

WERNER ENTERPRISES INC
 Form 5
 February 14, 2006

FORM 5

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

OMB APPROVAL
 OMB Number: 3235-0362
 Expires: January 31, 2005
 Estimated average burden hours per response... 1.0

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).
 Form 3 Holdings Reported Form 4 Transactions Reported

ANNUAL STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

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

1. Name and Address of Reporting Person *
PHILLIPS STEVEN LEE

2. Issuer Name and Ticker or Trading Symbol
**WERNER ENTERPRISES INC
 [WERN]**

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)

3. Statement for Issuer's Fiscal Year Ended (Month/Day/Year)
 12/31/2005

Director 10% Owner
 Officer (give title below) Other (specify below)
 VP - Customer Service

P.O. BOX 45308
 (Street)

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

6. Individual or Joint/Group Reporting (check applicable line)

OMAHA, NE 68145

Form Filed by One Reporting Person
 Form Filed by More than One Reporting Person

(City) (State) (Zip)

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

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		5. Amount of Securities Beneficially Owned at end of Issuer's Fiscal Year (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
				Amount	(A) or (D) Price			
Common Stock	01/05/2005	Â	A	22.793	A \$ 21.7426	1,775.38	D	Â
Common Stock	01/25/2005	Â	A	2.9889	A \$ 20.79	1,778.3689	D	Â
Common Stock	04/04/2005	Â	A	30.2346	A \$ 19.137	1,808.6035	D	Â
Common Stock	05/03/2005	Â	A	3.4515	A \$ 18.34	1,812.055	D	Â

Edgar Filing: WERNER ENTERPRISES INC - Form 5

Common Stock	07/05/2005	Â	A	25.1196	A	\$ 19.7288	1,837.1746	D	Â
Common Stock	07/19/2005	Â	A	3.8615	A	\$ 18.77	1,841.0361	D	Â
Common Stock	10/05/2005	Â	A	33.8623	A	\$ 17.2292	1,874.8984	D	Â
Common Stock	10/18/2005	Â	A	4.3292	A	\$ 17.01	1,879.2276	D	Â

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

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 2270
(9-02)

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

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Amount or Number of Shares
					(A) (D)	Date Exercisable	Expiration Date	Title	
Stock Options (Right to buy)	\$ 7.35	Â	Â	Â	Â Â	12/20/2001	12/21/2009	Common Stock	6,646
Stock Options (Right to buy)	\$ 9.7739	Â	Â	Â	Â Â	09/28/2003	09/29/2011	Common Stock	16,668
Stock Options (Right to buy)	\$ 10.425	Â	Â	Â	Â Â	11/28/1999	05/29/2008	Common Stock	6,668
Stock Options (Right to buy)	\$ 16.68	Â	Â	Â	Â Â	Â ⁽¹⁾	10/22/2015	Common Stock	12,500
Stock Options	\$ 18.33	Â	Â	Â	Â Â	05/19/2006	05/20/2014	Common Stock	15,000

(Right to buy)

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
PHILLIPS STEVEN LEE P.O. BOX 45308 OMAHA, NE 68145	Â	Â	Â VP - Customer Service	Â

Signatures

Steven L Phillips 02/14/2006

**Signature of Reporting Person

Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) Stock options become exercisable in the following percentages at the specified number of months from grant date: 25% at 24 months; 20% each at 36, 48, and 60 months; and 15% at 72 months.

Note: File three copies of this Form, one of which must be manually signed. If space provided is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. ALIGN="top">

each office or agency where the principal of, the premium (if any) and the interest on the debt securities will be payable and each office or agency where the debt securities may be presented for conversion, registration of transfer or exchange;

any right to defer payments of interest with respect to the debt securities;

whether the debt securities will be subject to defeasance or covenant defeasance; and

any other terms of the debt securities not inconsistent with the provisions of the applicable indenture.

The senior debt securities will be unsecured and will rank equally with all of our other unsecured and unsubordinated indebtedness. The subordinated debt securities will be unsecured and will rank subordinate to and junior in right of payment, to the extent set forth in the subordinated indenture, as amended by any supplemental indenture, to all of our senior debt.

Some of the debt securities may be issued as discounted debt securities to be sold at a substantial discount below their stated principal amount. The prospectus supplement will contain any Federal income tax consequences and other special considerations applicable to discounted debt securities.

Payment and Transfer

Unless we state otherwise in a prospectus supplement, we will issue debt securities only as registered securities, which means that the name of the holder will be entered in a register which will be kept by the trustee or another agent of ours. Unless we state otherwise in a prospectus supplement, we will make principal and interest payments at the office of the paying agent or agents we name in the prospectus supplement or by mailing a check to you at the address we have for you in the register.

Edgar Filing: WERNER ENTERPRISES INC - Form 5

Unless we state otherwise in a prospectus supplement, you will be able to transfer registered debt securities at the office of the transfer agent or agents we name in the prospectus supplement. You may also exchange registered debt securities at the office of the transfer agent for an equal aggregate principal amount of registered debt securities of the same series having the same maturity date, interest rate and other terms as long as the debt securities are issued in authorized denominations.

Neither we nor the trustee will impose any service charge for any transfer or exchange of a debt security, however, we may ask you to pay any taxes or other governmental charges in connection with a transfer or exchange of debt securities.

If the debt securities are redeemable and we redeem less than all of the debt securities of a particular series, we may block the transfer or exchange of debt securities during a specified period of time in order to freeze the list of holders entitled to receive notice of the redemption. The period begins 15 days before the day we mail the notice of redemption and ends on the day of that mailing. We also may refuse to register transfers or exchanges of debt securities selected for redemption. However, we will continue to permit transfers and exchanges of the unredeemed portion of any debt security being partially redeemed.

