

EMC CORP
Form S-3ASR
February 02, 2007

As filed with the Securities and Exchange Commission on February 2, 2007

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

EMC CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Massachusetts

(State or other jurisdiction of incorporation or organization)

04-2680009

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

176 South Street

Hopkinton, Massachusetts 01748

(508) 435-1000

(Address, including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Paul T. Dacier, Esq.

Executive Vice President and General Counsel

EMC Corporation

176 South Street

Hopkinton, Massachusetts 01748

(508) 435-1000

(Name, Address, including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

with a copy to:

Edgar Filing: EMC CORP - Form S-3ASR

Margaret A. Brown, Esq.

Skadden, Arps, Slate, Meagher & Flom LLP

One Beacon Street

Boston, Massachusetts 02108

(617) 573-4800

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

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

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, 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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

CALCULATION OF REGISTRATION FEE

<i>Title of each class of securities to be registered</i>	<i>Amount to be registered</i>	<i>Proposed maximum offering price per unit</i>	<i>Proposed maximum aggregate offering price</i>	<i>Amount of registration fee</i>
1.75% Convertible Senior Notes due 2011	\$ 1,725,000,000	(1) 100	%(2) \$ 1,725,000,000	\$ 184,575
1.75% Convertible Senior Notes due 2013	\$ 1,725,000,000	(1) 100	%(2) \$ 1,725,000,000	\$ 184,575
Common Stock, par value \$0.01	214,582,410	(3)		(4)

-
- (1) Represents the aggregate principal amount at maturity of the notes originally issued by the registrant on November 17, 2006.
 - (2) Equals the aggregate principal amount of the notes being registered. Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended, or the Securities Act.
 - (3) Represents the number of shares of common stock initially issuable upon conversion of the notes registered hereby. Pursuant to Rule 416 under the Securities Act, also includes such indeterminate number of shares of common stock as may be issued from time to time upon conversion of the notes as a result of the anti-dilution provisions contained therein.
 - (4) No separate consideration will be received for the shares of common stock issuable upon conversion of the notes, and, therefore, no registration fee is required pursuant to Rule 457(i) under the Securities Act.
-

PROSPECTUS

\$1,725,000,000 1.75% Convertible Senior Notes due 2011

\$1,725,000,000 1.75% Convertible Senior Notes due 2013

On November 17, 2006, we issued \$1,725,000,000 in aggregate principal amount of 1.75% senior convertible notes due 2011 (the 2011 notes) and \$1,725,000,000 in aggregate principal amount of 1.75% senior convertible notes due 2013 (the 2013 notes, and together with the 2011 notes, the notes) in a private offering. This prospectus relates to the resale by various selling securityholders of the notes and shares of our common stock issuable upon conversion of the notes. We will not receive any of the proceeds from these resales.

Interest is payable on the notes semi-annually in arrears in cash on June 1 and December 1 of each year, beginning June 1, 2007. The 2011 notes will mature on December 1, 2011. The 2013 notes will mature on December 1, 2013. Holders may convert their notes at their option on any day prior to the close of business on the scheduled trading day immediately preceding (i) September 1, 2011, with respect to the 2011 notes, and (ii) September 1, 2013, with respect to the 2013 notes, in each case only under the following circumstances: (1) during the five business-day period after any five consecutive trading-day period (the measurement period) in which the price per note of the applicable series for each day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such day; (2) during any calendar quarter after the calendar quarter ending December 31, 2006, if the last reported sale price of our common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the applicable conversion price in effect on the last trading day of the immediately preceding calendar quarter; or (3) upon the occurrence of specified corporate events. The notes will be convertible, regardless of the foregoing circumstances, at any time from, and including, September 1, 2011 to, and including, the business day immediately preceding the maturity date of the 2011 notes (in the case of the 2011 notes) and at any time from, and including, September 1, 2013 to, and including, the business day immediately preceding the maturity date of the 2013 notes (in the case of the 2013 notes).

