

CENTENE CORP  
Form S-3/A  
December 17, 2004  
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As filed with the Securities and Exchange Commission on December 17, 2004

Registration No. 333-119944

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## AMENDMENT NO. 1

TO

FORM S-3

Registration Statement

Under the Securities Act of 1933

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# CENTENE CORPORATION

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of incorporation or organization)

42-1406317  
(I.R.S. Employer Identification Number)

7711 Carondelet Avenue, Suite 800

St. Louis, Missouri 63105

(314) 725-4477

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

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**Michael F. Neidorff**

**Centene Corporation**

**7711 Carondelet Avenue, Suite 800**

**Saint Louis, Missouri 63105**

**(314) 725-4477**

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

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*Copy to:*

**Mark L. Johnson, Esq.**

**Wilmer Cutler Pickering Hale and Dorr LLP**

**60 State Street**

**Boston, Massachusetts 02109**

**Telephone: (617) 526-6000**

**Telecopy: (617) 526-5000**

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**Approximate date of commencement of proposed sale to 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 delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. " \_\_\_\_\_

\_\_\_\_\_

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

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**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion, Dated December 17, 2004**

**\$300,000,000**

**Common Stock**

**Preferred Stock**

**Debt Securities**

**Warrants**

**Securities Purchase Contracts**

**Securities Purchase Units**

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We may from time to time issue up to \$300,000,000 aggregate dollar amount of common stock, preferred stock, debt securities, warrants, securities purchase contracts and/or securities purchase units. We will specify in the accompanying prospectus supplement the terms of the securities to be offered and sold. We may sell these securities to or through underwriters or dealers and also to other purchasers or through agents. We will set forth the names of any underwriters, dealers or agents in the accompanying prospectus supplement.

Our common stock is listed on the New York Stock Exchange and traded under the symbol CNC.

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*Investing in our securities involves risks. See Risk Factors at page 2 of this prospectus.*

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

This prospectus may not be used to consummate sales of securities unless it is accompanied by a prospectus supplement.

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Prospectus dated \_\_\_\_\_, 2004.

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No dealer, salesperson or other person has been authorized to give any information or to make any representations other than those contained or incorporated by reference in this prospectus or any accompanying prospectus supplement in connection with the offer made by this prospectus or any accompanying prospectus supplement and, if given or made, such information or representations must not be relied upon as having been authorized by Centene Corporation or any such person. Neither the delivery of this prospectus or any accompanying prospectus supplement nor any sale made hereunder and thereunder shall under any circumstances create an implication that there has been no change in the affairs of Centene Corporation since the date hereof. This prospectus or any accompanying prospectus supplement does not constitute an offer or solicitation by anyone in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make such offer or solicitation.

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This prospectus is part of a registration statement that we filed with the SEC using a shelf registration process. Under this shelf registration process, we may offer and sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$300,000,000. We have provided to you in this prospectus 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. We may also add, update or change in the prospectus supplement any of the information contained in this prospectus.

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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. Our SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. Copies of the documents we file with the SEC can be read at the SEC's public reference facility at 450 Fifth Street, N.W., Washington, D.C. 20549. You can also obtain copies of our filings at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of its public reference facility.

We have filed this prospectus with the SEC as part of a registration statement on Form S-3 under the Securities Act. This prospectus does not contain all of the information set forth in the registration statement because some parts of the registration statement are omitted in accordance with the rules and regulations of the SEC. You can obtain a copy of the registration statement from the SEC at any address listed above or from the SEC's web site.

**INCORPORATION OF DOCUMENTS BY REFERENCE**

We are incorporating by reference in this prospectus some of the documents we file with the SEC. This means that we can disclose important information to you by referring you to those documents. The information in the documents incorporated by reference is considered to be part of this prospectus. Statements contained in documents that we file with the SEC and that are incorporated by reference in this prospectus will automatically update and supersede information contained in this prospectus, including information in previously filed documents or reports that have been incorporated by reference in this prospectus, to the extent the new information differs from or is inconsistent with the old information.

