

TOUSA INC  
Form 4  
November 28, 2007

**FORM 4** UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
UPTON MARK

(Last) (First) (Middle)

C/O TOUSA, INC., 4000  
HOLLYWOOD BLVD., STE. 500N

(Street)

HOLLYWOOD, FL 33021

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol  
TOUSA INC [TOA]

3. Date of Earliest Transaction  
(Month/Day/Year)

11/26/2007

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

\_\_\_\_ Director \_\_\_\_\_ 10% Owner  
 Officer (give title below) \_\_\_\_\_ Other (specify below)

EVP of TOUSA Homes, Inc.

6. Individual or Joint/Group Filing(Check Applicable Line)

Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
				(A) or (D)	Price		
Common Stock, par value \$.01 per share	11/26/2007		S	9,375 D	\$ 0.089	0	D

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474  
(9-02)

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**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Price of Derivative Security (Instr. 5)	9. Nu
				Code	V (A) (D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
UPTON MARK C/O TOUSA, INC. 4000 HOLLYWOOD BLVD., STE. 500N HOLLYWOOD, FL 33021			EVP of TOUSA Homes, Inc.	

## Signatures

/s/ Mark Upton 11/27/2007

\_\_Signature of Reporting Person Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, see Instruction 4(b)(v).

\*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. r bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unsolicited or unfriendly proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

### Delaware Business Combination Statute

We are subject to Section 203 of the Delaware General Corporation Law. Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the time of the transaction in which the person or entity became an interested stockholder, unless:

prior to that time, either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder is approved by the board of directors of the corporation;

upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the outstanding voting stock of the corporation, excluding for this purpose shares owned by persons who are directors and also officers of the corporation and by specified employee benefit plans; or

at or after such time, the business combination is approved by the board of directors of the corporation and by the affirmative vote, and not by written consent, of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

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For the purposes of Section 203, a "business combination" is broadly defined to include:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder, subject to limited exceptions;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

An "interested stockholder" is a person who, together with affiliates and associates, owns or within the immediately preceding three years did own 15% or more of the corporation's voting stock.

### *Undesignated Preferred Stock*

The ability of our board of directors, without action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with voting or other rights or preferences as designated by our board of directors could impede the success of any attempt to change control of us. The existence of authorized but unissued shares of preferred stock may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

### *Stockholder Action by Written Consent; Stockholder Meetings*

Our restated certificate of incorporation and amended and restated bylaws eliminate the right of stockholders to act by written consent without a meeting. As a result, a holder controlling a majority of our capital stock would not be able to amend our bylaws or remove directors without holding a meeting of our stockholders called in accordance with our amended and restated bylaws. Our amended and restated bylaws provide that a special meeting of stockholders may be called only by our chairman of the board or president, or by a resolution adopted by a majority of our board of directors. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of our capital stock to take any action, including the removal of directors.

### *Requirements for Advance Notification of Stockholder Nominations and Proposals*

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals to be brought before a stockholder meeting and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors. These provisions could have the effect of delaying until the next stockholder meeting stockholder actions that are favored by

the holders of a majority of our outstanding voting securities.

*Staggered Board*

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. This system of electing and removing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

*Removal of Directors*

Our restated certificate of incorporation provides that no member of our board of directors may be removed from office by our stockholders except for cause and, in addition to any other vote required by law, upon the approval of holders of at least two-thirds of the total voting power of all of our outstanding voting stock then entitled to vote in the election of directors.

*Board of Directors Vacancies*

Our restated certificate of incorporation and amended and restated bylaws authorize our board of directors to fill vacant directorships. In addition, the number of directors constituting our board of directors is set only by resolution adopted by a majority vote of our entire board of directors. These provisions will prevent a stockholder from increasing the size of our board of directors and gaining control of our board of directors by filling the resulting vacancies with its own nominees.

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### *Stockholders Not Entitled to Cumulative Voting*

Our restated certificate of incorporation does not permit stockholders to cumulate their votes in the election of directors. Accordingly, the holders of a majority of the outstanding shares of our common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they choose, other than any directors that holders of our preferred stock may be entitled to elect.

### *Amendment of Charter Provisions*

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock, would require approval by holders of at least two-thirds of the total voting power of all of our outstanding voting stock.

The provisions of Delaware law, our restated certificate of incorporation and our amended and restated bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board and management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

## **Choice of Forum**

Our restated certificate of incorporation provides that the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) will be the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our restated certificate of incorporation or amended and restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Additionally, if the subject matter of any action within the scope of the preceding sentence is filed in a court other than a court located with the State of Delaware, or is a foreign action (as defined in our restated certificate of incorporation), in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the foreign action as agent for such stockholder. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable.

## **Indemnification**

Our restated certificate of incorporation includes provisions that limit the liability of our directors for monetary damages for breach of their fiduciary duty as directors, except for liability that cannot be eliminated under the Delaware General Corporation Law. Accordingly, our directors will not be personally liable for monetary damages for breach of their fiduciary duty as directors, except for liabilities:

for any breach of the director's duty of loyalty to us or our stockholders;

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

for unlawful payments of dividends or unlawful stock repurchases or redemptions, as provided under Section 174 of the Delaware General Corporation Law; or

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

Any amendment or repeal of these provisions will require the approval of the holders of shares representing at least two-thirds of the shares entitled to vote in the election of directors, voting as one class.

Our restated certificate of incorporation and amended and restated bylaws also provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law. Our restated certificate of incorporation and amended and restated bylaws also permit us to purchase insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or

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her actions as our officer, director, employee or agent, regardless of whether Delaware law would permit indemnification. We have entered into separate indemnification agreements with our directors, including affiliates of the selling stockholders, and officers that require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors and to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified. We believe that the limitation of liability provision in our restated certificate of incorporation and the indemnification agreements facilitate our ability to continue to attract and retain qualified individuals to serve as directors and officers. The limitation of liability and indemnification provisions in our restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit us and our stockholders. A stockholder's investment may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

**DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of shares of our common stock, shares of our preferred stock or debt securities. The following description sets forth certain general terms and provisions of the warrants that we may offer pursuant to this prospectus. The particular terms of the warrants and the extent, if any, to which the general terms and provisions may apply to the warrants so offered will be described in the applicable prospectus supplement.

