

ART TECHNOLOGY GROUP INC

Form S-3/A

November 16, 2009

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**As filed with the Securities and Exchange Commission on November 16, 2009**

**Registration Statement No. 333-162794**

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

**Amendment No. 1  
to  
Form S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**Art Technology Group, Inc.**

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

**Delaware**

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

**04-3141918**

*(I.R.S. Employer  
Identification Number)*

**One Main Street  
Cambridge, Massachusetts 02142  
(617) 386-1000**

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

**Robert D. Burke  
President and Chief Executive Officer  
Art Technology Group, Inc.**

**One Main Street  
Cambridge, Massachusetts 02142**  
*(Name and address of agent for service)*

**(617) 386-1000**

*(Telephone number, including area code, of agent for service)*

***Copies to:***

**John D. Patterson, Jr., Esq.**  
**Robert W. Sweet, Jr., Esq.**  
**Foley Hoag LLP**  
**Seaport World Trade Center West**  
**155 Seaport Boulevard**  
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**Telephone: (617) 832-1000**  
**Telecopy: (617) 832-7000**

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

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

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

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  ==

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

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

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

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

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price per Unit(1)</b>	<b>Proposed Maximum Aggregate Offering Price(1)</b>	<b>Amount of Registration Fee(1)(2)</b>
Common stock (3)		\$	\$	\$
Preferred stock				
Warrants				
Debt securities				
<b>Total</b>			<b>\$ 250,000,000</b>	<b>\$ 13,950(4)</b>

(1) The amount to be registered consists of an unspecified amount of the securities of each identified class that may from time to time be offered at indeterminate prices.

(2) Fee calculated in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

(3) Shares of common stock may be issued separately, upon the exercise in accordance with their terms of warrants or upon conversion, without payment of separate consideration, of preferred stock or debt securities, each of which issuances is registered hereby.

(4) Previously filed.

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

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THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. WE MAY NOT SELL THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

**SUBJECT TO COMPLETION, DATED NOVEMBER 16, 2009**

**PROSPECTUS**

**\$250,000,000**

**Common Stock  
Preferred Stock  
Warrants  
Debt Securities**

This prospectus provides you with a general description of securities that we may offer and sell from time to time. Each time we sell securities we will provide a prospectus supplement that will contain specific information about the terms of that sale and may add to or update the information in this prospectus. You should read this prospectus and any applicable prospectus supplement carefully before you invest in our securities.

The securities may be offered directly by us, through agents designated from time to time by us or to or through underwriters or dealers. If any agents, underwriters or dealers are involved in the sale of any of the securities, their names and any applicable purchase price, fee, commission or discount arrangement between or among them will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. See the sections entitled *About This Prospectus* and *How We Plan to Offer and Sell the Securities* for more information. No securities may be sold without delivery of this prospectus and the applicable prospectus supplement describing the method and terms of the offering of such securities.

Our common stock is traded on The Nasdaq Global Market under the symbol *ARTG*. The last reported sale price of our common stock on The Nasdaq Global Market on November 13, 2009 was \$4.23 per share.

**Investing in our securities involves various risks. In our filings with the Securities and Exchange Commission, which are incorporated by reference in this prospectus, we identify and discuss risk factors that you should consider before investing in our securities.**

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

**the contrary is a criminal offense.**

The date of this prospectus is November , 2009.

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**ABOUT THIS PROSPECTUS**

This document is called a prospectus, and it provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement containing specific information about the terms of the securities being offered. That prospectus supplement may include a discussion of any risk factors or other special considerations that apply to those securities. The prospectus supplement may also add to, update or change the information in this prospectus. If there is any inconsistency between the information in this prospectus and in a prospectus supplement, you should rely on the information in that prospectus supplement. You should read both this prospectus and any prospectus supplement together with additional information described under the heading **Where You Can Find More Information**.

We have filed a registration statement with the Securities and Exchange Commission, or the SEC, using a shelf registration process. Under this shelf registration process, we may offer and sell any combination of the securities described in this prospectus in one or more offerings.

Our SEC registration statement containing this prospectus, including exhibits, provides additional information about us and the securities offered under this prospectus. The registration statement can be read at the SEC's web site or at the SEC's offices. The SEC's web site and street address are provided under the heading **Where You Can Find More Information**.

