

INGRAM MICRO INC  
Form S-3ASR  
August 07, 2012  
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As filed with the Securities and Exchange Commission on August 7, 2012

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-3**  
**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**Ingram Micro Inc.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of

62-1644402  
(I.R.S. Employer

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**Incorporation or Organization)**

**1600 E. St. Andrew Place**

**Santa Ana, CA 92705**

**(714) 566-1000**

**Identification Number)**

**(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)**

**William D. Humes**

**Chief Operating and Financial Officer**

**Ingram Micro Inc.**

**1600 E. St. Andrew Place**

**Santa Ana, CA 92705**

**(714) 566-1000**

**(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)**

*Copies to:*

**Larry C. Boyd**

**Executive Vice President**

**Secretary and General Counsel**

**Ingram Micro Inc.**

**1600 E. St. Andrew Place**

**Santa Ana, CA 92705**

**(714) 566-1000**

**Alan F. Denenberg**

**Davis Polk & Wardwell LLP**

**1600 El Camino Real**

**Menlo Park, California 94025**

**(650) 752-2000**

**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.

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

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

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

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

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

### CALCULATION OF REGISTRATION FEE

<b>Title of Each Class of Securities to be Registered</b>	<b>Proposed Maximum Aggregate Offering Price(1)</b>	<b>Amount of Registration Fee(1)</b>
Class A Common Stock		
Preferred Stock		
Debt Securities		
Warrants		
Units		

(1) An indeterminate amount of securities to be offered at indeterminate prices is being registered pursuant to this registration statement. The registrant is deferring payment of the registration fee pursuant to Rule 456(b) and is omitting this information in reliance on Rule 456(b) and Rule 457(r).

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**PROSPECTUS**

# Ingram Micro Inc.

The following are types of securities that may be offered and sold by Ingram Micro Inc. or by selling security holders under this prospectus from time to time:

Class A Common stock  
Preferred stock

Debt securities  
Warrants

Units

The securities may be offered by us or by selling security holders in amounts, at prices and on terms determined at the time of the offering. The securities may be sold directly to you, through agents, or through underwriters and dealers. If agents, underwriters or dealers are used to sell the securities, we will name them and describe their compensation in a prospectus supplement. You should read this prospectus, any accompanying prospectus supplement and any document we incorporate by reference carefully before you invest.

We will describe in a prospectus supplement, which must accompany this prospectus, the securities we are offering and selling, as well as the specific terms of the securities. Those terms may include:

Maturity  
Interest rate  
Currency of payments  
Dividends

Redemption terms  
Listing on a security exchange  
Amount payable at maturity  
Conversion or exchange rights

Liquidation amount  
Subsidiary guarantees  
Sinking fund terms

**Investing in these securities involves certain risks. See **Risk Factors** beginning on page 13 of our annual report on Form 10-K for the fiscal year ended December 31, 2011, which is incorporated by reference herein.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved 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 August 7, 2012**

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We have not authorized anyone to provide any information other than that contained or incorporated by reference in this prospectus, any accompanying prospectus supplement or any free writing prospectus prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus, any prospectus supplement, the documents incorporated by reference herein or therein and any related free writing prospectus is accurate only as of their respective dates. Our business, financial condition, liquidity, results of operations and prospects may have changed since those dates.

The terms Ingram Micro, we, us, and our refer to Ingram Micro Inc.

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**THE COMPANY**

Ingram Micro Inc., a Fortune 100 company, is the largest global information technology ( IT ) wholesale distributor by net sales as of the end of 2011, providing sales, marketing and logistics services for the IT industry worldwide. We provide a vital link in the IT supply chain by generating demand and developing markets for our technology partners. We create value in the market by extending the reach of our technology partners, capturing market share for resellers and suppliers, creating innovative solutions consisting of both technology products and services, offering credit and providing efficient fulfillment of IT products and services.