Warrants may be issued independently or together with other securities and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants and will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

A copy of the forms of the warrant agreement and the warrant certificate, if any, relating to any particular issue of warrants will be filed with the SEC each time we issue warrants, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the warrant agreement and the related warrant certificate, if any, see [Where You Can Find More Information](#).

**Stock Warrants**

The prospectus supplement relating to a particular issue of warrants to issue shares of our common stock or shares of our preferred stock will describe the terms of the common share warrants and preferred share warrants, including the following:

the title of the warrants;

the offering price for the warrants, if any;

the aggregate number of the warrants;



the designation and terms of the shares of common stock or shares of preferred stock that may be purchased upon exercise of the warrants;

the terms for changes or adjustments to the exercise price of the warrants;

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

if applicable, the date from and after which the warrants and any securities issued with the warrants will be separately transferable;

the number of shares of common stock or shares of preferred stock that may be purchased upon exercise of a warrant and the price at which the shares may be purchased upon exercise;

the dates on which the right to exercise the warrants commence and expire;

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

the currency or currency units in which the offering price, if any, and the exercise price are payable;

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if applicable, a discussion of material U.S. federal income tax considerations;

anti-dilution provisions of the warrants, if any;

redemption or call provisions, if any, applicable to the warrants;

information with respect to book-entry procedures;

identity of the warrant agent; and

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

**Debt Warrants**

The prospectus supplement relating to a particular issue of warrants to issue debt securities will describe the terms of those warrants, including the following:

the title of the warrants;

the offering price for the warrants, if any;

the aggregate number of the warrants;

the designation and terms of the debt securities purchasable upon exercise of the warrants;

the terms for changes or adjustments to the exercise price of the warrants;

if applicable, the designation and terms of the debt securities that the warrants are issued with and the number of warrants issued with each debt security;

if applicable, the date from and after which the warrants and any debt securities issued with them will be separately transferable;

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the principal amount of debt securities that may be purchased upon exercise of a warrant and the price at which the debt securities may be purchased upon exercise;

the dates on which the right to exercise the warrants will commence and expire;

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

whether the warrants represented by the warrant certificates or debt securities that may be issued upon exercise of the warrants will be issued in registered or bearer form;

information relating to book-entry procedures, if any;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

if applicable, a discussion of material U.S. federal income tax considerations;

anti-dilution provisions of the warrants, if any;

redemption or call provisions, if any, applicable to the warrants;

information with respect to book-entry procedures;

identity of the warrant agent; and

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

### **Exercise of Warrants**

Each holder of a warrant will be entitled to purchase, at the exercise price set forth in the applicable prospectus supplement, the number of shares of common stock, shares of preferred stock or the principal amount of debt securities being offered. Holders may exercise warrants at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants are void. Holders may exercise warrants as set forth in the prospectus supplement relating to the warrants being offered.

Until a holder exercises the warrants to purchase our shares of common stock, shares of preferred stock or debt securities, the holder will not have any rights as a holder of our shares of common stock, shares of preferred stock or debt securities, as the case may be, by virtue of ownership of warrants, including, with respect to equity warrants, any right to vote, consent, receive dividends, or receive notice as stockholders with respect to any meeting of the stockholders for the election of directors or any other matter and with respect to debt warrants, any right to receive payment of principal or premium, if any, or interest on the debt securities purchasable upon exercise.

## **DESCRIPTION OF DEBT SECURITIES**

We may issue, separately or together with, or upon conversion, exercise or exchange of other securities, debt securities, including debentures, notes or other evidences of indebtedness as set forth in the applicable prospectus supplement. The debt securities will be issued under one or more separate indentures between us and a trustee to be identified in an accompanying prospectus supplement. The following is a general description of the terms of debt securities we may issue from time to time. Particular terms of any debt securities we offer will be described in the prospectus supplement relating to such debt securities.

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 and the applicable indenture will be described in the prospectus supplement relating to such offering, and we urge you to read such description in its entirety, 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 some or all of the following:

the designation or title of the series of debt securities;

the aggregate 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 securities are to be guaranteed and, if so, the guarantor or guarantors and the terms of the guarantees;

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;

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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 definitive or global form or in definitive form only upon satisfaction of certain conditions;

any provisions for legal defeasance or covenant defeasance;

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;

any listing of the debt securities on any securities exchange;

any paying agents, authenticating agents, security registrars or other agents for debt securities, if other than the trustee;

any provisions relating to any security provided for the debt securities, including any provisions regarding the circumstances under which collateral may be released or substituted;

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

any other material terms.

Unless the prospectus supplement states otherwise, principal, interest and premium, if any, will be paid by us in immediately available funds.

**General**

Any debt securities we issue will be governed by a document called an indenture, the form of which is filed as an exhibit to the registration statement of which this prospectus forms a part. 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. 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.

The indenture provides that any debt securities proposed to be sold under this prospectus and the applicable prospectus supplement, including any debt securities issuable upon conversion or exchange of other offered securities, which we refer to as 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.

The indenture also provides that there may be more than one trustee thereunder, each with respect to one or more different series of securities issued thereunder. In the event that there is more than one trustee under the indenture, the powers and trust obligations of each trustee described in this prospectus will extend only to the one or more series of debt securities for which it is trustee. If two or more trustees are acting under an indenture, then the debt securities for which each trustee is acting would be treated as if issued under separate indentures.

