

CHESAPEAKE UTILITIES CORP

Form S-3/A

November 06, 2006

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**As filed with the Securities and Exchange Commission on November 6, 2006**  
**Registration No. 333-135602**

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

**PRE-EFFECTIVE AMENDMENT NO. 1**  
**TO**  
**Form S-3**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**Chesapeake Utilities Corporation**  
*(Exact name of registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*

**51-0064146**  
*(I.R.S. Employer  
Identification No.)*

**909 Silver Lake Boulevard**  
**Dover, Delaware 19904**  
**(302) 734-6799**  
*(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)*

**Michael P. McMasters, Senior Vice President &  
Chief Financial Officer**  
**Chesapeake Utilities Corporation**  
**909 Silver Lake Boulevard**  
**Dover, Delaware 19904**  
**(302) 734-6799**  
*(Name, address, including zip code, and telephone number,  
including area code, of agent for service)*

***Copies to:***

**William Appleton, Esq.**  
**Baker & Hostetler LLP**  
**312 Walnut Street, Suite 3200**  
**Cincinnati, Ohio 45202-4074**  
**(513) 929-3400**

**Approximate date of commencement of proposed sale to the public:** From time to time 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.

**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 the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**PROSPECTUS**

**Chesapeake Utilities Corporation**

**Common Stock and Debt Securities**

We may offer, from time to time in one or more offerings, in amounts, at prices and on terms that we will determine at the time of offering, shares of our common stock, par value per share \$0.4867 (the Common Stock ), and/or debt securities. We will provide the specific terms of any offering of Common Stock and/or debt securities in supplements to this prospectus. The prospectus supplements will also describe the specific manner in which we will offer these securities and may also supplement, update or amend information contained in this prospectus. You should read this prospectus, the applicable prospectus supplement, and any documents incorporated by reference into this prospectus carefully before you invest.

We may sell Common Stock and/or debt securities on a continuous or delayed basis directly, through agents, dealers or underwriters as designated from time to time, or through a combination of these methods. If any agents, dealers or underwriters are involved in the sale of any securities, the applicable prospectus supplement will set forth any applicable commissions or discounts. Our net proceeds from the sale of securities also will be set forth in the applicable prospectus supplement.

Our Common Stock is listed on the New York Stock Exchange under the symbol CPK .

**These Securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission, nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

**We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus or any applicable supplement to this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or any applicable supplement to this prospectus as if we had authorized it. This prospectus and any applicable prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate. Nor do this prospectus and any accompanying prospectus supplement constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus or any applicable prospectus supplement is correct on any date after its date, even though this prospectus or a supplement is delivered or securities are sold on a later date.**

The date of this prospectus is November 6, 2006.

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## FORWARD-LOOKING INFORMATION

This prospectus and the applicable prospectus supplements include and incorporate by reference forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Forward-looking statements are generally identifiable by use of the words believe, expect, intend, anticipate, plan, estimate, project or similar expressions. Our ability to produce results or the actual effect of future plans or strategies is inherently uncertain. Actual results could differ materially from those in forward-looking statements because of, among other reasons, the factors described under the caption Risk Factors in the periodic reports that we file with the Securities and Exchange Commission. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission using a shelf registration process. Under this shelf process, we may sell any combination of our Common Stock and/or debt securities described in this prospectus in one or more offerings up to a total amount of \$40,000,000.00. This prospectus only provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and the applicable prospectus supplement together with additional information described under the headings, Where You Can Find More Information and Incorporation of Certain Information by Reference.