We have filed or may file the following documents with the SEC. These documents are incorporated herein by reference as of their respective dates of filing:

- (1) our annual report on Form 10-K for the fiscal year ended December 31, 2003, as filed with the SEC on February 25, 2004, as amended by our Form 10-K/A filed with the SEC on December 17, 2004;
- (2) our quarterly report on Form 10-Q for the quarter ended September 30, 2004, as filed with the SEC on October 25, 2004, as amended by our Form 10-Q/A filed with the SEC on December 17, 2004;
- (3) our quarterly report on Form 10-Q for the quarter ended June 30, 2004, as filed with the SEC on July 26, 2004;
- (4) our quarterly report on Form 10-Q for the quarter ended March 31, 2004, as filed with the SEC on April 26, 2004;
- (5) our current reports on Form 8-K dated October 26, 2004, November 9, 2004, December 7, 2004 and December 17, 2004;
- (6) all our filings pursuant to the Securities Exchange Act after the date of filing of the initial registration statement and prior to the effectiveness of the registration statement;

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- (7) all documents and reports that we file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act after the date of this prospectus are incorporated by reference in this prospectus as of the respective filing dates of these documents and reports; and
- (8) the description of our common and preferred stock purchase rights contained in our registration statement on Form 8-A filed with the SEC on December 10, 2001, as amended by our Form 8-A/A filed with the SEC on August 30, 2002 and our Form 8-A/A filed with the SEC on December 17, 2004.

You may request, orally or in writing, a copy of these documents, which will be provided to you at no cost, by contacting our Secretary, Karey L. Witty, at Centene Corporation, 7711 Carondelet Avenue, Suite 800, Saint Louis, Missouri 63105, telephone (314) 725-4477.

You should rely only on the information contained in this prospectus, including information incorporated by reference as described above, or any prospectus supplement that we have specifically referred you to. We have not authorized anyone else to provide you with different information. You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of those documents or that any document incorporated by reference is accurate as of any date other than its filing date. You should not consider this prospectus to be an offer or solicitation relating to the securities in any jurisdiction in which such an offer or solicitation relating to the securities is not authorized. Furthermore, you should not consider this prospectus to be an offer or solicitation relating to the securities if the person making the offer or solicitation is not qualified to do so, or if it is unlawful for you to receive such an offer or solicitation.

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**CENTENE CORPORATION**

We are a multi-line managed care organization that provides Medicaid and Medicaid-related programs to organizations and individuals through government subsidized programs, including Medicaid, Supplemental Security Income and the State Children's Health Insurance Program. In addition, we provide specialty services, including behavioral health, nurse triage and treatment compliance, to our own and other healthcare organizations. We have health plans in Indiana, Kansas, Missouri, New Jersey, Ohio, Texas and Wisconsin. We also provide specialty services in each of the states where we have health plans as well as Arizona, California and Colorado. We believe our local approach to managing our subsidiaries, including provider and member services, enables us to provide accessible, high quality, culturally sensitive healthcare services to our communities. Our disease management, educational and other initiatives are designed to help members best utilize the healthcare system to ensure they receive appropriate, medically necessary services and effective management of routine, severe and chronic health problems. We combine our decentralized local approach for care with a centralized infrastructure of support functions such as finance, information systems and claims processing.

We were organized in Wisconsin in 1993 and reincorporated in Delaware in 2001. We initially were formed to serve as a holding company for a Medicaid managed care line of business that has been operating in Wisconsin since 1984. Our corporate office is located at 7711 Carondelet Avenue, Suite 800, Saint Louis, Missouri 63105, and our telephone number is (314) 725-4477. The address of our website is [www.centene.com](http://www.centene.com). The information on our website is not part of this prospectus.

CENTENE is our registered service mark, and the Centene logo is our service mark. This prospectus also contains trademarks, service marks and trade names of other companies.

**RISK FACTORS**

An investment in our securities involves significant risks. You should carefully consider the risks, including the forward-looking statements made in this prospectus and any prospectus supplement, as well as all of the risk factors incorporated herein by reference before you make an investment decision pursuant to this prospectus and any prospectus supplement. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our business operations.

**SPECIAL NOTE REGARDING FORWARD-LOOKING INFORMATION**

This prospectus, any prospectus supplement and the documents we incorporate by reference in this prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act. All statements, other than statements of historical facts, that we include in this prospectus, any prospectus supplement, and in the documents we incorporate by reference in this prospectus, may be deemed forward-looking statements for purposes of the Securities Act and the Securities Exchange Act. We use the words anticipate, believe, estimate, expect, intend, may, plan, project, will, would and similar expressions to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We cannot guarantee that we actually will achieve the plans, intentions or expectations disclosed in our forward-looking statements and, accordingly, you should not place undue reliance on our forward-looking statements. There are a number of important factors that could cause actual results or events to differ materially from the forward-looking statements that we make, including the factors included in the documents we incorporate by reference in this prospectus. You should read these factors and the other cautionary statements made in the documents we incorporate by reference as being applicable to all related forward-looking statements wherever they appear in this prospectus, any prospectus supplement, and any document incorporated by

reference. We caution you that we do not undertake any obligation to update forward-looking statements made by us.

