

HARBINGER GROUP INC.  
Form S-3  
March 13, 2012  
Table of Contents

As filed with the Securities and Exchange Commission on March 13, 2012

Registration No. 333-

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

**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**HARBINGER GROUP INC.**

*(Exact name of Registrant as specified in its charter)*

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

**74-1339132**  
*(I.R.S. Employer Identification No.)*

**450 Park Avenue, 27th Floor**

**New York, NY 10022**

**(212) 906-8555**

*(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)*

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Thomas A. Williams

Executive Vice President and Chief Financial Officer

450 Park Avenue, 27th Floor

New York, NY 10022

(212) 906-8555

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

*With copies to:*

Raphael M. Russo, Esq.

Paul, Weiss, Rifkind, Wharton & Garrison LLP

1285 Avenue of the Americas

New York, NY 10019-6064

(212) 373-3000

**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.

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, a 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   
Non-accelerated filer

Accelerated filer   
Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

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Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (1)	Proposed Maximum Aggregate Offering Price \$75,000,000 <sup>(2)</sup>	Amount of Registration Fee \$8,595 <sup>(2)</sup>
<i>Primary Offering:</i>				
Common Stock				
Preferred Stock				
Warrants				
Units				
<i>Secondary Offering:</i>	25,000,000 <sup>(3)</sup>	\$4.61 <sup>(4)</sup>	\$115,250,000	\$13,208 <sup>(4)</sup>
Common Stock				
TOTAL				\$21,803 <sup>(5)</sup>

- (1) An indeterminate aggregate initial offering price or number of shares of common stock, shares of preferred stock warrants and units of the Registrant is being registered as may from time to time be issued at currently indeterminable prices. Securities registered hereunder may be sold separately or together with other securities registered hereunder. The proposed maximum initial offering prices per security will be determined, from time to time, by the Registrant. Prices, when determined, may be in U.S. dollars or the equivalent thereof in one or more foreign currencies, foreign currency units or composite currencies. If any preferred stock is issued at an original issue discount, then the amount registered will include the principal or liquidation amount of such securities measured by the initial offering price thereof.
- (2) Estimated solely for the purpose of calculating the registration fee for primary offering pursuant to Rule 457(o) under the Securities Act of 1933, as amended. Such indeterminate amount of common stock, preferred stock, warrants and units as may from time to time be issued at indeterminate prices, with an aggregate initial offering price not to exceed the amount shown.
- (3) Consists of 25,000,000 shares of common stock held by the selling stockholders identified herein. Pursuant to Rule 416 under the Securities Act of 1933, this registration statement shall be deemed to cover any additional securities to be offered or issued from stock splits, stock dividends, recapitalizations or similar transactions.
- (4) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) under the Securities Act of 1933. The offering price and registration fee are computed using \$4.61, the average of the high and low prices of the registrant's common stock, as reported by the New York Stock Exchange on March 9, 2012.
- (5) Paid herewith

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

**Table of Contents**

**The information in this prospectus is not complete and may be changed. Neither we nor any of the selling stockholders may 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 MARCH 13, 2012**

**PRELIMINARY PROSPECTUS**

**Common Stock**

**Preferred Stock**

**Warrants**

**Units**

**Offered by Harbinger Group, Inc.**

**25,000,000 Shares**

**Common Stock**

**Offered by the Selling Stockholders**

We may offer and sell from time to time, in one or more offerings, in amounts, at prices and on terms determined at the time of any such offering, securities with an aggregate offering price of up to \$75,000,000.

In addition, the selling stockholders identified in this prospectus may sell, from time to time, up to 25,000,000 shares of our common stock. These shares were originally acquired by the selling stockholders in private placements exempt from the registration requirements of the Securities Act of 1933, as amended.

Each time we or the selling stockholders offer securities, we will provide a supplement to this prospectus, if required by applicable law, that will describe the specific manner in which such securities are being offered. The prospectus supplements, if any, may also add, update or change information contained in this prospectus.

The selling stockholders may offer for sale or otherwise distribute the shares of our common stock covered by this prospectus in one or more transactions, directly or through underwriters, brokers or dealers or agents, in public or private transactions, at fixed prices, prevailing market prices at the times of sale, prices related to the prevailing market prices, varying prices determined at the times of sale or negotiated prices.

For additional information on the methods of sale, you should refer to the section of this prospectus entitled *Plan of Distribution*.

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As of March 9, 2012, the aggregate market value of our outstanding common stock held by non-affiliates was \$44,607,828, based on 140,116,935 shares of outstanding common stock, of which 9,613,756 are held by non-affiliates, and a price of \$4.64 per share, based on the closing sale price of our common stock on March 9, 2012 on the New York Stock Exchange ( NYSE ). We have not offered any securities pursuant to General Instruction I.B.6 of Form S-3 during the prior 12-month period that ends on and includes the date of this prospectus.