When acquiring securities, you should rely only on the information provided in this prospectus and in the related prospectus supplement, including any information incorporated by reference. No one is authorized to provide you with information different from that which is contained, or deemed to be contained, in the prospectus and related prospectus supplement. We are not offering the securities in any state where the offer is prohibited. You should not assume that the information in this prospectus, any prospectus supplement or any document incorporated by reference is truthful or complete as of any date other than the date indicated on the cover page of the relevant document.

Unless otherwise stated or unless the context otherwise requires, all references to **we**, **us**, **our**, **our company** or **the Company** in this prospectus refer collectively to Art Technology Group, Inc., a Delaware corporation, and its subsidiaries, and their respective predecessor entities for the applicable periods, considered as a single enterprise.



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**PROSPECTUS SUMMARY**

This section contains a general summary of the information contained in this prospectus. It may not include all of the information that is important to you. You should read the entire prospectus, any accompanying prospectus supplement and the documents incorporated by reference before making an investment decision.

**Art Technology Group, Inc.**

We develop and market a comprehensive suite of e-commerce software products and software-as-a-service, or SaaS, solutions that are designed to help online businesses increase their revenues. We also provide related services, including support and maintenance, professional services, application hosting, e-commerce optimization services for enhancing online sales, and education. Our customers use our products and services to power their e-commerce websites, attract prospects, convert sales, increase order size, and offer ongoing customer care services. Our solutions are designed to provide a scalable, reliable and sophisticated e-commerce website for our customers to create a satisfied, loyal and profitable online customer base.

We seek to differentiate ourselves by offering solutions that enable our customers to provide a richer, more personalized and more compelling online shopping experience. We provide merchandisers and marketers more control over the online channel, and enable customer service agents to provide consumers more consistent, personalized and relevant assistance. Our solutions deliver better consistency and relevancy by capturing and maintaining information about customers' personal preferences, online activity, and transaction history, and by using this information to deliver more personalized and contextual content.

Our ATG Commerce Suite consists of solutions delivered through perpetual software licenses or delivered as recurring SaaS solutions. Our ATG e-Commerce Optimization Services interoperate with any e-commerce platform, and are delivered as recurring SaaS solutions. Our e-commerce optimization services include Click-to-Call, Click-to-Chat, Call Tracking services and Recommendation services.

We market our products and services primarily to Global 2000 companies and other businesses that have large numbers of online users and utilize the Internet as an important business channel. We focus primarily on businesses in the retail, consumer products, manufacturing, media and entertainment, telecommunications, financial services, travel and insurance industries. We have approximately 700 customers, including Amazon, American Eagle Outfitters, AOL, AT&T, Best Buy, B&Q, Cabela's, Carrefour, Cingular, Collective Brands, Conde Nast, Continental Airlines, Dell, DirecTV, El Corte Ingles, Expedia, France Telecom, Harvard Business School Publishing, Hewlett-Packard, Intuit, Hilton, HSBC, L.L. Bean, Lexmark, Macy's, Meredith, Microsoft, Neiman Marcus, New York & Company, Nokia, Nutrisystem, OfficeMax, Overstock.com, PayPal, Philips, Procter & Gamble, Sears, Shop Direct Group, Sony, Sprint, Symantec, T Mobile, Target, Urban Outfitters, Verizon, Viacom, and Vodafone.

We were incorporated in 1991 in the Commonwealth of Massachusetts and reincorporated in 1997 in the State of Delaware. Our corporate headquarters are at One Main Street, Cambridge, Massachusetts 02142. We have domestic offices in Chicago, Illinois; New York, New York; Washington D.C.; Reston, Virginia; San Francisco, California; and Seattle, Washington; and international offices in Canada, France, Northern Ireland, and the United Kingdom. Our Internet web site address is [www.atg.com](http://www.atg.com). The information found on our website is not part of this prospectus.

**The Securities We May Offer**

With this prospectus, we may offer common stock, preferred stock, debt securities, warrants to purchase common stock, preferred stock or debt securities, or any combination of the foregoing. The aggregate offering price of

securities that we offer with this prospectus will not exceed \$250,000,000. Each time we offer securities with this prospectus, we will provide offerees with a prospectus supplement that will contain the specific terms of the securities being offered.

