

TEXAS INSTRUMENTS INC  
Form S-3ASR  
February 24, 2010  
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As filed with the Securities and Exchange Commission on February 24, 2010

Registration No. 333-[ ]

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM S-3

## REGISTRATION STATEMENT

*UNDER*

*THE SECURITIES ACT OF 1933*

# TEXAS INSTRUMENTS INCORPORATED

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

12500 TI Boulevard  
P.O. Box 660199  
Dallas, Texas 75266-0199  
(972) 995-3773

**75-0289970**  
(I.R.S. Employer  
Identification Number)

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

**Joseph F. Hubach, Senior Vice**

**President, Secretary and General**

**Counsel**

**Texas Instruments Incorporated**

**12500 TI Boulevard**

**P.O. Box 660199**

**Dallas, Texas 75266-0199**

**(972) 995-3773**

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

*Copy to:*

**Bruce K. Dallas, Esq.**

**Sarah K. Solum, Esq.**

**Davis Polk & Wardwell LLP**

**1600 El Camino Real**

**Menlo Park, California 94025**

**(650) 752-2000**

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

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

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

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. " \_\_\_\_\_

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act 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.  x

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

### CALCULATION OF REGISTRATION FEE

| Title of Each<br>Class of Securities<br>to be Registered | Amount to be<br>Registered | Proposed<br>Maximum<br>Offering Price<br>Per Unit (1) | Proposed Maximum<br>Aggregate Offering<br>Price | Amount of<br>Registration Fee |
|--|----------------------------|---|---|-------------------------------|
| Common Stock   |                            |   |   |                               |
| Preferred Stock  |                            |   |   |                               |
| Debt Securities  |                            |   |   |                               |
| Warrants   |                            |   |   |                               |
| Units  |                            |   |   |                               |

(1) An indeterminate amount of securities to be offered at indeterminate prices is being registered pursuant to this registration statement. The registrant is deferring payment of the registration fee pursuant to Rule 456(b) and is omitting this information in reliance on Rule 456(b) and Rule 457(r).

The Company is filing this registration statement to replace its registration statement (No. 333-141048), which is expiring pursuant to Rule 415(a)(5). In accordance with Rule 415(a)(6), effectiveness of this Registration Statement will be deemed to terminate the expiring registration statement.

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**PROSPECTUS**

## **Texas Instruments Incorporated**

The following are types of securities that may be offered and sold by Texas Instruments Incorporated or by selling security holders under this prospectus from time to time:

|                 |          |
|-----------------|----------|
| Common stock    | Warrants |
| Preferred stock | Units    |
| Debt securities |          |

The securities may be offered by us or by selling security holders in amounts, at prices and on terms determined at the time of the offering. The securities may be sold directly to you, through agents, or through underwriters and dealers. If agents, underwriters or dealers are used to sell the securities, we will name them and describe their compensation in a prospectus supplement. You should read this prospectus and any prospectus supplement carefully before you invest.

We will describe in a prospectus supplement, which must accompany this prospectus, the securities we are offering and selling, as well as the specific terms of the securities. Those terms may include:

|                      |                                |                       |
|----------------------|--------------------------------|-----------------------|
| Maturity             | Redemption terms               | Liquidation amount    |
| Interest rate        | Listing on a security exchange | Subsidiary guarantees |
| Currency of payments | Amount payable at maturity     | Sinking fund terms    |
| Dividends            | Conversion or exchange rights  |                       |

Our Common Stock is quoted on the New York Stock Exchange under the ticker symbol TXN. On February 23, 2010, the reported last sale price on the New York Stock Exchange for our Common Stock was \$24.30.

**Investing in these securities involves certain risks. See [Item 1A Risk Factors](#) beginning on page 8 of our annual report on Form 10-K for the year ended December 31, 2009, which is incorporated by reference herein.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved 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 February 24, 2010

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You should rely only on the information contained in or incorporated by reference in this prospectus, in any supplement hereto or in any related free-writing prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information contained in or incorporated by reference in this prospectus is accurate as of any date other than the date on the front of this prospectus. The terms "Texas Instruments", "TI", "we", "us", and "our" refer to Texas Instruments Incorporated and its consolidated subsidiaries except where expressly indicated or the context otherwise requires.

