

BIODELIVERY SCIENCES INTERNATIONAL INC

Form S-3

January 21, 2009

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As filed with the Securities and Exchange Commission on January 21, 2009

Registration No. 333-

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

Washington, D.C. 20549

**FORM S-3**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**BioDelivery Sciences International, Inc.**

(Exact name of registrant as specified in charter)

Delaware

(State or jurisdiction of incorporation or organization)

35-2089858

(I.R.S. Employer Identification No.)

**801 Corporate Center Drive, Suite 210**

**Raleigh, NC 27607**

**(919) 582-9050**

**(Address, including zip code, and telephone number, including area code,**

**of registrant's principal executive offices)**

**Mark A. Sirgo, Pharm.D.**

**801 Corporate Center Drive, Suite 210**

**Raleigh, NC 27607**

**(919) 582-9050**

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

*Copies to:*

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**New York, New York 10017**

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**Fax: (212) 370-7889**

**Approximate date of proposed sale to the public:** From time to time, after this 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 to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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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 registrations 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, please check the following box. " \_\_\_\_\_

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered <sup>(1)</sup>	Proposed Maximum Aggregate Offering Price per Security <sup>(1)</sup>	Proposed Maximum Aggregate Offering Price <sup>(1)</sup>	Amount of Registration Fee <sup>(1)(2)</sup>
Common Stock, par value \$0.001 per share <sup>(3)</sup>				
Preferred Stock, par value \$0.001 per share <sup>(4)</sup>				
Debt Securities				
Warrants <sup>(5)</sup>				
Rights <sup>(6)</sup>				
Units <sup>(7)</sup>				
<b>TOTAL<sup>(8)</sup></b>	\$50,000,000		\$50,000,000	\$1,965.00

(1) Pursuant to General Instruction II.D to Form S-3, the Amount to be Registered, Proposed Maximum Aggregate Offering Price per Security and Proposed Maximum Aggregate Offering Price have been omitted for each class of securities that are registered hereby.

(2) The registration fee for the unallocated securities registered hereby has been calculated in accordance with Rule 457(o) under the Securities Act of 1933, as amended, and reflects the maximum offering price of securities that may be issued rather than the principal amount of any securities that may be issued at a discount.

(3) An indeterminate number of shares of common stock of BioDelivery Sciences International, Inc. are covered by this Registration Statement.

(4) An indeterminate number of shares of preferred stock of BioDelivery Sciences International, Inc. are covered by this Registration Statement. Shares of common stock issued upon conversion of the debt securities and the preferred stock will be issued without the payment of additional consideration.

(5) An indeterminate number of warrants of BioDelivery Sciences International, Inc., each representing the right to purchase an indeterminate number of shares of preferred stock or shares of common stock or amount of debt securities, each of which are registered hereby, are covered by this Registration Statement.

(6) Rights evidencing rights to purchase securities of BioDelivery Sciences International, Inc..

(7) Each Unit consists of any combination of two or more of the securities being registered hereby.

(8)

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Also registered hereby are such additional and indeterminable number of securities as may be issuable due to adjustments for changes resulting from stock dividends, stock splits and similar changes as well as anti-dilution provisions applicable to the warrants.

**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 or until this 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 it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Preliminary Prospectus**

**Subject To Completion. dated January 21, 2009**

**\$50,000,000**

**Common Stock  
Debt Securities  
Rights**

**Preferred Stock  
Warrants  
Units**

BioDelivery Sciences International, Inc. may offer and sell from time to time, in one or more series, any one of the following securities of our company:

common stock;

preferred stock;

secured or unsecured debt securities consisting of notes, debentures or other evidences of indebtedness which may be senior debt securities, senior subordinated debt securities or subordinated debt securities, each of which may be convertible into equity securities;

warrants to purchase our securities

rights to purchase any of the foregoing securities; or

units comprised of, or other combinations of, the foregoing securities.