We will not receive any of the proceeds from the sale of the shares by the selling stockholders. We will bear all expenses in connection with any offering of our securities by us or the selling stockholders, other than any underwriting fees, discounts, selling commissions and stock transfer taxes, if any, applicable in connection with any offering by the selling stockholders.

Our common stock is listed on the NYSE, under the symbol HRG . The last reported sale price of our common stock on the NYSE on March 9, 2012 was \$4.64 per share.

**You should carefully read this prospectus before you invest. Investing in our securities involves a high degree of risk. See Risk Factors on page 2.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is \_\_\_\_\_, 2012.**

**Table of Contents**

**TABLE OF CONTENTS**

<u>About This Prospectus</u>	i
<u>Where You Can Find More Information</u>	ii
<u>Incorporation of Documents by Reference</u>	iii
<u>The Company</u>	1
<u>Risk Factors</u>	2
<u>Forward-Looking Statements</u>	3
<u>Ratio of Earnings to Fixed Charges</u>	4
<u>Use of Proceeds</u>	5
<u>Selling Stockholders</u>	6
<u>Description of Capital Stock</u>	8
<u>Description of the Warrants</u>	15
<u>Description of the Units</u>	16
<u>Plan of Distribution</u>	17
<u>Legal Matters</u>	20
<u>Experts</u>	20

Unless otherwise indicated in this prospectus, any prospectus supplement, or the context requires otherwise, HGI, the Company, we, us or our refers to Harbinger Group Inc. and, where applicable, its consolidated subsidiaries; and Harbinger Parties refers, collectively, to Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P. and Global Opportunities Breakaway Ltd.

**You should rely only on the information contained or incorporated by reference in this prospectus or the prospectus supplement or any free writing prospectus and any pricing supplement that we or the selling stockholders authorize. Neither we nor the selling stockholders authorize any person, including any underwriter, salesperson or broker, to provide information other than that provided in this prospectus or the prospectus supplement or any free writing prospectus or any pricing supplement that we or the selling stockholders authorize in writing. We have not authorized anyone to provide you with different information. We are not making an offer of the securities in any jurisdiction where the offer is not permitted.**

You should assume that the information in this prospectus or the prospectus supplement or any free writing prospectus or any pricing supplement that we or the selling stockholders authorize is accurate only as of the date on its cover page and that any information previously filed with the Securities and Exchange Commission (the SEC) that is incorporate by reference is accurate only as of the date such document is incorporated by reference.

**ABOUT THIS PROSPECTUS**

To understand the terms of the securities offered by this prospectus, you should carefully read this prospectus, any applicable prospectus supplement and any information incorporated by reference. You should also read the documents referenced under the heading Where You Can Find More Information for information on the Company and its financial statements.

This prospectus is part of a registration statement that the Company has filed with the SEC using a shelf registration procedure. Under this procedure, we may offer and sell from time to time, any of the following securities, in one or more series:

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common stock, par value \$.01 per share (the common stock );

preferred stock;

i

## **Table of Contents**

warrants; and

units.

In addition, the selling stockholders may offer and sell from time to time shares of our common stock.

As described under the heading **Plan of Distribution**, certain third parties may also offer securities from time to time. The securities may be sold for U.S. dollars, foreign-denominated currency or currency units. Amounts payable with respect to any securities may be payable in U.S. dollars or foreign-denominated currency or currency units as specified in the applicable prospectus supplement.

This prospectus provides you with a general description of the securities that may be offered. Each time we or the selling stockholders sell securities, we may, to the extent required by applicable law, provide you with a prospectus supplement that will describe the specific amounts, prices and terms of the securities being offered. The prospectus supplement may also add, update or change information contained or incorporated by reference in this prospectus.

The prospectus supplement may also contain information about any material U.S. federal income tax considerations relating to the securities covered by the prospectus supplement.

We or the selling stockholders may sell these securities on a continuous or delayed basis directly, through agents, dealers or underwriters as designated from time to time, or through a combination of these methods. We and the selling stockholders reserve the sole right to accept, and together with any agents, dealers and underwriters, reserve the right to reject, in whole or in part, any proposed purchase of securities. If any agents, dealers or underwriters are involved in the sale of any securities, the applicable prospectus supplement will set forth any applicable commissions or discounts. The net proceeds to us or the selling stockholders from the sale of securities also will be set forth in the applicable prospectus supplement.

The prospectus supplement will also contain, with respect to the securities being sold by us or the selling stockholders, the names of any underwriters, dealers or agents, together with the terms of the offering, the compensation of any underwriters and the net proceeds to us.

