

GRIFFON CORP  
Form S-4  
March 30, 2009

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As filed with the Securities and Exchange Commission on March 30, 2009

Registration No. 333-

## SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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### FORM S-4

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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## GRIFFON CORPORATION\*

(Exact name of Registrant as specified in its charter)

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

**3442**  
(Primary Standard Industrial  
Classification Number)

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**11-1893410**  
(I.R.S. Employer  
Identification Number)

**100 Jericho Quadrangle**  
**Jericho, New York 11753**  
**(516) 938-5544**

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

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**Patrick L. Alesia**  
**Chief Financial Officer**  
**Griffon Corporation**  
**100 Jericho Quadrangle**  
**Jericho, New York 11753**  
**(516) 938-5544**

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

---

*Copies to:*

**Martin Nussbaum**  
**Derek M. Winokur**  
**William J. Tuttle**

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**Dechert LLP**  
**1095 Avenue of the Americas**  
**New York, New York 10036**  
**(212) 698-3500**  
**(212) 698-3599 Facsimile**

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

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, 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, 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(d) 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.

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

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)     

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)     

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered(1)(2)	Proposed Maximum Aggregate Offering Price(1)(3)	Amount of Registration Fee(4)
Common Stock, par value \$0.25 per share		
Preferred Stock, par value \$0.25 per share		
Depository shares		
Warrants to purchase common stock, preferred stock, depository shares, debt securities or units		
Rights to purchase common stock, preferred stock, depository shares, debt securities or units		
Debt securities		
Units		
Guarantees of debt securities(5)		
<b>Total</b>	<b>\$300,000,000</b>	<b>\$16,740</b>

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- (1) Not specified as to each class of securities to be registered hereunder pursuant to the General Instructions to Form S-4 under the Securities Act of 1933, as amended.
  - (2) Includes an indeterminate number of securities that may be issued in primary offerings or upon exercise, conversion or exchange of any securities registered hereunder that provide for exercise, conversion or exchange.
  - (3) With respect to debt securities, excluding accrued interest and accrued amortization of discount, if any, to the date of delivery. If any debt securities are issued at an original issue discount, then the offering price of such debt securities shall be equal to any such greater principal amount due at maturity, such aggregate principal amount not to exceed \$300,000,000 less the value of securities previously issued hereunder.
  - (4) The registration fee has been calculated in accordance with Rule 457(o) under the Securities Act of 1933, as amended.
  - (5) No separate consideration will be received for the guarantees, and no separate fee is payable pursuant to Rule 457(a) under the Securities Act.
- \*
- Includes certain subsidiaries of Griffon Corporation identified on the following pages.

**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 Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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**ADDITIONAL SUBSIDIARY GUARANTOR REGISTRANTS**

<b>EXACT NAME OF ADDITIONAL REGISTRANT AS SPECIFIED IN ITS CHARTER</b>	<b>STATE OR OTHER JURISDICTION OF INCORPORATION</b>	<b>IRS EMPLOYEE IDENTIFICATION NUMBER</b>
Clopay Building Products Company, Inc.	Delaware	11-2808682
Clopay Plastic Products Company, Inc.	Delaware	11-2808683
Telephonics Corporation	Delaware	52-0897556

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**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**Subject to Completion, dated March 30, 2009**

**\$300,000,000**

**GRIFFON CORPORATION**

**Common Stock  
Preferred Stock  
Depositary Shares  
Warrants to purchase common stock, preferred stock, depositary shares, debt securities or units  
Rights to purchase common stock, preferred stock, depositary shares, debt securities or units  
Debt Securities  
Units**

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We may from time to time offer at the time of our acquisition of businesses, assets or securities of other companies, whether by purchase, merger or any other form of business combination, any combination of common stock; preferred stock; depositary shares; warrants to purchase common stock, preferred stock, depositary shares, debt securities or units; rights to purchase common stock, preferred stock, depositary shares, debt securities or units; debt securities and units described in this prospectus in one or more offerings. The aggregate initial offering price of all securities issued under this prospectus will not exceed \$300,000,000. We or one or more of our subsidiaries may unconditionally guarantee any series of debt securities offered by this prospectus, if so and to the extent identified in the related prospectus supplement.

This prospectus provides a general description of the securities we may offer. Each time we offer securities, we will provide specific terms of the securities offered in a supplement to this prospectus. The prospectus supplement may also add, update or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in any securities. This prospectus may not be used to consummate an offer of securities unless accompanied by the applicable prospectus supplement.

