

GENESEE & WYOMING INC  
Form S-3  
November 28, 2008  
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As filed with the Securities and Exchange Commission on November 28, 2008

Registration No. 333-

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM S-3

## REGISTRATION STATEMENT

*UNDER*

*THE SECURITIES ACT OF 1933*

## Genesee & Wyoming Inc.

(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation or organization)

66 Field Point Road

Greenwich, Connecticut 06830

(203) 629-3722

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

06-0984624  
(I.R.S. Employer Identification No.)

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Registrant's principal executive offices)

Allison M. Fergus, Esq.

General Counsel and Secretary

Genesee & Wyoming Inc.

66 Field Point Road

Greenwich, Connecticut 06830

(203) 629-3722

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

*Copies to:*

Avrohom J. Kess, Esq.

Simpson Thacher & Bartlett LLP

425 Lexington Avenue

New York, New York 10017

(212) 455-2000

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:

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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 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. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  Smaller reporting filer   
 (Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

| Title of Each Class of Securities<br>to be Registered | Amount to be<br>Registered (1) | Proposed  | Proposed  | Amount of<br>Registration<br>Fee |
|---|--------------------------------|---|---|----------------------------------|
|   |                                | Maximum<br>Offering Price<br>Per Unit<br>(1)(2)(3)(4) | Maximum<br>Aggregate<br>Offering<br>Price (1)(3)(4) |                                  |
| <b>Primary Offering</b>                               |                                |   |   |                                  |
| Debt Securities (5)                                   |                                |   |   |                                  |
| Preferred Stock, par value \$.01 per share (6)        |                                |   |   |                                  |
| Class A Common Stock, par value \$.01 per share (7)   |                                |   |   |                                  |
| Warrants (8)  |                                |   |   |                                  |
| Total Primary Offering                                | \$750,000,000                  |   | \$750,000,000                                       | \$29,475                         |
| <b>Secondary Offering</b>                             |                                |   |   |                                  |
| Class A Common Stock, par value \$.01 per share (9)   | 250,000                        | \$27.97 (10)  | \$6,992,500   | \$274.81                         |

(1) Pursuant to General Instruction II.D of Form S-3, the amount to be registered, proposed maximum offering price per security, proposed maximum aggregate offering price and amount of registration fee have been omitted for each class of securities registered hereby other than the specified shares of Class A Common Stock to be sold by selling stockholders. See Note 9.

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- (2) The proposed maximum aggregate offering price per security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder.
- (3) The proposed maximum aggregate offering price has been estimated solely for purposes of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933 and reflects the maximum offering price of securities that may be issued, rather than the principal amount of securities that may be issued at a discount.
- (4) Excluding accrued interest, distributions and dividends, if any.
- (5) An indeterminate number of debt securities are covered by this registration statement. Debt securities may be issued (a) separately or (b) upon exercise of warrants to purchase debt securities that are registered hereby.
- (6) An indeterminate number of shares of preferred stock are covered by this registration statement. Preferred stock may be issued (a) separately or (b) upon exercise of warrants to purchase preferred stock that are registered hereby.
- (7) An indeterminate number of shares of common stock are covered by this registration statement. Common stock may be issued (a) separately, (b) upon the conversion of either debt securities or shares of preferred stock, each of which is registered hereby, (c) upon settlement of stock purchase contracts that are registered hereby or (d) upon exercise of warrants to purchase common stock that are registered hereby. Shares of common stock issued upon conversion of debt securities or preferred stock will be issued without the payment of additional consideration.
- (8) An indeterminate number of warrants, representing rights to purchase debt securities, common stock or preferred stock, each of which is registered hereby, are covered by this registration statement.
- (9) Represents shares of our Class A Common Stock to be sold by certain selling stockholders identified herein.
- (10) Estimated solely for the purpose of determining the registration fee and calculated in accordance with Rule 457(c) under the Securities Act on the basis of the last reported price of \$27.97 of the Registrant's Class A Common Stock on November 25, 2008, as reported on the New York Stock Exchange.