Global Notes, Delivery and Form

Unless otherwise specified in a prospectus supplement, the debt securities will be issued in the form of one or more fully registered Global Notes (as defined below) that will be deposited with, or on behalf of, a depository identified in the applicable prospectus supplement (the Depository) and registered in the name of the Depository's nominee. Global Notes are not exchangeable for definitive note certificates except in the specific circumstances described below. For purposes of this prospectus, Global Note refers to the Global Note or Global Notes representing an entire issue of debt securities.

Table of Contents

As set forth below, an exchange or transfer of a Global Note may be done, in whole and not in part, only to another nominee of the Depository or to a successor of the Depository or its nominee.

The Depository was created to hold securities of its participants and to facilitate the clearance and settlement of securities transactions among its participants through electronic book-entry changes in accounts of its participants, eliminating the need for physical movements of securities certificates. The Depository participants include securities brokers and dealers, banks, trust companies, clearing corporations and others, some of whom own the Depository. Access to the Depository book-entry system is also available to others that clear through or maintain a custodial relationship with a participant, either directly or indirectly. Where we issue a Global Note in connection with the sale thereof to an underwriter or underwriters, the Depository will immediately credit the accounts of participants designated by such underwriter or underwriters with the principal amount of the debt securities purchased by such underwriter or underwriters.

Ownership of beneficial interests in a Global Note and the transfers of ownership will be effected only through records maintained by the Depository (with respect to participants), by the participants (with respect to indirect participants and certain beneficial owners) and by the indirect participants (with respect to all other beneficial owners). The laws of some states require that certain purchasers of securities take physical delivery in definitive form of securities they purchase. These laws may limit your ability to transfer beneficial interests in a Global Note.

So long as a nominee of the Depository is the registered owner of a Global Note, such nominee for all purposes will be considered the sole owner or holder of such debt securities under the indenture. Except as provided below, you will not be entitled to have debt securities registered in your name, will not receive or be entitled to receive physical delivery of debt securities in definitive form, and will not be considered the owners or holders thereof under the indenture.

We will make payment of principal of, and interest on, debt securities represented by a Global Note to the Depository or its nominee, as the case may be, as the registered owner and holder of the Global Note representing those debt securities. The Depository has advised us that upon receipt of any payment of principal of, or interest on, a Global Note, the Depository will immediately credit accounts of participants with payments in amounts proportionate to their respective beneficial interests in the principal amount of that Global Note, as shown in the records of the Depository. Standing instructions and customary practices will govern payments by participants to owners of beneficial interests in a Global Note held through those participants, as is now the case with securities held for the accounts of customers in bearer form or registered in street name. Those payments will be the sole responsibility of those participants, subject to any statutory or regulatory requirements that may be in effect from time to time.

Neither we, the trustee, any paying agent, any registrar nor any of its or our respective agents will be responsible for any aspect of the records of the Depository, any nominee or any participant relating to beneficial ownership interests in the Global Note or for any payments made on account of such beneficial interests in a Global Note or for maintaining, supervising or reviewing any of the records of the Depository, any nominee or any participant relating to any beneficial ownership interests in the Global Note.

We will issue debt securities in definitive form in exchange for a Global Note only in the following situation:

if the Depository is at any time unwilling or unable to continue as depository and a successor depository is not appointed by us within 90 days, or

Table of Contents

if we choose to issue definitive debt securities.

In either instance, an owner of a beneficial interest in a Global Note will be entitled to have debt securities equal in principal amount to such beneficial interest registered in its name and will be entitled to physical delivery of debt securities in definitive form. Debt securities in definitive form will be issued in denominations of \$1,000 and integral multiples thereof and will be issued in registered form only, without coupons. We will maintain in the Borough of Manhattan, The City of New York, one or more offices or agencies where debt securities may be presented for payment and may be transferred or exchanged.

Modification of the Indentures

In general, our rights and obligations and the rights of the holders under the indentures may be modified if the holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series affected by the modification consent to it. A covenant or other provision of an indenture that has expressly been included solely for the benefit of one or more particular series of debt securities, or that modifies the rights of holders of the debt securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under such indenture of the holders of debt securities of any other series. However, Section 9.02 of each indenture provides that, unless each affected holder agrees, we cannot:

make any adverse change to any payment terms of a debt security such as:

extending the maturity date or dates,

extending the date on which we have to pay interest or make a sinking fund payment, other than deferrals of the payments of interest during any extension period as described in any applicable prospectus supplement,

reducing the interest rate,

reducing the amount of principal or of any principal payment we have to repay,

changing the currency in which we have to make any payment of principal, premium or interest,

modifying any redemption or repurchase right to the detriment of the holder, or

impairing any right of a holder to bring suit for payment;

reduce the percentage of the aggregate principal amount of debt securities needed to make any amendment to the indenture or to waive any covenant or default and its consequences;

waive any past payment default; or

make any change to Section 9.02.

However, if we and the trustee agree, we can amend the indenture without notifying any holders or seeking their consent if the amendment does not materially and adversely affect any holder.

Table of Contents

In addition, the subordinated note indenture may not be amended without the consent of a majority of the holders of subordinated debt securities affected thereby to modify the subordination of the subordinated debt securities issued under that indenture in a manner adverse to the holders of the subordinated debt securities.

Consolidation, Merger and Sale

We shall not consolidate with or merge into any other corporation or Person or sell, convey, transfer, lease or dispose of all or substantially all of our properties and assets substantially as an entirety to any other corporation or Person, unless (1) such other corporation or Person expressly assumes by supplemental indenture executed and delivered to the trustee, the payment of the principal of and premium, if any, and interest on all the debt securities and the performance of every covenant of the indenture on our part to be performed or observed; (2) immediately after giving effect to such transactions, no Event of Default, and no event which after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and (3) we have delivered to the trustee an officers' certificate and opinion of counsel, each stating that all provisions of the indenture required to be complied with in connection with such transaction have been complied with.