The amount and type of consideration we will offer and the other specific terms of each acquisition will be determined by negotiations with the owners or the persons who control the businesses, assets or securities we may acquire. We may structure business acquisitions in a variety of ways, including acquiring stock, other equity interests or assets of the acquired businesses, merging the acquired businesses with us or one of our subsidiaries or acquiring the acquired businesses through one of our subsidiaries. We expect that the price of the securities we issue will be related to their market price, either when we tentatively or finally agree to the particular terms of the acquisition, when we issue the securities, when the acquisition is completed or during some other negotiated period. We may issue securities at fixed offering prices, which may be changed, or at other negotiated prices. If necessary, we may be required to provide you further information by means of a post-effective amendment to the registration statement or a supplement to this prospectus once we know the actual information concerning a specific acquisition.

We will pay all expenses of this offering. We do not expect to pay any underwriting discounts or commissions in connection with issuing these shares, although we may pay finder's fees in connection with certain acquisitions and, in some cases, we may issue securities under this prospectus in full or partial payment of such fees. Any person receiving a finder's fee may be deemed an underwriter within the meaning of the Securities Act of 1933, as amended.

We may also permit individuals or entities who have received or will receive our securities in connection with the business combinations described above to use this prospectus to cover resales of those securities. See "Reselling Securities" for information relating to resales of our securities pursuant to this prospectus.

Our common stock is traded on the New York Stock Exchange, or NYSE, under the symbol "GFF." On March 27, 2009, the closing price of our common stock was \$7.88.

**Investing in our securities involves risks. See "Risk Factors" on page 3 of this prospectus and in the applicable prospectus supplement.**

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

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The date of this prospectus is \_\_\_\_\_, 2009.

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The prospectus incorporates important business and financial information about the company that is not included in or delivered with the prospectus. You may obtain documents incorporated by reference into this prospectus at no cost by writing or telephoning us at the following address:

**Griffon Corporation**  
**Attention: Patrick L. Alesia, Chief Financial Officer**  
**100 Jericho Quadrangle**  
**Jericho, New York 11753**  
**(516) 938-5544**

To obtain timely delivery, you must request information no later than five business days before the date you must make your investment decision.

**ABOUT THIS PROSPECTUS**

This prospectus is a part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, utilizing a "shelf" registration process. Under this shelf registration process, we may offer any combination of the securities described in this prospectus up to a total dollar amount of \$300,000,000 in connection with the acquisition of one or more businesses. We may issue these securities in connection with our acquisition of the businesses, assets or securities of other companies, whether by purchase, merger, or any other form of business combination. The amount and type of consideration we will offer and the other specific terms of each acquisition will be determined by negotiations with the owners or the persons who control the businesses, assets or securities we may acquire. We may structure business acquisitions in a variety of ways, including acquiring stock, other equity interests or assets of the acquired businesses, merging the acquired businesses with us or one of our subsidiaries or acquiring the acquired businesses through one of our subsidiaries. We expect that the price of the securities we issue will be related to their market price, either when we tentatively or finally agree to the particular terms of the acquisition, when we issue the securities, when the acquisition is completed or during some other negotiated period. We may issue securities at fixed

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offering prices, which may be changed, or at other negotiated prices. If necessary, we may be required to provide you further information by means of a post-effective amendment to the registration statement or a supplement to this prospectus once we know the actual information concerning a specific acquisition.

This prospectus provides you with a general description of the securities we may offer. Each time we issue securities under this shelf registration, 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, including all documents incorporated herein by reference, together with additional information described under "Where You Can Find More Information."

With our consent, persons who have received or will receive securities under this prospectus in connection with acquisitions may use this prospectus to sell such securities at a later date. We refer to these persons in the prospectus as selling security holders. Please see the information described under the heading "Reselling Securities" to find out more information about resales of the securities by the selling security holders.

**You should rely only on the information contained in this prospectus or any free writing prospectus we may authorize to be delivered to you. Neither we nor any selling security holders has, and neither we nor any selling security holders has authorized anyone else, to provide you with different or additional information. We are not making an offer of securities in any state or other jurisdiction where the offer is not permitted. You should not assume that the information contained in this prospectus or in the documents incorporated by reference herein is accurate as of any date other than the date on the front of this prospectus or the filing date of any document incorporated by reference, regardless of its time of delivery, and you should not consider any information in this prospectus or in the documents incorporated by reference herein to be investment, legal or tax advice. We encourage you to consult your own counsel, accountant and other advisors for legal, tax, business, financial and related advice regarding an investment in our securities.**

As used in this prospectus, "Griffon," "we," "our" and "us" refer to Griffon Corporation and its subsidiaries, unless stated otherwise or the context requires otherwise.