Our principal executive offices are located at 1600 E. St. Andrew Place, Santa Ana, CA 92705, and our telephone number is (714) 566-1000. We maintain a website at <http://www.ingrammicro.com> where general information about us is available. We are not incorporating the contents of our website into this prospectus.

**About this Prospectus**

This prospectus is part of a registration statement that we filed with the SEC utilizing a shelf registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings. 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 specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus, and, accordingly, to the extent inconsistent, information in this prospectus is superseded by the information in the 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.

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**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document that we file at the Public Reference Room of the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet site at <http://www.sec.gov>, from which interested persons can electronically access our SEC filings, including the registration statement and the exhibits and schedules thereto.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and all documents subsequently filed with the SEC pursuant to Section 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended, prior to the termination of the offering under this prospectus, *provided, however*, that nothing contained herein will be deemed to incorporate information furnished to, but not filed with, the SEC, including pursuant to Items 2.02 or 7.01 of any Current Report on Form 8-K:

- (a) Annual Report on Form 10-K for the year ended December 31, 2011;
- (b) Quarterly Reports on Form 10-Q for the quarters ended March 31, 2012 and June 30, 2012;
- (c) Current Reports on Form 8-K dated January 19, 2012 (other than the portion filed pursuant to Item 7.01), March 8, 2012, April 26, 2012 (other than the portion filed pursuant to Item 2.02), June 7, 2012 and July 2, 2012;
- (d) Portions of the Definitive Proxy Statement on Schedule 14A for the 2012 annual meeting of stockholders held June 6, 2012 incorporated by reference in the Annual Report on Form 10-K for the fiscal year ended December 31, 2011; and
- (e) The description of our Class A common stock included in our registration statement on Form 8-A filed on September 19, 1996, including any amendments or reports filed for the purpose of updating such description.

You may request a copy of these filings at no cost, by writing or telephoning the office of Investor Relations department by calling (714) 566-1000, by writing to Investor Relations, Ingram Micro Inc. 1600 E. St. Andrew Place, Santa Ana, CA 92705 or by sending an email to [investor.relations@ingrammicro.com](mailto:investor.relations@ingrammicro.com).

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**SPECIAL NOTE ON FORWARD-LOOKING STATEMENTS**

This prospectus, any accompanying prospectus supplement and documents that are incorporated by reference in this prospectus include forward-looking statements. Forward-looking statements may be preceded by, followed by or include the words *expects, could, would, may, anticipates, intends, plans, believes, seeks, targets, estimates, looks for, looks to* or similar expressions. Ingram Micro claims the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 for all forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events. These forward-looking statements are subject to risks, uncertainties, and assumptions about our business. Factors that might cause or contribute to such differences include, but are not limited to, those discussed in the section entitled *Risk Factors* in any accompanying prospectus supplement and in our Annual Report on Form 10-K incorporated by reference herein, and as may be updated in filings we make from time to time with the U.S. Securities and Exchange Commission (the *SEC*). You should understand that such factors could affect our future results, and could cause those results or other outcomes to differ materially from those expressed or implied in the forward-looking statements.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or risks, except to the extent required by applicable securities laws. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements. New information, future events or risks could cause the forward-looking events we discuss in this prospectus, any accompanying prospectus supplement or the documents incorporated herein or therein by reference not to occur. Additional information concerning these and other risks and uncertainties is contained in our other periodic filings with the SEC.



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Unless otherwise indicated in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities that we may offer from time to time under this prospectus and any applicable prospectus supplement or free writing prospectus for working capital and general corporate purposes. If we decide to use the net proceeds from a particular offering of securities for a specific purpose, we will describe that in the related prospectus supplement. Unless otherwise indicated, we will not receive any proceeds from the sale of securities by any selling security holders.

**DIVIDEND POLICY**

We have neither declared nor paid any dividends on our common stock in the preceding two fiscal years. We currently intend to retain future earnings to fund ongoing operations and finance the growth and development of our business. Any future decision to declare or pay dividends will be at the discretion of our board of directors and will be dependent upon our financial condition, results of operations, capital requirements, and such other factors as our board of directors deems relevant. In addition, certain of our debt facilities contain restrictions on the declaration and payment of dividends.