Each time our securities are offered, we will provide a prospectus supplement containing more specific information about the particular offering and attach it to this prospectus. The prospectus supplements may also add, update or change information contained in this prospectus. **This prospectus may not be used to offer or sell securities without a prospectus supplement which includes a description of the method and terms of this offering.**

Our common stock is traded on the Nasdaq Capital Market under the symbol BDSI. As of January 19, 2009, the aggregate market value of our outstanding common stock held by non-affiliates is approximately \$35,619,962, based on 19,163,538 shares of outstanding common stock, of which approximately 11,343,937 shares are held by non-affiliates, and a per share price of \$3.14 based on the closing sale price of our common stock on January 16, 2009. As of the date hereof we have not offered any securities pursuant to General Instruction I.B.6 of Form S-3 during the prior 12 calendar month period that ends on and includes the date hereof.

**Investing in our securities involves a high degree of risk. See the section entitled Risk Factors in the accompanying prospectus supplement and in the documents we incorporate by reference in this prospectus.**

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

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

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission utilizing a shelf registration process. Under this shelf registration statement, we may, from time to time, sell any combination of the securities referred to herein in one or more offerings for total gross proceeds of up to \$50,000,000. This prospectus provides you with a general description of the securities we may offer.

If required, each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of the securities being offered. The prospectus supplement may add, update or change information contained in this prospectus and may include a discussion of any risk factors or other special considerations that apply to the offered securities. If there is any inconsistency between the information in this prospectus and a prospectus supplement, you should rely on the information in that prospectus supplement. Before making an investment decision, it is important for you to read and consider the information contained in this prospectus and any prospectus supplement, together with the additional information described under the heading *Where You Can Find More Information*.

You should rely only upon the information contained in this prospectus and the registration statement of which this prospectus is a part. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it.

We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

You should assume the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date. This prospectus is based on information provided by us and other sources that we believe are reliable. We have summarized certain documents and other information in a manner we believe to be accurate, but we refer you to the actual documents for a more complete understanding of what we discuss in this prospectus. In making an investment decision, you must rely on your own examination of our business and the terms of the offering, including the merits and risks involved.

We obtained statistical data, market data and other industry data and forecasts used throughout, or incorporated by reference in, this prospectus from market research, publicly available information and industry publications. Industry publications generally state that they obtain their information from sources that they believe to be reliable, but they do not guarantee the accuracy and completeness of the information. Similarly, while we believe that the statistical data, industry data and forecasts and market research are reliable, we have not independently verified the data, and we do not make any representation as to the accuracy of the information. We have not sought the consent of the sources to refer to their reports appearing or incorporated by reference in this prospectus.

This prospectus contains, or incorporates by reference, trademarks, tradenames, service marks and service names of BioDelivery Sciences International, Inc. and other companies.



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**NOTE ON FORWARD LOOKING STATEMENTS**

Certain statements contained or incorporated by reference in this prospectus or in any prospectus supplement constitute forward-looking statements as that term is defined under the Private Securities Litigation Reform Act of 1995 and releases issued by the SEC and within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, (the Exchange Act). The words believe, expect, anticipate, intend, estimate, plan, project and other expressions which are predictions of or indicate future events, trends and which do not relate to historical matters identify forward-looking statements. Reliance should not be placed on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, which may cause our actual results, performance or achievements to differ materially from anticipated future results, performance or achievements expressed or implied by such forward-looking statements. Factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements include, but are not limited to:

our plans regarding the timing and outcome of research, development, commercialization, manufacturing, marketing and distribution efforts relating to the BEMA and Bioral technology platforms and any proposed formulations or products relating thereto (including, without limitation, ONSOLIS, formerly known as BEMA Fentanyl);

the domestic and international regulatory process relating to our technologies and proposed products and formulations, including the timing, status and results of our filings with the FDA and other similar international regulatory agencies, and the timing, status and results of pre-clinical work and clinical studies;

our ability to manufacture and generate commercial viability and acceptance of our BEMA and Bioral technology platforms and our proposed formulations and products;

our ability to finance our operations on acceptable terms, either through the raising of capital, the incurrence of convertible or other indebtedness or through strategic financing partnerships;

the protection and control afforded by our patents, or our interest in licensed patents, or our ability to enforce our rights under such patents or licenses;

our ability to enter into and/or perform under strategic partnerships for the development, commercialization, manufacturing and distribution of our proposed products and formulations;

the ability of our sublicensed partners to commercially exploit our drug delivery platforms and our ability to enter into sublicenses and to receive royalty and other payments from parties to whom we have sublicensed our technologies;

our ability to retain members of our management team and our employees;

our ability to receive federal, state, government or private grants; and

the competition that may arise in the future.