Unless otherwise indicated or unless the context requires otherwise, all references in this prospectus to we, us, our, the Company, the Registrant or Chesapeake mean Chesapeake Utilities Corporation and all entities owned or controlled

by Chesapeake Utilities Corporation. When we refer to our Certificate of Incorporation, we mean Chesapeake Utilities Corporation's Amended Certificate of Incorporation, and when we refer to our Bylaws, we mean Chesapeake Utilities Corporation's Amended Bylaws.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission (the SEC) pursuant to the Exchange Act. Such filings are available to the public from the SEC's website at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at the

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SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain copies of any document filed by us at prescribed rates by writing to the Public Reference Section of the SEC at that address. You may obtain information about the operation of the SEC's Public Reference Room by calling the SEC at 1-800-SEC-0330. You may inspect reports and other information that we file at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005. Information about us, including our filings, is also available on our website at <http://www.chpk.com>. Unless expressly incorporated by reference, information contained on or made available through our website is not a part of this prospectus or any accompanying prospectus supplement.

We have filed a registration statement, of which this prospectus is a part, and related exhibits with the SEC under the Securities Act. That registration statement contains additional information about us and the Common Stock and debt securities. You may inspect the registration statement and exhibits without charge at the SEC's Public Reference Room or at the SEC's web site set forth above, and you may obtain copies from the SEC at prescribed rates.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference the information contained in documents we file with the SEC, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus. Any statement contained in a document that is incorporated by reference in this prospectus is automatically updated and superseded if information contained in this prospectus, or information that we later file with the SEC, modifies or replaces that information. Any statement made in this prospectus or any prospectus supplement concerning the contents of any contract, agreement or other document is only a summary of the actual contract, agreement or other document. If we have filed or incorporated by reference any contract, agreement or other document as an exhibit to the registration statement, you should read the exhibit for a more complete understanding of the document or matter involved. Each statement regarding a contract, agreement or other document is qualified in its entirety by reference to the actual document.

We incorporate by reference the following documents we filed, excluding any information contained therein or attached as exhibits thereto which has been furnished to, but not filed with, the SEC:

- (a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2005, filed on March 7, 2006;
- (b) Our definitive Proxy Statement on Schedule 14A filed on March 31, 2006;
- (c) Our Current Report on Form 8-K dated March 11, 2006, filed on March 16, 2006;
- (d) Our Current Report on Form 8-K dated May 2, 2006, filed on May 3, 2006;
- (e) Our Current Report on Form 8-K dated May 1, 2006, filed on May 5, 2006;
- (f) Our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2006, filed on May 10, 2006;
- (g) Our Current Report on Form 8-K dated May 31, 2006, filed on June 2, 2006;
- (h) Our Current Report on Form 8-K dated June 13, 2006, filed on June 19, 2006;
- (i) Our Current Report on Form 8-K dated August 1, 2006, filed on August 7, 2006;
- (j) Our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2006, filed on August 9, 2006;

- (k) Our Current Report on Form 8-K dated August 31, 2006, filed on September 7, 2006;
- (l) Our Current Report on Form 8-K dated September 19, 2006, filed on September 22, 2006;
- (m) Our Current Report on Form 8-K dated September 26, 2006, filed on October 2, 2006;
- (n) Our Current Report on Form 8-K dated October 12, 2006, filed on October 17, 2006;



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(o) Our Current Report on Form 8-K dated October 31, 2006, filed on November 6, 2006;

(p) The description of our preferred stock purchase rights contained in our Registration Statement on Form 8-A filed on August 24, 1999, and all amendments or reports filed with the SEC for the purpose of updating such description, and further described in the section, Description of Common Stock ; and

(q) The description of our Common Stock contained in our registration statements filed pursuant to Section 12 of the Exchange Act, and all amendments or reports filed with the SEC for the purpose of updating such description, and further described in the section, Description of Common Stock.

Any documents we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and prior to the termination of the offering of the securities to which this prospectus relates will automatically be deemed to be incorporated by reference in this prospectus and a part of this prospectus from the date of filing such documents; provided however, that we are not incorporating, in each case, any documents or information contained therein that has been furnished to, but not filed with, the SEC.

To receive a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in any such documents), call or write Chesapeake Utilities Corporation, 909 Silver Lake Boulevard, Dover, Delaware 19904, Attention: Michael P. McMasters, Senior Vice President and Chief Financial Officer, telephone number (302) 734-6799. We also maintain a web site that contains additional information about us (<http://www.chpk.com>).