Events of Default

Each indenture defines an Event of Default with respect to each series of debt securities issued pursuant to the indenture. Unless otherwise provided in an indenture supplement and in the applicable prospectus supplement, Events of Default are any of the following with respect to each series of debt securities:

default in any payment of principal or premium, if any, on any debt security of such series when due;

default for 30 days in payment of any interest, if any, on any debt security of such series (subject to the deferral of any due date in the case of an extension period);

default in the making or satisfaction of any sinking fund payment or analogous obligation for 30 days on the debt securities of such series;

default for 90 days after written notice, as provided in the indenture, to us in the performance of any other covenant in respect of the debt securities of such series contained in such indenture;

certain events in bankruptcy, insolvency or reorganization; or

any other event of default provided with respect to debt securities of a series.

We are required by the terms of each indenture to annually inform the trustee as to our compliance with all of the conditions and covenants applicable to us under the indenture. In addition, we are required to inform the trustee of the occurrence of any Event of Default within five business days of our becoming aware of any such Event of Default.

Each indenture provides that the trustee may withhold notice to the holders of any series of debt securities issued thereunder of any Event of Default if the trustee considers it in the interest of such holders to do so provided the trustee may not withhold notice of default in the payment of principal, premium, if any, or interest, if any, on any of the debt securities of such series or in the making of any sinking fund installment or analogous obligation with respect to such series.

Table of Contents

Each indenture provides that if an Event of Default occurs and is continuing with respect to any series of debt securities, either the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding debt securities of such series may declare the principal amount (or in the case of discounted debt securities, such portion of the principal amount as may be specified in the terms of that series) of all the debt securities of that series to be due and payable immediately and, upon such declaration, the full principal amount of the debt securities of such series shall be and become immediately due and payable. At any time after a declaration of acceleration with respect to debt securities of any series has been made, and before a judgment or decree for payment of money has been obtained by the trustee, the holders of a majority in aggregate outstanding principal amount of the debt securities of that series may annul and rescind such acceleration if we shall have paid or deposited with the Trustee an amount sufficient to pay all matured installments of interest on such series plus the principal of (and premium, if any, on) all debt securities of that series that are due and payable through the date of such payment or deposit by us, other than by reason of acceleration resulting from the declaration of an Event of Default.

Other than the duties of a trustee during a default, the trustee is not obligated to exercise any of its rights or powers under each indenture at the request, order or direction of any holders of debt securities of any series issued thereunder unless such holders shall have offered to the trustee reasonable indemnity. Subject to such indemnification provision, each indenture provides that the holders of a majority in principal amount of the debt securities of any series issued thereunder at the time outstanding shall have any remedy available to the trustee thereunder, or exercising any trust or power conferred on such trustee thereunder, or exercising any trust or power conferred on such trustee with respect to the debt securities of such series. However, the trustee may decline to act if it has not been offered reasonable indemnity or if it determines that the proceedings so directed would be illegal or involve it in any personal liability.

The indentures do not have a cross-default provision. This means that a default by us on any other debt does not result in an Event of Default under any indenture. It further means that an Event of Default under one series of debt securities issued under an indenture does not constitute an Event of Default under any other series of debt securities issued under the same or any other indenture.

Conversion and Exchange Rights

The debt securities of any series may be convertible into or exchangeable for other securities we issue or securities of another issuer or property or cash on the terms and subject to the conditions set forth in the applicable prospectus supplement.

Defeasance and Discharge

The following discussion of full defeasance and discharge will apply to any series of debt securities unless otherwise indicated in the applicable prospectus supplement with respect to the debt securities of a series.

Each indenture provides that if we choose to have the defeasance and discharge provision applied to the debt securities, we can legally release ourselves from any payment or other obligations on the debt securities, except for the ministerial obligations described below, if we put in place the following arrangements for you to be repaid:

We must deposit in trust for the benefit of all direct holders of debt securities a combination of money and U.S. government or U.S. government agency notes or bonds that will generate enough cash to make any interest, premium, principal or other payments on the debt securities on their various due dates.

Table of Contents

We must deliver to the trustee a legal opinion of our counsel confirming that we received from, or there has been published by, the U.S. Internal Revenue Service a ruling, or there has been a change in the U.S. federal income tax law, and, in either case, under then current U.S. law we may make the above deposit without causing you to be taxed on the debt securities any differently than if we did not make the deposit and just repaid the debt securities ourselves.

In addition, the subordinated note indenture provides that if we choose to have the defeasance and discharge provision applied to the subordinated debt securities, the subordination provisions of the subordinated note indenture will become ineffective.

However, even if we make the deposit in trust and opinion delivery arrangements discussed above, a number of our obligations relating to the debt securities will remain. These include our obligations:

to register the transfer and exchange of debt securities;

to replace mutilated, destroyed, lost or stolen debt securities;

to maintain payment agencies; and

to hold money for payment in trust.

Covenant Defeasance

The indentures also allow us to choose whether covenant defeasance will apply to any series of debt securities. If we do so choose, we will say so in the prospectus supplement.

The indentures provide that if we choose to have the covenant defeasance provision applied to any debt securities, we need not comply with the covenants in the indentures, including under Consolidation, Merger and Sale and, in the case of the subordinated note indenture, the provisions relating to subordination. In addition, covenant defeasance would also render ineffective any Event of Default provisions relating to any restrictive covenants. Any of our other obligations affected by covenant defeasance will be specified in the prospectus supplement.

In order to exercise the covenant defeasance option, we must put into place the same deposit in trust and opinion delivery arrangements as discussed above under Defeasance and Discharge .

Subordination

Any subordinated debt securities issued under the subordinated indenture will be subordinate and junior in right of payment to all our Senior Debt whether existing at the date of the subordinated note indenture or subsequently incurred. This means that upon any payment or distribution of our assets to creditors upon any:

liquidation;

dissolution;

winding up;

reorganization;

assignment for the benefit of creditors;

Table of Contents

marshaling of assets or any bankruptcy;

insolvency; or

debt restructuring or similar proceedings in connection with any insolvency or bankruptcy proceeding of our company, the holders of Senior Debt will first be entitled to receive payment in full of the principal of and any premium and interest on such Senior Debt before the holders of the subordinated debt securities will be entitled to receive or retain any payment in respect of the principal of and any premium or interest on the subordinated debt securities.