Any underwriters, dealers or agents participating in the offering may be deemed **underwriters** within the meaning of the Securities Act of 1933, as amended, which we refer to in this prospectus as the **Securities Act**.

### **WHERE YOU CAN FIND MORE INFORMATION**

As required by the Securities Act of 1933, as amended (the **Securities Act**), we filed a registration statement relating to the securities offered by this prospectus with the SEC. This prospectus is a part of that registration statement, which includes additional information.

We file annual, quarterly and current reports, proxy statements and other information with the SEC pursuant to the Securities Exchange Act of 1934, as amended (the **Exchange Act**). You may read and copy any materials that we file with the SEC at the SEC Public Reference Room located at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. The SEC maintains an Internet site that contains the reports, proxy and information statements and other information that we and other issuers file electronically with the SEC. The SEC's Internet website address is <http://www.sec.gov>. You can also obtain information about our Company at the offices of the New York Stock Exchange (the **NYSE**), 20 Broad Street, New York, New York 10005.

As permitted by SEC rules, this prospectus does not contain all of the information we have included in the registration statement and the accompanying exhibits and schedules we file with the SEC. You may refer to the registration statement, exhibits and schedules for more information about us and the securities. The registration statement, exhibits and schedules are available through the SEC's website or at its public reference room.



**Table of Contents**

**INCORPORATION OF DOCUMENTS BY REFERENCE**

The SEC, allows us to incorporate by reference into this prospectus the information we file with the SEC. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. If we subsequently provide updating or superseding information in this prospectus or in a document that is incorporated by reference into this prospectus, the subsequent information will also become part of this prospectus and will supersede the earlier information.

We are incorporating by reference the following documents that we have filed with the SEC (other than any filing or portion thereof that is furnished under applicable SEC rules rather than filed):

our Annual Report on Form 10-K for the year ended September 30, 2011, as filed with the SEC on December 14, 2011 as amended by Amendment No. 1 thereto as filed with the SEC on January 30, 2012 (Commission File No.: 1-4219);

our Quarterly Report on Form 10-Q for the quarter ended January 1, 2012, as filed with the SEC on February 9, 2012 (Commission File No.: 1-4219);

our Current Reports on Form 8-K, as filed with the SEC on April 11, 2011 (as amended by Amendment No. 1 thereto filed with SEC on June 17, 2011), December 9, 2011, January 5, 2012, January 12, 2012, January 17, 2012, February 17, 2012 and February 27, 2012 (Commission File No.: 1-4219); and

the description of our common stock contained in our Information Statement on Schedule 14C, as filed with the SEC on November 30, 2009 (Commission File No.: 1-4219).

We are also incorporating by reference into the accompanying prospectus all of our future filings with the SEC (other than any filing or portion thereof that is furnished under applicable SEC rules rather than filed) under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act until this offering has been completed.

You should rely only on the information contained or incorporated by reference in this prospectus or the prospectus supplement or any free writing prospectus and any pricing supplement that we or the selling stockholders authorize. Neither we nor the selling stockholders authorize any person, including any underwriter, salesperson or broker, to provide information other than that provided in this prospectus or the prospectus supplement or any free writing prospectus or any pricing supplement that we or the selling stockholders authorize in writing. We have not authorized anyone to provide you with different information. We are not making an offer of the securities in any jurisdiction where the offer is not permitted.

You should assume that the information in this prospectus or the prospectus supplement or any free writing prospectus or any pricing supplement that we or the selling stockholders authorize is accurate only as of the date on its cover page and that any information previously filed with the SEC that is incorporate by reference is accurate only as of the date such document is incorporated by reference.

The documents incorporated by reference into this prospectus are available from us and upon request. We will provide a copy of any and all of the information that is incorporated by reference in this prospectus to any person, without charge, upon written or oral request. If exhibits to the documents incorporated by reference in this prospectus are not themselves specifically incorporated by reference in this prospectus, then the exhibits will not be provided. Requests for such copies should be directed to the following:

Harbinger Group Inc.

Attn.: Chief Financial Officer

450 Park Avenue, 27th Floor

New York, NY 10022

(212) 906-8555

**Except as expressly provided above, no other information, including none of the information on our website, is incorporated by reference into this prospectus.**

iii

**Table of Contents**

**THE COMPANY**

We are a diversified holding company that is majority owned by the Harbinger Parties. Our principal operations are conducted through subsidiaries that offer life insurance and annuity products, and branded consumer products such as batteries, personal care products, small household appliances, pet supplies, and home and garden pest control products. We are principally focused on acquiring controlling and other equity stakes in businesses across a diversified range of industries and growing our existing businesses. In addition to our intention to acquire controlling equity interests, we may also from time to time make investments in debt instruments and acquire minority equity interests in companies.