You should rely only on the information incorporated by reference or set forth in this prospectus or the applicable prospectus supplement. We have not authorized anyone else to provide you with different information. We may only use this prospectus to sell securities if it is accompanied by a prospectus supplement. We are offering these securities only in states where the offer is permitted. You should not assume that the information in this prospectus or the applicable prospectus supplement is accurate as of any date other than the dates on the front pages of these documents.

**THE COMPANY**

We are a diversified utility company engaged directly or through subsidiaries in natural gas distribution, transmission and marketing, propane distribution and wholesale marketing, advanced information services and other related businesses. We are a Delaware corporation that was formed in 1947. As of June 30, 2006, our three natural gas distribution divisions served approximately 56,800 residential, commercial and industrial customers in central and southern Delaware, Maryland's Eastern Shore and parts of Florida. Our natural gas transmission subsidiary, Eastern Shore Natural Gas Company, operates a 331-mile interstate pipeline system that transports gas from various points in Pennsylvania to our Delaware and Maryland distribution divisions, as well as to other utilities and industrial customers in southern Pennsylvania, Delaware and on the Eastern Shore of Maryland. As of June 30, 2006, our propane distribution operation served approximately 32,700 customers in central and southern Delaware, the Eastern Shore of Maryland and Virginia, southeastern Pennsylvania, and parts of Florida; and our wholesale propane marketing subsidiary markets propane to large independent and petrochemical companies, resellers and retail propane companies in the United States. Our advanced information services segment provides domestic and international clients with information technology-related business services and solutions for both enterprise and e-business applications. Our principal executive office is located at 909 Silver Lake Boulevard, Dover, Delaware 19904, and our telephone number is (302) 734-6799. Our website address is <http://www.chpk.com>. Unless expressly incorporated by reference, information contained on or made available through our website is not a part of this prospectus or any accompanying prospectus supplement.

**USE OF PROCEEDS**

Unless otherwise specified in a prospectus supplement, the net proceeds from the sale of Common Stock and/or debt securities will be added to our general corporate funds and may be used for general corporate purposes including, but not limited to, financing of capital expenditures, repayment of short-term debt, funding share repurchases, financing acquisitions, investing in subsidiaries and general working capital purposes. Prior to such application, all or a portion of the net proceeds may be invested in short-term investments.

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**DESCRIPTION OF COMMON STOCK**

Our Certificate of Incorporation authorizes us to issue up to 12,000,000 shares of Common Stock, par value per share \$0.4867. As of June 30, 2006, we had 5,957,627 shares of Common Stock outstanding. In addition, as of June 30, 2006, we have reserved 487,950 shares of Common Stock for issuance under our equity-based compensation plans and 30,000 shares of Common Stock for issuance upon the exercise of warrants. Our Certificate of Incorporation also authorizes us to issue up to 2,000,000 shares of preferred stock, par value per share \$0.01; however, no shares of preferred stock are outstanding. Our Common Stock is listed on the New York Stock Exchange under the symbol,

CPK. The transfer agent and registrar of the Common Stock is Computershare Trust Company, N.A., P.O. Box 43010, Providence, Rhode Island 02940-3010.

The following descriptions of our Common Stock and preferred stock set forth certain of their general terms and provisions. The following descriptions are in all respects subject to and qualified by reference to the applicable provisions of our Certificate of Incorporation and our Bylaws.

Holders of our Common Stock are entitled to receive dividends when, as and if declared by our Board of Directors, out of funds legally available therefor. If we are liquidated, dissolved or involved in any winding-up, the holders of our Common Stock are entitled to receive ratably any assets legally available for distribution to holders of Common Stock. Holders of our Common Stock possess ordinary voting rights, with each share entitling the holder to one vote. Directors are elected by a plurality of the votes cast by the holders of our Common Stock present in person or represented by proxy at the meeting and entitled to vote for the election of directors. Holders of our Common Stock do not have preemptive rights, which means that they have no right to acquire any additional shares of Common Stock that we may subsequently issue (other than pursuant to the Rights, described below). Holders of our Common Stock also do not have conversion or subscription rights, and the Common Stock is not subject to redemption by the Company.