The same priority of payment of the Senior Debt also applies upon the acceleration of the maturity of any subordinated debt securities resulting from an Event of Default and a declaration of acceleration under the subordinated indenture. The holders of all Senior Debt outstanding at the time of such acceleration will first be entitled to receive payment in full of all amounts due thereon, including any amounts due upon acceleration, before the holders of subordinated debt securities will be entitled to receive or retain any payment in respect of the principal of or any premium or interest on the subordinated debt securities.

No payments on account of principal, or any premium or interest, in respect of the subordinated debt securities may be made if:

there has occurred and is continuing a default in any payment with respect to Senior Debt;

there has occurred and is continuing an event of default with respect to any Senior Debt resulting in the acceleration of the maturity thereof; or

any judicial proceeding is pending with respect to any such default or event of default with respect to any Senior Debt.

Except as may otherwise be provided in an indenture supplement relating to a series of subordinated debt which will be described in any prospectus supplement relating to such series, the term "Senior Debt" shall mean (without duplication) the principal of (and premium, if any) and interest on all:

of our indebtedness for borrowed money;

of our obligations evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses;

of our obligations in respect of letters of credit or bankers' acceptances or other similar instruments (or reimbursement obligations thereto) issued for our account;

of our obligations to pay the deferred purchase price of property or services, except trade payables incurred in the ordinary course of business;

of our obligations as lessee under leases classified as "capitalized leases" under generally accepted accounting principles in the U.S.;

Edgar Filing: WERNER ENTERPRISES INC - Form 5

obligations of third persons secured by a lien on any of our assets, whether or not we have assumed such obligations; provided that, if recourse against us with respect to such obligation is limited to the assets of ours secured by such lien, then the amount of such obligation that shall constitute senior debt shall be the lesser of the amount of such obligation or the fair market value of our assets securing such obligation;

Table of Contents

obligations of third persons guaranteed by us (but only to the extent of the amount of such guaranty); and

of our obligations in respect of derivative products, such as interest rate, foreign exchange rate and commodity prices, forward contracts, options, swaps, collars and similar arrangements, in each case whether existing on or after the date of the subordinated note indenture.

The term "Senior Debt" will not include:

obligations of ours of the type listed above that:

when incurred and without respect to any election under Section 1111(b) of Title 11, U.S. Code, was without recourse to us, and

would be "senior debt" but for the fact that the terms of the indenture supplement to the subordinated note indenture creating or evidencing a series of subordinated debt states that such obligation shall rank pari passu with such series of subordinated debt.

any other obligations or ours which by the terms of the instrument creating or evidencing such obligation is specifically designated as being subordinated to or pari passu with one or more series of our subordinated debt securities;

any debt securities and guarantees issued by us to any trust, partnership or other entity affiliated with us which is used by us as a financing vehicle in connection with an issuance of securities by such financing vehicle.

The indentures will place no limitation on the amount of additional Senior Debt that may be incurred by us.

Governing Law

The indentures and the debt securities will be governed by and construed in accordance with the laws of the State of New York, except to the extent that the Trust Indenture Act applies.

Concerning the Trustee

We may have had and may continue to have commercial and investment banking relationships with the trustee in the ordinary course of our business.

Table of Contents

DESCRIPTION OF WARRANTS WE MAY OFFER

This section describes the general terms and provisions of the warrants we may offer. We have filed as exhibits to the registration statement of which this prospectus is a part a form of warrant agreement pursuant to which warrants to purchase our common stock and any new series of preferred stock, senior debt and subordinated debt that may be authorized for issuance by our board of directors in the future will be issued. A form of each such warrant certificate has also been filed as an exhibit to such registration statement. The specific terms of any warrants we offer, including any amendments, modifications or additions to the terms of the warrant agreement or the warrants evidenced by the warrant certificates filed as exhibits to this registration statement, will be described in a prospectus supplement.

General

We may issue pursuant to the warrant agreement referred to above, warrants to purchase common stock, preferred stock, senior debt or subordinated debt, or units of these securities as may from time to time be authorized by our board of directors. We may issue warrants to purchase any of these securities independently or together with any common stock, preferred stock or debt securities issued by us. Any warrants issued by us together with any common stock, preferred stock or debt securities may be issued separately from such other securities or as a unit attached with such common stock, preferred stock or debt securities. We may issue warrants in such amounts or in as many distinct series as we wish. The warrants will be issued under a warrant agreement to be entered into between us and a warrant agent who will be named in the prospectus supplement relating to the warrants being offered. The warrant agreement filed as an exhibit to this registration statement will, subject to such modifications and amendments prepared by us and the warrant agent and described in any prospectus supplement to which such modifications and supplements relate, be the warrant agreement pursuant to which the warrants being registered hereby, will be issued. Accordingly, the description that follows pertains to both the warrants and the warrant agreement pursuant to which the warrants being registered hereby will, unless otherwise indicated in a prospectus supplement will be issued.