**RATIOS OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratios of earnings to fixed charges for each of the periods indicated.

	<b>Twenty-six Weeks Ended</b>	<b>December 31,</b>	<b>January 1,</b>	<b>Fiscal Year Ended</b>		
	<b>June 30,</b>	<b>2011</b>	<b>2011</b>	<b>January 2,</b>	<b>January 3,</b>	<b>December 29,</b>
	<b>2012</b>			<b>2010</b>	<b>2009</b>	<b>2007</b>
Ratios of earnings to fixed charges	5.4	5.6	7.3	4.9	(A)	4.1

(A) Due to our loss in the year ended January 3, 2009, the ratio was less than 1:1. The deficiency in earnings necessary to achieve a 1:1 ratio was \$382,138.

For purposes of calculating these ratios: (i) earnings consists of the sum of: (x) income before income taxes and (y) fixed charges and (ii) fixed charges consists of the sum of: (a) interest expense; (b) amortized premiums, discounts and capitalized expenses related to indebtedness; and (c) an estimate of the interest within rental expense.

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**DESCRIPTION OF COMMON STOCK**

The following description of our capital stock is based upon our certificate of incorporation ( Certificate of Incorporation ), our amended and restated bylaws ( Bylaws ) and applicable provisions of law. We have summarized certain portions of the Certificate of Incorporation and Bylaws below. The summary is not complete. The Certificate of Incorporation and Bylaws are incorporated by reference in the registration statement of which this prospectus is a part and have been incorporated by reference as exhibits to our Annual Report on Form 10-K for the year ended December 31, 2011 or our Quarterly Report on Form 10-Q for the quarter ended June 30, 2012, respectively. You should read the Certificate of Incorporation and Bylaws for the provisions that are important to you.

Certain provisions of the Delaware General Corporation Law ( DGCL ), the Certificate of Incorporation and the Bylaws summarized in the following paragraphs may have an anti-takeover effect. This may delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in its best interests, including those attempts that might result in a premium over the market price for its shares.

**Authorized Common Stock**

Our authorized common stock consists of:

500,000,000 shares of Class A common stock, par value \$0.01 per share, of which 150,084,000 shares were issued and outstanding as of June 30, 2012, and

135,000,000 shares of Class B common stock, par value \$0.01 per share, of which no shares were issued and outstanding as of June 30, 2012.

We refer to the Class A common stock together with the Class B common stock as the common stock in this prospectus. The shares of Class A common stock and Class B common stock are identical in all respects, except for voting rights and certain conversion rights, as described below. There were no issued and outstanding shares of Class B common stock during the three-year period ended December 31, 2011.

**General**

*Ingram Micro Class A Common Stock Outstanding.* The outstanding shares of our Class A common stock are duly authorized, validly issued, fully paid and non-assessable. Our Class A common stock is listed and principally traded on the New York Stock Exchange under the symbol IM.

*Voting Rights.* The holders of Class A common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. The holders of Class B common stock are entitled to ten votes per share on all matters to be voted upon by the stockholders. Except as required by applicable law, holders of the Class A common stock and Class B common stock vote together as a single class on all matters to be voted upon by the stockholders. There is no cumulative voting. There were no issued and outstanding shares of Class B common stock during the three-year period ended December 31, 2011.

*Dividends.* Subject to preferences that may be applicable to any outstanding preferred stock, the holders of common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by our board of directors out of funds legally available therefor. See Dividend Policy. In the case of dividends or distributions payable in common stock, only shares of Class A common stock will be distributed to the Class A common stockholders and only shares of Class B common stock will be distributed to the Class B common stockholders. Neither the Class A common stock nor the Class B common stock may be subdivided or combined in any manner unless the other class is subdivided or combined in the same proportion.

*Rights upon Liquidation.* In the event of liquidation, dissolution or winding up of Ingram Micro, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding.

