

HARSCO CORP  
Form S-3ASR  
May 12, 2008

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**As filed with the Securities and Exchange Commission on May 12, 2008**

**Registration No. 333-**

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

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

**Harsco Corporation**

(Exact name of registrant as specified in its charter)

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

**23-1483991**  
(I.R.S. Employer  
Identification No.)

**350 Poplar Church Road  
Camp Hill, Pennsylvania 17011  
(717) 763-7064**

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

**Mark E. Kimmel  
Senior Vice President, Chief Administrative Officer,  
General Counsel and Corporate Secretary  
350 Poplar Church Road  
Camp Hill, Pennsylvania 17011  
(717) 763-7064**

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

**Copies to:**

**Mark E. Kimmel  
Senior Vice President, Chief Administrative Officer,  
General Counsel and Corporate Secretary  
Harsco Corporation**

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**350 Poplar Church Road  
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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

If the 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

(Do not check if a smaller reporting

Non-accelerated filer  company)

Smaller reporting company

### CALCULATION OF REGISTRATION FEE

Title Of Each Class Of Securities To Be Registered	Amount To Be Registered <sup>(1)</sup>	Proposed Maximum Offering Price Per Unit <sup>(1)</sup>	Proposed Maximum Aggregate Offering Price <sup>(1)</sup>	Amount Of Registration Fee <sup>(1)</sup>
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Debt Securities

- (1) An indeterminate aggregate initial offering price or number of debt securities is being registered as may from time to time be issued at indeterminate prices. In accordance with Rules 456(b) and 457(r), the registrant is deferring payment of all of the registration fee.
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**Prospectus**

**Harsco Corporation  
Debt Securities**

We intend to offer from time to time our debt securities. We may sell these securities in one or more offerings at prices and on other terms to be determined at the time of offering.

We will provide the specific terms of the securities to be offered in one or more supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in our securities. This prospectus may not be used to offer and sell our securities unless accompanied by a prospectus supplement describing the method and terms of the offering of those offered securities.

We may offer our securities through agents, underwriters or dealers or directly to investors. Each prospectus supplement will provide the amount, price and terms of the plan of distribution relating to the securities to be sold pursuant to such prospectus supplement. We will set forth the names of any underwriters or agents in the accompanying prospectus supplement, as well as the net proceeds we expect to receive from such sale. In addition, the underwriters, if any, may over-allot a portion of the securities.

Our common stock is listed on the New York Stock Exchange and trades under the ticker symbol **HSC** on that exchange. If we decide to seek a listing of any securities offered by this prospectus, we will disclose the exchange or market on which the securities will be listed, if any, or where we have made an application for listing, if any, in one or more supplements to this prospectus.

**Prior to making a decision about investing in our securities, you should consider carefully any risk factors contained in a prospectus supplement, as well as the risk sectors set forth in our most recently filed annual report on Form 10-K and other filings we may make from time to time with the SEC. See **Risk Factors** on page 2.**

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

The date of this prospectus is May 12, 2008.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission using a shelf registration process. Under this shelf registration process, we may from time to time sell the securities described in this prospectus in one or more offerings at prices and on other terms to be determined at the time of offering.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain more specific information about the terms of that offering. For a more complete understanding of the offering of the securities, you should refer to the registration statement, including its exhibits. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information under the heading **Where You Can Find Additional Information** and **Incorporation of Certain Information By Reference**.

You should rely only on the information contained or incorporated by reference in this prospectus and in any prospectus supplement or in any free writing prospectus that we may provide to you. We have not authorized anyone to provide you with different information. You should not assume that the information contained in this prospectus, any prospectus supplement or any document incorporated by reference is accurate as of any date other than the date mentioned on the cover page of these documents. We are not making offers to sell the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

References in this prospectus to the terms **we**, **us** or **Harsco** or other similar terms mean Harsco Corporation and its consolidated subsidiaries, unless we state otherwise or the context indicates otherwise. References in this prospectus to the term **the Company** mean Harsco Corporation.