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**GRIFFON CORPORATION**

Griffon, headquartered in Jericho, New York, is a diversified holding company consisting of three distinct business segments:

**Electronic Information and Communication Systems**, through Telephonics Corporation, a provider of integrated information, communication and sensor system solutions to military and commercial markets worldwide.

**Garage Doors**, through Clopay Building Products Company, a leading manufacturer and marketer of residential, commercial and industrial garage doors to professional installing dealers and major home center retail chains.

**Specialty Plastic Films**, through Clopay Plastic Products Company, an international leader in the development and production of embossed, laminated and printed specialty plastic films used in a variety of hygienic, health-care and industrial markets.

In 2008, we strengthened our balance sheet by refinancing our senior debt and by raising \$246.3 million in gross proceeds from the sale of our common stock. The latter transaction was effected through a common stock rights offering, along with an investment by GS Direct, L.L.C., an affiliate of Goldman Sachs. We intend to use such proceeds for general corporate purposes and to fund our growth.

As a result of the downturn in the residential housing market, in fiscal 2008, we exited substantially all of the operating activities of our Installation Services segment.

**Electronic Information and Communication Systems**

We specialize in advanced electronic information and communication systems for defense, aerospace, civil, industrial, and commercial applications domestically and in certain international markets. We design, manufacture, sell and provide logistical support for aircraft communication systems, radar, air traffic management, information and command and control systems, identification friend or foe equipment, Integrated Homeland Security Systems and custom, mixed-signal, application specific integrated circuits. We are a leading supplier of airborne maritime surveillance radar and aircraft intercommunication management systems, the segment's two largest product lines. In addition to the traditional defense products used predominantly by the United States Government, in recent years we have adapted our core technologies to products used in international markets and have expanded our presence in both non-defense government and commercial markets.

**Garage Doors**

We believe that Clopay Building Products Company is the largest manufacturer and marketer of residential garage doors and among the largest manufacturers of commercial sectional doors in the United States. Our building products are sold under the Clopay®, Ideal Door® and Holmes® brand names through an extensive distribution network throughout the United States. We estimate that the majority of Garage Doors' net sales are from sales of garage doors to the home remodeling segment of the residential housing market, with the balance from the new residential housing and commercial building markets.

**Specialty Plastic Films**

Clopay Plastic Products Company develops and produces specialty plastic films and laminates for a variety of hygienic, health care and industrial uses in domestic and certain international markets. Specialty Plastic Films' products include thin gauge embossed and printed films, elastomeric films and laminates of film and non-woven fabrics. These products are used primarily as moisture barriers in

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disposable infant diapers, adult incontinence products and feminine hygiene products, as protective barriers in single-use surgical and industrial gowns, drapes and equipment covers, as packaging for hygienic products, house wrap and other products.

Our principal executive offices are located at 100 Jericho Quadrangle, Jericho, New York 11753, and our telephone number is (516) 938-5544.

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**RISK FACTORS**

Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "Risk Factors" contained in the applicable prospectus supplement and any related free writing prospectus and under similar headings in the documents incorporated by reference into this prospectus. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations.

**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

All statements other than statements of historical fact included in this prospectus and any prospectus supplement, including statements regarding our financial position, business strategy and the plans and objectives of our management for future operations, are forward-looking statements. When used in this prospectus and any prospectus supplement, words such as "anticipate," "believe," "estimate," "expect," "intend" and similar expressions, as they relate to us or our management, identify forward-looking statements. Such forward-looking statements are based on the beliefs of our management, as well as assumptions made by and information currently available to our management. Actual results could differ materially from those contemplated by the forward-looking statements as a result of certain factors, including the factors identified in the applicable prospectus supplement under "Risk Factors" and in our SEC filings under "Risk Factors" and including, but not limited to:

the credit markets;

the housing market;

results of integrating acquired businesses into existing operations;

the results of our restructuring and disposal efforts;

competitive factors and pricing pressures for resin and steel; and

capacity and supply constraints.

Such statements reflect our views with respect to future events and are subject to these and other risks, uncertainties and assumptions relating to the operations, results of operations, growth strategy and liquidity of Griffon. Readers are cautioned not to place undue reliance on these forward-looking statements. We do not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect future events or circumstances or to reflect the occurrence of unanticipated events.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of earnings to fixed charges for the last five fiscal years and the three months ended December 31, 2008. We have not included a ratio of earnings to combined fixed charges and preferred stock dividends because we had no preferred stock outstanding.