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**The Company**

At Texas Instruments Incorporated (TI), we design and make semiconductors that we sell to electronics designers and manufacturers all over the world. We began operations in 1930. We are incorporated in Delaware, headquartered in Dallas, Texas, and have design, manufacturing or sales operations in more than 30 countries. We have four segments: Analog, Embedded Processing, Wireless and Other. We expect Analog and Embedded Processing to be our primary growth engines in the years ahead, and we therefore focus our resources on these segments. We were the world's fourth largest semiconductor company in 2009 as measured by revenue, according to preliminary estimates from an external source. Additionally, we sell calculators and related products.

Our principal executive offices are located at 12500 TI Boulevard, Dallas, Texas 75266-0199, and our telephone number is (972) 995-3773. We maintain a website at [www.ti.com](http://www.ti.com) where general information about us is available. We are not incorporating the contents of the website into this prospectus.

For a description of our business, financial condition, results of operations and other important information regarding us, see our filings with the SEC incorporated by reference in this prospectus. For instructions on how to find copies of these and our other filings incorporated by reference in this prospectus, see [Where You Can Find More Information](#).

**About this Prospectus**

This prospectus is part of a registration statement that we filed with the SEC utilizing a shelf registration process. Under this shelf process, we or selling security holders may sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we or selling security holders 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 any prospectus supplement together with additional information described under the heading [Where You Can Find More Information](#).

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**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document that we file at the Public Reference Room of the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains a website at [www.sec.gov](http://www.sec.gov), from which interested persons can electronically access our SEC filings, including the registration statement of which this prospectus forms a part and the exhibits and schedules thereto.

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. We incorporate by reference the documents listed below, and all documents subsequently filed with the SEC pursuant to Section 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) prior to the termination of the offering under this prospectus:

(a) Current Report on Form 8-K filed on February 19, 2010 and

(b) Annual Report on Form 10-K for the year ended December 31, 2009, filed on February 23, 2010.

Any statements contained in a previously filed document incorporated by reference into this prospectus is deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, or in a subsequently filed document also incorporated by reference herein, modifies or supersedes that statement.

You may request a copy of these filings at no cost, by writing or telephoning us at: 12500 TI Boulevard, P.O. Box 660199, Dallas, Texas 75266-0199, Attention: Manager of Investor Relations, (972) 995-3773. Information about us, including our SEC filings, is also available at our website at [www.ti.com](http://www.ti.com). However, the information on our website is not a part of this prospectus or any prospectus supplement that we file.

**CAUTION CONCERNING FORWARD-LOOKING STATEMENTS**

Certain matters discussed in this prospectus or incorporated by reference into this prospectus are forward-looking statements. The Private Securities Litigation Reform Act of 1995 has established that these statements qualify for safe harbors from liability. Forward-looking statements may include words like we believe, expect, anticipate, foresee, forecast, estimates or other words or phrases of similar import. Forward-looking statements describe our business strategy, outlook, objectives, plans, intentions or goals. All such forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those in forward-looking statements. Such statements address future events and conditions concerning:

capital expenditures,

earnings,

liquidity and capital resources,

litigation,

accounting matters,

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possible corporate restructurings, acquisitions and dispositions,

compliance with debt and other restrictive covenants,

interest rates and dividends, and



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the overall economy of our industry segments.

What happens in each case could vary materially from what we expect because of things such as:

market demand for semiconductors, particularly in key markets such as communications, entertainment electronics and computing;

TI's ability to maintain or improve profit margins, including its ability to utilize its manufacturing facilities at sufficient levels to cover its fixed operating costs, in an intensely competitive and cyclical industry;

TI's ability to develop, manufacture and market innovative products in a rapidly changing technological environment;

TI's ability to compete in products and prices in an intensely competitive industry;

TI's ability to maintain and enforce a strong intellectual property portfolio and obtain needed licenses from third parties;

expiration of license agreements between TI and its patent licensees, and market conditions reducing royalty payments to TI;

economic, social and political conditions in the countries in which TI, its customers or its suppliers operate, including security risks, health conditions, possible disruptions in transportation networks and fluctuations in foreign currency exchange rates;

natural events such as severe weather and earthquakes in the locations in which TI, its customers or its suppliers operate;

availability and cost of raw materials, utilities, manufacturing equipment, third-party manufacturing services and manufacturing technology;

changes in the tax rate applicable to TI as the result of changes in tax law, the jurisdictions in which profits are determined to be earned and taxed, the outcome of tax audits and the ability to realize deferred tax assets;

changes in laws and regulations to which TI or its suppliers are or may become subject, such as those imposing fees or reporting or substitution costs relating to the discharge of emissions into the environment or the use of certain raw materials in our manufacturing processes;

losses or curtailments of purchases from key customers and the timing and amount of distributor and other customer inventory adjustments;

customer demand that differs from company forecasts;

the financial impact of inadequate or excess TI inventory that results from demand that differs from projections;

the ability of TI and its customers and suppliers to access their bank accounts and lines of credit or otherwise access the capital markets;

impairments of our non-financial assets;

product liability or warranty claims, or recalls by TI customers for a product containing a TI part;