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**USE OF PROCEEDS**

We intend to use our net proceeds for working capital and other general corporate purposes. We may apply proceeds to fund working capital to, among other things:

increase market penetration within our current service areas;

pursue opportunities for the development of new markets;

expand services and products available to our members; and

strengthen our capital base by increasing the statutory capital of our health plan subsidiaries.

We also may use proceeds to acquire businesses, assets and technologies that are complementary to our business. In particular, we may use proceeds to acquire Medicaid and SCHIP businesses, specialty services businesses, and contract rights in order to increase our membership and to expand our business into new service areas.

We have not determined the amount of net proceeds to be used specifically for the foregoing purposes. As a result, our management will have broad discretion to allocate our net proceeds. Pending application of our net proceeds, we intend to invest our net proceeds in investment-grade, interest-bearing instruments, which may include repurchase agreements and high-grade municipal and corporate debt securities.

**RATIOS OF EARNINGS TO FIXED CHARGES AND TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The ratio of earnings to fixed charges and of earnings to fixed charges and preferred stock dividends for each of the periods indicated is set forth below. For purposes of computing these ratios, earnings represent income from continuing operations before extraordinary items. Fixed charges represent interest expenses, plus estimated interest within rental expense. For the periods shown below, no preferred stock was outstanding and no preferred stock dividends were declared or paid.

	Nine Months Ended	Year Ended December 31,				
	Sept. 30,					
	2004	2003	2002	2001	2000	1999
Ratio of Earnings to Fixed Charges	27.16	43.12	45.96	21.82	7.73	*
Ratio of Earnings to Fixed Charges and Preferred Stock Dividends	27.16	43.12	45.96	21.82	7.73	*

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\* Negative ratio. Coverage deficiency of \$4,568.

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**THE SECURITIES WE MAY OFFER**

The descriptions of the securities contained in this prospectus, together with the applicable prospectus supplements, summarize all the material terms and provisions of the various types of securities that we may offer. We will describe in the applicable prospectus supplement relating to any securities the particular terms of the securities offered by that prospectus supplement. If we indicate in the applicable prospectus supplement, the terms of the securities may differ from the terms we have summarized below. We will also include in the prospectus supplement information, where applicable, about material United States federal income tax considerations relating to the securities, and the securities exchange, if any, on which the securities will be listed.

We may sell from time to time, in one or more offerings:

common stock;

preferred stock;

debt securities;

warrants to purchase any of the securities listed above; and

securities purchase contracts and securities purchase units.

In this prospectus, we refer to the common stock, preferred stock, debt securities, warrants, securities purchase contracts and securities purchase units collectively as securities. The total dollar amount of all securities that we may sell will not exceed \$300,000,000.

If we issue debt securities at a discount from their original stated principal amount, then, for purposes of calculating the total dollar amount of all securities issued under this prospectus, we will treat the initial offering price of the debt securities as the total original principal amount of the debt securities.

This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.

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**DESCRIPTION OF CAPITAL STOCK**

Under our charter, we are authorized to issue 100,000,000 shares of common stock and 10,000,000 shares of preferred stock. Shares of each class have a par value of \$0.001 per share. The following description summarizes information about our capital stock. You can obtain more comprehensive information about our capital stock by consulting our charter and by-laws, as well as the Delaware General Corporation Law.

**Common Stock**

Our common stock is listed under the symbol **CNC** on the New York Stock Exchange. Each share of our common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors. Subject to any preference rights of holders of preferred stock, the holders of common stock are entitled to receive dividends, if any, declared from time to time by the directors out of legally available funds. In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining after the payment of liabilities, subject to any rights of holders of preferred stock to prior distribution.

The common stock has no preemptive or conversion rights or other subscription rights. No redemption or sinking fund provisions apply to the common stock. All outstanding shares of common stock are fully paid and nonassessable and all shares of common stock offered and sold pursuant to this prospectus and any prospectus supplement, upon delivery, will be fully paid and nonassessable.

The transfer agent and registrar for our common stock is Mellon Investor Services LLC.