**WHERE YOU CAN FIND ADDITIONAL INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements and other information filed by us at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call 1-800-SEC-0330 for further information on the Public Reference Room. The SEC maintains an Internet website that contains reports, proxy and information statements and other information regarding issuers, including us, that file electronically with the SEC. The address for the SEC's website is [www.sec.gov](http://www.sec.gov).

Our Internet website address is [www.harsco.com](http://www.harsco.com). Through this Internet website (found in the **Investor Relations** link), we make available, free of charge, our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and all amendments to those reports, as soon as reasonably practicable after these reports are electronically filed or furnished to the SEC. Information contained on our website is not part of this prospectus, and the reference to our website does not constitute incorporation by reference into this prospectus of the information contained at that site.

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**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference into this prospectus the information in documents we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. Any statement contained in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in or omitted from this prospectus or any accompanying prospectus supplement, or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein, modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We incorporate by reference the documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until the completion of the offering of securities described in this prospectus:

- our annual report on Form 10-K for the year ended December 31, 2007;
- our quarterly report on Form 10-Q for the quarter ended March 31, 2008; and
- our current reports on Form 8-K, as filed with the SEC on January 28, 2008 and February 7, 2008.

You may obtain copies of these filings without charge by requesting the filings in writing or by telephone at the following address.

350 Poplar Church Road  
Camp Hill, Pennsylvania 17011  
Attention: General Counsel  
(717) 763-7064

We will not, however, incorporate by reference in this prospectus any documents or portions thereof that are not deemed filed with the SEC, including any information furnished pursuant to Item 2.02 or Item 7.01 of our current reports on Form 8-K after the date of this prospectus unless, and except to the extent, specified in such current reports.

We have filed with the SEC a registration statement on Form S-3 under the Securities Act of 1933 covering the securities to be offered and sold by this prospectus and the applicable prospectus supplement. This prospectus does not contain all of the information included in the registration statement, some of which is contained in exhibits to the registration statement. The registration statement, including the exhibits, can be read at the SEC website or at the SEC offices referred to above. Any statement made in this prospectus or the prospectus supplement concerning the contents of any contract, agreement or other document is only a summary of the actual contract, agreement or other document. If we have filed any contract, agreement or other document as an exhibit to the registration statement, you should read the exhibit for a more complete understanding of the document or matter involved. Each statement regarding a contract, agreement or other document is qualified in its entirety by reference to the actual document.



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**DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

The nature of our business and the many countries in which we operate subject us to changing economic, competitive, regulatory and technological conditions, risks and uncertainties. Some of the statements contained in this prospectus and the accompanying prospectus supplement or incorporated by reference into this prospectus are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. In accordance with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, we provide the following cautionary remarks regarding important factors which, among others, could cause future results to differ materially from the forward-looking statements, expectations and assumptions expressed or implied herein. Forward-looking statements contained herein could include, among other things, statements about our management confidence and strategies for performance; expectations for new and existing products, technologies and opportunities; and expectations regarding growth, sales, cash flows, earnings and Economic Value Added (EVA®). These statements can be identified by the use of such terms as may, could, expect, anticipate, intend, believe comparable terms.

Factors that could cause results to differ include, but are not limited to: changes in the worldwide business environment in which we operate, including general economic conditions; changes in currency exchange rates, interest rates and capital costs; changes in the performance of stock and bond markets that could affect, among other things, the valuation of the assets in our pension plans and the accounting for pension assets, liabilities and expenses; changes in governmental laws and regulations, including environmental, tax and import tariff standards; market and competitive changes, including pricing pressures, market demand and acceptance for new products, services and technologies; unforeseen business disruptions in one or more of the many countries in which we operate due to political instability, civil disobedience, armed hostilities or other calamities; the seasonal nature of our business; the successful integration of our acquisitions; the amount and timing of repurchases of our common stock, if any; and other risk factors listed from time to time in our SEC reports. We caution that these factors may not be exhaustive and that many of these factors are beyond our ability to control or predict. Accordingly, forward-looking statements should not be relied upon as a prediction of actual results. Any forward-looking statement speaks only as of the date on which such statement is made, and we undertake no duty to update forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. In light of these and other uncertainties, the inclusion of a forward-looking statement herein should not be regarded as a representation by us that our plans and objectives will be achieved.