	Year ended September 30,					Three months ended
	2004	2005	2006	2007	2008	December 31, 2008
Ratio of earnings to fixed charges	5.3x	4.3x	4.1x	2.7x	1.2x	2.2x

**USE OF PROCEEDS**

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Unless otherwise provided in the applicable prospectus supplement, we do not expect to receive proceeds from the offering of any securities pursuant to this prospectus other than the businesses, assets or securities acquired in a business combination transaction. When this prospectus is used by a selling security holder in a public reoffering or resale of securities acquired pursuant to this prospectus, we will usually not receive any proceeds from such sale by the selling security holder.

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**DESCRIPTION OF COMMON STOCK**

We have authority to issue 85,000,000 shares of common stock, par value \$0.25 per share. As of December 31, 2008, we had approximately 59,275,870 shares of common stock issued and outstanding and 2,759,227 shares of common stock reserved for issuance. The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company.

**General**

Holders of shares of our common stock are entitled to one vote for each share held of record on all matters on which stockholders are generally entitled to vote. The vote of the holders of a majority of the stock represented at a meeting at which a quorum is present is generally required to take stockholder action, unless a greater vote is required by law. Directors are elected by a plurality of the votes cast at any election and there is no cumulative voting of shares.

Holders of shares of our common stock have no preemptive rights. Subject to the applicable laws and the rights of the holders of preferred stock, holders of shares of common stock are entitled to such dividends as may be declared by our board of directors. The common stock is not entitled to any sinking fund, redemption or conversion provisions. Upon our dissolution, liquidation or winding up, the holders of shares of our common stock are entitled to share ratably in our net assets remaining after the payment of all creditors and liquidation preferences of preferred stock. The outstanding shares of common stock are duly authorized, validly issued, fully paid and nonassessable.

**Anti-Takeover Considerations**

Our restated certificate of incorporation and amended by-laws contain a number of provisions that may have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from acquiring us.

***Classified Board of Directors***

Our restated certificate of incorporation and amended by-laws divide our board of directors into three classes, as nearly equal in size as possible, with staggered three year terms, and provide that:

directors may be removed only for cause by the affirmative vote of the holders of a majority of the outstanding shares of capital stock entitled to vote; and

any vacancy on our board of directors may only be filled by vote of a majority of the directors then in office.

***Stockholder Action, Special Meeting of Stockholders***

Our restated certificate of incorporation and amended by-laws eliminate the ability of our stockholders to act by written consent. Our restated certificate of incorporation and amended by-laws further provide that special meetings of our stockholders may be called only at the written request of stockholders owning at least 66<sup>2</sup>/<sub>3</sub>% of the entire voting power of our capital stock.

***Advance Notice Requirements for Stockholder Proposals and Directors Nominations***

Our amended by-laws provide that stockholders seeking to bring business before an annual meeting of stockholders, or to nominate candidates for election as directors at an annual meeting of stockholders, must provide timely notice in writing. To be timely, a stockholder's notice must be delivered to or mailed and received at our principal executive offices not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting. However, in the event that the annual meeting is called for a date that is not within 25 days before or after such anniversary date, notice by the stockholder in order to be timely must be received not later than the

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close of business on the tenth day following the date on which notice of the date of the annual meeting was mailed to stockholders or made public, whichever first occurs. Our amended by-laws also specify requirements as to the form and content of a stockholder's notice. These provisions may preclude stockholders from bringing matters before an annual meeting of stockholders or from making nominations for directors at an annual meeting of stockholders.

***Business Combinations and Limitations in our Certificate of Incorporation***

Our restated certificate of incorporation provides that in the event that it is proposed that we enter into a merger or consolidation with any other corporation and such other corporation or its affiliates singly or in the aggregate own or control, directly or indirectly, 5% or more of the outstanding voting power of our capital stock, or that we sell substantially all of our assets or business to such other corporation, the affirmative vote of the holders of 50% or more of the total voting power of all outstanding shares of our capital stock shall be required for the approval of any such proposal. However, such requirements shall not apply to any such merger, consolidation or sale of assets or business that was approved by resolutions of our board of directors prior to the acquisition of the ownership or control of 5% of our outstanding shares of capital stock by such other corporation or its affiliates, nor shall it apply to any such merger, consolidation or sale of assets or business between us and another corporation, 50% or more of the total voting power of which is owned by us. An "affiliate" is any person (including a corporation, partnership, trust, estate or individual) who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified; "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

***Amendments; Supermajority Vote Requirements***

Our restated certificate of incorporation requires the affirmative vote of 66<sup>2</sup>/<sub>3</sub>% of our voting stock to amend certain provisions of our certificate of incorporation, including those provisions relating to the amendment of the business combination provisions, classified board of directors, action by written consent and the ability of stockholders to call special meetings.