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

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The information in this prospectus is not complete and may be changed. We and the selling stockholders 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.

SUBJECT TO COMPLETION DATED NOVEMBER 28, 2008

PROSPECTUS

\$750,000,000

Genesee & Wyoming Inc.

Debt Securities

Preferred Stock

Class A Common Stock

Warrants

250,000 Shares of Class A Common Stock by selling stockholders

We may offer and sell debt securities, shares of preferred stock, shares of Class A Common Stock or warrants. We may sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$750,000,000. These securities may be offered and sold from time to time in amounts, at prices and on other terms to be determined at the time of offering.

In addition, the selling stockholders named in this prospectus are offering 250,000 shares of our Class A Common Stock. These securities may be offered and sold from time to time in amounts, at prices and on other terms to be determined at the time of offering. We will not receive any proceeds from the sale of the Class A Common Stock by the selling stockholders.

We and the selling stockholders will provide the specific terms and offering price of these securities in supplements to this prospectus to the extent those terms are not described in this prospectus or are different from the terms described in this prospectus. The prospectus supplements may also add to, update or change information contained in this prospectus. In addition, we may supplement, update or change any of the information contained in this prospectus by incorporating information by reference in this prospectus.

You should read this prospectus, the supplements to this prospectus and any incorporated documents carefully before you invest in any of our securities. 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.

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We and the selling stockholders may offer these securities directly to investors, through agents, underwriters or dealers on a continued or delayed basis. Each prospectus supplement will provide the terms of the plan of distribution relating to each series of securities.

Our Class A Common Stock is listed on the New York Stock Exchange under the symbol GWR.

**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 \_\_\_\_\_, 2008.

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**Forward-Looking Statements**

This prospectus and the documents incorporated herein by reference contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 (the Securities Act), as amended, and Section 21E of the Securities Exchange Act of 1934 (the Exchange Act), as amended, regarding future events and future performance of Genesee & Wyoming Inc. Words such as anticipates, intends, plans, believes, expects, estimates, variations of these words and similar expressions are intended to identify these forward-looking statements. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to forecast. Actual results may differ materially from those expressed or forecast in these forward-looking statements. Examples of forward-looking statements include all statements that are not historical in nature, including statements regarding:

our operations, competitive position, growth strategy and prospects;

industry conditions, including downturns in the general economy;

the effects of economic, political or social conditions and changes in foreign exchange policy or rates;

our ability to complete, integrate and benefit from acquisitions, joint ventures and strategic alliances;

governmental policies affecting our railroad operations, including laws and regulations regarding environmental liabilities;

our funding needs and financing sources; and

the outcome of pending legal proceedings.

These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to forecast. Forward-looking statements may be influenced by risks which exist in the following areas, among others:

our ability to fund, consummate and integrate acquisitions and investments;

our relationships with Class I railroads and other connecting carriers for our operations;

our ability to obtain railcars and locomotives from other providers on which we are currently dependent;

competition from numerous sources, including those relating to geography, substitute products, other types of transportation and other rail operators;

the effects of economic, political or social conditions and changes in foreign exchange policy or rates;



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legislative and regulatory developments, including rulings by the Surface Transportation Board (STB) or the Railroad Retirement Board;

strikes or work stoppages by our employees and our ability to attract and employ a sufficient number of skilled employees;

our transportation of hazardous materials by rail as a common carrier;

the occurrence of losses or other liabilities which are not covered by insurance or which exceed our insurance limits;

rising fuel costs;

customer retention and contract continuation;

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our susceptibility to downturns in the general economy;

our susceptibility to severe weather conditions and other natural occurrences;

our ability to obtain funding for capital projects;

the imposition of operational restrictions as the result of covenants in our credit facilities;

acts of terrorism and anti-terrorism measures;

our susceptibility to various legal claims and lawsuits; and

our susceptibility to risks associated with doing business in foreign countries.