### **Risks Affecting Us**

Our business is subject to a number of risks, which are highlighted in the section entitled **Risk Factors** immediately following this summary and in the prospectus supplement and the documents incorporated by reference.

**Table of Contents****RISK FACTORS**

Prior to making an investment decision with respect to the securities that we may offer, prospective investors should carefully consider, in light of their particular investment objectives and financial circumstances, the specific factors set forth under the caption "Risk Factors" in the applicable prospectus supplement pertaining thereto and in our most recent annual report on Form 10-K and quarterly report on Form 10-Q filed with the SEC, as well as any amendments thereto reflected in subsequent filings with the SEC, and in any of our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act incorporated by reference into this prospectus and the applicable prospectus supplement. For more information, see "Where You Can Find More Information" and "Incorporation of Certain Information by Reference."

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus and the documents incorporated by reference in this prospectus, contain forward-looking statements. You should carefully consider the various risk factors described above that are incorporated by reference into this prospectus from our SEC filings, which risk factors may cause our actual results to differ materially from those indicated by such forward-looking statements. You should not place undue reliance on our forward-looking statements.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table presents our ratio of earnings to fixed charges for the periods indicated (dollar amounts in thousands).

	Year Ended December 31,					Nine Months Ended September 30, 2009
	2004	2005	2006	2007	2008	
Income (loss) from operations	\$ (9,989)	\$ 5,582	\$ 5,366	\$ (5,991)	\$ 4,429	\$ 10,571
Fixed charges:						
Interest expense(1)						
Rental interest(2)	424	405	344	434	459	232
Total fixed charges	424	405	344	434	459	232
Income (loss) from operations plus fixed charges	\$ (9,565)	\$ 5,987	\$ 5,710	\$ (5,557)	\$ 4,888	\$ 10,803
Ratio of Earnings to Fixed Charges	N/A	14.78	16.60	N/A	10.65	46.56
Coverage Deficiency(3)	\$ 9,565	\$	\$	\$ 5,557	\$	\$

- (1) Includes interest expensed and capitalized; excludes interest related to FIN 48 tax reserves.
- (2) Represents an estimate of the portion of our rent expense incurred under operating leases that constitutes interest based on an estimated borrowing rate of prime plus five percent.
- (3) In 2004 and 2007 we incurred losses from operations and as a result our earnings were insufficient to cover our fixed charges. The amount shown represents the amount of the coverage deficiency in each such period.

#### **HOW WE INTEND TO USE THE PROCEEDS**

Unless stated differently in a prospectus supplement, we will use the net proceeds from the sale of the securities that we may offer with this prospectus and any accompanying prospectus supplement for general corporate purposes. General corporate purposes may include capital expenditures, acquisitions, investments, repurchase of our capital stock and any other purposes that we may specify in any prospectus supplement. We may invest the net proceeds temporarily until we use them for their stated purpose.

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**DESCRIPTION OF COMMON STOCK WE MAY OFFER**

*The following summary description of our common stock is based on the provisions of our Restated Certificate of Incorporation, as amended, which we refer to as our certificate of incorporation or our charter, our amended and restated by-laws, which we refer to as our by-laws, and the applicable provisions of the Delaware General Corporation Law, which we refer to as the DGCL. This description may not contain all of the information that is important to you and is subject to, and is qualified in its entirety by reference to our certificate of incorporation, our by-laws and the applicable provisions of the DGCL. For information on how to obtain copies of our certificate of incorporation and by-laws, see *Where You Can Find More Information*.*

We may offer common stock. We may also offer common stock issuable upon the conversion of debt securities or preferred stock or the exercise of warrants.

**Authorized and Outstanding Capital Stock**

Our authorized capital stock consists of 200,000,000 shares of common stock, \$0.01 par value per share, and 10,000,000 shares of preferred stock, \$0.01 par value, of which 500,000 shares are designated Series A junior participating preferred stock. As of October 30, 2009, we had 126,956,626 shares of common stock outstanding and no shares of preferred stock outstanding. All outstanding shares of our common stock are duly authorized, validly issued, fully paid and non-assessable.