Specific Terms of the Warrants

The applicable prospectus supplement will describe the following terms, where applicable, of the warrants in respect of which this prospectus is being delivered:

the title of the series of such warrants;

the aggregate number of warrants included in such series;

the price or prices at which the warrants of that series will be issued;

the designation, amount, and terms of the common stock, preferred stock or debt securities purchasable upon exercise of the warrants of that series;

if issued together as units with other securities offered by us, the date on and after which the warrants and such other securities will be separately transferable;

the price or prices at which the securities purchasable upon exercise of the warrants may be purchased;

the date on which the right to exercise the warrants of that series shall commence and the date on which the right shall expire;

Edgar Filing: WERNER ENTERPRISES INC - Form 5

with respect to warrants to purchase common stock, whether or not we will have the right to call the warrants for redemptions and, if so, the terms and conditions thereof;

Table of Contents

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

any provisions for adjustment of the number or amount of shares of our common stock or preferred stock, or in the principal amount of debt securities receivable upon exercise of the warrants or the exercise price of the warrants;

in the case of warrants to purchase a series of preferred stock or debt securities, the designation of such series and terms, such as liquidation, dividend, interest rate, conversion, sinking fund and voting rights, of the series of preferred stock or debt securities purchasable upon exercise of the warrants;

the warrant agent;

a discussion, if necessary, of any material federal income tax considerations; and

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

Exercise of warrants

Each warrant will entitle the holder of the warrant to purchase the securities issuable upon the exercise of the warrants at the exercise price set forth in, or determinable from, the prospectus supplement relating to the warrants. Warrants may be exercised at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement or, if the warrants are redeemable, up to the close of business on the redemption date set forth in the notice given to the holders of warrants called for redemption. After the close of business on the expiration date, unexercised warrants will become void.

Upon receipt by the warrant agent of payment for the securities being purchased and of the warrant certificate evidencing the warrant properly completed and duly executed, the warrant agent will, as soon as practicable thereafter, forward the securities purchased upon such exercise to the holder of the warrant certificate or to such person as the holder may direct. If less than all of the warrants represented by a warrant certificate are exercised, a new warrant certificate will be issued to the holder of the warrant certificate for the remaining warrants.

Prior to the exercise of any warrants, holders of the warrants will not have any of the rights of holders of the securities purchasable upon exercise, including the right to vote or to receive any payments of dividends or interest on the preferred stock, common stock or debt securities purchasable upon exercise.

Warrant certificates evidencing warrants to purchase securities will be exchangeable for new warrant certificates of different authorized denominations upon satisfaction of the conditions set forth in the warrant agreement.

DESCRIPTION OF UNITS WE MAY OFFER

We may offer units consisting of two or more of the securities previously described in this prospectus, i.e., shares of common stock, shares of preferred stock, debt securities and warrants. This section describes the general terms and provisions of any units comprised of those securities that we may offer. The specific terms of any units and of the securities comprising such units that we offer will be described in a prospectus supplement.

We may offer common stock, preferred stock, debt securities and warrants registered hereby in various combinations with one another called units. When offered as a unit, a purchaser must acquire all of the securities comprising the unit and may not separately purchase a component of the securities included in the unit.

Table of Contents

After purchase, one or more of the securities comprising a unit may be immediately detachable from the other securities in the unit and can be sold separately. Alternatively, such securities may not be separately detachable for a period of time following their purchase during which period the securities can only be sold together as a unit.

If preferred stock, debt securities or warrants are included in a unit we offer, we will satisfy the conditions described above with respect to those securities that are necessary to establish the terms and provisions of such securities, including filing with the SEC and incorporating by reference in this prospectus:

any amendment to our restated certificate of incorporation or any certificate of designation adopted by our board of directors establishing the terms of any series of preferred stock included in a unit or that is purchasable upon the exercise of a warrant included in a unit;

any resolution or indenture supplement adopted by our board of directors establishing the terms of any series of senior or subordinated debt securities included in a unit or that is purchasable upon the exercise of a warrant included in a unit; and

any amendment or modifications to the warrant agreement or the form of warrant certificates filed as exhibits to the registration statement of which this prospectus is a part with respect to any warrant included in a unit.

We will also describe in a prospectus supplement the terms of each of the securities included in the unit, whether or not the securities in the unit are detachable and separately tradable and, if so, when. In the event debt securities are included in a unit, we will also describe in the prospectus supplement any material matters relating to the taxation of original issue discount income under the Internal Revenue Code of 1986, as amended.

Table of Contents

PLAN OF DISTRIBUTION

We may sell the securities offered by this prospectus:

to or through one or more underwriters or dealers;

directly to purchasers;

through agents; or

through a combination of any of these methods of sale.

We may sell the securities at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices relating to the prevailing market prices or at negotiated prices. The distribution of the securities may be effected from time to time in one or more transactions, by means of one or more of the following:

block trades;

fixed-price offering;

at-the-market offerings;

negotiated transactions;

put or call option transactions relating to the securities;

under delayed delivery contracts or other contractual commitments; or

a combination of such methods of sale.

We may determine the price or other terms of the securities offered in this prospectus or any applicable prospectus supplement by use of an electronic auction. We will describe in the applicable prospectus supplement how any auction will determine the price or any other terms, how potential investors may participate in the auction and the nature of the obligations of the underwriter, dealer or agent.

Each time we offer securities pursuant to this prospectus, the prospectus supplement, if required, will set forth:

the name of any underwriter, dealer or agent, if any, involved in the offer and sale of the securities;

Edgar Filing: WERNER ENTERPRISES INC - Form 5

the terms of the offering;

any discounts, concessions or commissions and other items that may constitute compensation received by the underwriters, dealers, agents or broker-dealers;

any offering price for the securities being offered;

any discounts or concessions allowed or reallocated or paid to dealers;

any securities exchanges on which the securities will be listed; and

the anticipated delivery date of the securities.

Table of Contents

Underwriters, dealers or agents may receive compensation in the form of discounts, concessions or commissions from us or from our purchasers (where such persons acted as agents for the purchasers in connection with the sale of securities). The compensation received may be in excess of customary discounts, concessions or commissions. Any underwriters, dealers, agents or other purchasers participating in the distribution of the securities may be considered underwriters under the Securities Act of 1933, as amended. As a result, discounts, commissions, or profits on resale received by them on the sale of the securities may be treated as underwriting discounts and commissions.