The areas in which there is risk and uncertainty are further described in documents that we file from time to time with the United States Securities and Exchange Commission (the SEC), which contain additional important factors that could cause actual results to differ from current expectations and from the forward-looking statements contained herein. Readers of this document are cautioned that our forward-looking statements are not guarantees of future performance and the actual results or developments may differ materially from the expectations expressed in the forward-looking statements.

In light of the risks, uncertainties and assumptions associated with forward-looking statements, you should not place undue reliance on any forward-looking statements. Additional risks that we may currently deem immaterial or that are not presently known to us could also cause the forward-looking events discussed or incorporated by reference in this prospectus supplement or any accompanying prospectus supplement not to occur. Except as otherwise required by applicable securities laws, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changed circumstances or any other reason after the date of this prospectus.

The Private Securities Litigation Reform Act of 1995 provides a safe harbor for forward-looking statements to encourage companies to provide prospective information about their companies without fear of litigation. We are taking advantage of the safe harbor provisions of the Private Securities Litigation Reform Act in connection with the forward-looking statements included or incorporated by reference in this prospectus and any accompanying prospectus supplement.

Our forward-looking statements speak only as of the date of this prospectus or as of the date they are made, and we undertake no obligation to update our forward-looking statements.

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**Where You Can Find More Information About Us**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. These filings are available to the public over the Internet at the SEC's web site at [www.sec.gov](http://www.sec.gov). You may also read and copy any documents we file with the SEC at its public reference room at 100 F Street, NE, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. Information furnished under Item 2.02 or Item 7.01 of our Current Reports on Form 8-K is not incorporated by reference in this prospectus. We furnished information under Item 2.02 of our Current Reports on Form 8-K on April 29, 2008, August 4, 2008 and November 3, 2008.

We incorporate by reference the documents listed below, any documents that we file after the date of the filing of the initial registration statement of which the prospectus forms a part and prior to the effectiveness of that registration statement, and any documents we file in the future with the SEC, under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act until we and selling shareholders sell all of the securities that we have registered for sale under the registration statements of which this prospectus forms a part.

The Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 29, 2008;

The Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008 filed on May 7, 2008, August 7, 2008 and November 7, 2008, respectively; and

The Current Reports on Form 8-K filed on April 29, 2008, June 3, 2008, August 8, 2008, October 7, 2008 and November 6, 2008. We make available any documents that we file with the SEC free of charge on our website at [www.gwrr.com](http://www.gwrr.com) as soon as reasonably practicable after we electronically file such documents with the SEC. In addition, you may request a copy of these files, including the documents that are incorporated by reference in this prospectus, at no cost by writing or telephoning us at the following address or telephone number.

Genesee & Wyoming Inc.

66 Field Point Road

Greenwich, CT 06830

Attention: General Counsel

We and the selling stockholders have not authorized any dealer, salesperson or other person to give any information or represent anything not contained in this prospectus. You must not rely on any unauthorized information. This prospectus does not offer to sell or buy any securities in any jurisdiction where it is unlawful.

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### **Summary**

This summary highlights selected information contained elsewhere or incorporated by reference in this prospectus and does not contain all of the information that may be important to you. This prospectus provides you with a general description of the securities we may offer. Each time we or the selling stockholders sell securities, we will provide you with a prospectus supplement that will describe the specific amounts, prices and other terms of the securities being offered. The prospectus supplement and the documents incorporated by reference herein may also add, update or change information contained in this prospectus. To understand the terms of our securities, you should carefully read this document with the applicable prospectus supplement. Together, these documents will give the specific terms of the securities we are offering. You should also read the documents we have incorporated by reference in this prospectus described above under **Where You Can Find More Information About Us**. Unless the context otherwise indicates, the terms **Genesee & Wyoming**, **we**, **us** or **our** mean Genesee & Wyoming Inc. and its consolidated subsidiaries.