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*Conversion Rights.* The Class A common stock has no conversion rights. The Class B common stock is convertible into Class A common stock, in whole or in part, at any time, on the basis of one share of Class A common stock for each share of Class B common stock converted.

*Other Features.* The common stock has no preemptive or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

*Transfer Agent and Registrar.* The transfer agent and registrar for the common stock is Computer share Trust Company, N.A.

## **Certain Provisions of Ingram Micro's Certificate of Incorporation and Bylaws**

*Limits on Written Consents.* Stockholders may not act by written consent on any action required or permitted to be taken at any annual or special meeting of stockholders.

*Limits on Special Meetings.* Our Bylaws permit special meetings of stockholders to be called by our board of directors, the chairman of our board of directors or at the request of stockholders holding at least ten percent of the outstanding voting power of Ingram Micro.

## **Certain Anti-Takeover Effects of Delaware Law**

We are subject to Section 203 of the DGCL ( Section 203 ). In general, Section 203 prohibits a publicly held Delaware corporation from engaging in various business combination transactions with any interested stockholder for a period of three years following the date of the transactions in which the person became an interested stockholder, unless:

the transaction is approved by our board of directors prior to the date the interested stockholder obtained such status;

upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced; or

on or subsequent to such date the business combination is approved by our board of directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

A business combination is defined to include mergers, asset sales, and other transactions resulting in financial benefit to a stockholder. In general, 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. The statute could prohibit or delay mergers or other takeover or change in control attempts with respect to Ingram Micro and, accordingly, may discourage attempts to acquire Ingram Micro even though such a transaction may offer Ingram Micro's stockholders the opportunity to sell their stock at a price above the prevailing market price.

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**DESCRIPTION OF PREFERRED STOCK**

Our Certificate of Incorporation also authorizes us to issue up to 25,000,000 shares of preferred stock, par value \$0.01 per share, on terms determined by our board of directors, none of which were outstanding as of June 30, 2012.

If and when we offer to sell a particular series of preferred stock, we will describe the specific terms of the securities in a supplement to this prospectus. Our board of directors has the authority to issue the preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions thereof, including dividend rights, dividend rates, conversion rights, voting rights, terms of redemption, redemption prices, liquidation preferences and the number of shares constituting any series of the designation of such series, without further vote or action by the stockholders, unless stockholder action is required by applicable law or by the rules of a stock exchange or quotation system on which any series of our stock may be listed or quoted. The preferred stock will be issued under a certificate of designation relating to each series of preferred stock and is also subject to our Certificate of Incorporation.

All shares of preferred stock offered will be fully paid and non-assessable. Any shares of preferred stock that are issued will have priority over the common stock with respect to dividend or liquidation rights or both.

Our board of directors could create and issue a series of preferred stock with rights, privileges or restrictions which effectively discriminates against an existing or prospective holder of preferred stock as a result of the holder beneficially owning or commencing a tender offer for a substantial amount of common stock. One of the effects of authorized but unissued and unreserved shares of capital stock may be to make it more difficult or discourage an attempt by a potential acquirer to obtain control of our company by means of a merger, tender offer, proxy contest or otherwise. This protects the continuity of our management. The issuance of these shares of capital stock may defer or prevent a change in control of our company without any further stockholder action.

The transfer agent for each series of preferred stock will be described in the prospectus supplement.

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**DESCRIPTION OF DEBT SECURITIES**

This prospectus describes certain general terms and provisions of the debt securities. The debt securities will be issued under an indenture between Ingram Micro and Deutsche Bank Trust Company Americas, as trustee (the trustee), as may be supplemented from time to time. The debt securities may be issued in one or more series established in or pursuant to a board resolution and set forth in an officer's certificate or supplemental indenture.

If and when we offer to sell a particular series of debt securities, we will describe the specific terms for the securities in a supplement to this prospectus. The prospectus supplement will also indicate whether the general terms and provisions described in this prospectus apply to a particular series of debt securities.