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The foregoing does not represent an exhaustive list of risks. Please see "Risk Factors" in any accompanying prospectus supplement or in our Annual Reports on Form 10-K for additional risks which could adversely impact our business and financial performance. Moreover, new risks emerge from time to time and it is not possible for our management to predict all risks, nor can we assess the impact of all risks on our business or the extent to which any risk, or combination of risks, may cause actual results to differ from those contained in any forward-looking statements. All forward-looking statements included in this prospectus are based on information available to us on the date of this prospectus or the date of any prospectus supplement. Except to the extent required by applicable laws or rules, we undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained throughout this prospectus or in any prospectus supplement.

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**PROSPECTUS SUMMARY**

*The following summary highlights selected information contained or incorporated by reference in this prospectus. This summary does not contain all of the information you should consider before investing in the securities. Before making an investment decision, you should read the entire prospectus and any supplement hereto carefully, including the risk factors section as well as the financial statements and the notes to the financial statements incorporated herein by reference.*

*In this prospectus and any amendment or supplement hereto, unless otherwise indicated, the terms BioDelivery Sciences International, Inc. , BDSI , the Company , we , us , and our refer and relate to BioDelivery Sciences International, Inc. and its consolidated subsidiaries.*

**Our Company**

We are a specialty pharmaceutical company that is utilizing licensed and owned proprietary patented drug delivery technologies to develop and commercialize, either on our own or in partnerships with third parties, clinically-significant new formulations of proven therapeutics.

Our drug delivery technologies include:

the patented BEMA (transmucosal, or applied to the inner cheek membrane) drug delivery technology, and

the patented Bioral cochleate drug delivery technology, designed for a potentially broad base of applications.

Utilizing our patented and licensed delivery technologies, we are currently developing formulations of pharmaceuticals aimed principally at acute (i.e., short term) conditions occurring in cancer and surgical patients, mostly notably in the areas of pain and fungal infections.

Our lead product candidate is ONSOLIS (formerly known as BEMA Fentanyl), a treatment for breakthrough cancer pain (i.e., episodes of severe pain which break through the medication used to control the persistent pain) in opioid tolerant patients. In December 2008, we resubmitted our New Drug Application, or NDA, for ONSOLIS to the U.S. Food and Drug Administration, or FDA, following our receipt of a complete response letter from FDA in August 2008. The only NDA deficiency that FDA noted in their complete response letter was the need for a Risk Evaluation and Mitigation Strategy (REMS) which the agency had not required prior to the submission of our ONSOLIS NDA in October 2007. We anticipate that final FDA approval of ONSOLIS will occur in the second quarter of 2009. We have granted commercialization and distribution rights for ONSOLIS on a worldwide basis (except in South Korea and Taiwan) to Meda AB, a leading international specialty pharmaceutical company based in Sweden.

Our follow on product to ONSOLIS is BEMA Buprenorphine, a treatment for moderate to severe pain conditions which is currently in Phase I trials.

Our lead Bioral formulation is an encochleated version of Amphotericin B, an anti-fungal treatment for treating systemic fungal infections. This product is also currently in Phase I human testing. We also believe this drug delivery technology has the potential to be applied to other types of pharmaceuticals and also to other therapeutics such as small interfering RNA, or siRNA.

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Some of our products, such as ONSOLIS and BEMA Buprenorphine, may also have broader indications that would allow for chronic use. When such products present a viable commercial opportunity, we will also consider developing the product for chronic uses.