All of our shares of Common Stock currently outstanding are, and any shares of Common Stock offered hereby when issued will be, fully paid and nonassessable.

We may issue preferred stock from time to time, by authorization of our Board of Directors and without the necessity of further action or authorization by our stockholders, in one or more series and with such voting powers, designations, preferences and relative, participating, optional or other special rights and qualifications as our Board may, in its discretion, determine, including, but not limited to (a) the distinctive designation of such series and the number of shares to constitute such series; (b) the dividends, if any, for such series; (c) the voting power, if any, of shares of such series; (d) the terms and conditions (including price), if any, upon which shares of such stock may be converted into or exchanged for shares of stock of any other class or any other series of the same class or any other securities or assets; (e) our right, if any, to redeem shares of such series and the terms and conditions of such redemption; (f) the retirement or sinking fund provisions, if any, of shares of such series and the terms and provisions relative to the operation thereof; (g) the amount, if any, which the holders of the shares of such series shall be entitled to receive in case of our liquidation, dissolution or winding-up; (h) the limitations and restrictions, if any, upon the payment of dividends or the making of other distributions on, and upon our purchase, redemption, or other acquisition of, our Common Stock; and (i) the conditions or restrictions, if any, upon the creation of indebtedness or upon the issuance of any additional stock.

Under our Certificate of Incorporation, the affirmative vote of not less than 75% of the total voting power of all outstanding shares of our stock is required to approve our merger or consolidation with, or the sale of all or substantially all of our assets or business to, any other corporation (other than a corporation 50% or more of the

common stock of which we own), if such corporation or its affiliates singly or in the aggregate own or control directly or indirectly 5% or more of our outstanding shares of Common Stock, unless the transaction is approved by our Board of Directors prior to the acquisition by such corporation or its affiliates of ownership or control of 5% or more of our outstanding shares of Common Stock. In addition, our Certificate of Incorporation provides for a classified Board of Directors under which one-third of the members are elected annually for three-year terms. The supermajority voting requirement for certain mergers and consolidations and our classified Board of Directors may have the effect of delaying, deferring or preventing a change in control of the Company.

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On August 25, 1999, we filed with the SEC a Registration Statement on Form 8-A with respect to Rights (defined below) to purchase our Series A Participating Cumulative Preferred Stock, par value per share \$0.01 (the Preferred Shares ). On August 20, 1999, our Board of Directors declared a dividend distribution of one preferred share purchase right (a Right ) for each outstanding share of our Common Stock. The dividend was payable to the stockholders of record on September 3, 1999 (the Record Date ). One Right will also be issued with each share of Common Stock issued thereafter until the Distribution Date (defined below) and, in certain circumstances, with each share of Common Stock issued after the Distribution Date. Except as set forth below, each Right, when it becomes exercisable, entitles the registered holder to purchase from the Company one-fiftieth of a Preferred Share at a price of \$54.56 (the Purchase Price ), subject to adjustment. The description and terms of the Rights and the definition of the Distribution Date are set forth in a Rights Agreement (the Rights Agreement ) between the Corporation and Computershare Trust Company, N.A., successor to BankBoston, N.A., as Rights Agent (the Rights Agent ), dated as of August 20, 1999. The Rights are not exercisable until the Distribution Date and will expire at the close of business on August 20, 2009, unless earlier redeemed by the Company. The Registration Statement on Form 8-A, and the Rights Agreement attached thereto as an exhibit, are incorporated herein by reference. This description of the Rights, the Rights Agreement and the Preferred Shares is in all respects subject to and qualified by reference to the Registration Statement on Form 8-A, the Rights Agreement attached thereto as an exhibit and the applicable provisions of our Certificate of Incorporation and our Bylaws.