We have the ability to issue debt securities with terms different from those of debt securities previously issued and, without the consent of the holders thereof, to reopen a previous issue of a series of debt securities and issue additional debt securities of that series unless the reopening is restricted when that series is 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 holders of the debt securities upon conversion or exchange would be calculated according to the market price of the other securities as of a time stated in the prospectus supplement.

### **Payment and Paying Agents**

Unless otherwise indicated in a prospectus supplement, the provisions described in this paragraph will apply to the debt securities. Payment of interest on a debt security on any interest payment date will be made to the person in whose name the debt security is registered at the close of business on the regular record date. Payment on debt securities of a particular series will be payable at the office of a paying agent or paying agents designated by us. Unless otherwise designated in the applicable prospectus supplement, the trustee will be designated as our paying agent.

We may also name any other paying agents in a prospectus supplement. We may designate additional paying agents, change paying agents or change the office of any paying agent. However, we will be required to maintain a paying agent in each place of payment for the debt securities of a particular series.

All moneys paid by us to a paying agent for payment on any debt security that remain unclaimed for a period of two years after the principal, premium or interest has become due and payable and was deposited with the paying agent will be paid to us, subject to any applicable abandoned property law.

### **Global Securities**

The debt securities of any series may be represented, in whole or in part, by one or more global securities. Each global security will:

be registered in the name of a depository, or its nominee, that we will identify in a prospectus supplement;

be deposited with the trustee as custodian for the depository; and

bear any required legends.

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



the depositary has notified us that it is unwilling or unable to continue as depositary or has ceased to be qualified to act as depositary;

an event of default has occurred and is continuing with respect to the debt securities of the applicable series; or

any other circumstance described in a prospectus supplement has occurred permitting or requiring the issuance of any such security.

As long as the depositary, or its nominee, is the registered owner of a global security, the depositary or nominee will be considered the absolute owner of the debt securities represented by the global security for all purposes under the indenture. Participants in the depositary have no rights under the indenture with respect to the global securities held on their behalf by the depositary.

Payments on a global security will be made to the depositary or its nominee as the holder of the global security. Some jurisdictions have laws that require that certain purchasers of securities take physical delivery of such securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

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Ownership of beneficial interests in a global security are required to be shown on and effected through the book entry system maintained by the depository (or its nominee), with respect to participants' interests, or any participant, with respect to interests of persons held by participants on their behalf.

Payments, transfers and exchanges relating to beneficial interests in a global security will be subject to policies and procedures of the depository and must be effected through the depository's (or its nominee's) book entry system. The depository's policies and procedures may change from time to time. We and the trustee have no responsibility or liability for the depository's or any participant's records with respect to beneficial interests in a global security.

## **Events of Default**

Unless we indicate otherwise in a prospectus supplement with respect to a particular series of debt securities, the following will be events of default for any series of debt securities under the indenture:

we do not pay the principal of, or any premium on, a debt security of the series on its due date;

we do not pay interest on a debt security of the series within 30 days of its due date;

any guarantee with respect to the particular series of debt securities ceases to be of full force and effect;

we (or any guarantor) remain in breach of a covenant in respect of debt securities of the series for 60 days after we (or the applicable guarantor) receive a written notice of default from the trustee or holders of at least 25% of the aggregate principal amount of debt securities of the series specifying the default and demanding that it be remedied;

we file for bankruptcy or certain other events of bankruptcy, insolvency or reorganization occur; and

any other event of default occurs in respect of debt securities of the series described in the prospectus supplement.

The trustee may withhold notice to the holders of debt securities of any default, except in the payment of principal, premium or interest, if it considers the withholding of notice to be in the best interests of the holders.

### *Remedies if an Event of Default Occurs*

If an event of default has occurred and has not been cured or waived, the trustee or the holders of not less than 25% in aggregate principal amount of the debt securities of the affected series may declare the unpaid principal, premium, if any, and accrued and unpaid interest of all the debt securities of that series to be due and immediately payable. This is called a declaration of acceleration. A declaration of acceleration may be canceled by the holders of a majority in principal amount of the debt securities of the affected series if the default is cured or waived and certain other conditions are satisfied.

Except in cases of default, the trustee typically is not required to take any action under an indenture at the request of any holders unless the holders offer the trustee reasonable protection from expenses and liability, or an indemnity. If reasonable indemnity is provided, the holders of a majority in aggregate principal amount of the outstanding debt securities of the relevant series may direct the time, method and place of conducting any lawsuit or other formal legal action seeking any remedy available to the trustee.

Before a holder is allowed to bring its own lawsuit or other formal legal action or take other steps to enforce its rights or protect its interests relating to any debt securities, the following must occur:

the holder must give the trustee written notice that an event of default has occurred and remains uncured;

the holders of at least 25% in aggregate principal amount of all outstanding debt securities of the relevant series must make a written request that the trustee take action because of the default and must offer reasonable indemnity to the trustee against the cost and other liabilities of taking that action;

the trustee must not have taken action for 60 days after receipt of the above notice and offer of indemnity; and

the holders of a majority in aggregate principal amount of the debt securities must not have given the trustee a direction inconsistent with the above notice during that 60-day period.

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However, a holder is entitled at any time to bring a lawsuit for the payment of money due on its debt securities on or after the due date. Each year, we will furnish to each trustee a written statement of certain of our officers certifying that to their knowledge we are in compliance with the indenture and the debt securities, or else specifying any default.

### *Waiver of Default*

The holders of a majority in aggregate principal amount of the relevant series of debt securities may waive a default or event of default for such series of debt securities. If this happens, the default will be treated as if it had not occurred.

## **Merger or Consolidation**

Under the terms of an indenture, we may be permitted to consolidate or merge with another entity. We may also be permitted to sell all or substantially all of our assets to another entity. However, typically we may not take any of these actions unless all the following conditions are met:

if we do not survive such transaction or we convey, transfer or lease our properties and assets substantially as an entirety, the acquiring company must be a corporation, limited liability company, partnership or trust, or other corporate form, organized under the laws of the United States, any state of the United States or the District of Columbia, and such company must agree to be legally responsible for our debt securities;

alternatively, we must be the surviving company;

immediately after the transaction no event of default, or event that, after notice or lapse of time or both, would constitute an event of default, will have occurred or be continuing;

we must deliver certain certificates and documents to the trustee; and

we must satisfy any other requirements specified in the prospectus supplement relating to a particular series of debt securities.