Underwriters, dealers and agents may be entitled, under agreements entered into with us, to indemnification by us against certain civil liabilities, including liabilities under the Securities Act of 1933, as amended, or to contribution with respect to payments made by the underwriters, dealers or agents, under agreements between us and the underwriters, dealers and agents.

We may grant underwriters who participate in the distribution of securities an option to purchase additional securities to cover over-allotments, if any, in connection with the distribution. Underwriters or agents and their associates may be customers of ours or engage in transactions with, or perform services for, us in the ordinary course of business.

If underwriters or dealers are used in the sale, the securities will be acquired by the underwriters or dealers for their own account and may be resold from time to time in one or more transactions, at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, or at prices relating to such prevailing market prices, or at negotiated prices. The securities may be offered to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more of such firms. Unless otherwise set forth in the prospectus supplement, the obligations of the underwriters or dealers to purchase the securities offered will be subject to certain conditions precedent and the underwriters or dealers will be obligated to purchase all the offered securities if any are purchased.

The securities may be sold directly by us or through agents designated by us from time to time. Any agent involved in the offer or sale of the securities in respect of which this prospectus is delivered will be named in the prospectus supplement. Unless otherwise indicated, any such agent will be acting on a best efforts only basis for the period of its appointment.

In connection with the offering of the securities, certain underwriters and selling group members and their respective affiliates, may engage in transactions that stabilize, maintain or otherwise affect the market price of the applicable securities. These transactions may include stabilization transactions effected in accordance with Rule 104 of Regulation M promulgated by the SEC pursuant to which these persons may bid for or purchase securities for the purpose of stabilizing their market price.

The underwriters in an offering of securities may also create a short position for their account by selling more securities in connection with the offering than they are committed to purchase from us. In that case, the underwriters could cover all or a portion of the short position by either purchasing securities in the open market following completion of the offering of these securities or by exercising any over-allotment option granted to them by us. In addition, any managing underwriter may impose penalty bids under contractual arrangements with other underwriters, which means that they can reclaim from an underwriter (or any selling group member participating in the offering) for the account of the other underwriters, the selling concession for the securities that are distributed in the offering but subsequently purchased for the account of the underwriters in the open market. Any of the transactions described in this paragraph or comparable transactions that are described in any accompanying prospectus supplement may result in the maintenance of the price of the securities at a level above that which might otherwise prevail in the open market. None of the transactions described in this paragraph or in an accompanying prospectus supplement are required to be taken by any underwriters and, if they are undertaken, may be discontinued at any time.

Table of Contents

Our common stock is listed on the Nasdaq Global Market under the symbol MTRX. Any shares of common stock sold pursuant to a prospectus supplement will be listed on the Nasdaq Global Market, subject to official notice of issuance. The preferred stock, warrants and debt securities that we may sell pursuant to this prospectus, and any prospectus supplement, will be new issues of securities with no established trading market and may or may not be listed on a national securities exchange as specified in the applicable prospectus supplement. Any underwriters or agents to or through which we may sell securities may make a market in the securities, but these underwriters or agents will not be obligated to do so and any of them may discontinue any market making at any time without notice. We cannot, therefore, give any assurance as to the liquidity of our trading market for any securities that we may sell.

Under the securities laws of some states, the securities registered by the registration statement that includes this prospectus may be sold in those states only through registered or licensed brokers or dealers.

Any person participating in the distribution of the securities registered under the registration statement that includes this prospectus will be subject to applicable provisions of the Securities Exchange Act of 1934, and the applicable rules and regulations of the SEC, including, among others, Regulation M noted above, which may limit the timing of purchases and sales of any of the securities by any such person. Furthermore, Regulation M may restrict the ability of any person engaged in the distribution of the securities to engage in market-making activities with respect to the securities. These restrictions may affect the marketability of the securities and the ability of any person or entity to engage in market-making activities with respect to the securities.

Table of Contents

LEGAL MATTERS

Unless otherwise specified in the prospectus supplement accompanying this prospectus, Conner & Winters, LLP will provide opinions regarding the validity of the securities offered hereby.

EXPERTS

The financial statements, the related financial statement schedule, incorporated in this prospectus by reference from our Annual Report on Form 10-K, and the effectiveness of our internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such financial statements and financial statement schedule have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You can inspect and copy the registration statement and the reports and other information we file with the SEC at the Public Reference Room maintained by the SEC at 100 F Street, N.E., Room 1580, Washington, D.C. 20549, at prescribed rates. You can obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website which provides online access to reports, proxy and information statements and other information regarding companies that file electronically with the SEC at the address <http://www.sec.gov>.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to incorporate by reference into this prospectus the information we file with them, which means we can disclose important business and financial information about us to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, except for any information that is superseded by information included directly in this prospectus and any prospectus supplement. We incorporate by reference the documents listed below that we previously filed with the SEC (SEC File No. 1-15461) and any future filings made with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (other than Current Reports or portions thereof furnished under Items 2.02 or 7.01 of Form 8-K), prior to the completion of the offering covered by this prospectus:

Our Annual Report on Form 10-K for the fiscal year ended May 31, 2008;

Our Quarterly Reports on Form 10-Q for the quarters ended August 31, 2008 and November 30, 2008;

Our Current Reports on Form 8-K filed on September 15, 2008 and January 5, 2009 and the information included under Item 8.01 of our Current Report on Form 8-K filed on January 8, 2009;

The description of our common stock contained in our registration statement on Form 8-A/A, filed with the SEC on September 28, 1990, and any subsequent amendments or reports filed for the purpose of updating the description; and

The description of our preferred share purchase rights contained in our registration statement on Form 8-A, filed with the SEC on November 9, 1999, under Section 12(b) of the Exchange Act, File No. 1-15461, and any subsequent amendments or reports filed for the purpose of updating the description.

Table of Contents

In addition, any filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act (other than Current Reports or portions thereof furnished under Items 2.02 or 7.01 of Form 8-K) after the date of the initial filing or the registration statement and prior to the effectiveness of the registration statement will be incorporated by reference in this prospectus.