**Preferred Stock**

In connection with the Rights Plan described below, the board has designated 100,000 shares of preferred stock as Series A Junior Participating Preferred Stock, \$0.001 par value per share, as set forth in the Certificate of Designations of Series A Junior Participating Preferred Stock filed with the Delaware Secretary of State, as amended, and summarized below under the caption **Rights Plan**. As a result, as of the date of this prospectus, the board of directors had the authority, without action by the stockholders, to designate and issue up to an aggregate of 9,900,000 shares of preferred stock, in one or more series, each series to have the voting rights, dividend rights, conversion rights, liquidation preferences and redemption privileges as shall be determined by the board. The rights of the holders of common stock will be affected by, and may be adversely affected by, the rights of holders of any preferred stock that may be issued in the future. It is not possible to state the actual effect of the issuance of any shares of preferred stock on the rights of holders of common stock until the board determines the specific rights attached to that preferred stock. The effects of issuing preferred stock could include one or more of the following:

restricting dividends on the common stock;

diluting the voting power of the common stock;

impairing the liquidation rights of the common stock; or

delaying or preventing changes in control or management of Centene.

All shares of preferred stock offered and sold pursuant to this prospectus and any prospectus supplement, upon delivery, will be fully paid and nonassessable.

### **Rights Plan**

On August 26, 2002, the board of directors declared a dividend of one Right for each outstanding share of our common stock to our stockholders of record at the close of business on September 10, 2002, called the Record Date. In addition, each share of common stock issued subsequently includes one Right. Each Right entitles the registered holder to purchase from us one one-thousandth of a share of our Series A Junior Participating Preferred Stock at a purchase price of \$170.00 in cash per share, called the Purchase Price, subject to adjustment. The description and terms of the Rights are set forth in a Rights Agreement, dated as of August 30, 2002, between us and Mellon Investor Services LLC, as Rights Agent.

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Currently, the Rights are not exercisable and are attached to all certificates representing outstanding shares of our common stock, and no separate certificate, called a Rights Certificate, representing the Rights has been distributed. The Rights will separate from our common stock upon the earlier of:

ten business days following the first date of a public announcement that a person or group of affiliated or associated persons, called an Acquiring Person, has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of our common stock; and

ten business days following the commencement of a tender offer or exchange offer that would result in a person or group beneficially owning 15% or more of the outstanding shares of our common stock, called the Distribution Date.

The Distribution Date may be deferred in circumstances determined by the board of directors. In addition, certain inadvertent acquisitions will not trigger the occurrence of the Distribution Date. Until the Distribution Date (or earlier redemption or expiration of the Rights):

the Rights will be evidenced by our common stock certificates outstanding on the Record Date or by new certificates representing common stock issued after the Record Date which contain a notation incorporating the Rights Agreement by reference;

the Rights will be transferred with and only with such certificates; and

the surrender for transfer of any certificates representing shares of our common stock outstanding will also constitute the transfer of the Rights associated with the common stock represented by such certificate.

The Rights are not exercisable until the Distribution Date and will expire upon the close of business on August 30, 2012, called the Final Expiration Date, unless earlier redeemed or exchanged. As soon as practicable after the Distribution Date, separate Rights Certificates will be mailed to the holders of record of our common stock as of the close of business on the Distribution Date and, thereafter, the separate Rights Certificates alone will represent the Rights. Except as otherwise determined by the board of directors, and except for shares of our common stock issued upon exercise, conversion or exchange of then outstanding options, convertible or exchangeable securities or other contingent obligations to issue shares or pursuant to any employee benefit plan or arrangement, only shares of our common stock issued prior to the Distribution Date will be issued with Rights.

In the event that any person becomes an Acquiring Person, then, promptly following the first occurrence of such event, each holder of a Right shall thereafter have the right to receive, upon exercise, that number of shares of our common stock, or, in certain circumstances, cash, property or other securities, which equals the exercise price of the Right divided by 50% of the current market price per share of our common stock at the date of the occurrence of such event. Rights are not exercisable following such event, however, until such time as the Rights are no longer redeemable by us. Notwithstanding any of the foregoing, following the occurrence of such event, all Rights that are, or, under certain circumstances, were, beneficially owned by any Acquiring Person will be null and void. The event summarized in this paragraph is referred to as an A Trigger Event.

For example, at an exercise price of \$60 per Right, each Right not owned by an Acquiring Person following an A Trigger Event would entitle its holder to purchase for \$60 such number of shares of our common stock as equals \$60 divided by one-half of the current market price of our common stock. Assuming that our common stock had a market price of \$30 per share at such time, the holder of each valid Right would be entitled to purchase four shares of our common stock, having a market value of 4 times \$30, or \$120, for \$60.