**Common Stock**

*Voting Rights.* The holders of our common stock have one vote per share. Holders of our common stock are not entitled to vote cumulatively for the election of directors. Generally, all matters to be voted on by stockholders must be approved by a majority, or, in the case of the election of directors, by a plurality, of the votes cast at a meeting at which a quorum is present, voting together as a single class, subject to any voting rights granted to holders of any then outstanding preferred stock.

*Dividends.* Holders of common stock will share ratably in any dividends declared by our board of directors, subject to the preferential rights of any preferred stock then outstanding. We may pay dividends consisting of shares of common stock to holders of shares of common stock.

*Other Rights.* Upon the liquidation, dissolution or winding up of our company, all holders of common stock are entitled to share ratably in any assets available for distribution to holders of shares of common stock, subject to the preferential rights of any preferred stock then outstanding. No shares of common stock are subject to redemption or have preemptive rights to purchase additional shares of common stock.

**Rights Plan**

In September 2001, we adopted a rights plan. Under the rights plan, we distributed one preferred stock purchase right, which we refer to as a right, as a dividend on each outstanding share of our common stock. The rights will expire on September 26, 2011 unless they are redeemed or exchanged before that time. Each right entitles the holder to purchase one one-thousandth of a share of our Series A junior participating preferred stock at a purchase price of \$15.00 per right, subject to adjustment.

The rights are exercisable only upon the occurrence of certain events, which we refer to as triggering events, including the acquisition by a person or group of beneficial ownership of 15% or more of the then-outstanding shares of our common stock or the commencement of a tender or exchange offer by any person or group that would result in that person or group owning 15% or more of the then-outstanding shares of our common stock. If any person or group becomes the beneficial owner of 15% or more of the shares of our common stock, except in a tender or exchange offer for all shares at a fair price as determined by the outside members of our board of directors, each right not owned by the 15% stockholder will entitle its holder to purchase that number of shares of our common stock which equals the exercise price of the right divided by one-half of the market price of our common stock at the date of the occurrence of the triggering event. In addition, under certain circumstances following a triggering event, if we are involved in a merger or other business combination transaction with another entity in which we are not the surviving corporation or in which our common stock is changed or converted, or if we sell or transfer 50% or more

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of our assets or earning power to another entity, each right will entitle its holder to purchase a number of shares of common stock of the other entity that equals the exercise price of the right divided by one-half of the market price of that common stock at the date of the occurrence of the triggering event. We generally will be entitled to redeem the rights at \$.001 per right at any time until the tenth business day following public announcement that a 15% stock position has been acquired and in specified other circumstances.

The rights have anti-takeover effects. They may cause substantial dilution to a person or entity attempting to acquire us on terms not approved by our board of directors, except under the terms of an offer conditioned on a substantial number of rights being acquired. The rights should not interfere with any merger or other business combination approved by the board, since we may redeem the rights at \$.001 per right.

## **Preferred Stock**

Our certificate of incorporation provides that we may issue shares of preferred stock from time to time in one or more series. Our board of directors is authorized to fix the voting rights, if any, designations, powers, preferences, qualifications, limitations and restrictions thereof, applicable to the shares of each series. Our board of directors may, without stockholder approval, issue preferred stock with voting and other rights, including preferred stock or rights to acquire preferred stock in connection with implementing a shareholder rights plan, that could adversely affect the voting power and other rights of the holders of our common stock and could have anti-takeover effects. The ability of our board of directors to issue preferred stock without stockholder approval could have the effect of delaying, deferring or preventing a change of control of our company or the removal of existing management. Our board of directors has designated 500,000 shares of preferred stock as our Series A junior participating preferred stock.

## **Provisions of Our Certificate of Incorporation and By-Laws That May Have Anti-Takeover Effects**

Certain provisions of our certificate of incorporation and by-laws described below, as well as the ability of our board of directors to issue shares of preferred stock and to set the voting rights, preferences and other terms thereof, may be deemed to have an anti-takeover effect and may discourage takeover attempts not first approved by our board of directors, including takeovers that stockholders may believe to be in their best interests.