We have summarized certain terms and provisions of the indenture. The summary is not complete. The indenture has been filed as an exhibit to the registration statement for these securities that we have filed with the SEC. You should read the indenture (including the form of debt security) and any officer's certificate or supplemental indenture, as applicable, relating to the applicable series of debt securities for the provisions which may be important to you. The indenture is subject to and governed by the Trust Indenture Act of 1939, as amended.

**General**

The indenture will not limit the amount of debt securities which we may issue, and the debt securities may be in one or more series with the same or various maturities, at par, at a premium, or at a discount. The terms of each series of debt securities will be established by or pursuant to a resolution of our board of directors and set forth or determined in the manner provided in a resolution of our board of directors, in an officer's certificate or by a supplemental indenture. The particular terms of each series of debt securities will be described in a prospectus supplement relating to such securities (including any pricing supplement or term sheet). We may issue debt securities up to an aggregate principal amount as we may authorize from time to time. The debt securities will be our unsecured obligations and will rank equally with all of our other unsecured and unsubordinated debt from time to time outstanding. Our secured debt, if any, will be effectively senior to the debt securities to the extent of the value of the assets securing such debt. The debt securities will be exclusively our obligations and not of our subsidiaries and therefore the debt securities will be structurally subordinate to the debt and liabilities of any of our subsidiaries. The prospectus supplement will describe the terms of any debt securities being offered, including:

the title and ranking;

any limit upon the aggregate principal amount;

the date or dates on which the principal is payable;

the rate or rates at which the debt securities shall bear interest or the method by which such rate shall be determined, if any;

the date or dates from which interest shall accrue;

the date or dates on which interest shall be payable;

the record dates for the determination of holders to whom interest is payable;

the right, if any, to extend the interest payment periods or defer the payment of interest and the duration of such extension or deferral;

the place or places where the principal of and any interest shall be payable;

our obligation if any, to redeem or purchase the debt securities pursuant to any sinking fund or otherwise or at the option of a holder thereof;

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if applicable, the price or prices at which and the period or periods within which and the terms and conditions upon which the debt securities shall or may be redeemed, purchased or repaid, in whole or in part;

if other than denominations of \$1,000 and any multiple thereof, the denominations in which the debt securities of the series shall be issuable;

if other than the principal amount thereof, the portion of such principal amount which shall be payable upon declaration of acceleration of the maturity thereof;

any and all other terms of the series including any terms which may be required by or advisable under U.S. law or regulations or advisable in connection with the marketing of the debt securities;

whether the debt securities are issuable as global securities or definitive certificates and, in such case, the identity for the depository;

any deletion from, modification of or addition to the events of default or covenants;

any special tax implications of the debt securities;

any trustees, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the debt securities;

any guarantor or co-issuers;

any special interest premium or other premium;

whether the debt securities are convertible or exchangeable into common stock or other of our equity securities and the terms and conditions upon which such conversion or exchange shall be effected; and

the currency in which payments shall be made, if other than U.S. dollars.

**Events of Default**

When we use the term **Event of Default** in the indenture with respect to the debt securities of any series, here are some examples of what we mean:

(1) default in paying interest on the debt securities when it becomes due and the default continues for a period of 30 days or more;

(2) default in paying principal, or premium, if any, on the debt securities when due;

(3) default in the performance, or breach, of any covenant in the indenture (other than defaults specified in clause (1) or (2) above) and the default or breach continues for a period of 60 days or more after we receive written notice from the trustee or the trustee receives notice from the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the series;

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(4) certain events of bankruptcy, insolvency, reorganization, administration or similar proceedings with respect to us or any material subsidiary has occurred; or

(5) any other Events of Default set forth in a prospectus supplement relating to such series of debt securities.

If an Event of Default (other than an Event of Default specified in clause (4) with respect to us) under the indenture occurs with respect to the debt securities of any series and is continuing, then the trustee may and, at the direction of the holders of at least 25% in principal amount of the outstanding debt securities of that series, will by written notice, require us to repay immediately the entire principal amount of the outstanding debt securities of that series, together with all accrued and unpaid interest and premium, if any.