In the event that, at any time after any person becomes an Acquiring Person, (i) we are consolidated with, or merged with and into, another entity and we are not the surviving entity of such consolidation or merger or if we are the surviving entity, but shares of our outstanding common stock are changed or exchanged for stock or securities, cash or any other property, or (ii) more than 50% of our assets or earning power is sold or transferred, each holder of a Right shall thereafter have the right to receive, upon exercise, that number of shares of common stock of the acquiring company which equals the exercise price of the Right divided by 50% of the current market price of such common stock at the date of the occurrence of the event. The events summarized in this paragraph are referred to as a B Trigger Event. A Trigger Events and B Trigger Events are collectively referred to as Triggering Events.

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For example, at an exercise price of \$60 per Right, each valid Right following a B Trigger Event would entitle its holder to purchase for \$60 such number of shares of common stock of the acquiring company as equals \$60 divided by one-half of the current market price of such common stock. Assuming that such common stock had a market price of \$30 per share at such time, the holder of each valid Right would be entitled to purchase four shares of common stock of the acquiring company, having a market value of 4 times \$30, or \$120, for \$60.

At any time after the occurrence of an A Trigger Event, when no person owns a majority of our common stock, the board of directors may exchange the Rights in whole or in part, at an exchange ratio of one share of our common stock, or one one-thousandth of a share of our preferred stock, or of a share of a class or series of our preferred stock having equivalent rights, preferences and privileges, per Right.

The Purchase Price payable, and the number of units of our preferred stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, our preferred stock, (ii) if holders of our preferred stock are granted certain rights or warrants to subscribe for our preferred stock or convertible securities at less than the then-current market price of our preferred stock, or (iii) upon the distribution to holders of our preferred stock of evidences of indebtedness or assets or of subscription rights or warrants. The number of Rights associated with each share of our common stock is also subject to adjustment in the event of a stock split of our common stock or a stock dividend on our common stock payable in common stock or subdivisions, consolidations or combinations of our common stock occurring, in any such case, prior to the Distribution Date.

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments amount to at least 1% of the Purchase Price. No fractional shares of our preferred stock, other than fractions which are integral multiples of one one-thousandth of a share of our preferred stock, will be issued and, in lieu thereof, an adjustment in cash will be made based on the market price of our preferred stock on the last trading date prior to the date of exercise.

Preferred stock purchasable upon exercise of the Rights will not be redeemable. Each share of our preferred stock will be entitled to receive, when, as and if declared by the board of directors, a minimum preferential quarterly dividend payment of \$10 per share or, if greater, an aggregate dividend of 1,000 times the dividend declared per share of our common stock. In the event of liquidation, the holders of our preferred stock will be entitled to a minimum preferential liquidation payment of \$1,000 per share, plus an amount equal to accrued and unpaid dividends, and will be entitled to an aggregate payment of 1,000 times the payment made per share of our common stock. Each share of our preferred stock will have 1,000 votes, voting together with our common stock. In the event of any merger, consolidation or other transaction in which our common stock is changed or exchanged, each share of our preferred stock will be entitled to receive 1,000 times the amount received per share of our common stock. These rights are protected by customary antidilution provisions. Because of the nature of our preferred stock's dividend, liquidation and voting rights, the value of one one-thousandth of a share of our preferred stock purchasable upon exercise of each Right should approximate the value of one share of our common stock.

At any time prior to the earlier of the tenth business day after the Stock Acquisition Date, we may redeem the Rights in whole, but not in part, at a price of \$0.001 per Right, called the Redemption Price, payable in cash or stock. Immediately upon the redemption of the Rights or such earlier time as established by our Board of Directors in the resolution ordering the redemption of the Rights, the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price. The Rights may also be redeemable following certain other circumstances specified in the Rights Agreement.

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder, including, without limitation, the right to vote or to receive dividends. Although the distribution of the Rights should not be taxable to our stockholders or to us, our stockholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for our common stock or for common stock of an acquiring company as set forth above.

Any provision of the Rights Agreement, other than the redemption price, may be amended by the board of directors prior to such time as the Rights are no longer redeemable. Once the Rights are no longer redeemable, the board's authority to amend the Rights is limited to correcting ambiguities or defective or inconsistent provisions in a manner that does not adversely affect the interest of holders of Rights.