***Delaware Anti-Takeover Law***

Section 203 of the Delaware General Corporation Law prohibits certain "business combination" transactions between a Delaware corporation and any "interested stockholder" owning 15% or more of the corporation's outstanding voting stock for a period of three years after the date on which the stockholder became an interested stockholder, unless:

the board of directors approves, prior to the date, either the proposed business combination or the proposed acquisition of stock that resulted in the stockholder becoming an interested stockholder;

upon consummation of the transaction in which the stockholder becomes an interested stockholder, the interested stockholder owned at least 85% of those shares of the voting stock of the corporation that are not held by the directors, officers or certain employee stock plans; or

on or subsequent to the date on which the stockholder became an interested stockholder, the business combination with the interested stockholder is approved by the board of directors and also approved at a stockholder's meeting by the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation's voting stock other than shares held by the interested stockholder.

Under Delaware law, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder.

Although a corporation may elect not to be governed by Section 203, we have made no such election.

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**DESCRIPTION OF PREFERRED STOCK**

We have authority to issue 3,000,000 shares of preferred stock, par value \$0.25 per share. As of December 31, 2008, we had no shares of preferred stock outstanding.

**General**

Under our restated certificate of incorporation, our Board of Directors is authorized generally without stockholder approval to issue shares of preferred stock from time to time, in one or more classes or series. Prior to issuance of shares of each class or series, our Board of Directors is required by Delaware law to adopt resolutions and file a certificate of designation with the Secretary of State of the State of Delaware. The certificate of designation fixes for each class or series the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Any shares of preferred stock will, when issued, be fully paid and nonassessable.

For any series of preferred stock that we may issue, our Board of Directors will determine and the prospectus supplement relating to such series will describe:

the designation and number of shares of such series;

the rate and time at which, and the preferences and conditions under which, any dividends will be paid on shares of such series, as well as whether such dividends are cumulative or non-cumulative and participating or non-participating;

any listing of the preferred stock on any securities exchange;

any provisions relating to convertibility or exchangeability of shares of such series and the computation of the conversion or exchange price;

the rights and preferences, if any, of holders of shares of such series upon our liquidation, dissolution or winding up of our affairs;

the voting powers, if any, of the holders of shares of such series;

any provisions relating to the redemption of shares of such series;

any limitations on our ability to pay dividends or make distributions on, or acquire or redeem, other securities while shares of such series are outstanding;

the procedures for any auction and remarketing, if any, for shares of such series;

the provisions for a sinking fund, if any, for shares of such series;

whether shares of such series will be represented by depositary shares;

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any conditions or restrictions on our ability to issue additional shares of such series or other securities while shares of such series are outstanding;

if applicable, a discussion of certain U.S. Federal income tax considerations; and

any other relative power, preferences and participating, optional or special rights of shares of such series, and the qualifications, limitations or restrictions thereof.

Delaware law provides that the holders of preferred stock will have the right to vote separately as a class (or, in some cases, as a series) on an amendment to our restated certificate of incorporation if the amendment would change the par value or, unless the restated certificate of incorporation then in effect provided otherwise, the number of authorized shares of such class or change the powers, preferences or special rights of such class or series so as to adversely affect the class or series, as the



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case may be. This right is in addition to any voting rights that may be provided for in the applicable certificate of designation.

Our Board of Directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. In addition, our Board of Directors may authorize the issuance of shares of preferred stock with terms and conditions which could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or which holders might believe to be in their best interest.

**Ranking**

Unless we specify otherwise in the applicable prospectus supplement, the preferred stock will rank, with respect to dividends and upon our liquidation, dissolution or winding up:

senior to all classes or series of our common stock and to all of our equity securities ranking junior to the preferred stock;

on a parity with all of our equity securities the terms of which specifically provide that the equity securities rank on a parity with the preferred stock; and

junior to all of our equity securities the terms of which specifically provide that the equity securities rank senior to the preferred stock.

The term "equity securities" does not include convertible debt securities.

**Transfer Agent and Registrar**

The transfer agent and registrar for any series or class of preferred stock will be set forth in the applicable prospectus supplement.

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**DESCRIPTION OF DEPOSITARY SHARES**

The following is a general description of the terms of the depositary shares we may issue from time to time unless we provide otherwise in the prospectus supplement. Particular terms of any depositary shares we offer will be described in the prospectus supplement relating to such depositary shares.