TI's ability to recruit and retain skilled personnel; and

timely implementation of new manufacturing technologies, installation of manufacturing equipment and the ability to obtain needed third-party foundry and assembly/test subcontract services.

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These lists are not all-inclusive because it is not possible to predict all factors. All forward-looking statements are qualified by the risks described in the documents incorporated by reference into this prospectus and any supplement to this prospectus. We have no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or risks. New information, future events or risks may cause the forward-looking events we discuss in this prospectus not to occur.

**USE OF PROCEEDS**

We intend to use the net proceeds from the sale of the securities for working capital and general corporate purposes including, but not limited, to funding our operations, purchasing capital equipment, funding potential acquisitions, repaying debt and repurchasing shares of our common stock. We may also invest the proceeds in certificates of deposit, United States government securities or certain other interest-bearing securities. If we decide to use the net proceeds from a particular offering of securities for a specific purpose, we will describe that in the related prospectus supplement.

**RATIOS OF EARNINGS TO FIXED CHARGES**

Our ratio of earnings to fixed charges was as follows for the respective periods indicated:

| <b>For the Fiscal Years Ended December 31,</b> |             |             |             |             |
|--|-------------|-------------|-------------|-------------|
| <b>2009</b>                                    | <b>2008</b> | <b>2007</b> | <b>2006</b> | <b>2005</b> |
| 127.9x   | 109.5x      | 154.7x      | 94.1x       | 70.2x       |

Earnings consist of earnings from continuing operations, fixed charges, and other income or loss (including interest income, equity investment gains or losses, and other miscellaneous non-operational items such as currency exchange gains or losses). Fixed charges consist of total interest on loans, interest attributable to rental and lease expense, and capitalized interest.

We have no preferred shares outstanding and have paid no preferred dividends to date; therefore, our ratios of earnings to combined fixed charges and preferred dividends are the same as our ratios of earnings to fixed charges.

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### **DESCRIPTION OF CAPITAL STOCK**

The following description of our capital stock is based upon our restated certificate of incorporation, as amended ( Restated Certificate of Incorporation ), our by-laws, as amended ( By-Laws ), and applicable provisions of law. We have summarized certain portions of the Restated Certificate of Incorporation and By-Laws below. The summary is not complete. The Restated Certificate of Incorporation and By-Laws are incorporated by reference as exhibits to the registration statement of which this prospectus forms a part. You should read the Restated Certificate of Incorporation and By-Laws for the provisions that are important to you.

Certain provisions of the Delaware General Corporation Law ( DGCL ), the Restated Certificate of Incorporation and By-Laws summarized in the following paragraphs may have an anti-takeover effect. This may delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in its best interests, including those attempts that might result in a premium over the market price for the shares held by such stockholder.

#### **Authorized Capital Stock**

The Restated Certificate of Incorporation authorizes us to issue 2,400,000,000 shares of common stock, \$1.00 par value per share, and 10,000,000 shares of preferred stock, \$25.00 par value per share.

#### **Common Stock**

As of January 31, 2010, there were 1,241,888,536 shares of common stock outstanding which were held of record by 24,136 stockholders. We are authorized to issue additional shares of common stock without further stockholder approval, except as may be required by applicable law or stock exchange regulations. The holders of shares of our common stock, subject to the preferential rights of the holders of any shares of our preferred stock, are entitled to dividends when and as declared by our board of directors. The holders of our common stock have one vote per share on all matters submitted to a vote of the stockholders, and the right to share pro rata in the net assets of TI in liquidation after payment of any amounts due to creditors and in respect of any preferred stock. Holders of shares of our common stock are not entitled as a matter of right to any preemptive or subscription rights and are not entitled to cumulative voting for directors. All outstanding shares of common stock are, and the shares of common stock issued upon any conversion or exchange of any debt securities or preferred stock providing for such conversion or exchange will be, fully paid and nonassessable. Our common stock is listed on the New York Stock Exchange. The transfer agent and registrar for our common stock is Computershare Investor Services, LLC, 2 North LaSalle Street, 3<sup>rd</sup> Floor, Chicago, Illinois 60602.