We were incorporated in Delaware in 1954 under the name Zapata Corporation and reincorporated in Nevada in April 1999 under the same name. On December 23, 2009, we were reincorporated in Delaware under the name Harbinger Group Inc. Our common stock trades on the NYSE under the symbol HRG. Our principal executive offices are located at 450 Park Avenue, 27th Floor, New York, New York 10022.

For a description of our business, financial condition, results of operations and other important information regarding us, we refer you to our filings with the SEC incorporated by reference in this prospectus. For instructions on how to find copies of these documents, see *Where You Can Find More Information*. More information about us is also available through our website at [www.harbingergroupinc.com](http://www.harbingergroupinc.com). The information on our website is not incorporated by reference into this prospectus or any prospectus supplement.

**Table of Contents**

**RISK FACTORS**

Investing in our securities involves risks. You should carefully consider the specific risks discussed or incorporated by reference into the applicable prospectus supplement, together with all the other information contained in the prospectus supplement or incorporated by reference into this prospectus and any prospectus supplement. You should also consider the risks, uncertainties and assumptions discussed under the caption *Risk Factors* included in our Quarterly Report on Form 10-Q for the quarter ended January 1, 2012 and our Annual Report on Form 10-K for the annual period ended September 30, 2011, which are incorporated by reference into this prospectus. For instructions on how to find copies of these documents, see *Where You Can Find More Information*. These risk factors may be amended, supplemented or superseded from time to time in supplements to this prospectus and by other reports we file with the SEC in the future.

**Table of Contents**

**FORWARD-LOOKING STATEMENTS**

Some of the statements included or incorporated by reference in this prospectus or in information we file with the SEC are forward-looking statements that are subject to risks and uncertainties. These statements are based on the beliefs and assumptions of our management and the management of our subsidiaries. Generally, forward-looking statements include information concerning possible or assumed future actions, events or results of operations of our company. Forward-looking statements include, without limitation, the information regarding: conditions to, and the timetable for, completion and integration of acquisitions and the future economic performance of our subsidiaries. Forward-looking statements are also identified in the documents incorporated by reference.

Forward-looking statements may be preceded by, followed by or include the words *may*, *will*, *believe*, *expect*, *anticipate*, *intend*, *plan*, *could*, *might*, or *continue* or the negative or other variations thereof or comparable terminology.

We claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 for all forward-looking statements.

Forward-looking statements are not guarantees of performance. Further description of risks, uncertainties and other important factors currently known to our management that could cause actual results to differ materially from those in forward-looking statements is incorporated by reference herein under the section entitled *Risk Factors* and appears in our periodic SEC filings as incorporated by reference in this prospectus. For instructions on how to find copies of these documents, see *Where You Can Find More Information*.

We also caution you that undue reliance should not be placed on any forward-looking statements, which speak only as of the date of this prospectus or the date of documents incorporated by reference herein. We do not undertake any duty or responsibility to update any of these forward-looking statements to reflect events or circumstances after the date of this prospectus or to reflect actual outcomes.

**Table of Contents****RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDEND REQUIREMENTS**

The following table sets forth our consolidated ratio of earnings to combined fixed charges and preferred stock dividend requirements for each of the periods indicated. For the purpose of calculating the consolidated ratio of earnings to fixed charges and preferred stock dividend requirements, earnings represents pre-tax income (loss) from continuing operations plus fixed charges, and less any interest capitalized. Fixed charges consists of interest expense, whether expensed or capitalized, amortization of debt financing costs, and one-third of lease expense.

Preferred stock dividend requirements represents pre-tax earnings required to cover post-tax dividends and accretion on preferred stock, using a marginal income tax rate of 35%. You should read these ratios in connection with our consolidated financial statements, including the notes to those statements, incorporated by reference in this prospectus.

	Predecessor		Period from August 31, 2009 through September 30, 2009	Successor		Three Month Period Ended	
	Year Ended September 30, 2007	Year Ended September 30, 2008		Year Ended September 30, 2010	Year Ended September 30, 2011	January 2, 2011	January 1, 2012
	(In millions, except ratios)						
Ratio of earnings to combined fixed charges and preferred stock dividend requirements			7.2		1.1	1.1	1.7
Deficiency of (loss) earnings to combined fixed charges and preferred stock dividend requirements	\$ (507.2)	\$ (914.8)		\$ (20.0)	\$ (132.3)		

**Table of Contents**

**USE OF PROCEEDS**

Unless we state otherwise in the accompanying prospectus supplement, we intend to use the net proceeds from the sale of the securities offered by us under this prospectus and any related prospectus supplement for general corporate purposes. These purposes may include financing of acquisitions and capital expenditures, additions to working capital and repayment or redemption of existing indebtedness.

We will not receive any proceeds from the sale of our common stock by the selling stockholders.