Upon conversion we will pay cash or, at our election, a combination of cash and common stock based on a daily conversion value, as described in this prospectus, calculated on a proportionate basis for each day of the relevant 20-day observation period. The initial conversion rate for the notes is 62.1978 shares of common stock per \$1,000 principal amount of notes, equivalent to a conversion price of approximately \$16.08 per share of common stock. The conversion price will be subject to adjustment in some events but will not be adjusted for accrued interest. In addition, if a fundamental change occurs prior to the maturity date, we will in some cases increase the conversion rate for a holder that elects to convert notes in connection with such fundamental change.

Subject to certain exceptions, holders may require us to repurchase for cash all or part of their notes upon a designated event at a price equal to 100% of the principal amount of the notes being repurchased plus any accrued and unpaid interest up to, but excluding, the relevant repurchase date. We may not redeem the notes prior to maturity.

The notes are our senior unsecured obligations and rank equally with all of our other senior unsecured debt and all of our future senior unsecured debt. The notes are structurally subordinated to all liabilities of our subsidiaries and are effectively subordinated to our secured indebtedness.

Shares of our common stock are traded on the New York Stock Exchange, or NYSE, under the symbol EMC . On February 1, 2007, the closing sale price of our common stock on the NYSE was \$13.76 per share. The notes are not listed on any securities exchange or included in any automated quotation system.

Investing in the notes or our common stock issuable upon conversion of the notes involves risks that are described in the Risk Factors section of this prospectus and the risk factors incorporated herein by reference from our annual and quarterly reports filed with the Securities and Exchange Commission, or SEC.

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

The date of this prospectus is February 2, 2007.

TABLE OF CONTENTS

ADDITIONAL INFORMATION
SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS
TRADEMARKS
SUMMARY
RISK FACTORS
USE OF PROCEEDS
PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY
DESCRIPTION OF CAPITAL STOCK
DESCRIPTION OF THE NOTES
RATIO OF EARNINGS TO FIXED CHARGES
CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS
SELLING SECURITYHOLDERS
PLAN OF DISTRIBUTION
LEGAL MATTERS
EXPERTS

ADDITIONAL INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference room in Washington, D.C. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. Our SEC filings are also available to the public from the SEC's website at www.sec.gov. Our common stock is listed on the NYSE, under the symbol "EMC" and all reports, proxy statements and other information filed by us with the NYSE may be inspected at the NYSE's offices at 20 Broad Street, New York, New York 10005.

In this document, we incorporate by reference the information we file with the SEC, which means that we can disclose important information to you by referring to that information. The information incorporated by reference is considered to be an important part of this prospectus. Any statement in a document incorporated by reference in this prospectus will be deemed to be modified or superseded to the extent a statement contained in this prospectus or any other subsequently filed document that is incorporated by reference in this prospectus modifies or supersedes such statement. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, (other than information in such future filings deemed, under SEC rules, not to have been filed) after the date of this prospectus and until all of the notes or common stock to which this prospectus relates have been sold by the selling securityholders or this offering is otherwise terminated:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2005, filed on March 6, 2006;
- our Quarterly Report on Form 10-Q for the quarter ended March 31, 2006 filed on May 5, 2006, our Quarterly Report on Form 10-Q/A for the quarter ended June 30, 2006 filed on August 10, 2006 and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 filed on November 6, 2006;
- our Current Reports on Form 8-K, filed on February 16, 2006, February 27, 2006, March 31, 2006, June 29, 2006, June 30, 2006, July 21, 2006, August 8, 2006, September 18, 2006, September 29, 2006, October 17, 2006 (excluding information furnished therein pursuant to Item 2.02 and any exhibits thereto to the extent related to Item 2.02), November 13, 2006, November 14, 2006, November 17, 2006, January 5, 2007 and January 23, 2007 (excluding information furnished therein pursuant to Item 2.02 and any exhibits thereto to the extent related to Item 2.02);
- our Proxy Statement on Schedule 14A dated March 20, 2006 filed on March 20, 2006; and
- the description of our common stock contained in the Company's registration statement on Form 8-A filed on March 8, 1988.

Edgar Filing: EMC CORP - Form S-3ASR

You may request a copy of these filings, at no cost, by writing, emailing or telephoning us at the following address:

EMC Corporation

176 South Street

Hopkinton, Massachusetts 01748-2230

Tel.: (508) 435-1000

Attention: EMC Investor Relations

Email: emc_ir@emc.com

Exhibits to the filings will not be sent, however, unless those exhibits have been specifically incorporated by reference in this prospectus.