## **Modification or Waiver**

Unless we indicate otherwise in a prospectus supplement, there are three types of changes we may make to an indenture and the debt securities issued thereunder, as described below.

### *Changes Requiring Approval of Holders*

The following is a list of the types of changes that require specific approval of all of the holders of debt securities:

reduce the percentage in principal amount of debt securities of any series whose holders must consent to an amendment, supplement or waiver;

change the stated maturity of the principal of or the time for payment of interest on any debt security;

reduce the principal amount or the rate of interest or any premium payable upon the redemption of any debt security;

change the payment office where any payment on a debt security is payable;

change the currency in which any debt security is payable;

impair the right to bring suit to enforce payment of principal, premium, if any, or interest on or after the maturity of a debt security or, in the case of redemption, on or after the redemption date;

modify the percentage of holders of debt securities whose consent is needed to supplement the indenture or amend a series of debt securities, waive compliance with certain covenants or waive defaults or events of default, other than to increase such percentage or to provide that certain other provisions of the indenture cannot be modified except with the consent of all affected holders;

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change in any manner adverse to the interests of the holders the terms and conditions of the obligations of any guarantors in respect of the due and punctual payment of the principal thereof, premium, if any, and interest thereon, or any additional amounts or any sinking fund or analogous payments; and

impair the rights of holders with respect to any series of debt securities that are exchangeable or convertible to receive payment or delivery of any consideration due upon the conversion or exchange.

The holders of a majority in aggregate principal amount of all of the series of debt securities affected by a certain action, voting together as one class for this purpose, may amend or supplement the indenture or waive our compliance obligations with respect to some of our covenants in that indenture. However, we cannot obtain a waiver of a payment default or of any of the matters covered by the bullet points included above.

### *Changes Not Requiring Approval*

Clarifications and certain other changes that would not adversely affect holders of the outstanding debt securities in any material respect, including the addition of covenants and guarantees, do not require any vote by the holders of outstanding debt securities. We also do not need to obtain any approval from holders to make any change that affects only debt securities to be issued under the indenture after the change takes effect or any changes that are required to comply with the requirements of the SEC or the Trust Indenture Act of 1939.

### *Further Details Concerning Voting*

When taking a vote on proposed changes to the indenture and the debt securities, each holder will be entitled to one vote for each \$1,000 in principal amount of the securities of such series.

Debt securities will not be eligible to vote if they have been fully defeased as described under **Description of Debt Securities** **Defeasance** **Legal Defeasance**.

We generally will be entitled to set any day as a record date for the purpose of determining the holders of outstanding debt securities that are entitled to vote or take other action under the indenture. Any record date must not be more than 90 calendar days nor less than 20 calendar days prior to the proposed date of such vote or action. If we set a record date for a vote or other action to be taken by holders of one or more series, that vote or action may be taken only by persons who are holders of outstanding debt securities of those series on the record date and must be taken within 11 months following the record date.

Book-entry and other indirect holders will need to consult their banks or brokers for information on how approval may be granted or denied if we seek to change the indenture or the debt securities or request a waiver.

## **Defeasance**

The following provisions will be applicable to each series of debt securities unless we state in the applicable prospectus supplement that the provisions of covenant defeasance and legal defeasance will not be applicable to that series.

### *Covenant Defeasance*

We can make the deposit described below and be released from some of the restrictive covenants in the indenture under which the particular series was issued. This is called **covenant defeasance**. In that event, the holders would lose

the protection of those restrictive covenants but would gain the protection of having money and government securities set aside in trust to repay holders' debt securities. In order to achieve covenant defeasance, we must do the following:

we must deposit in trust for the benefit of all holders of such debt securities money, non-callable U.S. government securities, or a combination thereof that will generate enough cash to pay and discharge the principal, premium, if any, and interest on the debt securities on their various due dates;

we must deliver to the trustee a legal opinion of our counsel confirming that, under current U.S. federal income tax law, we may make the above deposit without causing the holders to be taxed on the debt securities any differently than if we did not make the deposit and repaid the debt securities ourselves at maturity; and

we must deliver to the trustee certain documentation stating that all conditions precedent to covenant defeasance have been complied with.

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If we accomplish covenant defeasance, holders can still look to us for repayment of the debt securities if there were a shortfall in the trust deposit or the trustee is prevented from making payment. In fact, if one of the remaining events of default occurs (such as our bankruptcy) and the debt securities become immediately due and payable, there might be a shortfall. Depending on the event causing the default, holders may not be able to obtain payment of the shortfall.

### *Legal Defeasance*

We can make the deposit described below and be legally released from all payment and other obligations on the debt securities of a particular series, which we refer to as legal defeasance. In that event, we and any guarantor shall have been deemed to have been discharged from obligations with respect to such debt securities and related guarantees, respectively. In order to achieve legal defeasance, we must do the following:

we must deposit in trust for the benefit of all holders of such debt securities money, non-callable U.S. government securities, or a combination thereof that will generate enough cash to pay and discharge the principal, premium, if any, and interest on the debt securities on their various due dates;

we must deliver to the trustee a legal opinion confirming that there has been a change in current U.S. federal tax law or an Internal Revenue Service ruling that allows us to make the above deposit without causing the holders to be taxed on the debt securities any differently than if we did not make the deposit and repaid the debt securities ourselves at maturity; and

we must deliver to the trustee a legal opinion and officers' certificate stating that all conditions precedent to legal defeasance have been complied with.