We currently generate revenue from licensing milestone payments and royalties, and have generated revenue from grants. Ultimately, if we secure approval from the FDA and other regulatory bodies throughout the world for our licensed and/or proprietary products and formulations, our goal will be to augment these revenues from sales of such products and formulations, on which we will also pay royalties or other fees to our licensors and/or third-party collaborators where they exist.

Our development strategy focuses on, but is not limited to, the utilization of the FDA's 505(b)(2) approval process to obtain more timely and efficient approval of new formulations of previously approved therapeutics which incorporate our licensed drug delivery technologies. Because the 505(b)(2) approval process is designed to address new formulations of previously approved drugs, we believe it has the potential to be more cost efficient and less time consuming than other approval methods of the FDA.

Our principal executive offices are located at 801 Corporate Center Drive, Suite 210, Raleigh, North Carolina 27607. Our telephone number is (919) 582-9050.

### **The Securities We May Offer**

We may offer and sell from time to time up to an aggregate of \$50,000,000 of any of, or combinations of, the following securities:

#### *Common Stock*

We may issue shares of our common stock. Holders of common stock are entitled to receive ratably dividends if, as and when dividends are declared from time to time by our board of directors out of funds legally available for that purpose, after payment of dividends required to be paid on outstanding preferred stock or series common stock. Holders of common stock are entitled to one vote per share. Holders of common stock have no cumulative voting rights in the election of directors.

#### *Preferred Stock*

We may issue shares of our preferred stock in one or more series. Our board of directors will determine the dividend, voting, conversion and other rights of the series of preferred stock being offered.

#### *Debt Securities*

We may offer debt securities, which may be secured or unsecured, senior, senior subordinated or subordinated, may be guaranteed by our subsidiaries, and may be convertible into shares of our common stock. We may issue debt securities either separately, or together with, upon conversion of or in exchange for other securities. It is likely that the debt securities that we may issue will not be issued under an indenture.

#### *Warrants*

We may issue warrants for the purchase of preferred stock or common stock or debt securities of our company. We may issue warrants independently or together with other securities. Warrants sold with other securities as a unit may be attached to or separate from the other securities. To the extent the warrants are publicly-traded, we will issue warrants under one or more warrant agreements between us and a warrant agent that we will name in the applicable prospectus supplement.

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### *Rights*

We may issue rights to purchase of preferred stock or common stock or debt securities of our company. We may issue rights independently or together with other securities. Rights sold with other securities as a unit may be attached to or separate from the other securities and may be (but shall not be required to be) publicly-listed securities.

### *Units*

We may also issue units comprised of one or more of the other securities described in this prospectus in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security.

### *Prospectus Supplement*

We will describe the terms of any such offering in a supplement to this prospectus. Any prospectus supplement may also add, update, or change information contained in this prospectus. Such prospectus supplement will contain the following information about the offered securities:

title and amount;

offering price, underwriting discounts and commissions or agency fees, and our net proceeds;

any market listing and trading symbol;

names of lead or managing underwriters or agents and description of underwriting or agency arrangements; and

the specific terms of the offered securities.

This prospectus may not be used to offer or sell securities without a prospectus supplement which includes a description of the method and terms of this offering.

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**RISK FACTORS**

Investing in our securities involves a high degree of risk. The prospectus supplement relating to a particular offering will contain a discussion of risks applicable to an investment in the securities offered. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading "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 this prospectus.

**USE OF PROCEEDS**

Except as otherwise provided in the applicable prospectus supplement, we intend to use the net proceeds from these sales for general corporate purposes including the advancement of our product candidates, and to meet working capital needs. The amounts and timing of the expenditures will depend on numerous factors, such as the timing and progress of our clinical trials and research and development efforts, technological advances and the competitive environment for our drug candidates.

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**DESCRIPTION OF SECURITIES AND SECURITIES WE MAY OFFER**

**General**

The following description of our capital stock (which includes a description of securities we may offer pursuant to the registration statement of which this prospectus, as the same may be supplemented, forms a part) does not purport to be complete and is subject to and qualified in its entirety by our certificate of incorporation and bylaws and by the applicable provisions of Delaware law.