These provisions also could have the effect of discouraging open market purchases of our common stock because these provisions may be considered disadvantageous by a stockholder who desires subsequent to such purchases to participate in a business combination transaction with us or to elect a new director to our board.

*Business Combinations.* We are subject to the provisions of 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 after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. A business combination includes mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder. Subject to specified exceptions, an interested stockholder is a person who, together with affiliates and associates, owns, or within three years did own, 15% or more of a corporation's voting stock.

*Classified Board.* Our charter divides our board of directors into three classes with staggered three-year terms. In addition, our charter provides that directors may be removed only for cause by the affirmative vote of the holders of two-thirds of our shares of capital stock entitled to vote. Under our charter, any vacancy on the board, including a vacancy resulting from an enlargement of the board, may only be filled by the affirmative vote of a majority of our directors then in office. The classification of the board and the limitations on the removal of directors and filling of vacancies could make it more difficult for a third party to acquire, or discourage a third party from acquiring, control of the company. Our charter and by-laws require the affirmative vote of the holders of at least 75% of the shares of

our capital stock issued and outstanding and entitled to vote to amend or repeal any of the provisions described in this paragraph.

*Limitation of Liability; Indemnification.* Our charter contains provisions permitted under Delaware corporate law relating to the liability of directors. These provisions eliminate a director's liability for monetary damages for a breach of fiduciary duty, except in circumstances involving wrongful acts, such as the breach of a director's



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duty of loyalty or acts or omissions that involve intentional misconduct or a knowing violation of law. This limitation on liability does not alter the liability of our directors and officers under federal securities laws. Furthermore, our charter contains provisions to indemnify our directors and officers to the fullest extent permitted by the Delaware corporate law. These provisions do not limit or eliminate our right or the right of any stockholder to seek non-monetary relief, such as an injunction or rescission in the event of a breach by a director or an officer of the duty of care to us. We believe that these provisions assist us in attracting and retaining qualified individuals to serve as directors.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be provided to our directors or officers, or persons controlling our company as described above, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

*Stockholder Action; Special Meeting of Stockholders.* Our charter provides that any action required or permitted to be taken by our stockholders may be taken only at a duly called annual or special meeting of stockholders and may not be taken by written action in lieu of a meeting. In addition, our charter provides that special meetings of our stockholders may be called only by the chairman of our board of directors, our president or a majority vote of our board of directors. Under our by-laws, in order for any matter to be considered properly brought before a meeting, a stockholder must comply with advance notice requirements. These provisions have the effect of limiting holders of less than a majority of our voting securities from calling a special meeting of stockholders. They also could have the effect of delaying until the next stockholder meeting actions that are favored by the holders of a majority of our outstanding voting securities. These provisions may also discourage a third party from making a tender offer for our common stock, because even if it acquired a majority of our outstanding voting securities, the third party would be able to take action as a stockholder (such as electing new directors or approving a merger) only at a duly called stockholders meeting, and not by written consent. Our charter and by-laws require the affirmative vote of the holders of at least 75% of the shares of our capital stock issued and outstanding and entitled to vote to amend or repeal any of the provisions described in this paragraph.

*Advance Notice Requirements for Stockholder Proposals and Director Nominations.* Our by-laws provide that nominations for election to our board of directors may be made either by the board or by a stockholder who complies with specified notice provisions. Our by-laws contain similar advance notice provisions for stockholder proposals for action at stockholder meetings. These provisions prevent stockholders from making nominations for directors and stockholder proposals from the floor at any stockholder meeting and require that any stockholder making a nomination or stockholder proposal submit the name of the nominee or the text of the stockholder proposal, together with specified information about the nominee or the stockholder proposal, prior to the meeting at which directors are to be elected or action is to be taken. These provisions ensure that stockholders have adequate time to consider nominations and proposals before action is required, and they may also have the effect of delaying stockholder action. Our by-laws require the affirmative vote of the holders of at least 75% of our outstanding voting securities to amend or repeal these provisions.

## **NASDAQ Global Market Listing**

Our common stock is listed on the NASDAQ Global Market under the trading symbol ARTG.