If we accomplish legal defeasance, holders would have to rely solely on the trust deposit for repayment of the debt securities. Holders could not look to us for repayment in the unlikely event of any shortfall. Conversely, the trust deposit would most likely be protected from claims of our lenders and other creditors if we ever became bankrupt or insolvent.

### **Resignation of Trustee**

Each trustee may resign or be removed with respect to one or more series of debt securities provided that a successor trustee is appointed to act with respect to such series. In the event that two or more persons are acting as trustee with respect to different series of debt securities, each of the trustees will be a trustee of a trust separate and apart from the trust administered by any other trustee.

### **Trustee**

We intend to name the indenture trustee for each series of debt securities in the related prospectus supplement.

### **Certain Considerations Relating to Foreign Currencies**

Debt securities denominated or payable in foreign currencies may entail significant risks. These risks include the possibility of significant fluctuations in the foreign currency markets, the imposition or modification of foreign exchange controls and potential illiquidity in the secondary market. These risks will vary depending upon the currency



or currencies involved and will be described in the applicable prospectus supplement.

**Governing Law**

The indenture and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York.

**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 applicable prospectus supplement. Particular terms of any rights we offer will be described in the prospectus supplement relating to such rights.

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**General**

We may issue rights to purchase common stock, preferred stock, 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 some or all of 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 or preferred stock, the type of stock and number of shares of stock purchasable upon exercise of one right;

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

if applicable, the minimum or maximum amount of the rights that 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 subscription price and number of shares of common stock or preferred stock 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 or preferred stock;

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

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

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

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.

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### **Exercise of Rights**

Each right will entitle the holder to purchase for cash or other consideration such shares of stock or principal amount of securities 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 applicable 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 common stock or preferred stock, the right to receive dividends, if any, or payments upon our liquidation, dissolution or winding up or to exercise any voting rights or, 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.

### **DESCRIPTION OF UNITS**

We may issue units comprising one or more securities described in this prospectus in any combination. The following description sets forth certain general terms and provisions of the units that we may offer pursuant to this prospectus. The particular terms of the units and the extent, if any, to which the general terms and provisions may apply to the units so offered will be described in the applicable prospectus supplement.

Each unit will be issued so that the holder of the unit also is the holder of each security included in the unit. Thus, the unit will have the rights and obligations of a holder of each included security. Units will be issued pursuant to the terms of a unit agreement, which may provide that the securities included in the unit may not be held or transferred separately at any time or at any time before a specified date. A copy of the forms of the unit agreement and the unit certificate relating to any particular issue of units will be filed with the SEC each time we issue units, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the unit agreement and the related unit certificate, see [Where You Can Find More Information](#).

The prospectus supplement relating to any particular issuance of units will describe the terms of those units, including, to the extent applicable, the following:

the designation and terms of the units and the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;

any provision for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units; and

whether the units will be issued in fully registered or global form.

#### **SELLING STOCKHOLDERS**

The following table sets forth the identity of each of the selling stockholders, the number of shares of our common stock and the percentage of shares of our common stock beneficially owned by each of the selling stockholders prior to this offering, the number of shares that may be offered under this prospectus by each of the selling stockholders, and the number of shares of our common stock and the percentage of our common stock to be beneficially owned by each of the selling stockholders after the completion of this offering, assuming that all shares offered hereunder are sold as contemplated herein. The number of shares in the column Maximum number of shares that may be offered represents all of the shares that each of the selling stockholders may offer under this prospectus.

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Beneficial ownership is determined in accordance with SEC rules. The information is not necessarily indicative of beneficial ownership for any other purpose. In general, under these rules a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares voting power or investment power with respect to such security. A person is also deemed to be a beneficial owner of a security if that person has the right to acquire beneficial ownership of such security within 60 days. To our knowledge, except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock beneficially owned by that person.

For purposes of the table below, the beneficial ownership amounts and percentages are based on a total of 32,308,644 shares of our common stock outstanding as of August 3, 2018. Shares of our common stock that a person has the right to acquire within 60 days of the date of this prospectus are deemed outstanding for purposes of computing the percentage ownership of such person's holdings, but are not deemed outstanding for purposes of computing the percentage ownership of any other person.

We do not know when or in what amounts the selling stockholders may sell or otherwise dispose of the shares covered hereby. The selling stockholders might not sell any or all of the shares covered by this prospectus or may sell or dispose of some or all of their shares in transactions exempt from the registration requirements of the Securities Act, or in the open market after the date on which they provided the information set forth in the table below. Because the selling stockholders may not sell or otherwise dispose of some or all of the shares covered by this prospectus and because there are currently no agreements, arrangements or understandings with respect to the sale or other disposition of any of the shares, we cannot estimate the number of the shares that will be held by the selling stockholders after completion of a potential offering. For purposes of the table below, we have assumed that the selling stockholders will have sold all of the shares covered by this prospectus upon completion of the applicable offering.

Information about additional selling stockholders, if any, including their identities and the common stock to be registered on their behalf, may be set forth in a prospectus supplement, in a post-effective amendment or in filings that we make with the SEC under the Exchange Act, which are incorporated by reference in this prospectus. Information concerning the selling stockholders may change from time to time. Any changes to the information provided below will be set forth in a supplement to this prospectus, in a post-effective amendment or in filings we make with the SEC under the Exchange Act, which are incorporated by reference into this prospectus, if and when necessary. The address of each beneficial owner listed in the table below is 1701 Pennsylvania Ave., NW, Suite 900, Washington, DC 20006.