Our By-Laws provide that the annual meeting of stockholders shall be held on the third Thursday in April each year or on such other date as may be fixed by the our board of directors and as stated in a written notice, which must be mailed or delivered to each stockholder at least 10 days prior to any stockholder meeting.

#### **Preferred Stock**

As of January 31, 2010, there were no shares of our preferred stock outstanding. We are authorized to issue up to 10,000,000 shares of preferred stock, in one or more series, with such designations and such relative voting, dividend, liquidation, conversion, and other rights, preferences and limitations as are stated in the Restated Certificate of Incorporation, or any certificate of designation establishing such series adopted by our board of directors. The 10,000,000 authorized but unissued shares of preferred stock may be issued pursuant to resolution of our board of directors without the vote of the holders of our capital stock. If preferred stock is offered pursuant to this prospectus, we will describe the restrictions, if any, on the repurchase or redemption of the preferred stock by us in a prospectus supplement.

#### **Certain Provisions of Texas Instruments Certificate of Incorporation and By-Laws**

Our Restated Certificate of Incorporation states that action may be taken by stockholders only at annual or special meetings of stockholders, and that stockholders may not act by written consent. The By-Laws vest the power to call special meetings of stockholders in our chairman of the board, our president, or a majority of our board of directors.

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To be properly brought before an annual meeting of stockholders, any stockholder proposal or nomination for the board of directors must be delivered to or mailed and received at our principal executive offices not less than 90 days prior to the first anniversary of the previous year's annual meeting; provided that in the event that the date of the annual meeting is advanced by more than 30 days, or delayed by more than 70 days, from such anniversary date, notice by the stockholder to be timely must be so delivered not later than the close of business on the later of the 90<sup>th</sup> day prior to such annual meeting or the 10<sup>th</sup> day following the day on which public announcement of the date of the meeting is first made.

### **Certain Anti-Takeover Effects of Delaware Law**

We are subject to Section 203 of the DGCL ( Section 203 ). In general, Section 203 prohibits a publicly held Delaware corporation from engaging in various business combination transactions with any interested stockholder for a period of three years following the date of the transactions in which the person became an interested stockholder, unless:

the transaction is approved by the board of directors prior to the date the interested stockholder obtained such status;

upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced; or

on or subsequent to such date the business combination is approved by the board and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

A business combination is defined to include mergers, asset sales, and other transactions resulting in financial benefit to a stockholder. In general, an interested stockholder is a person who, together with affiliates and associates, owns (or within three years, did own) 15% or more of a corporation's voting stock. The statute could prohibit or delay mergers or other takeover or change in control attempts with respect to Texas Instruments and, accordingly, may discourage attempts to acquire Texas Instruments even though such a transaction may offer Texas Instruments stockholders the opportunity to sell their stock at a price above the prevailing market price.

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**DESCRIPTION OF DEBT SECURITIES**

Our debt securities, consisting of notes, debentures or other evidences of indebtedness, may be issued from time to time in one or more series pursuant to an indenture to be entered into between us and U.S. Bank National Association, as trustee. The terms of our debt securities will include those set forth in the indenture and those made a part of the indenture by the Trust Indenture Act of 1939.

The following is only a summary of selected provisions of the indenture and the debt securities and therefore does not contain all information that may be important to you. This summary is qualified in its entirety by reference to the base indenture and any supplemental indenture thereto or officer's certificate or board resolution related thereto. We urge you to read the indenture because the indenture, not this description, defines the rights of the holders of the debt securities. The indenture is included as an exhibit to the registration statement of which this prospectus is a part.

As used in this section of the prospectus and under the captions "Description of Capital Stock," "Description of Warrants" and "Description of Units," the terms "we," "us" and "our" refer only to Texas Instruments Incorporated and not to any existing or future subsidiaries of Texas Instruments Incorporated.

**General**

The debt securities will constitute unsecured and unsubordinated obligations of ours and will rank pari passu with our other unsecured and unsubordinated obligations.