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**OUR BUSINESS**

Harsco is a diversified, multinational provider of market-leading industrial services and engineered products. Our operations fall into two reportable segments: Access Services and Mill Services, plus an all other category labeled Minerals & Rail Services and Products. We have locations in 50 countries, including the United States.

Harsco was incorporated as a Delaware corporation in 1956. Our executive offices are located at 350 Poplar Church Road, Camp Hill, Pennsylvania 17011. Our main telephone number is (717) 763-7064, and our Internet website address is [www.harsco.com](http://www.harsco.com). Information contained on or accessible through our website is not a part of this prospectus.

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**RISK FACTORS**

An investment in our securities involves risk. Prior to making a decision about investing in our securities, and in consultation with your own financial and legal advisors, you should carefully consider any risk factors contained in a prospectus supplement, as well as the risk factors set forth in our most recently filed annual report on Form 10-K under the heading "Risk Factors" and other filings we may make from time to time with the SEC. You should also refer to the other information in this prospectus and any applicable prospectus supplement, including our financial statements and the related notes incorporated by reference into this prospectus. Additional risks and uncertainties that are not yet identified may also materially harm our business, operating results and financial condition and could result in a complete loss of your investment.

**Table of Contents****USE OF PROCEEDS**

Unless otherwise indicated in any applicable prospectus supplement or other offering materials, we intend to use the net proceeds from the sale of our securities to which this prospectus relates for general corporate purposes. General corporate purposes may include repayment of debt, acquisitions, investments, additions to working capital, capital expenditures and advances to or investments in our subsidiaries. Pending any specific application, we may invest net proceeds in short-term marketable securities or apply them to the reduction of short-term debt.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of consolidated earnings to fixed charges for the periods presented:

<b>Three months ended March 31, 2008<sup>(1)</sup></b>	<b>2007<sup>(1)</sup></b>	<b>2006<sup>(2)</sup></b>	<b>Year ended December 31,</b>		
			<b>2005<sup>(2)</sup></b>	<b>2004<sup>(2)</sup></b>	<b>2003<sup>(2)</sup></b>
3.80	3.87	3.77	3.63	3.01	2.68

(1) Does not include interest related to FIN 48 obligations.

(2) Pre-tax income from continuing operations (net of minority interest in net income) restated to reflect the Gas Technologies business group as a discontinued operation. Portion of rentals revised to include recurring short-term rentals in the Access Services Segment.

Fixed charges represent interest expense, capitalized interest and the portion of rental expense representing the interest factor for continuing operations. Earnings represent the aggregate of income from continuing operations before extraordinary items (excluding undistributed earnings of unconsolidated entities), income taxes, net adjustments for capitalized interest and fixed charges deducted from earnings.

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**DESCRIPTION OF DEBT SECURITIES**

The following is a general description of the debt securities that we may offer from time to time under this prospectus. The financial terms and other specific terms of the debt securities being offered will be described in a prospectus supplement relating to the issuance of those securities. Those terms may vary from the terms described here. Although the debt securities that we may offer include debt securities denominated in United States dollars, we also may choose to offer debt securities in any other currency, including the euro.

The debt securities will be governed by an indenture between us and a financial institution acting as the trustee. The trustee can enforce your rights against us if we default. There are some limitations on the extent to which the trustee acts on your behalf, described under [Events of Default Remedies If an Event of Default Occurs](#). Additionally, the trustee performs administrative duties for us.

Because this section is a summary, it does not describe every aspect of the debt securities that we may offer pursuant to this prospectus. This summary also is subject to and qualified by reference to the description of the particular terms of the debt securities and the indenture described in the related prospectus supplement, including definitions used in the indenture. The particular terms of the debt securities that we may offer under this prospectus and the indenture may vary from the terms described below.