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

This prospectus is part of a registration statement that we filed with the SEC using a shelf registration process. Under this shelf registration process, we may offer from time to time, in one or more offerings, up to a total of \$750,000,000 of any of the following securities:

debt securities;

preferred stock;

Class A Common Stock; and

warrants.

The selling stockholders may also offer from time to time, in one or more offerings, up to a total of 250,000 shares of our Class A Common Stock.

This prospectus provides you with a general description of the securities we and the selling stockholders may offer. Each time we or the selling stockholders offer securities, we will provide you with one or more prospectus supplements that will describe the specific amounts, prices and other terms of the securities being offered to the extent those terms are not described in this prospectus or are different from the terms described in this prospectus. The prospectus supplement and the documents incorporated by reference herein may also add, update or change information contained in this prospectus. If this prospectus is inconsistent with the prospectus supplement, you should rely on the prospectus supplement.

### **Debt Securities**

We may offer unsecured general obligations, which may be either senior or subordinated, and may be convertible into shares of our Class A Common Stock or shares of our preferred stock. In this prospectus, we refer to our senior debt securities and subordinated debt securities together as **our debt securities**. The senior debt securities will have the same rank as all of our other unsecured and unsubordinated debt. The subordinated debt securities will be entitled to payment only after payment of our senior debt, including amounts under our current or future senior credit facilities.

Our debt securities will be issued under one of two indentures between us and a trustee. We have summarized general features of our debt securities under **Description of Our Debt Securities**. We encourage you to read the indentures, the form of each of which is filed as an exhibit to the registration statement of which this prospectus forms a part.

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### **Preferred Stock**

We may issue shares of our preferred stock, \$.01 par value per share, 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.

### **Class A Common Stock**

We may issue shares of our Class A Common Stock, par value \$.01 per share. Holders of shares of our Class A Common Stock are entitled to receive dividends when declared by our Board of Directors, subject to the rights of holders of our preferred stock. Each holder of our Class A Common Stock is entitled to one vote per share. Except as described herein, the holders of our Class A Common Stock have no preemptive rights or cumulative voting rights. See [Description of Our Capital Stock](#) for a more complete discussion of dividend, voting and conversion rights with respect to our outstanding shares of Class A Common Stock and Class B Common Stock.

### **Warrants**

We may issue warrants to purchase debt securities, preferred stock, Class A Common Stock or any combination of these securities, and these warrants may be issued by us independently or together with any underlying securities and may be attached or separate from the underlying securities. We will issue each series of warrants under a separate warrant agreement to be entered into between us and a warrant agent. The warrant agent will act solely as our agent in connection with the warrants of such series and will not assume any obligation or relationship of agency for or with holders or beneficial owners of warrants. We have summarized general features of our warrants under [Description of Our Warrants](#). Further terms of the warrants and the applicable warrant agreement will be stated in the applicable prospectus supplement. The following description and any description of the warrants in a prospectus supplement may not be complete and is subject to and qualified in its entirety by reference to the terms and provisions of the warrant agreement, the form of which will be incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part.

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**About Genesee & Wyoming Inc.**

We are a leading owner and operator of short line and regional freight railroads in the United States, Canada, Australia and the Netherlands and own a minority interest in a railroad in Bolivia. Our corporate predecessor was founded in 1899 as a 14-mile rail line serving a single salt mine in upstate New York and since 1977, we have completed 34 acquisitions.

Including our two most recent acquisitions, which are pending the approval of the STB, operations include 63 railroads organized in nine regions with more than 6,700 miles of owned and leased track and approximately 3,000 additional miles under track access arrangements. We operate in 28 U.S. states, two Canadian provinces, four Australian states and the Netherlands. We provide rail service at 16 ports in North America and Europe and perform contract coal loading and railcar switching for industrial customers.

During 2007, we ceased operations in Mexico. Results of our Mexican operations are included in results from discontinued operations.