You should read the information in this document together with the information in the documents incorporated by reference.

You should rely only upon the information provided in this document or incorporated in this document by reference. We have not authorized anyone to provide you with different information. You should not assume that the information in this document, including any information incorporated by reference, is accurate as of any date other than the date indicated on the front cover.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the information incorporated by reference in this prospectus include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Exchange Act. The forward-looking statements do not include the impact of any mergers, acquisitions, divestitures or business combinations that may be announced or closed after the date hereof. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the foregoing, the words believes, plans, intends, expects, estimates, predicts, projects, anticipates, seeks, likely, goals and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these words. These forward-looking statements are only predictions and, accordingly, are subject to substantial risks, uncertainties and assumptions.

Our future results may differ materially from our past results and from those projected in the forward-looking statements due to various uncertainties and risks. Factors that could affect our future operating results and cause actual results to vary materially from the forward-looking statements made or incorporated by reference in this prospectus or that might cause us to modify our plans or objectives include, but are not limited to:

- adverse changes in general economic or market conditions;
- delays or reductions in information technology spending;
- risks associated with acquisitions and investments, including the challenges and costs of integration, restructuring and achieving anticipated synergies;
- competitive factors, including but not limited to pricing pressures and new product introductions; the relative and varying rates of product price and component cost declines and the volume and mixture of product and services revenues; component and product quality and availability;

- the transition to new products, the uncertainty of customer acceptance of new product offerings, and rapid technological and market change; insufficient, excess or obsolete inventory;
- risks associated with our significant debt, including our ability to fulfill our debt service obligations, repurchase the notes upon a designated event or repay amounts owed upon conversion;
- war or acts of terrorism;
- the ability to attract and retain highly qualified employees; fluctuating currency exchange rates; risks associated with litigation; and
- other one-time events and other important factors disclosed previously and from time to time in our filings with the SEC.

Other factors that may cause our actual results to differ from the forward-looking statements contained herein and that may affect our prospects in general are included under the heading "Risk Factors" in this prospectus and in our filings with the SEC.

We caution you that any forward-looking statement reflects only our belief at the time the statement is made. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee our future results, levels of activity, performance or achievements. Except as required by law, we undertake no obligation to update any of the forward-looking statements to reflect events or developments after the date of this prospectus.

TRADEMARKS

EMC, Captiva, Documentum, LEGATO, Rainfinity, VMware, Network Intelligence and RSA are either registered trademarks or trademarks of EMC Corporation. Other trademarks referred to in this prospectus or the information incorporated by reference in this prospectus are either registered trademarks or trademarks of their respective owners.

SUMMARY

This summary does not include all of the information you should consider before deciding to purchase any notes or shares of our common stock. Please review this entire prospectus and the information incorporated herein by reference, including the risk factors section and our consolidated financial statements and related notes, before you decide to purchase any notes or shares of our common stock.

Except as otherwise indicated in this prospectus or as the context may otherwise indicate, in this prospectus the words we, our, and us refer to EMC Corporation and its subsidiaries.

Our Company

We develop and deliver a wide range of systems, software, services and solutions to help our customers manage growth, minimize risk, increase effectiveness, and maximize the value of information to unleash the true potential of their business.

We work with small, medium and enterprise customers from a variety of industries and government agencies worldwide to build an information infrastructure and implement an information lifecycle management strategy to manage information intelligently based on the information's changing value to an organization over time. This infrastructure is comprised of a variety of best-of-breed technologies to store, manage, protect and secure information to collaborate, solve problems, save money, exploit new opportunities, comply with regulations and policies and improve operational results.

To support our customers' critical business processes, we provide comprehensive systems to store information, taking into account service levels and costs. Our information management software and solutions empower our customers to capture, manage and leverage structured and unstructured information—documents, images or emails—to support their business processes. Our virtual infrastructure software helps organizations respond to changing information technology requirements by dynamically altering their computing and storage environments with flexible virtualization technologies. In addition, our resource management software allows organizations to better understand, manage and automate the operation of their information infrastructure.