**General**

The debt securities that we may offer under this prospectus will be issued under an indenture between us and The Bank of New York, as trustee.

The indenture will be governed by New York law. A copy of a form of the senior indenture has been filed as an exhibit to the registration statement of which this prospectus is a part. See [Where You Can Find More Information](#) for information on how to obtain a copy of the indenture.

We may offer the debt securities from time to time in as many distinct series as we may choose. All debt securities will be direct, unsecured obligations of ours. Any senior debt securities that we offer under this prospectus will have the same rank as all of our other unsecured and unsubordinated debt. The indenture will not limit the amount of debt that we may issue under the indenture. The indenture also will not limit the amount of other unsecured debt or other securities that we or our subsidiaries may issue.

Our primary sources of payment for our payment obligations under the debt securities will be revenues from our operations and investments and cash distributions from our subsidiaries. Our subsidiaries are separate and distinct legal entities and have no obligation whatsoever to pay any amounts due on debt securities issued by us or to make funds available to us. Our subsidiaries' ability to pay dividends or make other payments or advances to us will depend upon their operating results and will be subject to applicable laws and contractual restrictions. The indenture does not restrict our subsidiaries from entering into agreements that prohibit or limit their ability to pay dividends or make other payments or advances to us.

To the extent that we must rely on cash from our subsidiaries to pay amounts due on the debt securities, the debt securities will be effectively subordinated to all our subsidiaries' liabilities, including their trade payables. Accordingly, our subsidiaries may be required to pay all of their creditors in full before their assets are available to us. Even if we are recognized as a creditor of our subsidiaries, our claims would be effectively subordinated to any security interests in their assets and also could be subordinated to some or all other claims on their assets and earnings.

Other than the restrictions described below or any restrictions described in an applicable prospectus supplement, the indenture and the debt securities that we may offer under this prospectus will not contain any covenants or other provisions designed to protect holders of the debt securities if we participate in a highly leveraged transaction. Other than the restrictions described below or any restrictions described in an applicable prospectus supplement, the indenture and the debt securities that we may offer under this prospectus also will not contain provisions that give holders of the debt securities the right to require us to repurchase their debt securities if our credit ratings decline due to a takeover, recapitalization or similar restructuring or otherwise.

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You should look in the applicable prospectus supplement for the following terms of the debt securities being offered:

the title of the debt securities;

if other than United States dollars, the currency in which the debt securities may be purchased and the currency in which principal, premium, if any, and interest will be paid;

the total principal amount of the debt securities;

the price at which the debt securities will be issued;

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

the annual rate or rates, if any, at which the debt securities will bear interest, including the method of calculating interest if a floating rate is used;

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

the place or places where principal, any premium and interest will be payable;

any redemption, repayment or sinking fund provision;

the application, if any, of defeasance provisions to the debt securities;

if other than the entire principal amount, the portion of the debt securities that would be payable upon acceleration of the maturity of the debt securities;

any obligation we may have to redeem, purchase or repay the debt securities at the option of a holder upon the happening of any event and the terms and conditions of redemption, repurchase or repayment;

the form of debt securities, including whether we will issue the debt securities in individual certificates to each holder or in the form of temporary or permanent global securities held by a depository on behalf of holders;

if the amount of payments of principal of, premium, if any, or interest on the debt securities may be determined by reference to an index, the manner in which that amount will be determined;

any additional covenants applicable to the debt securities;

any additional events of default applicable to the debt securities;

the terms of subordination, if applicable;

the terms of conversion or exchange, if applicable;

any material provisions described in this prospectus that do not apply to the debt securities; and

any other material terms of the debt securities, including any additions to the terms described in this prospectus, and any terms which may be required by or advisable under applicable laws or regulations.

Debt securities bearing no interest or interest at a rate that is below the prevailing market rate may be sold at a discount below their stated principal amount. Special United States federal income tax and other special considerations applicable to any discounted debt securities, or to debt securities issued at face value which are treated as having been issued at a discount for United States federal income tax purposes, will be described in the applicable prospectus supplement.