By focusing our corporate and regional management teams on improving our return on invested capital, we intend to continue to increase our earnings and cash flow. In addition, we expect that acquisitions will adhere to our return on capital targets and that existing operations will strive to improve year-over-year financial returns and safety performance.

Our executive offices are located at 66 Field Point Road, Greenwich, CT 06830, and our telephone number is (203) 629-3722.

**Table of Contents****Ratios of Earnings to Fixed Charges and****Earnings to Combined Fixed Charges and Preferred Stock Dividends**

The following table shows our consolidated ratios of earnings to fixed charges and of earnings to combined fixed charges and preferred stock dividends for the most recent interim period and each of the five most recent fiscal years ended on December 31:

|   | <b>Nine months<br/>ended<br/>September 30,<br/>2008</b> | <b>2007</b> | <b>2006</b> | <b>2005</b> | <b>2004</b> | <b>2003</b> |
|---|---|-------------|-------------|-------------|-------------|-------------|
| Ratio of earnings to fixed charges  | 6.0   | 4.8         | 13.1        | 3.8         | 3.9         | 3.2         |
| Ratio of earnings to combined fixed charges and preferred stock dividends | 6.0   | 4.8         | 13.1        | 3.8         | 3.7         | 2.7         |

For the purposes of the table above, earnings are defined as earnings from continuing operations before income taxes, equity earnings, minority interest and extraordinary items, plus fixed charges and distributed income of equity investees. Fixed charges include interest expense on all debt, amortization of deferred debt issuance costs and the portion of rental expense on operating leases which management believes is attributable to interest. Preferred stock dividends are the pre-tax equivalent, at our effective tax rate, of dividends earned on our outstanding preferred stock. The ratios of earnings to fixed charges and to combined fixed charges and preferred stock dividends in 2006 includes a net gain of \$218.8 million from the sale of the Western Australia operations and certain other assets of the Australian Railroad Group.

**Use of Proceeds**

Unless otherwise indicated in the prospectus supplement, we will use all or a portion of the net proceeds from the sale of our securities offered by this prospectus and the prospectus supplement for general working capital purposes.

We will not receive any of the proceeds from the sale of shares of our Class A Common Stock by the selling stockholders. The selling stockholders will receive all of the net proceeds from the sale of the shares of Class A Common Stock by the selling stockholders.

**Dividend Policy**

We did not pay cash dividends on our Class A Common Stock or Class B Common Stock in 2005, 2006 or 2007. We do not intend to pay cash dividends on our Class A Common Stock or Class B Common Stock for the foreseeable future and intend to retain earnings, if any, for the operation and expansion of our business. Any determination to pay dividends in the future will be at the discretion of our Board of Directors and will be dependent upon our results of operations, financial condition, contractual restrictions and other factors deemed relevant by our Board of Directors.

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### **Description of Our Debt Securities**

Any of our debt securities issued under this prospectus will be our direct, unsecured general obligations. Our debt securities will be either senior debt securities (Senior Debt Securities) or subordinated debt securities (Subordinated Debt Securities).

The Senior Debt Securities and the Subordinated Debt Securities will be issued under separate indentures between us and U.S. banking institutions (each, a Trustee). The Trustee for each series of our debt securities will be identified in the applicable prospectus supplement. Senior Debt Securities will be issued under a Senior Indenture and Subordinated Debt Securities will be issued under a Subordinated Indenture. Together the Senior Indenture and the Subordinated Indenture are called Indentures.

Our debt securities may be issued from time to time in one or more series. The particular terms of each series that is offered by a prospectus supplement will be described in the applicable prospectus supplement.

We have summarized selected provisions of the Indentures below. The summary is not complete. The forms of the Indentures have been filed as exhibits to the registration statement and you should read the Indentures for provisions that may be important to you. Whenever we refer to this prospectus or in the prospectus supplement to defined terms of the Indentures, those defined terms are incorporated by reference herein or therein, as applicable. Capitalized terms used in this summary have the meanings specified in the Indentures.