We were incorporated in Massachusetts in 1979. Our corporate headquarters are located at 176 South Street, Hopkinton, Massachusetts, 01748-2230. Our telephone number is (508) 435-1000.

The Notes

The following is a brief summary to the notes solely for your convenience. This summary is not a complete description of the notes. You should read the full text and more specific details contained elsewhere in this prospectus. For a more detailed description of the notes and our common stock issuable upon conversion of the notes, see the sections entitled "Description of the Notes" and "Description of Capital Stock" in this prospectus. With respect to the discussion of the terms of the notes on the cover page, in this summary and in the section entitled "Description of the Notes," the words "we," "our," "us" and the "Company" refer only to EMC Corporation and to not any of its subsidiaries.

Issuer	EMC Corporation.
Notes Offered	\$1.725 billion in aggregate principal amount of 1.75% Convertible Senior Notes due 2011. \$1.725 billion in aggregate principal amount of 1.75% Convertible Senior Notes due 2013.
Maturity Date	The 2011 notes will mature on December 1, 2011, unless earlier redeemed, repurchased or converted. The 2013 notes will mature on December 1, 2013, unless earlier redeemed, repurchased or converted.
Interest	1.75% per year with respect to the 2011 notes and 1.75% per year with respect to the 2013 notes, in each case payable semi-annually in arrears in cash on June 1 and December 1 of each year, beginning June 1, 2007.
Ranking	The notes rank equally with any future senior debt and senior to any future subordinated debt and are effectively subordinated to all existing and future liabilities of our subsidiaries and to any secured debt we may issue to the extent of the value of the collateral. The indenture for the notes does not restrict us or our subsidiaries from incurring additional debt or other liabilities, including secured debt. Our subsidiaries have not guaranteed any of our obligations under the notes. As of September 30, 2006, our subsidiaries had outstanding liabilities, including trade and other payables but excluding intercompany amounts, in an amount equal to \$2.1 billion, all of which were effectively senior to the notes.
Conversion Rights	<p>Holders may convert their notes prior to the close of business on the scheduled trading day immediately preceding (i) September 1, 2011, in the case of the 2011 notes, and (ii) September 1, 2013, in the case of the 2013 notes, in each case, in multiples of \$1,000 in principal amount, at the option of the holder under the following circumstances:</p> <ul style="list-style-type: none"> • during the five business-day period after any five consecutive trading day period (the "measurement period") in which the trading price per note of the applicable series for each day of such measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such day; or • during any calendar quarter after the calendar quarter ending December 31, 2006, if the last reported sale price of our common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter exceeds 130% of the applicable conversion price in effect on the last trading day of the immediately preceding calendar quarter; or

- upon the occurrence of specified events described below under Description of the Notes Conversion Rights.

At the option of the holder, regardless of the foregoing circumstances, holders may convert their notes, in multiples of \$1,000 in principal amount, at any time on or after September 1, 2011, with respect to the 2011 notes, and at any time on or after September 1, 2013, with respect to the 2013 notes, in each case through the scheduled trading day immediately preceding the applicable maturity date, subject to prior repurchase of the notes.

The initial conversion rate for the notes is 62.1978 shares of common stock per \$1,000 in principal amount of notes, which is equivalent to an initial conversion price of approximately \$16.08 per share of common stock, subject to adjustment.

Upon valid tender of notes for conversion, we will pay, on the third trading day following the last day of the related 20 trading day observation period, an amount in cash equal to the lesser of (i) the principal amount and (ii) the daily conversion value (as described herein) of the notes converted for each trading day in such period, all calculated as described under Description of the Notes Conversion Rights Payment Upon Conversion. If the daily conversion value exceeds the principal amount of the converted notes on any trading day during the relevant 20 trading-day observation period, in addition to paying the principal amount of the converted notes in cash for such trading day, we will also deliver, at our election, cash or shares of our common stock or a combination of cash and shares of our common stock in an amount equal to the excess of the daily conversion value over the principal amount of the converted notes for such trading day, all calculated as described under Description of the Notes Conversion Rights Payment upon Conversion.