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In addition to the debt securities that we may offer pursuant to this prospectus, we may issue other debt securities in public or private offerings from time to time. These other debt securities may be issued under other indentures or documentation that are not described in this prospectus, and those debt securities may contain provisions materially different from the provisions applicable to one or more issues of debt securities offered pursuant to this prospectus.

## **Restrictive Covenants**

We will agree in the indenture to certain covenants for the benefit only of holders of the debt securities governed by the indenture. The covenants summarized below will apply to each series of debt securities issued pursuant to the indenture as long as any of those debt securities are outstanding, unless waived, amended or the prospectus supplement states otherwise.

**Payment.** We will pay principal of and premium, if any, and interest on the debt securities at the place and time described in the debt securities. Unless otherwise provided in the applicable prospectus supplement, we will pay interest on any debt security to the person in whose name that security is registered at the close of business on the regular record date for that interest payment.

Any money deposited with the trustee or any paying agent for the payment of principal of or any premium or interest on any debt security that remains unclaimed for two years after that amount has become due and payable will be paid to us at our request. After this occurs, the holder of that security must look only to us for payment of that amount and not to the trustee or paying agent.

**Merger and Consolidation.** We will not merge or consolidate with any other entity or sell or convey all or substantially all of our assets to any person, firm, corporation or other entity, except that we may merge or consolidate with, or sell or convey all or substantially all of our assets to, any other entity if:

we are the continuing entity or the successor entity (if other than us) is organized and existing under the laws of the United States of America, a State thereof or the District of Columbia and the successor entity expressly assumes payment of the principal and interest on all the debt securities, and the performance and observance of all of the covenants and conditions of the indenture to be performed by us; and

there is no default under the indenture.

Upon such a succession, we will be relieved from any further obligations under the indenture.

**Waiver of Certain Covenants.** Unless otherwise provided in an applicable prospectus supplement, we may, with respect to the debt securities of any series, omit to comply with any covenant provided in the terms of those debt securities if, before the time for such compliance, holders of at least a majority in principal amount of the outstanding debt securities of that series waive such compliance in that instance or generally.

## **Events of Default**

You will have special rights if an Event of Default occurs and is not cured, as described later in this subsection. Unless described otherwise in an applicable prospectus supplement, the term **Event of Default** means any of the following with respect to an issue of debt securities offered under this prospectus:

we do not pay interest on an issue of debt securities within 30 days of the due date;

we do not pay the principal of, or premium, if any, on an issue of debt securities on the applicable due date;

we do not pay any sinking fund installment on an issue of debt securities within 30 days of the due date;

we remain in breach of any other covenant or warranty in the debt securities of such series or in the indenture for 90 days after we receive a notice of default stating that we are in breach, as provided in the indenture;

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certain events of bankruptcy, insolvency or reorganization occur; or

any other Event of Default described in the applicable prospectus supplement occurs.

***Remedies If an Event of Default Occurs.*** Unless provided otherwise in an applicable prospectus supplement, if an Event of Default has occurred and continues with respect to an issue of debt securities, the trustee or the holders of not less than 25% in principal amount of the debt securities of the affected series may declare the entire principal amount of all of the debt securities of the affected series to be due and immediately payable. This is called a declaration of acceleration of maturity. Under some circumstances, a declaration of acceleration of maturity may be canceled by the holders of at least a majority in principal amount of the debt securities of that series.

The trustee generally is not required to take any action under the indenture at the request of any holders unless one or more of the holders have provided to the trustee security or indemnity reasonably satisfactory to it.

If reasonable protection from expenses and liabilities is provided, the holders of a majority in 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 and to waive certain past defaults regarding the relevant series. The trustee may refuse to follow those directions in some circumstances.

If an Event of Default occurs and is continuing regarding a series of debt securities, the trustee may use any sums that it holds under the indenture for its own reasonable compensation and expenses incurred prior to paying the holders of debt securities of that series.

Before any holder of any series of debt securities may institute action for any remedy, except payment on such holder's debt security when due, the holders of not less than 25% in principal amount of the debt securities of that series outstanding must request the trustee to take action. Holders must also offer and give the trustee satisfactory security and indemnity against liabilities incurred by the trustee for taking such action.