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If an Event of Default under the indenture specified in clause (4) with respect to us occurs and is continuing, then the entire principal amount of the outstanding debt securities will automatically become due immediately and payable without any declaration or other act on the part of the trustee or any holder.

After a declaration of acceleration or any automatic acceleration under clause (4) described above, the holders of a majority in principal amount of outstanding debt securities of any series may rescind this accelerated payment requirement if all existing Events of Default, except for nonpayment of the principal and interest on the debt securities of that series that has become due solely as a result of the accelerated payment requirement, have been cured or waived and if the rescission of acceleration would not conflict with any judgment or decree. The holders of a majority in principal amount of the outstanding debt securities of any series also have the right to waive past defaults, except a default in paying principal or interest on any outstanding debt security, or in respect of a covenant or a provision that cannot be modified or amended without the consent of all holders of the debt securities of that series.

Holders of at least 25% in principal amount of the outstanding debt securities of a series may seek to institute a proceeding only after they have made written request, and offered indemnity as the trustee may reasonably require, to the trustee to institute a proceeding and the trustee has failed to do so within 60 days after it received this notice. In addition, within this 60-day period the trustee must not have received directions inconsistent with this written request by holders of a majority in principal amount of the outstanding debt securities of that series. These limitations do not apply, however, to a suit instituted by a holder of a debt security for the enforcement of the payment of principal, interest or any premium on or after the due dates for such payment.

During the existence of an Event of Default of which a responsible officer of the trustee has actual knowledge or has received written notice from us or any holder of the debt securities, the trustee is required to exercise the rights and powers vested in it under the indenture and use the same degree of care and skill in its exercise as a prudent person would under the circumstances in the conduct of that person's own affairs. If an Event of Default has occurred and is continuing, the trustee is not under any obligation to exercise any of its rights or powers at the request or direction of any of the holders unless the holders have offered to the trustee security or indemnity as the trustee may reasonably require. Subject to certain provisions, the holders of a majority in principal amount of the outstanding debt securities of any series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust, or power conferred on the trustee.

The trustee will, within 45 days after any default occurs, give notice of the default to the holders of the debt securities of that series, unless the default was already cured or waived. Unless there is a default in paying principal, interest or any premium when due, the trustee can withhold giving notice to the holders if it determines in good faith that the withholding of notice is in the interest of the holders.

We are required to furnish to the trustee an annual statement as to compliance with all conditions and covenants under the indenture.

## **Modification and Waiver**

We and the trustee may amend or modify the indenture or the debt securities without the consent of any holder of debt securities in order to:

cure ambiguities, defects or inconsistencies, provided that such an amendment or modification shall not materially adversely affect the rights of holders;

provide for the assumption of our obligations in the case of a merger or consolidation and our discharge upon such assumption;

make any change that would provide any additional rights or benefits to the holders of the debt securities of a series;

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provide for or add guarantors with respect to the debt securities of any series;

secure the debt securities of a series;

establish the form or forms of debt securities of any series;

maintain the qualification of the indenture under the Trust Indenture Act;

conform any provision in the indenture to this Description of Debt Securities ; or

make any change that does not materially adversely affect the rights of holders.

Other amendments and modifications of the indenture or the debt securities may be made with the consent of the holders of not less than a majority of the aggregate principal amount of the outstanding debt securities of each series affected by the amendment or modification (voting as one class), and our compliance with any provision of the indenture with respect to any series of debt securities may be waived by written notice to the trustee by the holders of a majority of the aggregate principal amount of the outstanding debt securities of each series affected by the waiver (voting as one class). However, no modification or amendment may, without the consent of the holder of each outstanding debt security affected:

reduce the principal amount, or extend the fixed maturity, of the debt securities, alter or waive the redemption provisions of the debt securities;

change the currency in which principal, any premium or interest is paid;

reduce the percentage in principal amount outstanding of debt securities of any series which must consent to an amendment, supplement or waiver or consent to take any action;

impair the right to institute suit for the enforcement of any payment on the debt securities;

waive a payment default with respect to the debt securities or any guarantor;

reduce the interest rate or extend the time for payment of interest on the debt securities; or

adversely affect the ranking of the debt securities of any series.