In addition, if a fundamental change occurs prior to maturity, subject to certain limitations and provided such fundamental change is not a public acquirer change in control in respect of which the Company has elected to adjust the conversion rate as described under Description of the Notes Conversion Rights Conversion Rate Adjustments Conversion After a Public Acquirer Fundamental Change, we will increase the conversion rate for a holder who elects to convert its notes in connection with such fundamental change upon conversion in the circumstances as described under Description of the Notes Conversion Rights Conversion Rate Adjustments Adjustment to Conversion Rate upon Fundamental Change. No adjustment to the conversion rate will be paid if the stock price is less than \$12.61 or if the stock price exceeds \$40.00 (in each case, subject to adjustment).

Holders of the notes will not receive any additional cash payment or additional shares representing accrued and unpaid interest upon conversion of a note, except in limited circumstances. Instead, interest will be deemed paid by the cash and shares, if any, of common stock delivered to holders upon conversion.

Sinking Fund

None.

Optional Redemption by EMC

The notes may not be redeemed prior to maturity.

Designated Event Repurchase Right of Holders

Subject to certain exceptions, if we undergo a designated event as defined below under Description of the Notes Designated Event Permits Holders to Require us to Purchase Notes, including a fundamental change as defined in such section, holders of notes will have the option to require us to repurchase all or any portion of their notes. The designated event repurchase price will be 100% of the principal amount of the notes to be purchased plus any accrued and unpaid interest to but excluding the designated event repurchase date. We will pay cash for all notes so repurchased.

Events of Default

Except as noted below, if an event of default on the notes occurs, the principal amount of the notes, plus accrued and unpaid interest and special interest, if any, may be declared immediately due and payable, subject to certain conditions set forth in the indenture. If the event of default relates to our failure to comply with the reporting obligations in the indenture, at our option, the sole remedy for the first 60 days following such event of default consists exclusively of the right to receive special interest on the notes at an annual rate of 0.25% of the principal amount of the notes. The notes automatically become due and payable in the case of certain types of bankruptcy or insolvency events of default involving us.

Registration Rights

Pursuant to the registration rights agreement we entered into with the initial purchasers of the notes, we have filed a shelf registration statement, of which this prospectus is a part, with the SEC relating to the resale of the notes and common stock issuable upon conversion of the notes. We have agreed in the registration rights agreement to use our commercially reasonable efforts to keep the shelf registration statement effective until the earliest of:

- the date when all securities covered by the registration statement have been sold;
- the expiration of the period referred in Rule 144(k) under the Securities Act with respect to notes or shares held by non-affiliates of the Company, or any successor provision; and
- the date that is two years after the effective date of the registration statement.

We may suspend the use of the registration statement to resell notes or shares of common stock issuable upon conversion of the notes for reasons relating to pending corporate developments, public filings or other events.

Subject to certain exceptions, we will be required to pay the holders of notes special interest on the notes if we fail to keep the registration statement effective during the periods described above. See Description of the Notes Registration Rights.

Trading

Prior to this offering, the notes have been eligible for trading in The PORTALSM Market. However, the notes resold pursuant to this prospectus will no longer be eligible for trading in The PORTALSM Market. We do not intend to list the notes on any national securities exchange.

New York Stock Exchange
Symbol for Our
Common Stock

Our common stock is listed on the NYSE under the symbol EMC.

DTC

The notes were issued in fully registered book-entry form and are represented by permanent global notes without coupons deposited with the trustee for the notes, as custodian for the Depository Trust Company, or the DTC. Beneficial interests in global notes will be shown on, and transfers thereof will be effected only through, records maintained by the DTC and its direct and indirect participants, and a holder's interest in any global note may not be exchanged for certificated notes, except in limited circumstances described under Description of the Notes Global Notes, Book-Entry Form.

Use of Proceeds

The selling securityholders will receive all of the proceeds from the sale under this prospectus of the notes and common stock issuable upon conversion of the notes. We will not receive any proceeds from these sales.

United States Federal Income
Tax Considerations

You should consult your tax advisor with respect to the U.S. federal income tax consequences of owning the notes and the common stock into which the notes may be converted in light of your own particular situation and with respect to any tax consequences arising under the laws of any state, local, foreign or other taxing jurisdiction. See Certain United States Federal Income Tax Considerations.