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The Rights are intended to protect our stockholders in the event of an unfair or coercive offer to acquire us and to provide the board of directors with adequate time to evaluate unsolicited offers. The Rights may have anti-takeover effects. The Rights will cause substantial dilution to a person or group that attempts to acquire us without conditioning the offer on a substantial number of Rights being acquired. The Rights, however, should not affect any prospective offer or willing to make an offer at a fair price and determined by the board. The Rights should not interfere with any merger or other business combination approved by the board.

## **Anti-Takeover Effects of Provisions of Delaware Law and Our Charter and By-Laws**

Delaware law and our charter and by-laws, as well as our rights plan described above, could make it more difficult to acquire us by means of a tender offer, a proxy contest, open market purchases, removal of incumbent directors and otherwise. These provisions, summarized below, are expected to discourage types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of us to first negotiate with us. We believe that the benefits of increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging takeover or acquisition proposals because negotiation of these proposals could result in an improvement of their terms.

We must comply with Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date the person became an interested stockholder, unless the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to an interested stockholder. An interested stockholder includes a person who, together with affiliates and associates, owns, or did own within three years prior to the determination of interested stockholder status, 15% or more of the corporation's voting stock. The existence of this provision generally will have an anti-takeover effect for transactions not approved in advance by the board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

Our charter and by-laws require that any action required or permitted to be taken by our stockholders must be effected at a duly called annual or special meeting of the stockholders and may not be effected by a consent in writing. In addition, special meetings of our stockholders may be called only by the board of directors or some of our officers. Our charter and by-laws also provide that the board is divided into three classes, with the classes serving staggered three-year terms. These provisions may have the effect of deterring hostile takeovers or delaying or preventing changes in our control or management.

## **Potential Effects of Authorized but Unissued Stock**

We have shares of common stock and preferred stock available for future issuance without stockholder approval. We may utilize these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, to facilitate corporate acquisitions or payment as a dividend on the capital stock.

The existence of unissued and unreserved common stock and preferred stock may enable the board of directors to issue shares to persons friendly to current management or to issue preferred stock with terms that could render more difficult or discourage a third-party attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise, thereby protecting the continuity of our management. In addition, the board has the discretion to determine designations, rights, preferences, privileges and restrictions, including voting rights, conversion rights, redemption privileges and liquidation preferences of each series of preferred stock, all to the fullest extent permissible under

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Delaware law and subject to any limitations set forth in our certificate of incorporation. The purpose of authorizing the board to issue preferred stock and to determine the rights and preferences applicable to such preferred stock is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing desirable flexibility in connection with possible financings, acquisitions and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from acquiring, a majority of our outstanding voting stock.

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**DESCRIPTION OF DEBT SECURITIES**

The following description, together with the additional information we include in any applicable prospectus supplements, summarizes the material terms and provisions of the debt securities that we may offer under this prospectus. While the terms we have summarized below will apply generally to any future debt securities we may offer, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement.

**General**

We may enter into indenture agreements with respect to any debt securities we may offer. We would enter into separate indentures, with different trustees, for (a) any and all senior debt securities, (b) any and all subordinated debt securities and (c) any and all junior subordinated debt securities. We use the term "indentures" to refer to the senior indenture, the subordinated indenture and the junior subordinated indenture, and we use the term "trustees" to refer to the several trustees under the indentures. The material terms of the indenture governing a series of debt securities will be described in the applicable prospectus supplement. The indentures will be qualified under the Trust Indenture Act.

We conduct some of our operations through subsidiaries. Our rights and the rights of our creditors, including holders of debt securities, to the assets of any subsidiary of ours upon that subsidiary's liquidation or reorganization or otherwise would be subject to the prior claims of that subsidiary's creditors, except to the extent that we may be a creditor with recognized claims against the subsidiary. Our subsidiaries' creditors include trade creditors, debt holders, secured creditors and taxing authorities.

**Additional Information**

We will describe in the applicable prospectus supplement the following terms relating to a series of debt securities:

the title;

any limit on the amount that may be issued;

whether or not we will issue the series of debt securities in global form, and, if so, the terms and the name of the depository;

the maturity date;

the annual interest rate, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;

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whether or not the debt securities will be secured or unsecured, and the terms of any securities;

the terms of the subordination of any series of debt securities;

the terms on which any series of debt securities may be convertible into or exchangeable for common stock or other securities of ours, including (a) provisions as to whether conversion or exchange is mandatory, at the option of the holder or at our option and (b) provisions pursuant to which the number of shares of common stock or other securities of ours that the holders of the series of debt securities receive would be subject to adjustment;

the place where payments will be payable;

our right, if any, to defer payment of interest and the maximum length of any such deferral period;

the date, if any, after which, and the price at which, we may, at our option, redeem the series of debt securities pursuant to any optional redemption provisions;

the date, if any, on which, and the price at which we are obligated, pursuant to any mandatory sinking fund provisions or otherwise, to redeem, or at the holder's option to purchase, the series of debt securities;