**General**

We may, at our option, elect to offer fractional shares of preferred stock, rather than single shares of preferred stock (to be set forth in the prospectus supplement relating to a particular series of preferred stock). In the event we elect to do so, depositary receipts evidencing depositary shares may be issued.

The shares of any class or series of preferred stock represented by depositary shares will be deposited under a deposit agreement among us, a depositary selected by us and the holders of the depositary receipts. The depositary will be a bank or trust company having such criteria as we deem necessary or appropriate. Subject to the terms of the deposit agreement, each owner of a depositary share will be entitled, in proportion to the applicable fraction of a share of preferred stock represented by such depositary share, to all the rights and preferences of the shares of preferred stock represented by the depositary share, including dividend, voting, redemption and liquidation rights.

The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Depositary receipts will be distributed to those persons purchasing the fractional shares of the related class or series of preferred shares in accordance with the terms of the offering described in the related prospectus supplement.

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**DESCRIPTION OF WARRANTS**

The following is a general description of the terms of the warrants we may issue from time to time unless we provide otherwise in the prospectus supplement. Particular terms of any warrants we offer will be described in the prospectus supplement relating to such warrants.

**General Terms**

We may issue warrants to purchase common stock, preferred stock, depository shares, debt securities or units. Warrants may be issued independently or together with other securities and may be attached or separate from such securities. We will issue each series of warrants under a separate warrant agreement to be entered into between us and a warrant agent. The warrant agent will act solely as our agent and will not assume any obligation or relationship of agency for or with holders or beneficial owners of warrants.

A prospectus supplement will describe the particular terms of any series of warrants we may issue, including the following:

the title and aggregate number of the warrants;

the price or prices at which the warrants will be issued and the currency or currencies in which the price of the warrants may be payable;

if applicable, the designation and terms of the securities with which the warrants are issued and the number of warrants issued with each such security or each principal amount of such security;

in the case of warrants to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one warrant;

in the case of warrants to purchase common stock, preferred stock, depository shares or units, the number of shares of common stock, shares of preferred stock, depository shares or units, as the case may be, purchasable upon exercise of one warrant;

the date on which the right to exercise the warrants shall commence and the date on which such right will expire (subject to any extension);

whether the warrants will be issued in registered form or bearer form;

if applicable, the minimum or maximum amount of the warrants which may be exercised at any one time;

if applicable, the date on and after which the warrants and the related securities will be separately transferable;

if applicable, the procedures for adjusting the exercise price and number of shares of common stock, preferred stock or depository shares purchasable upon the exercise of each warrant upon the occurrence of certain events, including stock splits, reverse stock splits, combinations, subdivisions or reclassifications of common stock, preferred stock or depository shares;

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the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreement and the warrants;

the terms of any rights to redeem or call the warrants;

information with respect to book-entry procedures, if any;

the terms of the securities issuable upon exercise of the warrants;

if applicable, a discussion of certain U.S. Federal income tax considerations; and

any other terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

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We and the warrant agent may amend or supplement the warrant agreement for a series of warrants without the consent of the holders of the warrants issued thereunder to effect changes that are not inconsistent with the provisions of the warrants and that do not materially and adversely affect the interests of the holders of the warrants.

**Exercise of Warrants**

Each warrant will entitle the holder to purchase for cash such common stock, preferred stock, depositary shares or units at the exercise price or such principal amount of debt securities as shall in each case be set forth in, or be determinable as set forth in, the prospectus supplement relating to the warrants offered thereby. Warrants may be exercised as set forth in the prospectus supplement beginning on the date specified therein and continuing until the close of business on the expiration date set forth in the prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void.

Upon receipt of payment and a warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the prospectus supplement, we will, as soon as practicable, forward the securities purchasable upon such exercise. If less than all of the warrants represented by such warrant certificate are exercised, a new warrant certificate will be issued for the remaining warrants. If we so indicate in the applicable prospectus supplement, holders of the warrants may surrender securities as all or part of the exercise price for warrants.

Prior to exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including, in the case of warrants to purchase debt securities, the right to receive principal, premium, if any, or interest payments, on the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture or, in the case of warrants to purchase common stock, preferred stock or depositary shares, the right to receive dividends, if any, or payments upon our liquidation, dissolution or winding up or to exercise any voting rights.

**Governing Law**

The warrants and warrant agreements will be governed by, and construed in accordance with, the laws of the State of New York.