Risk Factors

See Risk Factors for a discussion of factors that should be considered with respect to an investment in the notes.

8

RISK FACTORS

Before you decide to invest in the notes or our common stock, in addition to the risk factors set forth below, you should carefully consider the risks and other information included or incorporated by reference in this prospectus, including those set forth under Item 1A of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 filed November 6, 2006, as the same may be updated from time to time by our future filings under the Exchange Act. For more information see Additional Information. These risks and uncertainties are not the only ones we face. Others that we do not know about now, or that we do not now think are important, may also impair our business. The risks described in this section and included or incorporated by reference in this prospectus could cause our actual results to differ materially from those anticipated.

Risks Related to an Investment in the Notes

Our debt service obligations may adversely affect our cash flow.

While the notes are outstanding, we will have debt service obligations on the notes of approximately \$60.4 million per year in interest payments. If we issue other debt securities in the future, our debt service obligations will increase. If we are unable to generate sufficient cash to meet these obligations and must instead use our existing cash or investments, we may have to reduce, curtail or terminate other activities of our business.

We intend to fulfill our debt service obligations from cash generated by our operations, if any, and from our existing cash and investments. We may enter into other senior financial instruments.

Our indebtedness could have significant negative consequences to you. For example, it could:

- increase our vulnerability to general adverse economic and industry conditions;
- limit our ability to obtain additional financing;
- require the dedication of a substantial portion of any cash flow from operations to the payment of principal of, and interest on, our indebtedness, thereby reducing the availability of such cash flow to fund our growth strategy, working capital, capital expenditures and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and our industry; and
- place us at a competitive disadvantage relative to our competitors with less debt.

The notes effectively rank junior in right of payment to any future secured debt and the liabilities of our subsidiaries.

The notes are our general, unsecured obligations and effectively rank junior in right of payment to any future secured debt to the extent of the value of the assets securing such debt. The notes are equal in right of payment with any future unsubordinated, unsecured debt. We expect from time to time to incur additional indebtedness and other liabilities.

In addition, the notes are not guaranteed by any of our existing or future subsidiaries. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due with respect to the notes or to make any funds available therefor, whether by dividends, loans or other payments. As a result, the notes effectively rank junior in right of payment to all existing and future debt and other liabilities, including trade payables, of our subsidiaries. As of September 30, 2006, our subsidiaries had approximately \$2.1 billion in outstanding liabilities, including trade and other payables but excluding intercompany amounts.

The conditional conversion feature of the notes could prevent holders of notes from receiving the value of cash, or cash and common stock, into which a note would otherwise be convertible.

Prior to September 1, 2011 (in the case of the 2011 notes) or September 1, 2013 (in the case of the 2013

notes), the notes are convertible into cash, or cash and shares of our common stock, only if specified conditions are met. If the specific conditions for conversion are not met, holders will not be able to convert notes until after September 1, 2011 (in the case of the 2011 notes) or September 1, 2013 (in the case of the 2013 notes), and holders may not be able to receive the value of the cash and common stock into which the notes would otherwise be convertible.

The net share settlement feature of the notes may have adverse consequences.

The notes are subject to net share settlement, which means that we will satisfy our conversion obligation to holders by paying cash in settlement of the lesser of the principal amount and the conversion value of the notes and by delivering, at our election, cash or shares of our common stock, or a combination of cash and common stock, in settlement of any and all conversion obligations in excess of the daily conversion values, as described under Description of the Notes Conversion Rights Payment upon Conversion. Accordingly, upon conversion of a note, holders might not receive any shares of our common stock, or they might receive fewer shares of common stock relative to the conversion value of the note. In addition, any settlement of a conversion of notes into cash and shares of our common stock will be delayed until at least the 25th trading day following our receipt of the holder's conversion notice. Accordingly, you may receive fewer proceeds than expected because the value of our common stock may decline, or fail to appreciate as much as you may expect, between the day that you exercise your conversion right and the day the conversion value of your notes is determined.

An active trading market may not develop for the notes. The failure of a market to develop for the notes could adversely affect the liquidity and value of holders' notes.