The Preferred Shares purchasable upon exercise of the Rights will not be redeemable. Each Preferred Share will be entitled to a minimum preferential quarterly dividend payment equal to the greater of (i) \$13.00 per share (or \$0.26 per 1/50th of a Preferred Share) and (ii) an aggregate dividend per share of 50 times (subject to adjustment) the dividend declared per share of Common Stock. In the event of liquidation, the holders of the Preferred Shares will be entitled to a minimum preferential liquidation payment of \$900.00 per share (or \$18.00 per 1/50th of a Preferred Share); thereafter, and after the holders of the Common Stock receive a liquidation payment of \$18.00 per share, the holders of the Preferred Shares and the holders of the Common Stock will share the remaining assets in the ratio of 50 (subject to adjustment) to one for each Preferred Share and share of Common Stock so held, respectively. In the event of any merger, consolidation or other transaction in which Common Stock is exchanged, each Preferred Share will be entitled to receive 50 times (subject to adjustment) the amount received per share of Common Stock. The holders of Preferred Shares will be entitled to vote on all matters submitted to a vote of the Common Stock (with the Preferred Shares being entitled to 50 votes per share). In the event that the amount of accrued and unpaid dividends on the Preferred Shares is equivalent to six full quarterly dividends or more, the holders of the Preferred Shares shall have the right, voting as a class, to elect two directors in addition to the directors elected by the holders of the Common Stock until all cumulative dividends on the Preferred Shares have been paid through the last quarterly dividend payment date. These rights are protected by customary anti-dilution provisions. Because of the nature of the dividend, liquidation and voting rights of the Preferred Shares, the value of a one-fiftieth interest in a Preferred Share purchasable upon the exercise of a Right should approximate the value of one share of Common Stock. The Rights approved by the Board of Directors of the Company were designed to protect the value of the outstanding Common Stock in the event of an unsolicited attempt by an acquirer to take over the Company in a manner or on terms not approved by the Board of Directors. The Rights were not intended to prevent a takeover of the Company at a fair price and should not interfere with any merger or business combination approved by the Board of Directors. The Rights have no dilutive effect, nor do they affect reported earnings per share or change the way in which the Common Stock is traded.

The Rights may have the effect of rendering more difficult or discouraging an acquisition of the Company deemed undesirable by the Board of Directors. If a person or group attempts to acquire the Company on terms or in a manner not approved by the Board of Directors, then the Rights may cause such person's or group's ownership interest to become substantially diluted unless the offer includes, as a condition to the acquisition, a provision that the Rights will be purchased, redeemed or otherwise effectively eliminated.

**DESCRIPTION OF THE DEBT SECURITIES**

The following description of the terms of the debt securities sets forth general terms that may apply to the debt securities and provisions of the indentures that will govern the debt securities. The description is not intended to be

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complete, as we will describe the particular terms of any debt securities in the prospectus supplement relating to those debt securities.

The debt securities will be either our senior debt securities or our subordinated debt securities. The senior debt securities will be issued under an indenture between us and the trustee. We refer to this indenture as the senior indenture. The subordinated debt securities will be issued under an indenture between us and the trustee. We refer to this indenture as the subordinated indenture and to the senior indenture and the subordinated indenture together as the indentures.

The following is a summary of some provisions of the indentures. The summary does not purport to be complete, and is subject to, and qualified in its entirety by reference to, all of the provisions of each indenture. Copies of the entire indentures are exhibits to the registration statement of which this prospectus is a part. Parenthetical section references under this heading are references to sections to each of the indentures unless we indicate otherwise.

## **General Terms**

Neither indenture limits the amount of debt securities that we may issue. (Section 301). Each indenture provides that debt securities may be issued up to the principal amount authorized by us from time to time. The senior debt securities will be unsecured and will have the same rank as all of our other unsecured and unsubordinated debt. The subordinated debt securities will be unsecured and will be subordinated to all senior indebtedness as set forth below. None of our subsidiaries will have any obligations with respect to the debt securities. Therefore, our rights and the rights of our creditors, including holders of senior debt securities and subordinated debt securities, to participate in the assets of any subsidiary will be subject to the prior claims of the creditors of our subsidiaries.