### **General**

The debt securities will be our direct, unsecured general obligations. The Senior Debt Securities will rank equally with all of our other unsecured and unsubordinated indebtedness. The Subordinated Debt securities will be subordinated in right of payment to the prior payment in full of our Senior Indebtedness (including the Senior Debt Securities) as described under Subordination below and in the prospectus supplement applicable to any Subordinated Debt Securities.

The Indentures provide that our debt securities may be issued without limit as to aggregate principal amount, in one or more series, and in any currency or currency units, in each case as established from time to time in or under the authority granted by a resolution of our Board of Directors or as established in one or more supplemental indentures. All debt securities of one series need not be issued at the same time, and may vary as to interest rate, maturity and other provisions and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of that series, for issuances of additional debt securities of that series.

A prospectus supplement will include the terms of any debt securities being offered (Offered Debt Securities). These terms will include some or all of the following:

the title of the Offered Debt Securities;

whether the Offered Debt Securities are Senior Debt Securities or Subordinated Debt Securities;

the total principal amount of the Offered Debt Securities;

the dates on which the principal of the Offered Debt Securities will be payable;

the interest rate, which may be fixed or variable, of the Offered Debt Securities and the interest payment dates for the Offered Debt Securities;

the places where payments on the Offered Debt Securities will be payable;



any terms upon which the Offered Debt Securities may be redeemed at our option;

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any sinking fund or other provisions that would obligate us to repurchase or otherwise redeem the Offered Debt Securities;

whether the Offered Debt Securities are defeasible;

any addition to or change in the Events of Default;

if convertible into shares of our Class A Common Stock or any of our other securities, the terms on which such Offered Debt Securities are convertible;

any addition to or change in the covenants in the applicable Indenture; and

any other terms of the Offered Debt Securities not inconsistent with the provisions of the applicable Indenture.

If so provided in the applicable prospectus supplement, we may issue our debt securities at a discount below their principal amount and pay less than the entire principal amount of our debt securities upon declaration of acceleration of their maturity (Original Issue Discount Securities). The applicable prospectus supplement will describe all material U.S. federal income tax, accounting and other considerations applicable to Original Issue Discount Securities.

The general provisions of the Indentures do not contain any provisions that would limit our ability or the ability of our subsidiaries to incur indebtedness or that would afford holders of our debt securities protection in the event of a highly leveraged or similar transaction involving us or any of our subsidiaries. Please refer to the applicable prospectus supplement for information with respect to any deletions from, modifications of or additions, if any, to the Events of Default described below that are applicable to the Offered Debt Securities or any covenants or other provisions providing event risk or similar protection.

**Form, Exchange and Transfer**

The debt securities of each series will be issuable only in fully registered form, without coupons. Unless otherwise indicated in the applicable prospectus supplement, the securities will be issued in denominations of \$1,000 each or multiples thereof.

Subject to the terms of the applicable Indenture and the limitations applicable to global securities, debt securities may be transferred or exchanged at the corporate trust office of the Trustee or at any other office or agency maintained by us for that purpose, without the payment of any service charge except for any tax or governmental charge.

**Global Securities**

The debt securities of any series may be issued, in whole or in part, by one or more global certificates that will be deposited with the depository identified in the applicable prospectus supplement.

No global security may be exchanged in whole or in part for the debt securities registered in the name of any person other than the depository for that global security or any nominee of that depository unless:

the depository is unwilling or unable to continue as depository;

an Event of Default has occurred and is continuing; or

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as otherwise provided in the applicable prospectus supplement.

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Unless otherwise stated in any prospectus supplement, The Depository Trust Company (DTC) will act as depository. Beneficial interests in global certificates will be shown on, and transfers of global certificates will be affected only through records maintained by DTC and its participants.