Our authorized capital stock consists of 45,000,000 shares of common stock and 5,000,000 shares of preferred stock. As of the date of this prospectus, our outstanding capital stock consists of 19,163,538 shares of common stock, \$0.001 par value, and no shares of preferred stock. These figures do not include securities to be issued: (i) pursuant to other unregistered warrants issued since our initial public offering or (ii) pursuant to our Amended and Restated 2001 Incentive Stock Option Plan.

We, directly or through agents, dealers or underwriters designated from time to time, may offer, issue and sell, together or separately, up to \$50,000,000 in the aggregate of:

common stock;

preferred stock;

secured or unsecured debt securities consisting of notes, debentures or other evidences of indebtedness which may be senior debt securities, senior subordinated debt securities or subordinated debt securities, each of which may be convertible into equity securities;

warrants to purchase our securities;

rights to purchase our securities; or

units comprised of, or other combinations of, the foregoing securities.

We may issue the debt securities as exchangeable for or convertible into shares of common stock, preferred stock or other securities. The preferred stock may also be exchangeable for and/or convertible into shares of common stock, another series of preferred stock or other securities. The debt securities, the preferred stock, the common stock, the rights and the warrants are collectively referred to in this prospectus as the securities. When a particular series of securities is offered, a supplement to this prospectus will be delivered with this prospectus, which will set forth the terms of the offering and sale of the offered securities.

**Common Stock**

As of January 19, 2009, there were 19,179,029 shares of common stock issued and 19,163,538 shares of common stock outstanding, held of record by approximately 169 stockholders. The holders of common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders. Subject to preferential rights with respect to any outstanding preferred stock, holders of common stock are entitled to receive ratably such dividends as may be declared by the board of directors out of funds legally available therefore. In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities and satisfaction of preferential rights of any outstanding preferred stock.



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Our common stock has no preemptive or conversion rights or other subscription rights. There are no sinking fund provisions applicable to the common stock. The outstanding shares of common stock are fully paid and non-assessable.

### **Preferred Stock**

Our certificate of incorporation empowers our board of directors, without action by our shareholders, to issue up to 5,000,000 shares of preferred stock from time to time in one or more series, which preferred stock may be offered by this prospectus and supplements thereto. As of January 19, 2009, no shares of preferred stock were outstanding.

We are currently authorized to issue: (i) no shares of our previously designated Series A Convertible Preferred Stock, (ii) 600,001 shares of our previously designated Series B Convertible Preferred Stock and (iii) no shares of our previously designated Series C Convertible Preferred Stock. In addition, our board may fix the rights, preferences, privileges, and restrictions of our remaining 764,705 authorized but undesignated preferred shares, including:

dividend rights and preferences over dividends on our common stock or any series of preferred stock;

the dividend rate (and whether dividends are cumulative);

conversion rights, if any;

voting rights;

rights and terms of redemption (including sinking fund provisions, if any);

redemption price and liquidation preferences of any wholly unissued series of any preferred stock and the designation thereof of any of them; and

to increase or decrease the number of shares of any series subsequent to the issue of shares of that series but not below the number of shares then outstanding.

You should refer to the prospectus supplement relating to the series of preferred stock being offered for the specific terms of that series, including:

the title of the series and the number of shares in the series;

the price at which the preferred stock will be offered;

the dividend rate or rates or method of calculating the rates, the dates on which the dividends will be payable, whether or not dividends will be cumulative or noncumulative and, if cumulative, the dates from which dividends on the preferred stock being offered will cumulate;

the voting rights, if any, of the holders of shares of the preferred stock being offered;