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whether the indenture will restrict our ability to pay dividends, or will require us to maintain any asset ratios or reserves;

whether we will be restricted from incurring any additional indebtedness;

a discussion of any material United States federal income tax considerations applicable to the debt securities;

the denominations in which we will issue the series of debt securities, if other than denominations of \$1,000 and any integral multiple thereof; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities.

**DESCRIPTION OF WARRANTS**

The following description, together with the additional information we may include in any applicable prospectus supplements, summarizes the material terms and provisions of the warrants that we may offer under this prospectus and the related warrant agreements and warrant certificates. While the terms summarized below will apply generally to any warrants that we may offer, we will describe the particular terms of any series of warrants in more detail in the applicable prospectus supplement. If we indicate in the prospectus supplement, the terms of any warrants offered under that prospectus supplement may differ from the terms described below. Specific warrant agreements will contain additional important terms and provisions and will be incorporated by reference as an exhibit to the registration statement that includes this prospectus.

**General**

We may issue warrants for the purchase of common stock, preferred stock or debt securities in one or more series. We may issue warrants independently or together with common stock, preferred stock and debt securities, and the warrants may be attached to or separate from these securities.

We will evidence each series of warrants by warrant certificates that we will issue under a separate agreement. We may enter into the warrant agreement with a warrant agent. We will indicate the name and address and other information regarding the warrant agent in the applicable prospectus supplement relating to a particular series of warrants.

Before exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including:

in the case of warrants to purchase debt securities, the right to receive payments of principal of, or premium, if any, or interest on, the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture; or



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in the case of warrants to purchase common stock or preferred stock, the right to receive dividends, if any, or, payments upon our liquidation, dissolution or winding up or to exercise voting rights, if any.

### **Additional Information**

We will describe in the applicable prospectus supplement the terms of the series of warrants, including:

the offering price and aggregate number of warrants offered;

the currency for which the warrants may be purchased;

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

if applicable, the date on and after which the warrants and the related securities will be separately transferable;

in the case of warrants to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one warrant and the price at, and currency in which, this principal amount of debt securities may be purchased upon such exercise;

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in the case of warrants to purchase common stock or preferred stock, the number of shares of common stock or preferred stock, as the case may be, purchasable upon the exercise of one warrant and the price at which these shares may be purchased upon such exercise;

the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreement and the warrants;

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

any provisions for changes to or adjustments in the exercise price or number of securities issuable upon exercise of the warrants;

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

the manner in which the warrant agreement and warrants may be modified;

a discussion on any material or special United States federal income tax consequences of holding or exercising the warrants;

the terms of the securities issuable upon exercise of the warrants; and

any other specific terms, preferences, rights or limitations of or restrictions on the warrants.

## **Exercise of Warrants**

Each warrant will entitle the holder to purchase the securities that we specify in the applicable prospectus supplement at the exercise price that we describe in the applicable prospectus supplement. Unless we otherwise specify in the applicable prospectus supplement, holders of the warrants may exercise the warrants at any time up to 5 p.m., Eastern time, on the expiration date that we set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void.

Holders of the warrants may exercise the warrants by delivering the warrant certificate representing the warrants to be exercised together with specified information, and paying the required amount to the warrant agent in immediately available funds, as provided in the applicable prospectus supplement. We will set forth on the reverse side of the warrant certificate and in the applicable prospectus supplement the information that the holder of the warrant will be required to deliver to the warrant agent.

Upon receipt of the required payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will issue and deliver the securities purchasable upon such exercise. If fewer than all of the warrants represented by the warrant certificate are exercised, then we will issue a new warrant certificate for the remaining amount of warrants. If we so indicate in the applicable prospectus supplement, holders of the warrants may surrender securities as all or part of the exercise price for warrants.

## **Enforceability of Rights by Holders of Warrants**

Each warrant agent will act solely as our agent under the applicable warrant agreement and will not assume any obligation or relationship of agency or trust with any holder of any warrant. A single bank or trust company may act as warrant agent for more than one issue of warrants. A warrant agent will have no duty or responsibility in case of any default by us under the applicable warrant agreement or warrant, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a warrant may, without the consent of the related warrant agent or the holder of any other warrant, enforce by appropriate legal action its right to exercise, and receive the securities purchasable upon exercise of, its warrants.