**Table of Contents****SELLING STOCKHOLDERS**

In addition to covering the offering of the securities by us, this prospectus covers the offering for resale of common shares by the selling shareholders named below. We have registered the shares to permit the selling stockholders and their successors, which include their donees, pledgees, distributees or transferees or their successors-in-interest. We refer to all of these possible sellers as the selling stockholders in this prospectus. The selling stockholders may sell all, a portion or none of their shares at any time.

The following table sets forth the maximum number of shares of our common stock to be sold by the selling stockholders pursuant to this registration statement. The beneficial ownership of the common stock set forth in the following table is determined in accordance with Rule 13d-3 under the Exchange Act, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rule, beneficial ownership includes any shares as to which the selling stockholder has sole or shared voting power or investment power and also any shares that the selling stockholder has the right to acquire within 60 days. The percentage of shares beneficially owned before the offering is based on 139,348,645 shares of common stock outstanding as of March 5, 2012, and a total of 188,268,949 shares of common stock outstanding on a fully diluted basis as of March 5, 2012 after giving effect to the conversion of the Company's outstanding shares of Series A Participating Preferred Stock (the Series A Shares) and Series A-2 Participating Preferred Stock (the Series A-2 Shares, and together with the Series A Shares, the Preferred Stock) and the limitation on voting by applicable to one of Preferred Stockholders prior to receipt of certain regulatory approvals.

	Shares of Common Stock Beneficially Owned Prior to the Offering		Shares of Common Stock Offered	Shares of Common Stock Beneficially Owned After the Offering	
	Number	%		Number	%
Harbinger Capital Partners Master Fund I, Ltd. <sup>(1)</sup>	95,932,068	51.0	18,468,379	77,463,689	41.1
Harbinger Capital Partners Special Situations Fund, L.P. <sup>(2)</sup>	21,493,161	11.4	4,137,760	17,355,401	9.2
Global Opportunities Breakaway Ltd. <sup>(3)</sup>	12,434,660	6.6	2,393,861	10,040,799	5.3

- (1) Harbinger Capital Partners Master Fund I, Ltd. (the Master Fund) is the beneficial owner of 95,932,068 shares of our common stock, which may also be deemed to be beneficially owned by Harbinger Capital, the investment manager of Master Fund; Harbinger Holdings, LLC (Harbinger Holdings), the managing member of Harbinger Capital Partners LLC (Harbinger Capital), and Mr. Philip A. Falcone, the managing member of Harbinger Holdings and the portfolio manager of the Master Fund. The address of the Master Fund is c/o International Fund Services (Ireland) Limited, 78 Sir John Rogerson's Quay, Dublin 2, Ireland. The Company has been informed that, as of the date hereof, all of the shares of our Common Stock held by the Master Fund are pledged, together with securities of other issuers, to secure certain portfolio financing for the Master Fund.
- (2) Harbinger Capital Partners Special Situation Fund, L.P. (the Special Situations Fund) is the beneficial owner of 21,493,161 shares of our common stock, which may be deemed to be beneficially owned by Harbinger Capital Partners Special Situations GP, LLC (HCPSS), the general partner of the Special Situations Fund, Harbinger Holdings, the managing member of HCPSS, and Mr. Falcone, the managing member of Harbinger Holdings and the portfolio manager of the Special Situations Fund. The address of the Special Situations Fund is 450 Park Avenue, 30th floor, New York, New York, 10022.
- (3) Global Opportunities Breakaway Ltd. (the Global Fund) is the beneficial holder of 12,434,660 shares of our common stock, which may be deemed to be beneficially owned by Harbinger Capital Partners II LP (HCP II), the investment manager of the Global Fund; Harbinger Capital Partners II GP LLC (HCP II GP), the general partner of HCP II, and Mr. Falcone, the managing member of HCP II GP and the portfolio manager of the Global Fund. The address of the Global Fund is c/o Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, Cayman Islands KY1-1104.



**Table of Contents**

**Material relationships with the selling stockholders**

The selling stockholders control a majority of our voting securities. In addition, Mr. Philip A Falcone, our Chairman and Chief Executive Officer is the Chief Investment Officer and Chief Executive Officer of Harbinger Capital and Keith M. Hladek and Robin Roger, two of our directors, are senior officers of Harbinger Capital. In addition, a number of our executive officers and employees are former officers or employees of Harbinger Capital. We have entered into several agreements and arrangements with Harbinger Capital and its affiliates, including the registration rights agreement pursuant to which the selling stockholders' shares are included in this prospectus.

Additional information about certain material relationships between us and the selling shareholders is included in the documents incorporated by reference herein, including the information set forth under the heading "Item 13. Certain Relationships, Related Party Transactions and Director Independence" in Amendment No. 1 to our Annual Report on Form 10-K for the fiscal year ended September 30, 2011, the headings "Item 1. Business," and "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2011 and the heading "Item 1A. Risk Factors" in our Quarterly Report on Form 10-Q for quarter period ended January 1, 2012.

