whether the debt securities are senior debt securities or subordinated debt securities and the terms of subordination;

whether the debt securities will be guaranteed and the terms of any such guarantees;

any provisions granting special rights to you when a specified event occurs;

any limit on the amount of debt securities that may be issued;

whether any of the debt securities will be issuable in whole or in part in temporary or permanent global form or in the form of book entry securities and, in such case, the identity for the depository for such series and if in global form whether beneficial owners of interests in any such global security may exchange such interests for securities of such series, and the form of legend or legends that shall be borne by any such global security;

the person to whom any interest payable on a debt security shall be payable, if other than the person in whose name that debt security is registered at the close of business on the regular record date for such payment;

the manner in which any interest payable on a temporary global security on any interest payment date will be paid, if other than in the manner provided in the indenture;

the maturity date(s) of the debt securities;

the annual interest rate(s) (which may be fixed or variable) or the method for determining the rate(s) and the date(s) interest will begin to accrue on the debt securities, the date(s) interest will be payable, and the regular record date(s) for interest payment date(s) or the method for determining the record date(s);

the place(s) where payments with respect to the debt securities shall be payable;

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

the date, if any, after which, and the price(s) at which, the series of debt securities may, pursuant to any optional redemption provisions, be redeemed at our option, and other related terms and provisions;

the date(s), if any, on which, and the price(s) at which, if applicable, we are obligated, pursuant to any mandatory sinking fund provisions or otherwise, to redeem, or at your option to purchase in whole or in part, the series of debt securities and other related terms and provisions;

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the denominations and currency in which the series of debt securities will be issued, if other than denominations of \$1,000 (or the equivalent amount in foreign currency) and any integral multiple thereof;

any mandatory or optional sinking fund or similar provisions respecting the debt securities;

the currency or currency units in which payment of the principal of, premium, if any, and interest on the debt securities shall be payable;

if the amount of payments of principal of (and premium, if any), and any interest on, the debt securities of the series may be determined with reference to any commodities, currencies or indices, values, rates or prices or any other index or formula, the manner in which such amounts shall be determined;

if other than the entire principal amount, the portion of the principal amount of debt securities of the series which shall be payable upon declaration of acceleration of the maturity of a series of debt securities in case of an event of default under the indenture;

any additional means of satisfaction and discharge, and any additional conditions to discharge, of the indenture;

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if the debt securities of the series are to be convertible into or exchangeable for our common stock (or cash in lieu thereof), equity securities, other debt securities (including other debt securities issued under the indenture), warrants or any other of our securities or property or any other entity, at our, or the holder of debt securities option or upon the occurrence of any condition or event, the terms and conditions for such conversion or exchange;

whether and under what circumstances we will pay additional amounts on any debt securities held by a person who is not a United States person for tax or other regulatory purposes and whether we can redeem the debt securities rather than pay these additional amounts;

any addition to, or modification or deletion of, any definition, any event of default or any covenant specified in the applicable indenture and supplement with respect to the debt securities;

the terms and conditions, if any, pursuant to which the debt securities are secured; and

any other terms of the debt securities.

Further, each prospectus supplement will describe the supplemental indenture provisions that amend the indenture without the consent of the holders of debt securities where such amendment is not specifically permitted under the indenture without such consent; provided, however, that any such amendment shall become effective only when there is no debt security of any series which (i) is outstanding, (ii) was created prior to the execution of the supplemental indenture providing for such change and (iii) is adversely affected by such amendment.

The debt securities may be issued as original issue discount securities as described in a prospectus supplement. An original issue discount security is a debt security, including any zero coupon debt security, which:

is issued at a price lower than the amount payable upon its stated maturity; and

provides that upon redemption or acceleration of the maturity, an amount less than the amount payable upon the stated maturity, shall become due and payable.

United States federal income tax considerations applicable to debt securities sold at an original issue discount security will be described in the applicable prospectus supplement. In addition, United States federal income tax or other considerations applicable to any debt securities which are denominated in a currency or currency unit other than United States dollars may be described in the applicable prospectus supplement.