### **Payment**

Unless otherwise indicated in the applicable prospectus supplement, payment of interest on a debt security on any interest payment date will be made to the person in whose name that debt security is registered at the close of business on the regular record date for that interest payment.

Unless otherwise indicated in the applicable prospectus supplement, principal, interest and any premium on our debt securities will be paid at designated places. However, at our option, payment may be made by check mailed to the persons in whose names our debt securities are registered on days specified in the applicable Indenture or any prospectus supplement.

### **Events of Default**

Unless otherwise specified in the applicable prospectus supplement, each of the following will constitute an event of default (Event of Default) under the Indentures with respect to our debt securities of any series:

default in the payment of any interest upon any debt security of that series when it becomes due and payable, and continuance of that default for a period of 30 days;

default in the payment of the principal of and premium, if any, on any debt security of that series at its Maturity;

default in the deposit of any sinking fund payment, when and as due by the terms of a debt security of that series;

default in the performance, or breach, of any covenant or warranty in the applicable Indenture, other than a covenant or warranty a default in whose performance or whose breach is elsewhere specifically dealt with or which expressly has been included in the applicable Indenture solely for the benefit of debt securities of a series other than that series, and continuance of such default or breach for a period of 30 days after there has been given by registered or certified mail, to us by the applicable Trustee or to us and the applicable Trustee by the Holders of at least 25% in principal amount of the outstanding debt securities of that series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a Notice of Default ;

failure by us to pay final judgments aggregating in excess of \$50,000,000, which judgments are not paid, discharged or stayed for a period of 60 days;

certain events of bankruptcy, insolvency or reorganization with respect to us; or

any other Event of Default provided with respect to debt securities of that series.

Each Indenture requires us to file with the applicable Trustee, annually, an officers certificate as to our compliance with all conditions and covenants under the applicable Indenture. Each Indenture provides that the applicable Trustee may withhold notice to the Holders of a series of debt securities of any default, except payment defaults on those debt securities, if it considers such withholding to be in the interest of the Holders of that series of debt securities.

If an Event of Default with respect to our debt securities of any series at the time outstanding occurs and is continuing, then in every case the applicable Trustee or the Holders of not less than 25% in principal amount of our outstanding debt securities of that series may declare the principal amount, or, if any debt securities of that series are Original Issue Discount Securities, that portion of the principal amount of those

Original Issue Discount Securities

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as may be specified in the terms of those Original Issue Discount Securities, of all our debt securities of that series to be due and payable immediately, by a notice in writing to us, and to the applicable Trustee if given by Holders, and upon any such declaration that principal amount, or specified amount, plus accrued and unpaid interest, and premium, if any, will become immediately due and payable. Upon payment of that amount in the currency in which such debt securities are denominated (except as otherwise provided in the applicable Indenture or specified in the prospectus supplement), all of our obligations in respect of the payment of principal of the debt securities of that series will terminate.

If an Event of Default results from bankruptcy, insolvency or reorganization, the principal amount of all the debt securities of a series, or that portion of the principal amount of such debt securities as may be specified in a prospectus supplement, will automatically become immediately due and payable.

Subject to the provisions of each Indenture relating to the duties of the applicable Trustee, in case an Event of Default with respect to our debt securities of a particular series occurs and is continuing, the applicable Trustee will be under no obligation to exercise any of its rights or powers under that Indenture at the request, order or direction of any of the Holders of Debt securities of that series, unless the Holders have offered to the applicable Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in complying with such request or direction. Subject to the provisions for the indemnification of the applicable Trustee, the Holders of a majority in principal amount of our outstanding debt securities of that series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the applicable Trustee under the applicable Indenture, or exercising any trust or power conferred on the applicable Trustee with respect to our debt securities of that series.

At any time after a declaration of acceleration with respect to any series of our debt securities has been made and before a judgment or decree for payment of the money due has been obtained by the applicable Trustee as provided in the Indentures, the Holders of a majority in principal amount of our outstanding debt securities of that series, by written notice to us and the applicable Trustee, may rescind and annul such declaration and its consequences, subject to any terms or conditions specified in the applicable prospectus supplement.