	Common stock beneficially owned					
	Shares beneficially owned prior to this offering		Maximum number of shares that may be offered	Shares beneficially owned after this offering		
	Number	Percentage		Number	Percentage	
Entities Affiliated with Allan M. Fox <sup>(1)</sup>	3,043,568	9.42%	3,043,568	0	0%	
Entities Affiliated with John Daniel Kiser <sup>(2)</sup>	2,013,890	6.23%	2,013,890	0	0%	

(1) Entities include The Allan M. Fox Trust (U/A/D April 21, 2015) (the Fox Trust), The Allan M. Fox Revocable Trust (the Fox Revocable Trust) and MAPES. Mr. Kiser is the trustee of the Fox Trust and holds sole investment

power over such trust. Mr. Fox holds sole investment power over the shares held by the Fox Revocable Trust and the shares held by MAPES. Mr. Fox is a member of our board of directors and Mr. Kiser is a former member of our board of directors. The amount reflected does not include 948,157 shares held by the Kiser Gift Trust, for which Mr. Fox serves as co-trustee as described in footnote (2).

- (2) Entities include The Kiser 2012 Gift Trust (the Kiser Gift Trust), The John Daniel Kiser Revocable Trust U/A/D July 27, 2011 (the Kiser Revocable Trust) and The Kiser 2018 Grantor Retained Annuity Trust (the Kiser Retained Annuity Trust). Mr. Fox is co-trustee of the Kiser Gift Trust and holds shared investment power over such trust. Mr. Kiser holds sole investment power over the shares held by the Kiser Revocable Trust. Ellen G. Kiser, the wife of Mr. Kiser, holds sole investment power over the shares held by the Kiser Retained Annuity Trust. The amount reflected does not include 722,485 shares held by the Fox Trust, for which Mr. Kiser serves as trustee as described in footnote (1).

#### **PLAN OF DISTRIBUTION**

From time to time, we or the selling stockholders may sell the securities offered by this prospectus in any one or more of the following ways:

to or through one or more underwriters, dealers or agents;

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in short or long transactions;

through put or call option transactions relating to our common stock;

directly to agents or other purchasers;

in at the market offerings within the meaning of Rule 415(a)(4) of the Securities Act, to or through a market maker or into an existing trading market, on an exchange or otherwise;

though a combination of any such methods of sale; or

through any other method described in the applicable prospectus supplement.

The securities may be distributed from time to time in one or more transactions at:

a fixed price or prices, which may be changed;

market prices prevailing at the time of sale;

prices related to the prevailing market price; or

negotiated prices.

The applicable prospectus supplement will set forth the method of distribution and the terms and conditions of the offering of such securities, including:

the terms of the offering;

the names of any underwriters, dealers or agents;

the name or names of any managing underwriter or underwriters;

the purchase price of the securities and the proceeds to us from the sale;



any over-allotment or other options under which the underwriters may purchase additional shares of common stock from us;

any underwriting discounts, concessions, commissions or agency fees and other items constituting compensation to underwriters, dealers or agents;

any discounts or concessions allowed or re-allowed or paid by underwriters or dealers to other dealers;

any delayed delivery arrangements;

estimated offering expenses; or

any securities exchange or market on which the securities offered in the prospectus supplement may be listed. We may issue to our existing security holders, through a dividend or similar distribution, rights to purchase shares of our common stock or preferred stock, debt securities or units, which may or may not be transferable. In any distribution of rights to our existing security holders, if all of the underlying securities are not subscribed for, we may then sell the unsubscribed securities directly to third parties or may engage the services of one or more underwriters, dealers or agents, including standby underwriters, to sell the unsubscribed securities to third parties. The applicable prospectus supplement will describe the specific terms of any offering of our common stock or preferred stock through the issuance of rights, including, if applicable, the material terms of any standby underwriting or purchase arrangement.

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### **Sale Through Underwriters or Dealers**

If we or the selling stockholders use underwriters for a sale of securities, the underwriters will acquire the securities for their own account for resale to the public, either on a firm commitment basis or a best efforts basis. The underwriters may resell the securities in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer the securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. If an underwriter or underwriters are used in the sale of securities hereunder, an underwriting agreement will be executed with the underwriter or underwriters or their representatives at the time an agreement for sale is reached. Unless we inform you otherwise in the applicable prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions. The underwriters may change from time to time any public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

During and after an offering through underwriters, the underwriters may purchase and sell the securities in the open market. These transactions may include overallotment and stabilizing transactions and purchases to cover syndicate short positions created in connection with the offering. The underwriters may also impose a penalty bid, which means that selling concessions allowed to syndicate members or other broker-dealers for the offered securities sold for their account may be reclaimed by the syndicate if the offered securities are repurchased by the syndicate in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the offered securities, which may be higher than the price that might otherwise prevail in the open market. If commenced, the underwriters may discontinue these activities at any time.

Some or all of the securities that we offer through this prospectus may be new issues of securities with no established trading market. Any underwriters to whom we sell our securities for public offering and sale may make a market in those securities, but they will not be obligated to do so and they may discontinue any market making at any time without notice. Accordingly, we cannot assure you of the liquidity of, or continued trading markets for, any securities that we offer.

If dealers are used for the sale of securities, we or the selling stockholders, or an underwriter, will sell the securities to them as principals. The dealers may then resell those securities to the public at varying prices determined by the dealers at the time of resale. We will include in the applicable prospectus supplement the names of the dealers and the terms of the transaction.

Underwriters, dealers and agents that participate in the distribution of the securities may be underwriters as defined in the applicable securities laws and any discounts or commissions they receive from us or the selling stockholders and any profit on their resale of the securities may be treated as underwriting discounts and commissions under the applicable securities laws. We will identify in the applicable prospectus supplement any underwriters, dealers or agents and will describe their compensation. We or the selling stockholders may have agreements with the underwriters, dealers and agents to indemnify them against specified civil liabilities, including liabilities under the applicable securities laws.

### **Direct Sales and Sales Through Agents**

We or the selling stockholders may also sell the securities through agents designated from time to time. In the applicable prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the applicable prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its

appointment.

We or the selling stockholders may sell the securities directly in transactions not involving underwriters, dealers or agents.

We or the selling stockholders may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any such sales in the prospectus supplement.