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**Table of Contents**

**DESCRIPTION OF CAPITAL STOCK**

Our authorized capital stock consists of 500,000,000 shares of common stock, par value \$0.01 per shares and 10,000,000 shares of preferred stock, par value \$0.01 per share. As of March 9, 2012, we have 140,116,935 shares of common stock and 280,000 Series A Shares and 120,000 Series A-2 Shares outstanding. Summarized below are material provisions of our certificate of incorporation (including the certificates of designation of the Preferred Stock) and by-laws as currently in effect, as well as relevant sections of the Delaware General Corporation Law (the DGCL ). The following summary is qualified in its entirety by the entire text of our certificate of incorporation and by-laws, copies of which have been filed as exhibits to our SEC reports, which are incorporated herein by reference, and by the applicable provisions of the DGCL.

**Common stock**

The holders of our common stock are entitled to one vote per share on all matters submitted to a vote of stockholders, including the election of directors. Holders of the common stock do not have any preemptive rights or cumulative voting rights, which means that the holders of a majority of the outstanding common stock voting for the election of directors can elect all directors then being elected. The holders of our common stock are entitled to receive dividends when, as, and if declared by our Board out of legally available funds. Upon our liquidation or dissolution, the holders of common stock will be entitled to share ratably in those of our assets that are legally available for distribution to stockholders after payment of liabilities and subject to the prior rights of any holders of preferred stock then outstanding. All of the outstanding shares of common stock are, and the shares of common stock to be sold in this offering when issued and paid for will be, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to the rights of the holders of shares of the Preferred Stock and of any other series of preferred stock that may be issued in the future.

**Preferred stock**

Our Board of directors is authorized, subject to limitations prescribed by Delaware law and our certificate of incorporation, to determine the terms and conditions of the preferred stock, including whether the shares of preferred stock will be issued in one or more series, the number of shares to be included in each series and the powers, designations, preferences and rights of the shares. Our Board of directors is also authorized to designate any qualifications, limitations or restrictions on the shares without any further vote or action by the stockholders. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control of our company and may adversely affect the voting and other rights of the holders of our common stock, which could have an adverse impact on the market price of our common stock.

***Series A and Series A-2 Preferred Stock***

On May 13, 2011, and August 5, 2011, the Company issued an aggregate of 400,000 shares of Preferred Stock to certain institutional investors (the Preferred Stock Purchasers ) including CF Turul LLC ( CF Turul ), at a purchase price of \$1,000 per share (the Purchase Price ), resulting in aggregate gross proceeds to us of \$400 million. The following discussion provides only a summary of the material terms of the Preferred Stock. The following summary is qualified in its entirety by the entire text of the certificates of designation of the Series A Shares and the Series A-2 Shares, including amendments thereto, which have been filed as exhibits to our SEC reports and are incorporated herein by reference.

*Dividends.* The Preferred Stock will accrue a cumulative quarterly cash dividend at an annualized rate of 8%. The Purchase Price of the Preferred Stock will accrete quarterly at an annualized rate of 4% that will be reduced to 2% or 0% if the Company achieves specified rates of growth measured by increases in its net asset value. The Preferred Stock is also entitled to participate in cash and in-kind distributions to holders of shares of common stock on an as-converted basis.

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**Table of Contents**

*Optional Conversion.* Each share of Preferred Stock may be converted by the holder into common stock at any time based on the then applicable conversion price. The initial conversion price is \$6.50 for the Series A Shares and \$7.00 for the Series A-2 Shares and is subject to adjustment for dividends, certain distributions, stock splits, combinations, reclassifications, reorganizations, recapitalizations and similar events, as well as in connection with issuances of common stock (and securities convertible or exercisable for common stock) below the conversion price (which adjustment shall be made on a weighted average basis). Until certain regulatory filings are made and approvals are obtained and effective, Preferred Stock may not be converted if upon such conversion the holder's beneficial ownership would exceed certain thresholds.

*Automatic Conversion/Mandatory Redemption.* On May 13, 2018, holders of the Preferred Stock are entitled to cause the Company to redeem the Preferred Stock at the Purchase Price per share plus accrued but unpaid dividends. Each share of Preferred Stock that is not so redeemed will be automatically converted into shares of common stock at the applicable conversion price then in effect ( Conversion Price ).

Upon a change of control (as defined in the certificates of designation), holders of the Preferred Stock are entitled to cause the Company to redeem their Preferred Stock at a price per share equal to the sum of 101% of the Purchase Price and any accrued and unpaid dividends, including accrued and unpaid cash and accreting dividends for the then current dividend period.