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the provisions for a sinking fund, if any, and the provisions for redemption, if applicable, of the preferred stock being offered, including any restrictions on the foregoing as a result of arrearage in the payment of dividends or sinking fund installments;

the liquidation preference per share;

the terms and conditions, if applicable, upon which the preferred stock being offered will be convertible into our common stock, including the conversion price, or the manner of calculating the conversion price, and the conversion period;

the terms and conditions, if applicable, upon which the preferred stock being offered will be exchangeable for debt securities, including the exchange price, or the manner of calculating the exchange price, and the exchange period;

any listing of the preferred stock being offered on any securities exchange;

a discussion of any material federal income tax considerations applicable to the preferred stock being offered;

any preemptive rights;

the relative ranking and preferences of the preferred stock being offered as to dividend rights and rights upon liquidation, dissolution or the winding up of our affairs;

any limitations on the issuance of any class or series of preferred stock ranking senior or equal to the series of preferred stock being offered as to dividend rights and rights upon liquidation, dissolution or the winding up of our affairs; and

any additional rights, preferences, qualifications, limitations and restrictions of the series.

Upon issuance, the shares of preferred stock will be fully paid and nonassessable, which means that its holders will have paid their purchase price in full and we may not require them to pay additional funds.

Any preferred stock terms selected by our board of directors could decrease the amount of earnings and assets available for distribution to holders of our common stock or adversely affect the rights and power, including voting rights, of the holders of our common stock without any further vote or action by the stockholders. The rights of holders of our common stock will be subject to, and may be adversely affected by, the rights of the holders of any preferred stock that may be issued by us in the future. The issuance of preferred stock could also have the effect of delaying or preventing a change in control of our company or make removal of management more difficult.

## **Warrants**

We may issue warrants for the purchase of our common stock, preferred stock or debt securities or any combination thereof. Warrants may be issued independently or together with our common stock, preferred stock or debt securities and may be attached to or separate from any offered securities. To the extent warrants that we issue are to be publicly-traded, each series of such warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with such warrants. The warrant agent will

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not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. This summary of certain provisions of the warrants is not complete. For the terms of a particular series of warrants, you should refer to the prospectus supplement for that series of warrants and the warrant agreement for that particular series.

### **Debt Securities**

As used in this prospectus, the term *debt securities* means the debentures, notes, bonds and other evidences of indebtedness that we may issue from time to time. The debt securities will either be senior debt securities, senior subordinated debt or subordinated debt securities. We may also issue convertible debt securities. Debt securities issued under an indenture (which we refer to herein as an Indenture) will be indenture entered into between us and a trustee to be named therein. It is likely that convertible debt securities will not be issued under an Indenture.

The Indenture or forms of Indentures, if any, will be filed as exhibits to the registration statement of which this prospectus is a part. The statements and descriptions in this prospectus or in any prospectus supplement regarding provisions of the Indentures and debt securities are summaries thereof, do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all of the provisions of the Indentures (and any amendments or supplements we may enter into from time to time which are permitted under each Indenture) and the debt securities, including the definitions therein of certain terms.

#### *General*

Unless otherwise specified in a prospectus supplement, the debt securities will be direct secured or unsecured obligations of our company. The senior debt securities will rank equally with any of our other unsecured senior and unsubordinated debt. The subordinated debt securities will be subordinate and junior in right of payment to any senior indebtedness.

We may issue debt securities from time to time in one or more series, in each case with the same or various maturities, at par or at a discount. Unless indicated in a prospectus supplement, we may issue additional debt securities of a particular series without the consent of the holders of the debt securities of such series outstanding at the time of the issuance. Any such additional debt securities, together with all other outstanding debt securities of that series, will constitute a single series of debt securities under the applicable Indenture and will be equal in ranking.

Should an indenture relate to unsecured indebtedness, in the event of a bankruptcy or other liquidation event involving a distribution of assets to satisfy our outstanding indebtedness or an event of default under a loan agreement relating to secured indebtedness of our company or its subsidiaries, the holders of such secured indebtedness, if any, would be entitled to receive payment of principal and interest prior to payments on the senior indebtedness issued under an Indenture.