We may issue the debt securities in one or more separate series of senior debt securities and/or subordinated debt securities. (Section 301). The prospectus supplement relating to the particular series of debt securities being offered will specify the particular amounts, prices and terms of those debt securities. These terms may include:

the title of the debt securities and the series in which the debt securities will be included;

the authorized denominations and aggregate principal amount of the debt securities;

the date or dates on which the principal and premium, if any, are payable;

the rate or rates per annum at which the debt securities will bear interest, if there is any interest, or the method or methods of calculating interest and the date from which interest will accrue;

the place or places where the principal of and any premium and interest on the debt securities will be payable;

the dates on which the interest will be payable and the corresponding record dates;

the period or periods within which, the price or prices at which, and the terms and conditions on which, the debt securities may be redeemed, in whole or in part, at our option;

any obligation to redeem, repay or purchase debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder;

the portion of the principal amount of the debt securities payable upon declaration of the acceleration of the maturity of the debt securities;

the person to whom any interest on any debt security will be payable if other than the person in whose name the debt security is registered on the applicable record date;

any events of default, covenants or warranties applicable to the debt securities;

if applicable, provisions related to the issuance of debt securities in book-entry form;

the currency, currencies or composite currency of denomination of the debt securities;



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the currency, currencies or composite currencies in which payments on the debt securities will be payable and whether the holder may elect payment to be made in a different currency;

whether and under what conditions we will pay additional amounts to holders of the debt securities;

the terms and conditions of any conversion or exchange provisions in respect of the debt securities;

the terms pursuant to which our obligation under the indenture may be terminated through the deposit of money or government obligations;

whether the debt securities will be subordinated in right of payment to senior indebtedness and the terms of any such subordination; and

any other specific terms of the debt securities not inconsistent with the applicable indenture. (Section 301).

Unless otherwise specified in the applicable prospectus supplement, the debt securities will not be listed on any securities exchange.

Unless the applicable prospectus supplement specifies otherwise, we will issue the debt securities in fully registered form without coupons. If we issue debt securities of any series in bearer form, the applicable prospectus supplement will describe the special restrictions and considerations, including special offering restrictions and special federal income tax considerations, applicable to those debt securities and to payment on and transfer and exchange of those debt securities.

**U.S. Federal Income Tax Considerations**

We may issue the debt securities as original issue discount securities, bearing no interest or bearing interest at a rate, which, at the time of issuance, is below market rates, to be sold at a substantial discount below their principal amount. We will describe some special U.S. federal income tax and other considerations applicable to any debt securities that are issued as original issue discount securities in the applicable prospectus supplement. We encourage you to consult with your own competent tax and financial advisors on these important matters.

**Payment, Registration, Transfer and Exchange**

Subject to any applicable laws or regulations, we will make payments on the debt securities at a designated office or agency, unless the applicable prospectus supplement otherwise sets forth. At our option, however, we may also make interest payments on the debt securities in registered form:

by checks mailed to the persons entitled to interest payments at their registered addresses; or

by wire transfer to an account maintained by the person entitled to interest payments as specified in the security register.

Unless the applicable prospectus supplement otherwise indicates, we will pay any installment of interest on debt securities in registered form to the person in whose name the debt security is registered at the close of business on the regular record date for that installment of interest. (Section 307). If a holder wishes to receive a payment by wire transfer, the holder should provide the paying agent with written wire transfer instructions at least 15 days prior to the

payment date.

Unless the applicable prospectus supplement otherwise sets forth, debt securities issued in registered form will be transferable or exchangeable at the agency we may designate from time to time. Debt securities may be transferred or exchanged without service charge, other than any tax or other governmental charge imposed in connection with the transfer or exchange. (Section 305).