We conduct some of our operations through subsidiaries. Consequently, our ability to pay our obligations, including our obligation to pay principal or interest on the debt securities, to pay the debt securities at maturity or upon redemption or to buy the debt securities may depend upon our subsidiaries repaying investments and advances we have made to them, and upon our subsidiaries' earnings and their distributing those earnings to us. The debt securities will be effectively subordinated to all obligations (including trade payables and preferred stock obligations) of our subsidiaries. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due on the debt securities or to make funds available to us to do so. Our subsidiaries' ability to pay dividends or make other payments or advances to us will depend upon their operating results and will be subject to applicable laws and contractual restrictions. The indenture will not limit our subsidiaries' ability to enter into other agreements that prohibit or restrict dividends or other payments or advances to us.

The debt securities will be our unsecured obligations. Our secured debt and other secured obligations will be effectively senior to the debt securities to the extent of the value of the assets securing such debt or other obligations.

You should look in the prospectus supplement for any additional or different terms of the debt securities being offered, including the following terms:

the debt securities' designation;

the aggregate principal amount of the debt securities;

the percentage of their principal amount (i.e. price) at which the debt securities will be issued;

the date or dates on which the debt securities will mature and the right, if any, to extend such date or dates;

the rate or rates, if any, per year, at which the debt securities will bear interest, or the method of determining such rate or rates;

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the date or dates from which such interest will accrue, the interest payment dates on which such interest will be payable or the manner of determination of such interest payment dates and the record dates for the determination of holders to whom interest is payable on any interest payment date;

the right, if any, to extend the interest payment periods and the duration of that extension;

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the manner of paying principal and interest and the place or places where principal and interest will be payable;

provisions for a sinking fund purchase or other analogous fund, if any;

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

the form of the debt securities;

any provisions for payment of additional amounts for taxes and any provision for redemption, if we must pay such additional amounts in respect of any debt security;

the terms and conditions, if any, upon which we may have to repay the debt securities early at your option;

the currency, currencies or currency units for which you may purchase the debt securities and the currency, currencies or currency units in which principal and interest, if any, on the debt securities may be payable;

the terms and conditions, if any, pursuant to which the debt securities may be exchanged for the cash value of other securities issued by us or by a third party;

the initial conversion or exchange price or rate and any adjustments thereto, the period or periods within which, and the other terms and conditions upon which conversion or exchange of the debt securities may be effected;

whether and upon what terms the debt securities may be defeased;

any events of default or covenants in addition to or in lieu of those set forth in the indenture;

provisions for electronic issuance of debt securities or for debt securities in uncertificated form; and

any other terms of the debt securities, including any terms which may be required by or advisable under applicable laws or regulations or advisable in connection with the marketing of the debt securities.

We may from time to time, without notice to or the consent of the holders of any series of debt securities, create and issue further debt securities of any such series ranking equally with the debt securities of such series in all respects (or in all respects other than the payment of interest accruing prior to the issue date of such further debt securities or except for the first payment of interest following the issue date of such further debt securities). Such further debt securities may be consolidated and form a single series with the debt securities of such series and have the same terms as to status, redemption or otherwise as the debt securities of such series.

You may present debt securities for exchange and you may present debt securities for transfer in the manner, at the places and subject to the restrictions set forth in the debt securities and the applicable prospectus supplement. We will provide you those services without charge, although you may have to pay any tax or other governmental charge payable in connection with any exchange or transfer, as set forth in the indenture.



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Debt securities will bear interest at a fixed rate or a floating rate. Debt securities bearing no interest or interest at a rate that at the time of issuance is below the prevailing market rate (original issue discount securities) may be sold at a discount below their stated principal amount. Special U.S. federal income tax considerations applicable to any such discounted debt securities or to certain debt securities issued at par which are treated as having been issued at a discount for U.S. federal income tax purposes will be described in the applicable prospectus supplement.

We may issue debt securities with the principal amount payable on any principal payment date, or the amount of interest payable on any interest payment date, to be determined by reference to one or more currency exchange rates, securities or baskets of securities, commodity prices or indices. You may receive a payment of principal on any principal payment date, or a payment of interest on any interest payment date, that is greater than or less than the amount of principal or interest otherwise payable on such dates, depending upon the value on such dates of the applicable currency, security or basket of securities, commodity or index. Information as to the methods for determining the amount of principal or interest payable on any date, the currencies, securities or baskets of securities, commodities or indices to which the amount payable on such date is linked and certain additional tax considerations will be set forth in the applicable prospectus supplement.