## **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

## **DESCRIPTION OF PREFERRED STOCK WE MAY OFFER**

*This section outlines some of the provisions of the preferred stock we may offer. This description may not contain all of the information that is important to you and is subject to, and is qualified in its entirety by reference to our certificate of incorporation, by-laws and the applicable provisions of the DGCL. The specific terms of any series of preferred stock will be described in the applicable prospectus supplement. Any series of preferred stock we issue will be governed by our certificate of incorporation (as amended and in effect as of the date of such issuance) and by*

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*the certificate of amendment or certificate of designation related to that series. We will file the certificate of amendment or certificate of designation with the SEC and incorporate it by reference as an exhibit to our registration statement at or before the time we issue any preferred stock of that series of authorized preferred stock.*

### **Authorized Preferred Stock**

We have authorized 10,000,000 shares of preferred stock, \$0.01 par value, of which 500,000 shares are designated Series A junior participating preferred stock. No shares of our preferred stock are outstanding.

The prospectus supplement relating to any series of preferred stock that we may offer will contain the specific terms of the preferred stock.

### **DESCRIPTION OF WARRANTS WE MAY OFFER**

*This section outlines some of the provisions of each warrant agreement pursuant to which warrants may be issued, the warrants or rights of warrant holders, and any warrant certificates. This description may not contain all of the information that is important to you and is qualified in its entirety by reference to any warrant agreement with respect to the warrants of any particular series. The specific terms of any series of warrants will be described in the applicable prospectus supplement. If so described in the prospectus supplement, the terms of that series of warrants may differ from the general description of terms presented below.*

We may issue warrants. We may issue these securities in such amounts or in as many distinct series as we wish. This section summarizes the terms of these securities that apply generally. Most of the financial and other specific terms of any such series of securities will be described in the applicable prospectus supplement. Those terms may vary from the terms described here.

When we refer to a series of securities in this section, we mean all securities issued as part of the same series under any applicable indenture, agreement or other instrument. When we refer to the applicable prospectus supplement, we mean the prospectus supplement describing the specific terms of the security you purchase. The terms used in the applicable prospectus supplement generally will have the meanings described in this prospectus, unless otherwise specified in the applicable prospectus supplement.

### **Warrants**

We may issue warrants, options or similar instruments for the purchase of our common stock, preferred stock or debt securities. We refer to these collectively as warrants. Warrants may be issued independently or together with common stock, preferred stock or debt securities, and may be attached to or separate from those securities.

### **Agreements**

Each series of warrants may be evidenced by certificates and may be issued under a separate indenture, agreement or other instrument to be entered into between us and a bank, trust company or other institution that we select as agent with respect to such series. The warrant agent will act as our agent in connection with the warrant agreement or any warrant certificates and will not assume any obligation or relationship of agency or trust for or with any warrant holders. Copies of the forms of agreements and the forms of certificates representing the warrants will be filed with the SEC near the date of filing of the applicable prospectus supplement with the SEC. Because the following is a summary of certain provisions of the forms of agreements and certificates, it does not contain all information that may be important to you. You should read all the provisions of the agreements and the certificates once they are available.

No warrant agreement will be qualified as an indenture, and no warrant agent will be required to qualify as a trustee, under the Trust Indenture Act. Therefore, holders of warrants issued under warrant agreements will not have the protections of the Trust Indenture Act with respect to their warrants.

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**General Terms of Warrants**

The prospectus supplement relating to a series of warrants will identify the name and address of the warrant agent, if any. The prospectus supplement will describe the terms of the series of warrants in respect of which this prospectus is being delivered, including:

the offering price;

the designation and terms of any securities with which the warrants are issued and in that event the number of warrants issued with each security or each principal amount of security;

the dates on which the right to exercise the warrants will commence and expire, and the price at which the warrants are exercisable;

the amount of warrants then outstanding;

material U.S. federal income tax consequences of holding or exercising these securities; and

any other terms of the warrants.

Warrant certificates may be exchanged for new certificates of different denominations and may be presented for transfer of registration and, if exercisable for other securities or other property, may be exercised at the warrant agent's corporate trust office or any other office indicated in the prospectus supplement. If the warrants are not separately transferable from any securities with which they were issued, an exchange may take place only if the certificates representing the related securities are also exchanged.