### **Delayed Delivery Contracts**

If the prospectus supplement indicates, we may authorize underwriters, dealers or agents to solicit offers from certain types of institutions to purchase securities at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The applicable prospectus supplement will describe the commission payable for solicitation of those contracts.

### **Market Making, Stabilization and Other Transactions**

Unless the applicable prospectus supplement states otherwise, all preferred stock, debt securities, warrants, rights and units will be new issues of securities with no established trading market. Unless indicated in the applicable prospectus supplement, we do not expect to list the offered securities on a securities exchange, except for our common stock, which is listed on The Nasdaq Global Select Market. Any underwriters that we use in the sale of offered securities may make a market in such securities, but may discontinue such market making at any time without notice. Therefore, we cannot assure you that the securities will have a liquid trading market.

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Any underwriter may also engage in stabilizing transactions, syndicate covering transactions and penalty bids in accordance with Rule 104 of Regulation M under the Exchange Act. Stabilizing transactions involve bids to purchase the underlying security in the open market for the purpose of preventing or retarding a decline in the price of the securities. Syndicate covering transactions involve purchases of the securities in the open market after the distribution has been completed in order to cover syndicate short positions. Penalty bids permit the underwriters to reclaim a selling concession from a syndicate member when the securities originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

Stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our securities or preventing or retarding a decline in the price of our securities. As a result, the price of the securities in the open market may be higher than it would otherwise be in the absence of these transactions. The underwriters may, if they commence these transactions, discontinue them at any time.

## **Hedging**

We or the selling stockholders may enter into hedging transactions with broker-dealers and the broker-dealers may engage in short sales of the securities in the course of hedging the positions they assume with us or the selling stockholders, including, without limitation, in connection with distributions of the securities by those broker-dealers. We or the selling stockholders may enter into option or other transactions with broker-dealers that involve the delivery of the securities offered hereby to the broker-dealers, who may then resell or otherwise transfer those securities. We or the selling stockholders may also loan or pledge the securities offered hereby to a broker-dealer and the broker-dealer may sell the securities offered hereby so loaned or upon a default may sell or otherwise transfer the pledged securities offered hereby.

## **Electronic Auctions**

We may make sales through the Internet or through other electronic means. Since we may from time to time elect to offer securities directly to the public, with or without the involvement of agents, underwriters or dealers, utilizing the Internet or other forms of electronic bidding or ordering systems for the pricing and allocation of such securities, you will want to carefully review the description of that system, which we will provide in a prospectus supplement.

Such electronic system may allow bidders to directly participate, through electronic access to an auction site, by submitting conditional offers to buy that are subject to acceptance by us, and which may directly affect the price or other terms and conditions at which such securities are sold. These bidding or ordering systems may present to each bidder, on a so-called real-time basis, relevant information to assist in making a bid, such as the clearing spread at which the offering would be sold, based on the bids submitted, and whether a bidder's individual bids would be accepted, prorated or rejected. For example, in the case of debt security, the clearing spread could be indicated as a number of basis points above an index treasury note.

Upon completion of such an electronic auction process, securities will be allocated based on prices bid, terms of bid or other factors. The final offering price at which securities would be sold and the allocation of securities among bidders would be based in whole or in part on the results of the Internet or other electronic bidding process or auction.

## **General Information**

Underwriters, dealers and agents may engage in transactions with or perform services for us in the ordinary course of their businesses for which they may receive customary fees and reimbursement of expenses. We or the selling stockholders may have a material relationship with the underwriters, dealers or agents. We will describe the nature of

such relationship in the applicable prospectus supplement.

Under the securities laws of some states, the securities offered by this prospectus may be sold in those states only through registered or licensed brokers or dealers. The specific terms of any lock-up provisions in respect of any given offering will be described in the applicable prospectus supplement.

Underwriters, dealers and agents may be entitled, under agreements entered into with us, to be indemnified by us against certain liabilities, including liabilities under the Securities Act. Our underwriters, dealers and agents, or their affiliates, may be customers of, engage in transactions with or perform services for us, in the ordinary course of business.

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**LEGAL MATTERS**

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Covington & Burling LLP, Washington, D.C. Counsel for any underwriters, dealers or agents will be named in the applicable prospectus supplement.

**EXPERTS**

The financial statements incorporated in this prospectus by reference to the Annual Report on Form 10-K for the year ended December 31, 2017 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

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**Common Stock**

**Preferred Stock**

**Warrants**

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**5,057,458 Shares of Common Stock for Resale by Selling Stockholders**

**PROSPECTUS**

**August 8, 2018**

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**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth an itemization of all estimated expenses in connection with the issuance and distribution of the securities being registered, all of which will be borne by the registrant.

SEC registration fee	\$	*
Legal fees and expenses		**
Accounting fees and expenses		**
Transfer agent and registrar fees and expenses		**
Stock exchange listing fees		**
Trustee fees and expenses		**
Printing, FINRA filing fee (if applicable) and miscellaneous expenses		**
Total	\$	**

\* Pursuant to Rule 415(a)(6) under the Securities Act, this registration statement includes \$137,772,500 aggregate amount of unsold securities previously registered under the Registration Statement on Form S-3 (File No. 333-215146). The registration fee previously paid with respect to such unsold securities will continue to apply to such securities in accordance with Rule 415(a)(6) under the Securities Act. The balance of the registration fees will be paid at the time of any primary offering of securities under this registration statement after the unsold securities have been used and therefore is not determinable. In addition, the registration fee for the secondary offering is partially offset by \$12,142.29 in fees the registrant is entitled to offset under Rule 457(p) under the Securities Act, which the registrant previously paid with respect to unsold shares in the secondary offering under the Registration Statement on Form S-3 (File No. 333-215146). Additional fees with respect to the secondary offering of \$31,599.27 were paid at the time this was registration statement was filed.

\*\* These fees and expenses are calculated based on the amount of securities offered and number of offerings accordingly cannot be estimated at this time. The estimate of such expenses in connection with securities to be offered and sold pursuant to this registration statement will be included in the applicable prospectus supplement.