Street Name and other indirect holders should consult their banks or brokers for information on how to give notice or direction to or make a request of the trustee and to make or cancel a declaration of acceleration.

We will furnish every year to the 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 offered pursuant to the indenture, or else specifying any default.

An Event of Default regarding one series of debt securities issued under the indenture is not necessarily an Event of Default regarding any other series of debt securities.

**Satisfaction and Discharge; Defeasance and Covenant Defeasance**

The following discussion of satisfaction and discharge, defeasance and covenant defeasance will be applicable to a series of debt securities only if we choose to have them apply to that series. If we do so choose, we will state that in the applicable prospectus supplement.

***Satisfaction and Discharge.*** The indenture will be satisfied and discharged if:

we deliver to the trustee all debt securities then outstanding for cancellation; or

all debt securities not delivered to the trustee for cancellation have become due and payable, are to become due and payable within one year or are to be called for redemption within one year and we deposit an amount sufficient to pay the principal, premium, if any, and interest to the date of maturity, redemption or deposit (in the case of debt securities that have become due and payable), provided that in either case we have paid all other sums payable under the indenture.

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***Defeasance and Covenant Defeasance.*** The indenture provides, if such provision is made applicable to the debt securities of a series, that:

we may elect either:

- n to defease and be discharged from any and all obligations with respect to any debt security of such series (except for the obligations to register the transfer or exchange of such debt security, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of the debt securities and to hold moneys for payment in trust) ( defeasance ); or
- n to be released from our obligations with respect to the restrictions described above under Restrictive Covenants together with additional covenants that may be included for a particular series; and

the Events of Default described in the third, fourth and sixth bullets under Events of Default, shall not be Events of Default under the indenture with respect to such series ( covenant defeasance ), upon the deposit with the trustee (or other qualifying trustee), in trust for such purpose, of money certain United States government obligations and/or, in the case of debt securities denominated in United States dollars, certain state and local government obligations which through the payment of principal and interest in accordance with their terms will provide money, in an amount sufficient to pay the principal of (and premium, if any) and interest on such debt security, on the scheduled due dates.

In the case of defeasance, the holders of such debt securities are entitled to receive payments in respect of such debt securities solely from such trust. Such a trust may only be established if, among other things, we have delivered to the trustee an opinion of counsel (as specified in the indenture) to the effect that the holders of the debt securities affected thereby will not recognize income, gain or loss for United States federal income tax purposes as a result of such defeasance or covenant defeasance and will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance or covenant defeasance had not occurred. Such opinion of counsel, in the case of defeasance described above, must refer to and be based upon a ruling of the Internal Revenue Service or a change in applicable United States federal income tax law occurring after the date of the indenture.

**Modification and Waiver**

The indenture contains provisions permitting us and the trustee to modify the indenture or enter into or modify any supplemental indenture without the consent of the holders of the debt securities in regard to matters as will not adversely affect the interests of the holders of the debt securities, including, without limitation, the following:

- to evidence the succession of another corporation to us;
- to add to our covenants further covenants for the benefit or protection of the holders of any or all series of debt securities or to surrender any right or power conferred upon us by the indenture;
- to add any additional events of default with respect to all or any series of debt securities;
- to add to or change any of the provisions of the indenture to facilitate the issuance of debt securities in bearer form with or without coupons, or to permit or facilitate the issuance of debt securities in

uncertificated form;

to add to, change or eliminate any of the provisions of the indenture in respect of one or more series of debt securities thereunder, under certain conditions designed to protect the rights of any existing holder of those debt securities;

to secure all or any series of debt securities;

to establish the forms or terms of the debt securities of any series;

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to evidence the appointment of a successor trustee and to add to or change provisions of the indenture necessary to provide for or facilitate the administration of the trusts under the indenture by more than one trustee; or

to cure any ambiguity, to correct or supplement any provision of the indenture which may be defective or inconsistent with another provision of the indenture or to make other amendments that do not adversely affect the interests of the holders of any series of debt securities in any material respect.