These filings have not been included in or delivered with this prospectus. We will provide to each person, including any beneficial owner to whom this prospectus is delivered, a copy of any or all information that has been incorporated by reference in this prospectus but not delivered with this prospectus. You can access these documents on our website at <http://www.matrixservice.com> or you may request a copy of these filings at no cost, by writing or telephoning us at the following address:

Matrix Service Company

5100 E. Skelly Drive, Suite 700

Tulsa, Oklahoma 74135

(918) 838-8822

Except as otherwise specifically incorporated by reference in this prospectus, information contained in, or accessible through, our website is not a part of this prospectus.

Table of Contents

Part II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

All amounts which are payable by the Registrant, other than the SEC registration fee, are estimates.

SEC registration fee(1)	\$ 0
Legal fees and expenses	25,000
Accounting fees and expenses	10,000
Miscellaneous	3,000
Total	\$ 38,000

- (1) Pursuant to Rule 457(p), \$15,720 previously paid by the registrant upon filing on July 1, 2004, of a registration statement on Form S-3, registration no. 333-117077, is being offset against the filing fee of \$15,720 associated with this Registration Statement.

Item 15. Indemnification of Directors and Officers

Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") grants us the authority to indemnify each of our directors and officers against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by a director or officer that is made a party to any threatened, pending or completed action, suit or proceeding, (whether civil, criminal or otherwise) by reason of the fact that such director or officer is or was a director, officer, employee or agent of ours or by reason of the fact that such director or officer, at our request, is or was serving at any other corporation or other entity, in any capacity, if such director or officer acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful; provided, that in the case of an action, suit or proceeding against a director or officer that is brought by us or in our right, we may indemnify such director or officer only in respect of expenses (including attorneys' fees) actually and reasonably incurred by such director or officer; provided further, that no such indemnity for expenses may be made with respect to any claim, issue or matter as to which such director or officer shall have been adjudged to be liable to us unless, and only to the extent that, either the Delaware Court of Chancery or the court in which the action, suit or proceeding against such director or officer was brought shall determine upon application that, despite the adjudication of liability to us but in view of all the circumstances of the case, such director or officer is nevertheless fairly and reasonably entitled to indemnity from us for such expenses in an amount deemed proper by such court.

Unless ordered by a court, the determination of whether a then sitting director or officer has met the applicable standard for indemnity, i.e., that the director or officer acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful, shall be made by either (i) a majority vote of our directors at the time of such determination who were not parties to the suit or action, or (ii) by our stockholders.

Section 145 of the DGCL also authorizes us to advance expenses (including attorneys' fees) incurred by a director or officer in defending any action, suit or proceeding against the director or officer prior to a determination of whether the director or officer is actually entitled to indemnity and to purchase insurance for the benefit of a director or officer against any liability that may be incurred by reason of the fact that the insured was or is a director or officer, regardless of whether the liability insured could have legally been indemnified by us.

Table of Contents

Pursuant to the authority granted us by Section 145 of the DGCL, we have provided in our restated certificate of incorporation and bylaws for the indemnification of our directors and officers to the fullest extent authorized or permitted by law as from time to time in effect and we have purchased a policy of insurance for the benefit of our directors that provides standard coverage.

As permitted by Section 102 of the DGCL, our restated certificate of incorporation provides that each of our directors shall not be personally liable to us or our stockholders for or with respect to any acts or omissions in the performance of their duties as a director; provided, that a director shall be liable, to the extent provided by applicable law, for any breach of such director's duty of loyalty to us or our stockholders; for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for liability under Section 174 of the DGCL (involving certain unlawful dividends or stock repurchases), or for any transaction from which such director derived an improper personal benefit. This provision does not limit or eliminate our rights or the rights of any stockholder to seek nonmonetary relief such as an injunction or rescission in the event of a breach of a director's duty of care.

Item 16. Exhibits

The following is a list of all exhibits filed as a part of this Registration Statement on Form S-3, including those incorporated by reference herein.

Exhibit

Number Exhibit

- 1* Form of Underwriting Agreement.
- 4.1** Amended and Restated Certificate of Incorporation.
- 4.2 Bylaws, as amended, (previously filed as Exhibit 3.2 to our Current Report on Form 8-K filed on December 4, 2007 (File No. 1-15461) and incorporated by reference herein).
- 4.3 Certification of Designations, Preferences and Rights of Series B Junior Preferred Stock dated November 12, 1999 (previously filed as Exhibit 3.2 to our Registration Statement on Form S-3 (File No. 333-117077), and incorporated by reference herein).
- 4.4 Certificate of Increase of Authorized Number of Shares of Series B Junior Participating Preferred Stock pursuant to Section 151 of the General Corporation Law of the State of Delaware dated May 1, 2005 (previously filed as Exhibit 3.5 to our Annual Report on Form 10-K (File No. 1-15461), filed August 17, 2005, and incorporated by reference herein).
- 4.5 Certificate of Increase of Authorized Number of Shares of Series B Junior Participating Preferred Stock pursuant to Section 151 of the General Corporation Law of the State of Delaware dated October 23, 2006 (previously filed as Exhibit 3.7 to our Annual Report on Form 10-K (File No. 1-15461), filed August 14, 2007, and incorporated by reference herein).
- 4.6 Form of Senior Note Indenture (previously filed as Exhibit 4.2 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
- 4.7 Form of Senior Note (previously filed as Exhibit 4.3 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
- 4.8 Form of Subordinated Note Indenture (previously filed as Exhibit 4.4 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
- 4.9 Form of Subordinated Note (previously filed as Exhibit 4.5 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).