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### Certain Terms of the Debt Securities

#### *Certain Covenants*

*Certain Definitions.* The term **attributable debt** in respect of a sale and leaseback transaction means, at the time of determination, the lesser of (1) the fair market value of the assets subject to such transaction, as determined by our board of directors, and (2) the present value (discounted at the interest rate implicit in the lease or, if it is not practicable to determine such rate, then at our incremental borrowing rate determined in accordance with generally accepted accounting principles) of the obligation of the lessee for net rental payments during the remaining term of any lease.

The term **consolidated net tangible assets** means, at any date, the total assets appearing on our most recent consolidated balance sheet, prepared in accordance with generally accepted accounting principles, less all current liabilities as shown on such balance sheet, and intangible assets.

The term **funded debt** means all debt whether incurred, assumed or guaranteed, including purchase money indebtedness, maturing by its terms more than one year from the date of creation thereof or which is renewable or extendable at the sole option of the obligor in such manner that it may become payable more than one year from the date of creation thereof.

The term **intangible assets** means the value (net of applicable reserves), as shown on or reflected in our most recent consolidated balance sheet, of (i) all trade names, trademarks, licenses, patents, copyrights and goodwill; (ii) organizational and development costs; (iii) deferred charges (other than prepaid items such as insurance, taxes, interest, commissions, rents and similar items and tangible assets being amortized); and (iv) unamortized debt discount and expenses, less unamortized premium; but in no event shall the term **intangible assets** include computer programs and related products.

The term **net rental payments** under any lease for any period shall mean the sum of rental and other payments required to be paid by such lessee thereunder, not including, however, amounts payable by the lessee for maintenance and repairs, insurance, taxes, assessments and similar charges and for contingent rents (such as those based on sales).

The term **principal manufacturing property** means each of our manufacturing or processing plants or facilities located in the United States of America (other than territories and possessions of the United States) or Puerto Rico, except any such manufacturing or processing plant or facility that the board of directors by resolution determines not to be of material importance to the total business conducted by us and our consolidated subsidiaries, taken as a whole.

*Restrictions on Liens.* The indenture provides that, unless as may otherwise be indicated by resolution of our board of directors, officer's certificate, or supplemental indenture, we will not issue or assume any debt for money borrowed (which, including guarantees of debt for borrowed money, we refer to as **debt**), if the debt is secured by a mortgage, pledge, lien or other encumbrance (which we refer to as a **mortgage**) upon any principal manufacturing property (whether such principal manufacturing property is now owned or subsequently acquired) without in any such case effectively providing that the debt securities (together with any other debt security ranking equally with the debt securities) shall be secured equally and ratably with the debt until such time as such debt is no longer secured by such mortgage. The foregoing restrictions shall not apply to:

mortgages existing as of the closing date of the offering of the relevant series of debt securities;

mortgages on property existing at the time of or within 120 days after acquisition of the property and certain purchase money mortgages;

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mortgages on property of an entity existing at the time that entity is merged into or consolidated with us or substantially all the assets of which are acquired by us;

mortgages in favor of the United States or any political subdivision or any instrumentality thereof, or in favor of any other country or any political subdivision or instrumentality thereof, to secure certain payments pursuant to any contract or statute or to secure any indebtedness incurred for the purpose of financing all or any part of the purchase price or the cost of construction of the property subject to the mortgages;

mortgages for taxes, assessments or other governmental charges not yet due or payable or subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings;

mortgages to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

mortgages imposed by law, such as carrier's, warehousemen's and mechanic's liens and other similar liens, in each case for sums not yet overdue by more than 30 calendar days or being contested in good faith by appropriate proceedings, or other liens arising out of judgments or awards against us with respect to which we shall then be proceeding with an appeal or other proceedings for review and liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; and

any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any mortgage referred to in the bullet points above.