### **Book-Entry Procedures**

The applicable prospectus supplement for each series of debt securities will state whether those debt securities will be subject to the following provisions.

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Unless debt securities in physical form are issued, the debt securities will be represented by one or more fully-registered global certificates, in denominations of \$1,000 or any integral multiple of \$1,000. Each global certificate will be deposited with, or on behalf of, The Depository Trust Company ( DTC ), and registered in its name or in the name of Cede & Co. or other nominee of DTC. No holder of debt securities initially issued as a global certificate will be entitled to receive a certificate in physical form, except as set forth below.

DTC has advised us that:

DTC is:

- a banking organization within the meaning of the New York banking law;
- a limited purpose trust company organized under the New York banking law;
- a member of the Federal Reserve System;
- a clearing corporation within the meaning of the New York Uniform Commercial Code; and
- a clearing agency registered pursuant to Section 17A of the Exchange Act.

DTC holds securities for DTC participants and facilitates the settlement of securities transactions between DTC participants through electronic book-entry transfers, thereby eliminating the need for physical movement of certificates.

DTC participants include securities brokers and dealers, banks, trust companies and clearing corporations.

Access to DTC's book-entry system is also available to others, such as banks, brokers and dealers, and trust companies and clearing corporations that clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly.

Holders that are not DTC participants but desire to purchase, sell or otherwise transfer ownership of, or other interests in, the debt securities may do so only through DTC participants. In addition, holders of the debt securities will receive all distributions of principal and interest from the trustee through DTC participants. Under the rules, regulations and procedures creating and affecting DTC and its operation, DTC is required to make book-entry transfers of debt securities among DTC participants on whose behalf it acts and to receive and transmit distributions of principal of, and interest on, the debt securities. Under the book-entry system, holders of debt securities may experience some delay in receipt of payments, since the trustee will forward such payments to Cede & Co., as nominee for DTC, and DTC, in turn, will forward the payments to the appropriate DTC participants.

DTC participants will be responsible for distributions to holders of debt securities, which distributions will be made in accordance with customary industry practices. Although holders of debt securities will not have possession of the debt securities, the DTC rules provide a mechanism by which those holders will receive payments and will be able to transfer their interests. Although the DTC participants are expected to convey the rights represented by their interests in any global security to the related holders, because DTC can act only on behalf of DTC participants, the ability of holders of debt securities to pledge the debt securities to persons or entities that are not DTC participants or to otherwise act with respect to the debt securities may be limited due to the lack of physical certificates for the debt securities.

Neither we nor the trustee under the applicable indenture nor any agent of either of them will be responsible or liable for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the debt securities or for supervising or reviewing any records relating to such beneficial ownership interests. Since the only holder of debt securities, for purposes of the indenture, will be DTC or its nominee, the trustee will not recognize beneficial holders of debt securities as holders of debt securities, and beneficial holders of debt securities will be permitted to exercise the rights of holders only indirectly through DTC and DTC participants. DTC has advised us that it will take any action permitted to be taken by a holder of debt securities under the indenture only at the direction of one or more DTC participants to whose accounts with DTC the related debt securities are credited.

All payments we make to the trustee will be in immediately available funds and will be passed through to DTC in immediately available funds.

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Physical certificates will be issued to holders of a global security, or their nominees, if:

DTC advises the trustee in writing that DTC is no longer willing, able or eligible to discharge properly its responsibilities as depository and we are unable to locate a qualified successor; or

We decide in our sole discretion to terminate the book-entry system through DTC. (Section 305).

In such event, the trustee under the applicable indenture will notify all holders of debt securities through DTC participants of the availability of such physical debt securities. Upon surrender by DTC of a definitive global note representing the debt securities and receipt of instructions for reregistration, the trustee will reissue the debt securities in physical form to holders or their nominees. (Section 305).

Debt securities in physical form will be freely transferable and exchangeable at the office of the trustee upon compliance with the requirements set forth in the applicable indenture.