Unless otherwise specified in a supplemental indenture, under the indentures, we will have the ability, in addition to the ability to issue debt securities with terms different from those of debt securities previously issued, without your consent, to reopen a previous issue of a series of debt securities and issue additional debt securities of that series, unless such reopening was restricted when the series was created, in an aggregate principal amount determined by us.

**Conversion or Exchange of Rights**

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The terms, if any, on which a series of debt securities may be convertible into or exchangeable for our common stock or other of our securities will be detailed in the prospectus supplement relating thereto. Such terms will include provisions as to whether conversion or exchange is mandatory, at your option, or at our option, and may include provisions pursuant to which the number of shares of our common stock or of our other securities to be received by you and other holders of such series of debt securities would be subject to adjustment.

### **Guarantees**

Any senior or subordinated debt securities may be guaranteed by one or more of our direct and indirect subsidiaries. While each prospectus supplement will more fully describe any guarantees for the benefit of the series of debt securities to which it relates, unless otherwise indicated in the prospectus supplement, the following provisions will apply to the guarantees of the debt securities given by our subsidiaries.

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Subject to the limitations described below and in the prospectus supplement, our Subsidiary Guarantors will unconditionally guarantee the punctual payment when due, whether at the maturity date of the debt securities, by acceleration or otherwise, of all of our obligations under the indentures and the debt securities of a series, whether for principal of, premium, if any, or interest on the debt securities or otherwise (all such obligations guaranteed by our Subsidiary Guarantors, the Guaranteed Obligations ).

In the case of subordinated debt securities, a Subsidiary Guarantee will be subordinated in right of payment to the senior debt of the Subsidiary Guarantor on the same basis as the subordinated debt securities are subordinated to our senior debt. No payment will be made by the Subsidiary Guarantor under its Subsidiary Guarantee during any period in which payments by us on the subordinated debt securities are suspended by the subordination provisions of the subordinated indenture.

Each Subsidiary Guarantee will be limited to an amount not to exceed the maximum amount that can be guaranteed by such Subsidiary Guarantor without rendering such Subsidiary Guarantee voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

Each Subsidiary Guarantee will be a continuing guarantee and will:

remain in full force and effect until either (a) payment in full of all the Guaranteed Obligations (or the applicable debt securities are defeased and discharged in accordance with the defeasance provisions of the indentures) or (b) released as described in the following paragraph;

be binding upon the applicable Subsidiary Guarantor; and

inure to the benefit of, and be enforceable by, the applicable trustee, the holders of the debt securities and their successors and permitted transferees and assigns.

If a Subsidiary Guarantor ceases to be our subsidiary, whether as a result of a disposition of all or substantially all of the assets or all of the capital stock of the Subsidiary Guarantor, by way of sale, merger, consolidation or otherwise, the Subsidiary Guarantor will be deemed released and relieved of its obligations under its Subsidiary Guarantee without any further action required on the part of the trustee or any holder of debt securities, and no other person acquiring or owning the assets or capital stock of the Subsidiary Guarantor will be required to enter into a Subsidiary Guarantee; *provided*, in each case, that the transaction or transactions resulting in the Subsidiary Guarantor's ceasing to be subsidiary are carried out pursuant to, and in compliance with, all of the applicable covenants in the applicable indentures. Further, if we elect either defeasance and discharge or covenant defeasance under the terms of the indentures, then such Subsidiary Guarantor will also be deemed released and relieved of its obligations under its Subsidiary Guarantee without any further action required on the part of the trustee or any holder of debt securities. In addition, an applicable prospectus supplement may specify additional circumstances under which a Subsidiary Guarantor can be released from its Subsidiary Guarantee.

## **Consolidation, Merger or Sale**

Unless noted otherwise in a prospectus supplement, the indentures and the supplemental indentures will not contain any covenant which restricts our ability to merge or consolidate, or sell, convey, transfer, or otherwise dispose of all or substantially all of our assets. However, any successor or acquirer of all or substantially all of our assets must assume all of our obligations under the indentures and any supplemental indentures or the

debt securities, as appropriate.