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**DESCRIPTION OF RIGHTS**

The following is a general description of the terms of the rights we may issue from time to time unless we provide otherwise in the prospectus supplement. Particular terms of any rights we offer will be described in the prospectus supplement relating to such rights.

**General**

We may issue rights to purchase common stock, preferred stock, depositary shares, debt securities or units. Rights may be issued independently or together with other securities and may or may not be transferable by the person purchasing or receiving the rights. In connection with any rights offering to our stockholders, we may enter into a standby underwriting, backstop or other arrangement with one or more underwriters or other persons pursuant to which such underwriters or other persons would purchase any offered securities remaining unsubscribed for after such rights offering. In connection with a rights offering to our stockholders, we would distribute certificates evidencing the rights and a prospectus supplement to our stockholders on or about the record date that we set for receiving rights in such rights offering.

The applicable prospectus supplement will describe the following terms of any rights we may issue, including the following:

the title and aggregate number of the rights;

the subscription price or a formula for the determination of the subscription price for the rights and the currency or currencies in which the subscription price may be payable;

if applicable, the designation and terms of the securities with which the rights are issued and the number of rights issued with each such security or each principal amount of such security;

the number or a formula for the determination of the number of the rights issued to each stockholder;

the extent to which the rights are transferable;

in the case of rights to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one right;

in the case of rights to purchase common stock, preferred stock, depositary shares or units, the number of shares of common stock, shares of preferred stock, depositary shares or units, as the case may be, purchasable upon exercise of one right;

the date on which the right to exercise the rights would commence, and the date on which the rights shall expire (subject to any extension);

if applicable, the minimum or maximum amount of the rights which may be exercised at any one time;

the extent to which such rights include an over-subscription privilege with respect to unsubscribed securities;

if applicable, the procedures for adjusting the exercise price and number of shares of common stock, preferred stock or depositary shares purchasable upon the exercise of each right upon the occurrence of certain events, including stock splits, reverse stock splits, combinations, subdivisions or reclassifications of common stock, preferred stock or depositary shares;

the effect of any merger, consolidation, sale or other disposition of our business on the rights;

the terms of any rights to redeem or call the rights;

information with respect to book-entry procedures, if any;

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the terms of the securities issuable upon exercise of the rights;

if applicable, the material terms of any standby underwriting, backstop or other purchase arrangement that we may enter into in connection with the rights offering;

if applicable, a discussion of certain U.S. Federal income tax considerations; and

any other terms of the rights, including terms, procedures and limitations relating to the exchange and exercise of the rights.

**Exercise of Rights**

Each right will entitle the holder to purchase for cash such principal amount of securities or shares of stock at the subscription price as shall in each case be set forth in, or be determinable as set forth in, the prospectus supplement relating to the rights offered thereby. Rights may be exercised as set forth in the prospectus supplement beginning on the date specified therein and continuing until the close of business on the expiration date set forth in the prospectus supplement relating to the rights offered thereby. After the close of business on the expiration date, unexercised rights will become void.

Upon receipt of payment and a subscription certificate properly completed and duly executed at the corporate trust office of the subscription agent or any other office indicated in the prospectus supplement, we will, as soon as practicable, forward the securities purchasable upon such exercise. If less than all of the rights represented by such subscription certificate are exercised, a new subscription certificate will be issued for the remaining rights. If we so indicate in the applicable prospectus supplement, holders of the rights may surrender securities as all or part of the exercise price for rights.

We may determine to offer any unsubscribed offered securities directly to stockholders, persons other than stockholders, to or through agents, underwriters or dealers or through a combination of such methods, including pursuant to standby underwriting, backstop or other arrangements, as set forth in the applicable prospectus supplement.

Prior to exercising their rights, holders of rights will not have any of the rights of holders of the securities purchasable upon subscription, including, in the case of rights to purchase debt securities, the right to receive principal, premium, if any, or interest payments, on the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture or, in the case of rights to purchase common stock, preferred stock or depositary shares, the right to receive dividends, if any, or payments upon our liquidation, dissolution or winding up or to exercise any voting rights.

**Governing Law**

The rights and subscription certificates will be governed by, and construed in accordance with, the laws of the State of Delaware.



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**DESCRIPTION OF DEBT SECURITIES**

The following is a general description of the terms of debt securities we may issue from time to time unless we provide otherwise in the prospectus supplement. Particular terms of any debt securities we offer will be described in the prospectus supplement relating to such debt securities.