## **Merger or Consolidation**

Each Indenture provides that we may not consolidate with or merge with or into or wind up into, whether or not we are the surviving corporation, or sell, assign, convey, transfer or lease our properties and assets substantially as an entirety to any Person, unless:

the successor corporation formed by the consolidation or into which we are merged or the Person which acquires by conveyance or transfer, or which leases our properties and assets substantially as an entirety, is an entity organized and existing under the laws of the United States or any State or territory thereof or the District of Columbia and expressly assumes by a supplemental indenture the due and punctual payment of the principal of, and premium, if any, and interest on all our debt securities issued under the applicable Indenture and the performance of every covenant in the applicable Indenture on our part to be performed or observed;

immediately after giving effect to such transaction, no Event of Default under the applicable Indenture, and no event which, after notice or lapse of time, or both, would become an Event of Default, has happened and is continuing; and

the other conditions as may be specified in the applicable prospectus supplement.

## **Modification or Waiver**

Without prior notice to or consent of any Holders, we and the applicable Trustee, at any time and from time to time, may modify the applicable Indenture for any of the following purposes:

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to evidence the succession of another corporation to our rights and the assumption by that successor of our covenants and obligations under the applicable Indenture and under our debt securities issued thereunder in accordance with the terms of the applicable Indenture;

to add to our covenants for the benefit of the Holders of all or any series of our debt securities, and if those covenants are to be for the benefit of less than all series, stating that those covenants are expressly being included solely for the benefit of that series, or to surrender any of our rights or powers under the applicable Indenture;

to add any additional Events of Default, and if those Events of Default are to be applicable to less than all series, stating that those Events of Default are expressly being included solely to be applicable to that series;

to change or eliminate any of the provisions of the applicable Indenture, provided that any such change or elimination will become effective only when there is no outstanding debt security issued thereunder of any series created prior to such modification which is entitled to the benefit of such provision and as to which such modification would apply;

to secure the debt securities issued thereunder or to provide that any of our obligations under the debt securities or the applicable Indenture shall be guaranteed and the terms and conditions for the release or substitution of the security or guarantee;

to supplement any of the provisions of the applicable Indenture to the extent necessary to permit or facilitate the defeasance and discharge of any series of debt securities, provided that any such action will not adversely affect the interests of the Holders of debt securities of that series or any other series of debt securities issued under the applicable Indenture in any material respect;

to establish the form or terms of debt securities as permitted by the applicable Indenture;

to evidence and provide for the acceptance of appointment thereunder by a successor Trustee with respect to one or more series of debt securities and to add to or change any of the provisions of the applicable Indenture as is necessary to provide for or facilitate the administration of the trusts thereunder by more than one Trustee; or

to cure any ambiguity, to correct or supplement any provision in the applicable Indenture which may be defective or inconsistent with any other provision therein, to eliminate any conflict between the terms of the applicable Indenture and the debt securities issued thereunder and the Trust Indenture Act (the TIA) or to make any other provisions with respect to matters or questions arising under the applicable Indenture which will not be inconsistent with any provision of the applicable Indenture; provided those other provisions do not adversely affect the interests of the Holders of our outstanding debt securities of any series created thereunder prior to such modification in any material respect.

With the written consent of the Holders of not less than a majority in principal amount of the outstanding debt securities of each series affected by such modification voting separately, we and the applicable Trustee may modify the applicable Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the applicable Indenture or of modifying in any manner the rights of the Holders of debt securities under the applicable Indenture; provided, however, that such modifications may not, without the consent of the Holder of each outstanding debt security of each series affected, modify the principal or interest terms, reduce the percentage required for modifications or otherwise conflict with the required provisions of the TIA or make those changes or modifications specified in the applicable prospectus supplement as requiring the consent of the Holder of each outstanding debt security for each