**Events of Default under the Indentures**

Unless otherwise specified in a supplemental indenture, an event of default typically will occur under the indentures with respect to any series of debt securities issued upon:

failure to pay interest on the debt securities when due if such failure continues for 30 days and the time for payment has not been extended or deferred;



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failure to pay the principal or premium of the debt securities, if any, when due;

in the case of debt securities guaranteed by one or more of our subsidiaries, the Subsidiary Guarantees being held by a final non-appealable order or judgment of a court of competent jurisdiction to be unenforceable or invalid or ceasing for any reason to be in full force and effect (other than in accordance with the terms of the applicable indenture) or such Subsidiary Guarantor or any person or entity acting on behalf of such Subsidiary Guarantor denying or disaffirming such Subsidiary Guarantor's obligations under its Subsidiary Guarantee (other than by reason of a release of such Subsidiary Guarantor from its Subsidiary Guarantee in accordance with the terms of the applicable Indenture).

failure to deposit any sinking fund payment, when due, for any debt security and in the case of the subordinated indenture, whether or not the deposit is prohibited by the subordination provisions;

failure to observe or perform any other covenant contained in the debt securities or the indentures other than a covenant specifically relating to another series of debt securities, if such failure continues for 90 days after we receive notice from a trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series;

if the debt securities are convertible into shares of our common stock or other of our securities, failure by us to deliver common stock or the other securities when you and other holders of the debt securities elect to convert the debt securities into shares of our common stock or other of our securities; and

particular events of bankruptcy, insolvency, or reorganization.

The supplemental indentures or the form of security for a particular series of debt securities may include additional events of default or changes to the events of default described above. For any additional or different events of default applicable to a particular series of debt securities, see the prospectus supplement relating to such series.

Subject to the provisions of the supplemental indentures, an event of default for a particular series of debt securities may, but does not necessarily, constitute an event of default for any other series of debt securities.

Unless otherwise specified in a supplemental indenture, if an event of default with respect to debt securities of any series occurs and is continuing, the trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series, by notice in writing to us and to the trustee if notice is given by such holders, may declare the unpaid principal, premium, if any, and accrued interest, if any, due and payable immediately.

Subject to the provisions of the supplemental indentures, the holders of a majority in principal amount of the outstanding debt securities of an affected series may waive any default or event of default with respect to such series and its consequences, except defaults or events of default regarding payment of principal, premium, if any, or interest on the debt securities. Any such waiver shall cure such default or event of default.

Subject to the provisions of the supplemental indentures, in the case of any series of subordinated debt securities, the amounts collected by a trustee from us as a result of an event of default must first be applied towards any amounts due to the trustee and then to the payment of any senior series of debt securities before being paid to holders of such series of subordinated debt securities.

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Subject to the terms of the supplemental indentures, if an event of default under an indenture shall occur and be continuing, the trustee named in such indenture will be under no obligation to exercise any of its rights or powers under such indenture at your request or direction or that of any other holders of the applicable series of debt securities, unless you or such holders have offered the trustee reasonable indemnity. The holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time,

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method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power conferred on the trustee, with respect to the debt securities of that series, provided that:

it is not in conflict with any law or the applicable indenture;

the trustee may take any other action deemed proper by it which is not inconsistent with such direction; and

subject to its duties under the Trust Indenture Act, the trustee need not take any action that might involve it in personal liability or might be unduly prejudicial to the holders not involved in the proceeding.

Subject to the terms of the supplemental indentures, as a holder of the debt securities of any series, you will only have the right to institute a proceeding or to appoint a receiver or trustee, or to seek other remedies if:

you have given written notice to the trustee of a continuing event of default with respect to that series;

the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request, and have offered reasonable indemnity to the trustee to institute such proceedings as trustee; and

the trustee does not institute such proceeding, and does not receive from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series other conflicting directions within 60 days after such notice, request, and offer. These limitations do not apply to a suit instituted by you if we default in the payment of the principal, premium, if any, or interest on, your debt securities.

Subject to the terms of the supplemental indentures, we will periodically file statements with the trustee regarding our