As required by Federal law for all bonds and notes of companies that are publicly offered, any debt securities we issue will be governed by a document called an "indenture." An indenture is a contract between us and a financial institution acting as trustee on behalf of the holders of the debt securities, and is subject to and governed by the Trust Indenture Act of 1939, as amended. The trustee has two main roles. First, the trustee can enforce holders' rights against us if we default. There are some limitations on the extent to which the trustee acts on holders' behalf, described in the second paragraph under "Description of Debt Securities Events of Default." Second, the trustee performs certain administrative duties, such as sending interest and principal payments to holders.

Because this section is a summary, it does not describe every aspect of any debt securities we may issue or the indenture governing any such debt securities. Particular terms of any debt securities we offer will be described in the prospectus supplement relating to such debt securities, and we urge you to read the applicable indenture, which will be filed with the SEC at the time of any offering of debt securities, because it, and not this description, will define the rights of holders of such debt securities.

A prospectus supplement will describe the particular terms of any series of debt securities we may issue, including the following:

the designation or title of the series of debt securities;

the total principal amount of the series of debt securities, the denominations in which the offered debt securities will be issued and whether the offering may be reopened for additional securities of that series and on what terms;

the percentage of the principal amount at which the series of debt securities will be offered;

the date or dates on which principal will be payable;

the rate or rates (which may be either fixed or variable) and/or the method of determining such rate or rates of interest, if any;

the date or dates from which any interest will accrue, or the method of determining such date or dates, and the date or dates on which any interest will be payable;

the terms for redemption, extension or early repayment, if any;

the currencies in which the series of debt securities are issued and payable;

whether the amount of payments of principal, interest or premium, if any, on a series of debt securities will be determined with reference to an index, formula or other method and how these amounts will be determined;

the place or places of payment, transfer, conversion and/or exchange of the debt securities;

the provision for any sinking fund;

any restrictive covenants;

events of default;

whether the series of debt securities are issuable in certificated form;

any provisions for legal defeasance or covenant defeasance;

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whether and under what circumstances we will pay additional amounts in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem the debt securities rather than pay the additional amounts (and the terms of this option);

any provisions for convertibility or exchangeability of the debt securities into or for any other securities;

whether the debt securities are subject to subordination and the terms of such subordination;

the listing, if any, on a securities exchange;

if applicable, a discussion of certain U.S. Federal income tax considerations, including those related to original issue discount, if applicable; and

any other terms.

The debt securities may be secured or unsecured obligations. Unless the prospectus supplement states otherwise, principal, interest and premium, if any, will be paid by us in immediately available funds.

**General**

The indenture may provide that any debt securities proposed to be sold under this prospectus and the applicable prospectus supplement relating to such debt securities ("offered debt securities") and any debt securities issuable upon the exercise of warrants or upon conversion or exchange of other offered securities ("underlying debt securities") may be issued under the indenture in one or more series.

For purposes of this prospectus, any reference to the payment of principal of, or interest or premium, if any, on, debt securities will include additional amounts if required by the terms of the debt securities.

Debt securities issued under an indenture, when a single trustee is acting for all debt securities issued under the indenture, are called the "indenture securities." The indenture may also provide that there may be more than one trustee thereunder, each with respect to one or more different series of securities issued thereunder. See "Description of Debt Securities Resignation of Trustee" below. At a time when two or more trustees are acting under an indenture, each with respect to only certain series, the term "indenture securities" means the one or more series of debt securities with respect to which each respective trustee is acting. In the event that there is more than one trustee under an indenture, the powers and trust obligations of each trustee described in this prospectus will extend only to the one or more series of indenture securities for which it is trustee. If two or more trustees are acting under an indenture, then the indenture securities for which each trustee is acting would be treated as if issued under separate indentures.

We refer you to the applicable prospectus supplement relating to any debt securities we may issue from time to time for information with respect to any deletions from, modifications of or additions to the Events of Default or covenants that are described below, including any addition of a covenant or other provision providing event risk or similar protection, that will be applicable with respect to such debt securities.

We have the ability to issue indenture securities with terms different from those of indenture securities previously issued and, without the consent of the holders thereof, to reopen a previous issue of a series of indenture securities and issue additional indenture securities of that series unless the reopening was restricted when that series was created.

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**Conversion and Exchange**

If any debt securities are convertible into or exchangeable for other securities, the related prospectus supplement will explain the terms and conditions of the conversion or exchange, including the conversion price or exchange ratio (or the calculation method), the conversion or exchange period (or how the period will be determined), if conversion or exchange will be mandatory or at the option of the holder or us, provisions for adjusting the conversion price or the exchange ratio and provisions affecting conversion or exchange in the event of the redemption of the underlying debt securities. These terms may also include provisions under which the number or amount of other securities to be received by the hol