*Optional Redemption.* At any time after May 13, 2014, the Company may redeem the Preferred Stock, in whole but not in part, at a price per share equal to 150% of the Purchase Price plus accrued but unpaid dividends, subject to the holder's right to convert prior to such redemption.

*Mandatory Conversion.* After May 13, 2014, the Company may force conversion of the Preferred Stock into common stock if the thirty day volume weighted average price of our common stock ( VWAP ), and the daily VWAP exceeds 150% of the then applicable Conversion Price for at least twenty trading days out of the thirty trading day period used to calculate the thirty day VWAP. In the event of a forced conversion, the holders of Preferred Stock will have the ability to elect cash settlement in lieu of conversion if certain market liquidity thresholds for the common stock are not achieved. In addition, for so long as CF Turul owns sufficient combined voting power (through ownership of Preferred Stock and common stock) to entitle it to have consent rights or to nominate directors or appoint observers (as described below), the Company's ability to force conversion shall be limited so that CF Turul retains at least one share of Preferred Stock, enabling it to continue to exercise its right to nominate directors, appoint observers or exercise consent rights associated with the Preferred Stock, but such Preferred Stock shall have no other rights or preferences. Upon CF Turul ceasing to own sufficient combined voting power to exercise these rights, the retained share shall be automatically cancelled.

*Liquidation Preference.* In the event of any liquidation or winding up of the Company, the holders of Preferred Stock will be entitled to receive per share the greater of (i) 150% of the Purchase Price, plus any accrued and unpaid dividends and (ii) the value that would be received if the share of Preferred Stock were converted into common stock immediately prior to the liquidation or winding up.

*Participation Rights.* Prior to May 13, 2016 with respect to the Series A Shares and prior to August 5, 2016 with respect to the Series A-2 Shares, subject to meeting certain ownership thresholds, certain Preferred Stock Purchasers will be entitled to participate, on a pro rata basis in accordance with their ownership percentage, determined on an as-converted basis, in issuances of equity and equity linked securities by the Company. In addition, subject to meeting certain ownership thresholds and other conditions, certain Preferred Stock Purchasers will be entitled to participate in issuances of preferred securities and in debt transactions of the Company and its subsidiaries.

*Voting Rights.* The holders of the Preferred Stock will be entitled to vote on an as-converted basis with the Company's holders of common stock on all matters submitted to a vote of the holders of common stock for all purposes. However, until approval is obtained from certain insurance regulatory authorities, no holder of

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**Table of Contents**

Preferred Stock may, at any time, vote more than 9.9% of the total number of votes which may be cast in a general election of a director of the Company.

*Consent Rights.* Consent of the holders of Preferred Stock is required before certain fundamental changes that can be made to the Preferred Stock, including changes to the terms of the Preferred Stock with respect to liquidation preference, dividend, or redemption rights. Consent of the holders of a majority of Preferred Stock is required before, subject to certain exceptions, certain material actions may be taken with respect to the Preferred Stock including issuing stock senior or *pari passu* to the Preferred Stock and incurring debt, or permitting a subsidiary to incur debt or selling assets or permitting a subsidiary to sell assets not otherwise permitted by the indenture relating to the Company's Senior Secured Notes due 2015 (or any replacement thereof). While CF Turul continues to own at least 50% of the Series A Shares it initially purchased (either as Preferred Stock or common stock upon conversion), consent of CF Turul is required before any action may be taken which, pursuant to the express terms of the certificates of designation, requires approval by a majority of the holders of Preferred Stock or any action with respect to certain related party transactions between the Company and its affiliates.

*Board Representation.* Subject to certain approval from certain insurance regulatory authorities, so long as CF Turul owns at least 50% of the Series A Shares it initially purchased or 10% of the outstanding common stock on an as-converted basis, CF Turul shall have the right to appoint one director to the Board who shall be entitled to be a member of any committee of the Board (except for any special committee formed to consider a related party transaction involving CF Turul).

If CF Turul does not appoint a director, subject to meeting certain ownership thresholds, CF Turul has the right to appoint an observer to attend all meetings of the Board, any committee of the Board, and the board of any wholly owned subsidiary of the Company on which it does not have a director. Upon a specified breach event (described in the Section *Other Covenants* below) the size of the Board will be increased by one or two directors, depending on whether CF Turul has appointed a director prior thereto. CF Turul, or a majority of Preferred Stock Purchasers if CF Turul at that time owns less than a threshold amount, in either common stock or Preferred Stock, will have the right to appoint one or two directors, reasonably acceptable to the Board.