**Item 15. Indemnification of Directors and Officers**

Section 102 of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of its directors or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers



under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, our restated certificate of incorporation and amended and restated bylaws contain provisions relating to the limitation of liability and indemnification of directors and officers. The restated certificate of incorporation provides that our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability:

for any breach of the director's duty of loyalty to us or our stockholders;

for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

in respect of unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or

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

Our restated certificate of incorporation also provides that if Delaware law is amended after the approval by our stockholders of the certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law.

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Our amended and restated bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law, as it now exists or may in the future be amended, against all expenses and liabilities reasonably incurred in connection with their service for or on our behalf. Our amended and restated bylaws provide that we shall advance the expenses incurred by a director or officer in advance of the final disposition of an action or proceeding, and permit us to secure insurance on behalf of any director, officer, employee, or other enterprise agent for any liability arising out of his or her action in that capacity, whether or not Delaware law would otherwise permit indemnification.

We either have entered or intend to enter into indemnification agreements with each of our directors and executive officers and certain other key employees. The form of agreement provides that we will indemnify each of our directors, executive officers and such other key employees against any and all expenses incurred by that director, executive officer, or other key employee because of his or her status as one of our directors, executive officers, or other key employees, to the fullest extent permitted by Delaware law, our restated certificate of incorporation and our amended and restated bylaws. In addition, the form agreement provides that, to the fullest extent permitted by Delaware law, we will advance all expenses incurred by our directors, executive officers and other key employees in connection with a legal proceeding.

We currently carry and intend to continue to carry liability insurance for our directors and officers.

At present, there is no pending litigation or proceeding involving any of our directors, officers or employees in which indemnification will be required or permitted. We are not aware of any threatened litigation or proceeding that might result in a claim for such indemnification.

**Table of Contents****Item 16. Exhibits****Exhibit**

<b>Number</b>	<b>Description</b>
1.1*	Form of underwriting agreement.
4.1	<u>Restated Certificate of Incorporation (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-37553) filed on September 22, 2015).</u>
4.2	<u>Amended and Restated Bylaws (incorporated herein by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K (File No. 001-37553) filed on September 22, 2015).</u>
4.3	<u>Specimen stock certificate evidencing shares of the Company's common stock, par value \$0.0001 per share (incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1 (File No. 333-206430) filed on August 17, 2015).</u>
4.4	<u>Amended and Restated Investors' Rights Agreement dated as of May 15, 2015 (incorporated herein by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-1 (File No. 333-206430) filed on August 17, 2015).</u>
4.5*	Form of certificate of designation with respect to any preferred stock issued hereunder and the related form of preferred stock certificate.
4.6*	Form of preferred stock certificate.
4.7*	Form of warrant agreement.
4.8*	Form of warrant certificate.
4.9	<u>Form of indenture (incorporated herein by reference to Exhibit 4.8 to the Company's Registration Statement on Form S-3 (File No. 333-215146) filed December 16, 2016).</u>
4.10*	Form of debt security.
4.11*	Form of rights certificate.
4.12*	Form of unit agreement.
4.13*	Form of unit certificate.
5.1	<u>Opinion of Covington &amp; Burling LLP.</u>
12.1	<u>Computation of Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends</u>
23.1	<u>Consent of PricewaterhouseCoopers LLP.</u>
23.2	<u>Consent of Covington &amp; Burling LLP (included in Exhibit 5.1).</u>
24.1	<u>Power of Attorney (included on signature page hereto).</u>
25.1**	Statement of Eligibility of Trustee on Form T-1 under Trust Indenture Act of 1939.

\* To be filed by amendment or as an exhibit to a document filed under the Exchange Act and incorporated by

reference herein.

\*\* To be filed separately pursuant to Section 305(b)(2) of the Trust Indenture Act of 1939, and the rules and regulations thereunder.

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**Item 17. Undertakings**

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high and of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

*provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or date of the first sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of this registration statement or made in a document incorporated or deemed incorporated by reference into this

registration statement or prospectus that is a part of this registration statement will, as to a purchaser with a time of contract sale prior to such effective date, supersede or modify any statement that was made in this registration statement or prospectus that was a part of this registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

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- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (7) In connection with offerings of securities to existing security holders pursuant to warrant or rights where any securities not taken by security holders are to be reoffered to the public, to supplement the prospectus, after the expiration of the subscription period for a warrant or rights offering, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.
- (8) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted against the registrant by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.
- (9) If and when applicable, to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act of 1939 in accordance with the rules and regulations prescribed by the Securities and Exchange Commission under Section 305(b)(2) of the Trust Indenture Act of 1939.

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Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rockville, State of Maryland, on the 8th day of August, 2018.

**REGENXBIO INC.**

By: /s/ Kenneth T. Mills  
 Kenneth T. Mills  
 President and Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Kenneth T. Mills and Patrick J. Christmas, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on August 8, 2018.

<b>Signature</b>	<b>Title</b>
/s/ Kenneth T. Mills	President and Chief Executive Officer and Director
Kenneth T. Mills	(Principal Executive Officer)
/s/ Vittal Vasista	Chief Financial Officer
Vittal Vasista	(Principal Financial Officer and Principal Accounting Officer)
/s/ Donald J. Hayden, Jr.	Chairman of the Board of Directors
Donald J. Hayden, Jr.	
/s/ Daniel J. Abdun-Nabi	Director



Daniel J. Abdun-Nabi

/s/ Luke M. Beshar

Director

Luke M. Beshar

/s/ Allan M. Fox

Director

Allan M. Fox

/s/ Alexandra Glucksmann

Director

Alexandra Glucksmann

/s/ A.N. Jerry Karabelas

Director

A.N. Jerry Karabelas

/s/ David C. Stump

Director

David C. Stump

/s/ Daniel Tassé

Director

Daniel Tassé