We and the trustee may otherwise modify the indenture or any supplemental indenture with the consent of the holders of not less than a majority in aggregate principal amount of each series of debt securities affected thereby at the time outstanding, except that no such modifications shall, without the consent of the holder of each debt security affected thereby:

extend the fixed maturity of any debt securities or any installment of interest or premium on any debt securities, or reduce the principal amount thereof or reduce the rate of interest or premium payable upon redemption, or reduce the amount of principal of an original issue discount debt security or any other debt security that would be due and payable upon a declaration of acceleration of the maturity thereof, or change the currency in which the debt securities are payable or impair the right to institute suit for the enforcement of any payment after the stated maturity thereof or the redemption date, if applicable, or adversely affect any right of the holder of any debt security to require us to repurchase that security;

reduce the percentage of debt securities of any series, the consent of the holders of which is required for any waiver or supplemental indenture;

modify the provisions of the indenture relating to the waiver of past defaults or the waiver or certain covenants or the provisions described in this section, except to increase any percentage set forth in those provisions or to provide that other provisions of the indenture may not be modified without the consent of the holder of each debt security affected thereby;

change any obligation of ours to maintain an office or agency;

change any obligation of ours to pay additional amounts;

adversely affect the right of repayment or repurchase at the option of the holder; or

reduce or postpone any sinking fund or similar provision.

With respect to any vote of holders of a series of debt securities, we will generally 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.

Street Name and other indirect holders should consult their banks or brokers for information on how approval may be granted or denied if we seek to change the indenture or debt securities or request a waiver.

**Street Name and Other Indirect Holders**

Investors who hold securities in accounts at banks or brokers, which is referred to as holding in Street Name, generally will not be recognized by us as legal holders of debt securities. Instead, we would recognize only the bank or broker,

or the financial institution that the bank or broker uses to hold its securities. These intermediary banks, brokers and other financial institutions pass along principal, interest and other payments on the debt securities, either because they agree to do so in their customer agreements or because they are legally required to. If you hold debt securities in Street Name, you should check with your own institution to find out:

how it handles payments and notices;

whether it imposes fees or charges;



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how it would handle voting if applicable;

whether and how you can instruct it to send you debt securities registered in your own name so you can be a direct holder as described below; and

if applicable, how it would pursue rights under your debt securities if there were a default or other event triggering the need for holders to act to protect their interests.

**Direct Holders**

Our obligations, as well as the obligations of the trustee and those of any third parties employed by us or the trustee, run only to persons who are registered as holders of debt securities issued under the indenture. As noted above, we do not have obligations to you if you hold in Street Name or other indirect means, either because you choose to hold debt securities in that manner or because the debt securities are issued in the form of global securities as described below. For example, once we make payment to the registered holder, we have no further responsibility for the payment even if that holder is legally required to pass the payment along to you as a Street Name customer but does not do so.

**Global Securities**

**Global Securities.** A global security is a special type of indirectly held debt security as described above under Street Name and Other Indirect Holders. If we choose to issue debt securities in the form of global securities, the ultimate beneficial owners can only hold the debt securities in Street Name. We would do this by requiring that the global security be registered in the name of a financial institution we select and by requiring that the debt securities included in the global security not be transferred to the name of any other direct holder unless the special circumstances described below occur. The financial institution that acts as the sole direct holder of the global security is called the depositary. Any person wishing to own a debt security issued in the form of a global security must do so indirectly by virtue of an account with a broker, bank or other financial institution that in turn has an account with the depositary. The applicable prospectus supplement will indicate whether a series of debt securities will be issued only in the form of global securities and, if so, will describe the specific terms of the arrangement with the depositary.

**Special Investor Considerations for Global Securities.** As an indirect holder, an investor's rights relating to a global security will be governed by the account rules of the investor's financial institution and of the depositary, as well as general laws relating to securities transfers. We do not recognize this type of investor as a holder of debt securities and instead deal only with the depositary that holds the global security.

An investor should be aware that if a serie