**Satisfaction, Discharge and Covenant Defeasance**

We may terminate our obligations under the indenture, when either:

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all the debt securities of any series issued that have been authenticated and delivered have been accepted by the trustee for cancellation; or

all the debt securities of any series issued that have not been accepted by the trustee for cancellation will become due and payable within one year (a discharge ) and we have made irrevocable arrangements satisfactory to the trustee for the giving of notice of redemption by such trustee in our name, and at our expense and we have irrevocably deposited or caused to be deposited with the trustee sufficient funds to pay and discharge the entire indebtedness on the series of debt securities to pay principal, interest and any premium;

we have paid or caused to be paid all other sums then due and payable under the indenture; and

we have delivered to the trustee an officer's certificate and an opinion of counsel, each stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture have been complied with.

We may elect to have our obligations under the indenture discharged with respect to the outstanding debt securities of any series ( legal defeasance ). Legal defeasance means that we will be deemed to have paid and discharged the entire indebtedness represented by the outstanding debt securities of such series under the indenture, except for:

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the rights of holders of the debt securities to receive principal, interest and any premium when due;

our obligations with respect to the debt securities concerning issuing temporary debt securities, registration of transfer of debt securities, mutilated, destroyed, lost or stolen debt securities and the maintenance of an office or agency for payment for debt securities payments held in trust;

the rights, powers, trusts, duties and immunities of the trustee; and

the defeasance provisions of the indenture.

In addition, we may elect to have our obligations released with respect to certain covenants in the indenture ( covenant defeasance ). Any failure to comply with these obligations will not constitute a default or an event of default with respect to the debt securities of any series. In the event covenant defeasance occurs, certain events, not including non-payment, bankruptcy and insolvency events, described under Events of Default will no longer constitute an event of default for that series.

In order to exercise either legal defeasance or covenant defeasance with respect to outstanding debt securities of any series:

we must irrevocably have deposited or caused to be deposited with the trustee as trust funds for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the holders of the debt securities of a series:

money in an amount;

U.S. Government Obligations; or

a combination of money and U.S. Government Obligations, in each case sufficient without reinvestment, in the written opinion of an internationally recognized firm of independent public accountants to pay and discharge, and which shall be applied by the trustee to pay and discharge, all of the principal, interest and any premium at due date or maturity or if we have made irrevocable arrangements satisfactory to the trustee for the giving of notice of redemption by the trustee in our name and at our expense, the redemption date;

in the case of legal defeasance, we have delivered to the trustee an opinion of counsel stating that, as a result of an IRS ruling or a change in applicable federal income tax law, the holders of the debt securities of that series will not recognize gain or loss for U.S. federal income tax purposes as a result of the deposit, defeasance and discharge to be effected and will be subject to the same U.S. federal income tax as would be the case if the deposit, defeasance and discharge did not occur;

in the case of covenant defeasance, we have delivered to the trustee an opinion of counsel to the effect that the holders of the debt securities of that series will not recognize gain or loss for U.S. federal income tax purposes as a result of the deposit and covenant defeasance to be effected and will be subject to the same U.S. federal income tax as would be the case if the deposit and covenant defeasance did not occur;

no default with respect to the outstanding debt securities of that series has occurred and is continuing at the time of such deposit after giving effect to the deposit or, in the case of legal defeasance, no default relating to bankruptcy or insolvency has occurred and is

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continuing at any time on or before the 91<sup>st</sup> day after the date of such deposit, it being understood that this condition is not deemed satisfied until after the 91<sup>st</sup> day;

the legal defeasance or covenant defeasance will not cause the trustee to have a conflicting interest within the meaning of the Trust Indenture Act, assuming all debt securities of a series were in default within the mean