#### *Prospectus Supplement*

Each prospectus supplement will describe the terms relating to the specific series of debt securities being offered. These terms will include some or all of the following:

the title of debt securities and whether they are subordinated, senior subordinated or senior debt securities;

any limit on the aggregate principal amount of debt securities of such series;

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the percentage of the principal amount at which the debt securities of any series will be issued;

the ability to issue additional debt securities of the same series;

the purchase price for the debt securities and the denominations of the debt securities;

the specific designation of the series of debt securities being offered;

the maturity date or dates of the debt securities and the date or dates upon which the debt securities are payable and the rate or rates at which the debt securities of the series shall bear interest, if any, which may be fixed or variable, or the method by which such rate shall be determined;

the basis for calculating interest if other than 360-day year or twelve 30-day months;

the date or dates from which any interest will accrue or the method by which such date or dates will be determined;

the duration of any deferral period, including the maximum consecutive period during which interest payment periods may be extended;

whether the amount of payments of principal of (and premium, if any) or interest on the debt securities may be determined with reference to any index, formula or other method, such as one or more currencies, commodities, equity indices or other indices, and the manner of determining the amount of such payments;

the dates on which we will pay interest on the debt securities and the regular record date for determining who is entitled to the interest payable on any interest payment date;

the place or places where the principal of (and premium, if any) and interest on the debt securities will be payable, where any securities may be surrendered for registration of transfer, exchange or conversion, as applicable, and notices and demands may be delivered to or upon us pursuant to the applicable Indenture;

the rate or rates of amortization of the debt securities;

if we possess the option to do so, the periods within which and the prices at which we may redeem the debt securities, in whole or in part, pursuant to optional redemption provisions, and the other terms and conditions of any such provisions;

our obligation or discretion, if any, to redeem, repay or purchase debt securities by making periodic payments to a sinking fund or through an analogous provision or at the option of holders of the debt securities, and the period or periods within which and the price or prices at which we will redeem, repay or purchase the debt securities, in whole or in part, pursuant to such obligation, and the other terms and conditions of such obligation;

the terms and conditions, if any, regarding the option or mandatory conversion or exchange of debt securities;

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the period or periods within which, the price or prices at which and the terms and conditions upon which any debt securities of the series may be redeemed, in whole or in part at our option and, if other than by a board resolution, the manner in which any election by us to redeem the debt securities shall be evidenced;

any restriction or condition on the transferability of the debt securities of a particular series;

the portion, or methods of determining the portion, of the principal amount of the debt securities which we must pay upon the acceleration of the maturity of the debt securities in connection with any event of default if other than the full principal amount;

the currency or currencies in which the debt securities will be denominated and in which principal, any premium and any interest will or may be payable or a description of any units based on or relating to a currency or currencies in which the debt securities will be denominated;

provisions, if any, granting special rights to holders of the debt securities upon the occurrence of specified events;

any deletions from, modifications of or additions to the events of default or our covenants with respect to the applicable series of debt securities, and whether or not such events of default or covenants are consistent with those contained in the applicable Indenture;

any limitation on our ability to incur debt, redeem stock, sell our assets or other restrictions;

the application, if any, of the terms of the applicable Indenture relating to defeasance and covenant defeasance (which terms are described below) to the debt securities;

what subordination provisions will apply to the debt securities;

the terms, if any, upon which the holders may convert or exchange the debt securities into or for our common stock, preferred stock or other securities or property;

whether we are issuing the debt securities in whole or in part in global form;

any change in the right of the trustee or the requisite holders of debt securities to declare the principal amount thereof due and payable because of an event of default;

the depository for global or certificated debt securities, if any;

any material federal income tax consequences applicable to the debt securities, including any debt securities denominated and made payable, as described in the prospectus supplements, in foreign currencies, or units based on or related to foreign currencies;

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any right we may have to satisfy, discharge and defease our obligations under the debt securities, or terminate or eliminate restrictive covenants or events of default in the Indentures, by depositing money or U.S. government obligations with the trustee of the Indentures;



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the names of any trustees, depositories, authenticating or paying agents, transfer agents or registrars or other agents with respect to the debt securities;