Table of Contents

- 4.10 Form of Warrant Agreement (previously filed as Exhibit 4.6 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
- 4.11 Form of Warrant Certificate for Common Stock (previously filed as Exhibit 4.7 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
- 4.12 Form of Warrant Certificate for Preferred Stock (previously filed as Exhibit 4.8 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
- 4.13 Form of Warrant Certificate for Senior Debt (previously filed as Exhibit 4.9 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
- 4.14 Form of Warrant Certificate for Subordinated Debt (previously filed as Exhibit 4.10 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
- 5** Opinion of Conner & Winters, LLP regarding the legality of the securities.
- 12** Statements Regarding Computation of Ratio of Earnings to Fixed Charges.
- 23.1** Consent of Deloitte & Touche LLP.
- 23.2** Consent of Conner & Winters, LLP (included in Exhibit 5).
- 24** Power of Attorney (included on the signature page hereto).
- 25.1* The Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of the Trustee under the Senior Indenture.
- 25.2* The Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of the Trustee under the Subordinated Indenture.

* To be filed by amendment or as an exhibit to a Current Report on Form 8-K in connection with a specific offering.

** Filed herewith.

Table of Contents

Item 17. Undertakings

(a) The undersigned registrant hereby undertakes:

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

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

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

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

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

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

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

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

(i) If the registrant is relying on Rule 430B:

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

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after

Table of Contents

effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

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

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

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of

Table of Contents

appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(j) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under section 305(b)(2) of the Trust Indenture Act.

Table of Contents**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tulsa, State of Oklahoma, on the 20th day of January 2009.

MATRIX SERVICE COMPANY

By: /s/ Michael J. Bradley
 Michael J. Bradley
President and Chief Executive Officer

Each of the undersigned officers and directors of Matrix Service Company, a Delaware corporation, whose signature appears below hereby constitutes and appoints Michael J. Bradley, Thomas E. Long and Kevin S. Cavanah, and each of them, as his or her true and lawful attorneys-in-fact and agents, severally, with full power of substitution and resubstitution, in his or her name and on his or her behalf, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and any subsequent registration statement filed by the Registrant pursuant to Rule 462(b) of the Securities Act of 1933, which relates to this Registration Statement, and to file the same with all exhibits thereto and all documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing necessary or appropriate to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
/s/ Michael J. Bradley Michael J. Bradley	President, Chief Executive Officer and Director (Principal Executive Officer)	January 20, 2009
/s/ Thomas E. Long Thomas E. Long	Vice President Finance and Chief Financial Officer (Principal Financial Officer)	January 20, 2009
/s/ Kevin S. Cavanah Kevin S. Cavanah	Vice President Accounting and Financial Reporting (Principal Accounting Officer)	January 20, 2009
/s/ Michael J. Hall Michael J. Hall	Chairman of the Board of Directors	January 20, 2009
/s/ I. Edgar Hendrix I. Edgar Hendrix	Director	January 20, 2009
/s/ Paul K. Lackey Paul K. Lackey	Director	January 20, 2009

Table of Contents

/s/ Tom E. Maxwell Tom E. Maxwell	Director	January 20, 2009
/s/ David J. Tippeconnic David J. Tippeconnic	Director	January 20, 2009

Table of Contents

Index to Exhibits

Exhibit

Number	Exhibit
1*	Form of Underwriting Agreement.
4.1**	Amended and Restated Certificate of Incorporation.
4.2	Bylaws, as amended, (previously filed as Exhibit 3.2 to our Current Report on Form 8-K filed on December 4, 2007 (File No. 1-15461) and incorporated by reference herein).
4.3	Certification of Designations, Preferences and Rights of Series B Junior Preferred Stock dated November 12, 1999 (previously filed as Exhibit 3.2 to our Registration Statement on Form S-3 (File No. 333-117077), and incorporated by reference herein).
4.4	Certificate of Increase of Authorized Number of Shares of Series B Junior Participating Preferred Stock pursuant to Section 151 of the General Corporation Law of the State of Delaware dated May 1, 2005 (previously filed as Exhibit 3.5 to our Annual Report on Form 10-K (File No. 1-15461), filed August 17, 2005, and incorporated by reference herein).
4.5	Certificate of Increase of Authorized Number of Shares of Series B Junior Participating Preferred Stock pursuant to Section 151 of the General Corporation Law of the State of Delaware dated October 23, 2006 (previously filed as Exhibit 3.7 to our Annual Report on Form 10-K (File No. 1-15461), filed August 14, 2007, and incorporated by reference herein).
4.6	Form of Senior Note Indenture (previously filed as Exhibit 4.2 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
4.7	Form of Senior Note (previously filed as Exhibit 4.3 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
4.8	Form of Subordinated Note Indenture (previously filed as Exhibit 4.4 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
4.9	Form of Subordinated Note (previously filed as Exhibit 4.5 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
4.10	Form of Warrant Agreement (previously filed as Exhibit 4.6 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
4.11	Form of Warrant Certificate for Common Stock (previously filed as Exhibit 4.7 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
4.12	Form of Warrant Certificate for Preferred Stock (previously filed as Exhibit 4.8 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
4.13	Form of Warrant Certificate for Senior Debt (previously filed as Exhibit 4.9 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
4.14	Form of Warrant Certificate for Subordinated Debt (previously filed as Exhibit 4.10 to Amendment No. 1 to our Registration Statement on Form S-3 (File No. 333-117077) filed on October 12, 2004, and incorporated by reference herein).
5**	Opinion of Conner & Winters, LLP regarding the legality of the securities.
12**	Statements Regarding Computation of Ratio of Earnings to Fixed Charges.
23.1**	Consent of Deloitte & Touche LLP.
23.2**	Consent of Conner & Winters, LLP (included in Exhibit 5).
24**	Power of Attorney (included on the signature page hereto).
25.1*	The Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of the Trustee under the Senior Indenture.

Table of Contents

25.2* The Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of the Trustee under the Subordinated Indenture.

* To be filed by amendment or as an exhibit to a Current Report on Form 8-K in connection with a specific offering.

** Filed herewith.