Subject to meeting certain ownership thresholds, in the event that Philip A. Falcone ceases to have principal responsibility for the Company's investments for a period of more than 90 consecutive days, other than as a result of temporary disability, and CF Turul does not approve the Company's proposed business continuity plan, CF Turul may appoint such number of directors that, when the total number of directors appointed by CF Turul is added to the number of independent directors, that number of directors is equal to the number of directors employed by or affiliated with the Company or the Harbinger Parties and their affiliates (the *Harbinger Affiliates*).

Notwithstanding all of the foregoing, CF Turul's representation on the Board will always be less than or proportionate (save for rounding up, where necessary) to its beneficial ownership of the Company's common stock and will otherwise comply with the rules of the NYSE and certain insurance regulatory authorities.

*Other Covenants.* The certificates of designation include additional terms regarding obligations of the Company. Upon a specified breach event (which shall include an event of default under the indenture relating to the Company's Senior Secured Notes due 2015, the Company's failure to pay any dividends for a period longer than 90 days, the Company's failure to maintain a 1:1 ratio of cash and cash equivalents to fixed charges until March 31, 2012, the Company's failure to perform certain covenants under the certificates of designation, and causing the delisting of its common stock), the Company shall be prohibited from making certain restricted payments, incurring certain debt, and entering into certain agreements to purchase debt or equity interests in portfolio companies of the Harbinger Affiliates and related parties (other than the Company) or to sell equity interests in portfolio companies of the Company to the Harbinger Affiliates and related parties.

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**Table of Contents**

**Directors liability; indemnification of directors and officers**

Section 145 of the DGCL authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursements for expenses incurred arising under the Securities Act.

Our certificate of incorporation provides that a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except:

for any breach of the duty of loyalty;

for acts or omissions not in good faith or which involve intentional misconduct or knowing violations of law;

for liability under Section 174 of the DGCL (relating to unlawful dividends, stock repurchases or stock redemptions); or

for any transaction from which the director derived any improper personal benefit.

The effect of this provision is to eliminate our rights, and our stockholders' rights, to recover monetary damages against a director for breach of a fiduciary duty of care as a director. This provision does not limit or eliminate our rights or those of any stockholder to seek non-monetary relief such as an injunction or rescission in the event of a breach of a director's duty of care. The provisions will not alter the liability of directors under federal securities laws. In addition, our certificate of incorporation and by-laws will provide that we indemnify each director and the officers, employees and agents determined by our Board to the fullest extent provided by the laws of the State of Delaware.

Any amendment to or repeal of these provisions will not adversely affect any right or protection of our directors in respect of any act or failure to act that occurred prior to any amendment to or repeal of such provisions or the adoption of an inconsistent provision. If the DGCL is amended to provide further limitation on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the DGCL. Our by-laws authorize us to indemnify our directors and officers and we must advance expenses, including attorneys' fees, to our directors and officers in connection with legal proceedings, subject to very limited exceptions. We also enter into indemnification agreements with our directors and officers which may, in certain cases, be broader than specified indemnification provisions of our certificate of incorporation and by-laws. We intend to maintain director and officer liability insurance, if available on reasonable terms.

**Certain certificate of incorporation, by-law and statutory provisions**

Some of the provisions of our certificate of incorporation and by-laws summarized below may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that holders of our securities might consider in their best interest, including any attempt that might result in receipt of a premium over the market price for our shares of common stock.

***Stockholder action by written consent; special meetings of stockholders***

Our certificate of incorporation permits stockholder action by written consent in lieu of a meeting in accordance with Delaware law. A special meeting of our stockholders can be called only by the chairman of our Board or any three members of our Board. A special meeting cannot be called by stockholders.

***Advance notice requirements for stockholder proposals and director nominations***

Our by-laws require stockholders to provide to our Board not less than 90 days and not more than 120 days advance notice of business proposed to be brought before, and of nominations of directors to be made at, a stockholder meeting. The content of the notice must include the stockholder's beneficial stock ownership information, including his or her derivative and short positions and all information required by Regulation 14A



**Table of Contents**

of the SEC proxy rules. Failure to deliver proper notice in a timely fashion results in exclusion of the proposal from stockholder consideration at the meeting. In the case of nominations of directors, our by-laws also require nominees to respond to a questionnaire providing information about the candidate's background and qualifications, to represent that he or she has no agreements with any third party as to voting or compensation in connection with his or her service as a director, and to agree to abide by applicable confidentiality, governance, conflicts, stock ownership and trading policies of the Company.

***Election and removal of directors***

Our Board is divided into three classes. The directors in each class serve for a three-year term, one class being elected each year by our stockholders. Our Board may elect a director to fill a vacancy, including vacancies created by the expansion of our Board. Our certificate of incorporation and by-laws do not provide for cumulative voting in the election of directors. A director may be removed only for cause by the holders of a majority of shares then entitled to vote in an election of directors.

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