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**DESCRIPTION OF SECURITIES PURCHASE CONTRACTS AND SECURITIES PURCHASE UNITS**

This section describes the general terms of the securities purchase contracts and securities purchase units that we may offer and sell by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each securities purchase contract or securities purchase unit. The accompanying prospectus supplement may add, update or change the terms and conditions of the securities purchase contracts and securities purchase units described in this prospectus.

**Stock Purchase Contracts and Stock Purchase Units**

We may issue stock purchase contracts, representing contracts obligating holders to purchase from us, and obligating us to sell to the holders, a specified number of shares of common stock or preferred stock at a future date or dates, or a variable number of shares of common stock or preferred stock for a stated amount of consideration. The price per share and the number of shares of common stock or preferred stock may be fixed at the time the stock purchase contracts are issued or may be determined by reference to a specific formula set forth in the stock purchase contracts. Any such formula may include anti-dilution provisions to adjust the number of shares of common stock or preferred stock issuable pursuant to the stock purchase contracts upon certain events. The stock purchase contracts may require holders to secure their obligations in a specified manner and in certain circumstances we may deliver newly issued prepaid stock purchase contracts upon release to a holder of any collateral securing such holder's obligations under the original stock purchase contract.

The stock purchase contracts may be issued separately or as a part of units consisting of a stock purchase contract and, as security for the holder's obligations to purchase the shares under the stock purchase contracts, either (a) our senior debt securities or subordinated debt securities or (b) debt obligations of third parties, including U.S. Treasury securities. The stock purchase contracts may require us to make periodic payments to the holders of the stock purchase units or vice versa, and such payments may be unsecured or prefunded on some basis.

The applicable prospectus supplement will describe the general terms of any stock purchase contracts or stock purchase units, as well as any material U.S. federal income tax considerations applicable to the stock purchase contracts and the stock purchase units. We will file with the SEC forms of any stock purchase contracts to be issued either separately or as a part of stock purchase units.

**Debt Purchase Contracts and Debt Purchase Units**

We may issue debt purchase contracts, representing contracts obligating holders to purchase from us, and obligating us to sell to the holders, a specified principal amount of debt securities at a future date or dates. The purchase price and the interest rate may be fixed at the time the debt purchase contracts are issued or may be determined by reference to a specific formula set forth in the debt purchase contracts. The debt purchase contracts may require holders to secure their obligations in a specified manner and in certain circumstances we may deliver newly issued prepaid debt purchase contracts upon release to a holder of any collateral securing such holder's obligations under the original debt purchase contract.

The debt purchase contracts may be issued separately or as a part of units consisting of debt purchase contracts and, as security for the holder's obligations to purchase the securities under the debt purchase contracts, either (a) our senior debt securities or subordinated debt securities or (b) debt obligations of third parties, including U.S. Treasury securities. The debt purchase contracts may require us to make periodic payments to the holders of the debt purchase units or vice versa, and such payments may be unsecured or prefunded on some basis.

The applicable prospectus supplement will describe the general terms of: (a) any debt purchase contracts or debt purchase units; (b) the collateral arrangements and depositary arrangements, if applicable, relating to such debt purchase contracts or debt purchase units; and (c) if applicable, the prepaid debt purchase contracts and the document pursuant to which such prepaid debt purchase contracts will be issued. In addition, such prospectus supplement will describe any material U.S. federal income tax considerations applicable to the debt purchase contracts and the debt purchase units. We will file with the SEC forms of any debt purchase contracts that may be issued separately or as a part of debt purchase units.

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**LEGAL OWNERSHIP OF SECURITIES**

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee maintain for this purpose as the holders of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly through others, own beneficial interests in securities that are not registered in their own names, as indirect holders of those securities. As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

**Book-Entry Holders**

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depositary on behalf of other financial institutions that participate in the depositary's book-entry system. These participating institutions, which are referred to as participants, in turn, hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Securities issued in global form will be registered in the name of the depositary or its participants. Consequently, for securities issued in global form, we will recognize only the depositary as the holder of the securities, and we will make all payments on the securities to the depositary. The depositary passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depositary and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a book-entry security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depositary's book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not holders, of the securities.

**Street Name Holders**

We may terminate a global security or issue securities in non-global form. In these cases, investors may choose to hold their securities in their own names or in street name. Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.