No service charge will be imposed for any registration of transfer or exchange, but payment of a sum sufficient to cover any tax or other governmental charge may be required. (Section 305).

**Consolidation, Merger or Sale by the Company**

Each indenture generally permits a consolidation or merger between us and another U.S. corporation. It also permits the sale or transfer by us of all or substantially all of our property and assets and the purchase by us of all or substantially all of the property and assets of another corporation. These transactions are permitted if:

the resulting or acquiring corporation, if other than us, assumes all of our responsibilities and liabilities under the indenture, including the payment of all amounts due on the debt securities and performance of the covenants in the indenture; and

immediately after the transaction, no event of default exists. (Section 801).

Even though each indenture contains the provisions described above, we are not required by either indenture to comply with those provisions if we sell all of our property and assets to another U.S. corporation if, immediately after the sale, that corporation is one of our wholly-owned subsidiaries. (Section 803).

If we consolidate or merge with or into any other corporation or sell all or substantially all of our assets according to the terms and conditions of each indenture, the resulting or acquiring corporation will be substituted for us in the indentures with the same effect as if it had been an original party to the indentures. As a result, the successor corporation may exercise our rights and powers under each indenture, in our name or in its own name and we will be released from all our liabilities and obligations under each indenture and under the debt securities. (Section 802).

**Events of Default, Notice and Certain Rights on Default**

Unless otherwise stated in the applicable prospectus supplement, an event of default, when used with respect to any series of debt securities, means any of the following:

failure to pay interest on any debt security of that series for 30 days after the payment is due;

failure to pay the principal of or any premium on any debt security of that series when due;

failure to deposit any sinking fund payment on debt securities of that series when due;

failure to perform any other covenant in the applicable indenture that applies to debt securities of that series for 90 days after we have received written notice of the failure to perform in the manner specified in the indenture;

default under any debt, including other series of debt securities, or under any mortgage, lien or other similar encumbrance, indenture or instrument, including the indentures, which secures any debt, and which results in acceleration of the maturity of an outstanding principal amount of debt greater than \$50 million, unless the acceleration is rescinded, or the debt is discharged, within 10 days after we have received written notice of the default in the manner specified in the indenture;

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certain events in bankruptcy, insolvency or reorganization; or

any other event of default that may be specified for the debt securities of that series when that series is created. (Section 501).

If an event of default for any series of debt securities occurs and continues, the trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the series may declare the entire principal of all the debt securities of that series to be due and payable immediately. If a declaration occurs, the holders of a majority of the aggregate principal amount of the outstanding debt securities of that series can, subject to certain conditions, rescind the declaration. (Section 502).

The prospectus supplement relating to each series of debt securities which are original issue discount securities will describe the particular provisions that relate to the acceleration of maturity of a portion of the principal amount of that series when an event of default occurs and continues.

An event of default for a particular series of debt securities does not necessarily constitute an event of default for any other series of debt securities issued under either indenture.

Each indenture requires us to file an officers certificate with the trustee each year that states that certain defaults do not exist under the terms of the indenture. The trustee will transmit by mail to the holders of debt securities of a series notice of any default.

Other than its duties in the case of a default, a trustee is not obligated to exercise any of its rights or powers under an indenture at the request, order or direction of any holders, unless the holders offer the trustee indemnification satisfactory to the trustee. (Section 603). If indemnification satisfactory to the trustee is provided, then, subject to certain other rights of the trustee, the holders of a majority in principal amount of the outstanding debt securities of any series may, with respect to the debt securities of that series, direct the time, method and place of:

conducting any proceeding for any remedy available to the trustee; or

exercising any trust or power conferred upon the trustee. (Section 512).

The holder of a debt security of any series will have the right to begin any proceeding with respect to the applicable indenture or for any remedy only if:

the holder has previously given the trustee written notice 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 a written request of, and offered reasonable indemnification to, the trustee to begin the proceeding;

the trustee has not started the proceeding within 60 days after receiving the request; and

the trustee has not received directions inconsistent with the request from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series during those 60 days. (Section&