*Restrictions on Sale and Leaseback Transactions.* The indenture provides that, unless as may otherwise be indicated by resolution of our board of directors, officer's certificate, or supplemental indenture, we will not enter into any lease longer than three years covering any principal manufacturing property that is sold to any other person (other than any then-existing subsidiary) in connection with such lease unless the proceeds from such sale or transfer shall be at least equal to the fair value of such property as determined by resolution by our board of directors and either:

we would be entitled, pursuant to the Restrictions on Liens described above, to incur debt secured by a mortgage on the principal manufacturing property involved in an amount at least equal to the attributable debt in respect of such principal manufacturing property without equally and ratably securing the debt securities, provided, that such attributable debt shall thereupon be deemed to be debt subject to the provisions of such restrictions on liens; or

within a period commencing twelve months prior to the consummation of the sale and leaseback transaction and ending twelve months after consummation of such transaction, we have expended or will expend for principal manufacturing property an amount equal to:

the proceeds of such sale and leaseback transaction and we elect to designate such amount as a credit against such transaction, or

a part of the proceeds of such sale and leaseback transaction and we elect to designate such amount as a credit against such transaction and treat an amount equal to the remainder of the proceeds as provided in the clause directly below; or

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such attributable debt (less any amount elected under the clause directly above) is applied within 120 days after the transaction to the retirement of funded debt, or is considered to be attributable debt for purposes of the calculation of exempted debt and, after giving effect to the exempted debt, the exempted debt does not exceed 15% of consolidated net tangible assets.

*Exempted Debt.* The indenture provides that, notwithstanding the restrictions on mortgages and sale and leaseback transactions described above, we may, in addition to amounts permitted under such restrictions, create, extend, renew or replace debt secured by mortgages, or enter into sale and leaseback transactions, which would otherwise be subject to the foregoing restrictions, without equally and ratably securing the debt securities and without any obligation to make expenditures for principal manufacturing property or to retire any debt, provided, that after giving effect thereto, the aggregate additional outstanding amount of such debt secured by mortgage plus attributable debt resulting from such sale and leaseback transactions ( **exempted debt** ) does not exceed 15% of consolidated net tangible assets.

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*Consolidation, Merger and Sale or Conveyance.* We may not consolidate with, merge with or into, or sell, or convey (including by way of lease) all or substantially all of our assets to any person or permit any person to merge with or into us unless:

we are the continuing person or the person formed by such consolidation or into which we are merged or that acquired or leased our property and assets shall be a corporation or entity organized and validly existing under the laws of the United States of America or any jurisdiction thereof (or, any entity not organized under such laws which agrees, in a form satisfactory to the trustee, to submit to the jurisdiction of the United States district court for the Southern District of New York, and to indemnify and hold harmless the holders of the debt securities against certain taxes and expenses) and shall expressly assume, by a supplemental indenture, executed and delivered to the trustee, all of our obligations on all of the debt securities and under the indenture;

immediately after giving effect to such transaction, no default or event of default shall have occurred and be continuing; and

we deliver to the trustee an officers' certificate and opinion of counsel, in each case stating that such consolidation, merger, or conveyance and such supplemental indenture complies with this provision and that all conditions precedent provided for in the indenture and the debt securities relating to such transaction have been complied with.

The restrictions in the bullets above shall not be applicable to:

the merger or consolidation of us with an affiliate of ours if our board of directors determines in good faith that the purpose of such transaction is principally to change our state of incorporation or convert our form of organization to another form; or

the merger of us with or into a single direct or indirect wholly owned subsidiary of ours pursuant to Section 251(g) (or any successor provision) of the General Corporation Law of the State of Delaware.

If any consolidation or merger or any sale, assignment, conveyance, lease, transfer or other disposition of all or substantially all of our assets occurs in accordance with the indenture, the successor corporation will succeed to, and be substituted for us and may exercise every right and power under the indenture with the same effect as if such successor corporation had been named in our place in the indenture, and we will (except in the case of a lease) be discharged from all obligations and covenants under the indenture and the debt securities.

## ***Events of Default***

An event of default for any series of debt securities is defined under the indenture as being:

our default in the payment of principal or premium on the debt securities of such series when due and payable whether at maturity, upon acceleration, redemption, or otherwise, if that default continues for a period of five days;

our default in the payment of interest on any debt securities of such series when due and payable, if that default continues for a period of 60 days;

our default in the performance of or breach of any of our other covenants or agreements in the indenture applicable to debt securities of such series, other than a covenant breach of which is specifically dealt with elsewhere in the indenture, and that default or breach continues for a period of 90 consecutive days after we receive written notice from the trustee or from the holders of 25% or more in aggregate principal amount of the debt securities of such series;



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there occurs any other event of default provided for in such series of debt securities;

a court having jurisdiction enters a decree or order for:

relief in respect of us in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect;