

REGENXBIO Inc.
Form S-3
August 08, 2018
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As filed with the Securities and Exchange Commission on August 8, 2018

Registration No. 333-

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

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

REGENXBIO Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

47-1851754
(IRS Employer
Identification Number)

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9600 Blackwell Road, Suite 210

Rockville, Maryland 20850

(240) 552-8181

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

Kenneth T. Mills

President and Chief Executive Officer

REGENXBIO Inc.

9600 Blackwell Road, Suite 210

Rockville, Maryland 20850

(240) 552-8181

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

With copies to:

Patrick J. Christmas

Senior Vice President, General Counsel

REGENXBIO Inc.

9600 Blackwell Road, Suite 210

Rockville, Maryland 20850

(240) 552-8181

Kerry Shannon Burke

Matthew C. Franker

Covington & Burling LLP

One CityCenter

850 Tenth Street N.W.

Washington, D.C. 20001

(202) 662-6000

Approximate date of commencement of proposed sale to the public: From time to time after this registration statement becomes effective.

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

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

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

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

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

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

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of each class of	Amount	Proposed	Proposed	Amount of registration fee ⁽²⁾⁽³⁾
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securities to be registered	to be registered ⁽¹⁾	maximum offering price per share ⁽¹⁾	maximum aggregate offering price ⁽¹⁾	
Primary Offering				
Common Stock, par value \$0.0001 per share				
Preferred Stock, par value \$0.0001 per share				
Warrants				
Debt Securities				
Rights to purchase common stock, preferred stock, debt securities or units				
Units ⁽⁴⁾				
Total Primary Offering				
Secondary Offering				
Common Stock, par value \$0.0001 per share	5,057,458	\$69.47 ⁽⁵⁾	\$351,337,814.20	\$43,741.56

- (1) With respect to the primary offering, an indeterminate aggregate initial offering price or number or amount of securities of each identified class are being registered as may from time to time be offered at indeterminate prices, including an indeterminate number or amount of securities that may be issued upon the exercise, settlement, exchange or conversion of securities offered hereunder. Separate consideration may or may not be received for securities that are issuable upon conversion of, or in exchange for, or upon exercise of, convertible or exchangeable securities. Pursuant to Rule 416 under the Securities Act of 1933, or the Securities Act, the common stock being registered in the secondary offering hereunder includes such indeterminate number of shares of common stock as may be issuable as a result of stock splits, stock dividends or similar transactions.
- (2) With respect to the primary offering, the registrant is deferring payment of all of the registration fee and omitting information from the Calculation of Registration Fee table in accordance with Rules 456(b) and 457(r) under the Securities Act. Pursuant to Rule 415(a)(6) under the Securities Act, this registration statement includes \$137,772,500 aggregate amount of unsold securities previously registered in the primary offering under the Registration Statement on Form S-3 (File No. 333-215146), which was filed by the registrant on December 16, 2016 and declared effective on January 6, 2017. Pursuant to Rule 415(a)(6) under the Securities Act, the primary offering of the unsold securities under the previous registration statement was deemed terminated upon the filing of this automatic shelf registration statement. The registration fee previously paid by the registrant with respect to such securities will continue to apply to such securities in accordance with Rule 415(a)(6) under the Securities Act.
- (3) With respect to the secondary offering, the registration fee is partially offset by \$12,142.29 in fees the registrant is entitled to offset under Rule 457(p) of the Securities Act, which the registrant previously paid with respect to unsold shares in the secondary offering under the Registration Statement on Form S-3 (File No. 333-215146), which was filed by the registrant on December 16, 2016 and declared effective on January 6, 2017. Pursuant to Rule 457(p) under the Securities Act, the secondary offering of the unsold securities under the previous registration statement was deemed terminated upon the filing of this automatic shelf registration statement.
- (4) Each unit will represent an interest in two or more other securities registered hereunder, which may or may not be separable from one another.
- (5) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act based on the average of the high and low prices of the registrant's common stock on The Nasdaq Global Select Stock Market on August 1, 2018.

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PROSPECTUS

Common Stock

Preferred Stock

Warrants

Debt Securities

Rights

Units

5,057,458 Shares of Common Stock for Resale by Selling Stockholders

We may offer and sell, from time to time, in one or more offerings, our shares of common stock, shares of preferred stock, warrants, debt securities, rights to purchase common stock, preferred stock, debt securities or units and units that include any of these securities. We may sell any combination of these securities in one or more offerings in amounts, at prices and on terms that we will determine at the time of the offering.

In addition, the selling stockholders may from time to time offer and sell up to an aggregate of 5,057,458 shares of our common stock. We will not receive any of the proceeds from the sale of our common stock by the selling stockholders.

This prospectus provides you with a general description of the securities we may offer. Each time we offer securities pursuant to this prospectus, we will provide a prospectus supplement containing specific terms of the particular offering together with this prospectus. In any prospectus supplement relating to any sales by selling stockholders, we will, among other things, identify the number of shares of our common stock that each of the selling stockholders will be selling. You should read this prospectus and the applicable prospectus supplement carefully before you invest in any securities. The prospectus supplement also may add, update or change information contained in this prospectus. This prospectus may not be used to offer and sell securities unless accompanied by the applicable prospectus supplement.

The securities may be offered and sold in the same offering or separate offerings directly or to or through underwriters or dealers, and also to other purchasers or through agents. The names of any underwriters or agents that are included in a sale of securities to you, and any applicable commissions or discounts, will be stated in an accompanying prospectus supplement.

Our common stock is listed on The Nasdaq Global Select Market under the symbol RGNX. On August 7, 2018, the closing price of our common stock was \$70.80.

We are an emerging growth company, as that term is used in the Jumpstart our Business Startups Act of 2012, and have elected to avail ourselves of certain reduced public company reporting requirements for this prospectus and future filings.

Investing in our securities involves significant risks. Before buying our securities, you should carefully read and consider the risks we describe in this prospectus and in any accompanying prospectus supplement, as well as the risk factors that are incorporated by reference into this prospectus and in any accompanying prospectus supplement from our filings made with the Securities and Exchange Commission. See Risk Factors beginning on page 5 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 adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is August 8, 2018

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ABOUT THIS PROSPECTUS

This prospectus is part of an automatic shelf registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or the SEC, as a well-known seasoned issuer, as defined under Rule 405 under the Securities Act of 1933, or the Securities Act. Under this shelf registration process, we may, from time to time, offer or sell any combination of the securities described in this prospectus in one or more offerings in amounts, at prices and on terms that we determine at the time of the offering. In addition, under this shelf registration process, the selling stockholders may from time to time sell up to an aggregate of 5,057,458 shares of our common stock in one or more offerings.

This prospectus provides you with a general description of the securities we or the selling stockholders may offer. Each time we or the selling stockholders offer securities under this registration statement, we will describe in a prospectus supplement, which will be delivered with this prospectus, specific information about the offering and the terms of the particular securities offered. The specific terms of the offered securities may vary from the general terms of the securities described in this prospectus, and accordingly the description of the securities contained in this prospectus is subject to, and qualified by reference to, the specific terms of the offered securities contained in the applicable prospectus supplement. The prospectus supplement also may add, update or change information contained in this prospectus. Before making an investment decision, you should read carefully both this prospectus and any prospectus supplement together with the documents incorporated by reference into this prospectus as described below under the heading Information Incorporated by Reference. For more detailed information about the securities, you can also read the exhibits to the registration statement. Those exhibits have been either filed with the registration statement or incorporated by reference to earlier SEC filings listed in the registration statement.

Neither we nor the selling stockholders have authorized anyone to provide you with information in addition to or different from that contained in this prospectus or any applicable prospectus supplement. We take no responsibility for, and can provide no assurance as to the reliability of, any information that others may provide. We and the selling stockholders will be offering to sell, and seeking offers to buy, the shares only in jurisdictions where offers and sales are permitted. You should not assume that the information in this prospectus, any applicable prospectus supplement or any free writing prospectus that we have prepared is accurate as of any date other than the date of those documents, and that any information in documents that we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus or any prospectus supplement or any sale of a security.

Unless the context otherwise requires, throughout this prospectus and any applicable prospectus supplement, the words REGENXBIO, we, or us refer to REGENXBIO Inc. and the term securities refers collectively to the securities registered hereunder or any combination thereof.

NAV, REGENXBIO and the REGENXBIO logos are our registered trademarks. Any other trademarks appearing in this prospectus are the property of their respective holders.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and other reports, proxy and information statements and other information with the SEC. Our SEC filings are available to the public on the SEC's website, www.sec.gov. You may also read and copy these materials at the public reference room maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of its public reference room.

We make available, free of charge, through our website at www.regenxbio.com our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and proxy and information statements, including any

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applicable amendments, filed or furnished pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, or the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Information on, or that can be accessed through, our website is not incorporated into this prospectus or other securities filings and is not a part of these filings. You may also obtain, free of charge, a copy of any of these documents (other than exhibits to these documents unless the exhibits are specifically incorporated by reference into these documents or referred to in this prospectus) by writing or calling us at:

REGENXBIO Inc.

Attention: General Counsel

9600 Blackwell Road, Suite 210

Rockville, MD 20850

(240) 552-8181

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INFORMATION INCORPORATED BY REFERENCE

The SEC allows us to incorporate by reference into this prospectus the information contained in documents that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we subsequently file with the SEC will automatically update and supersede this information. The following documents that we previously filed with the SEC (File No. 001-37553) are incorporated by reference herein:

our Annual Report on Form 10-K for the year ended December 31, 2017, filed with the SEC on March 6, 2018;

the information contained in our Definitive Proxy Statement on Schedule 14A for our 2018 Annual Meeting of Stockholders, filed with the SEC on April 12, 2018 to the extent incorporated by reference in Part III of our Annual Report on Form 10-K for the year ended December 31, 2017;

our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2018 and June 30, 2018, filed with the SEC on May 8, 2018 and August 8, 2018, respectively;

our Current Reports on Form 8-K filed with the SEC on January 4, 2018 (with respect to Item 8.01 only), January 9, 2018 (with respect to Item 1.01 only), January 11, 2018 (as amended on February 1, 2018), May 29, 2018 and June 11, 2018;

the description of our common stock contained in our Registration Statement on Form 8-A, filed on September 9, 2015, and all amendments and reports updating such description.

All reports and other documents that we subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the completion of the sales of the securities offered hereby, but excluding any information furnished to, rather than filed with, the SEC, will also be incorporated by reference into this prospectus and deemed to be part of this prospectus from the time of the filing of such reports and documents.

This prospectus and the applicable prospectus supplement may contain information that updates, modifies or is contrary to information herein or in one or more of the documents incorporated by reference in this prospectus. You should rely only on the information incorporated by reference or provided in this prospectus, the applicable prospectus supplement or any free writing prospectus that we have prepared that relates to a particular offering. We have not authorized anyone else to provide you with different or additional information. You should not assume that the information in this prospectus is accurate as of any date other than the date of this prospectus or the date of the documents incorporated by reference in this prospectus.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, each prospectus supplement and the information incorporated by reference in this prospectus and each prospectus supplement contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, which are subject to the safe harbor created by those sections for such statements. The words believe, may, will, estimate, continue, anticipate, design, intend, expect, could, predict, seek, should, would or the negative version of these words and similar expressions are intended to identify forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, strategy, short- and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties, assumptions and other important factors, including those described in this prospectus and the documents incorporated herein by reference, particularly in the sections of such documents titled Risk Factors and Management's Discussion and Analysis of Financial Condition and Results of Operations. In light of these risks, uncertainties, assumptions and other factors, the forward-looking events and circumstances discussed in this prospectus and the information incorporated by reference herein may not occur, and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. Given these uncertainties, you should not place undue reliance on these forward-looking statements.

Forward-looking statements include, but are not limited to, statements about:

the timing of enrollment, commencement and completion and the success of clinical trials conducted by us, our licensees and our partners;

the timing of commencement and completion and the success of preclinical studies conducted by us and our development partners;

the timely development and launch of new products;

the ability to obtain and maintain regulatory approval of our product candidates, and the labeling for any approved products;

the scope, progress, expansion and costs of developing and commercializing our product candidates;

our ability to obtain and maintain intellectual property protection for our product candidates and technology;

our anticipated growth strategies;

our expectations regarding competition;

the anticipated trends and challenges in our business and the market in which we operate;

our ability to attract or retain key personnel;

the size and growth of the potential markets for our product candidates and the ability to serve those markets;

the rate and degree of market acceptance of any of our product candidates;

our ability to establish and maintain development partnerships;

our expectations regarding our expenses and revenue;

our expectations regarding regulatory developments in the United States and foreign countries; and

the use or sufficiency of our cash and cash equivalents and needs for additional financing.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, level of activity, performance or achievements. Any forward-looking statement made by us in this prospectus and the information incorporated by reference herein speaks only as of the date of the respective document. Except as required by law, we disclaim any duty to update any of these forward-looking statements after the date such statements are made, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

You should read this prospectus and the documents contained or incorporated by reference herein completely and with the understanding that our actual future results may be materially different from what we expect.

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All written and verbal forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We caution investors not to rely too heavily on the forward-looking statements we make or that are made on our behalf.

In addition, you should refer to the section of this prospectus entitled **Risk Factors** as well as the **Risk Factors** disclosed in the documents we have incorporated by reference, for a discussion of other important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this prospectus will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties to which these forward-looking statements are subject, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all.

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We are a leading clinical-stage biotechnology company seeking to improve lives through the curative potential of gene therapy. Our gene therapy product candidates are designed to deliver genes to cells to address genetic defects or to enable cells in the body to produce therapeutic proteins that are intended to impact disease. Through a single administration, our gene therapy product candidates are designed to provide long-lasting effects, potentially significantly altering the course of disease and delivering improved patient outcomes.

Our product candidates all utilize viral vectors from our NAV Technology Platform, which consists of exclusive rights to AAV7, AAV8, AAV9 AAVrh10 and over 100 other novel adeno-associated virus, or AAV, gene delivery vectors. We and our third-party NAV technology platform licensees are applying the NAV Technology Platform in the development of a broad pipeline of product candidates in multiple therapeutic areas.

Our principal executive offices are located at 9600 Blackwell Road, Suite 210, Rockville, Maryland 20850 and our telephone number is (240) 552-8181.

RISK FACTORS

Investing in our securities involves risk. You should carefully consider the specific risks discussed or incorporated by reference into this prospectus and the applicable prospectus supplement, together with all the other information contained in this prospectus and the applicable prospectus supplement or incorporated by reference into this prospectus and the applicable prospectus supplement, including the risks, uncertainties and assumptions discussed under the caption "Risk Factors" in documents we file from time to time with the SEC, specifically our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and our Current Reports on Form 8-K. These risk factors may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future or by a prospectus supplement relating to a particular offering of our securities. These risks and uncertainties are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us, or that we currently view as immaterial, may also impair our business. If any of the risks or uncertainties described in our SEC filings or any prospectus supplement or any additional risks and uncertainties actually occur, our business, financial condition and results of operations could be materially and adversely affected. In that case, the trading price of our securities could decline and you might lose all or part of your investment.

RATIO OF EARNINGS TO FIXED CHARGES AND**RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table sets forth our ratio of earnings to fixed charges and ratio of earnings to combined fixed charges and preferred stock dividends for each of the periods indicated. For purposes of calculating the ratios below, earnings consist of income (loss) before income taxes plus fixed charges. Fixed charges consist of interest expense and an estimate of the interest portion of rental expense. The ratios below have been computed on a consolidated basis and should be read in conjunction with the consolidated financial statements and accompanying notes incorporated by reference into this prospectus.

	Six Months Ended	Year Ended December 31,			
	2017	2016	2015	2014	2013

**June 30,
2018**

Ratio of earnings to fixed charges ⁽¹⁾	301.2	N/A	N/A	N/A	N/A	N/A
Ratio of earnings to combined fixed charges and preferred stock dividends ⁽²⁾	301.2	N/A	N/A	N/A	N/A	N/A

- (1) Due to losses incurred for the years ended December 31, 2017, 2016, 2015, 2014 and 2013, the ratio coverage for each period was less than 1:1. We would have needed to generate additional earnings of \$73.2 million, \$63.4 million, \$22.8 million, \$4.0 million and \$5.4 million, respectively, to cover our fixed charges in such periods.
- (2) Due to losses incurred for the years ended December 31, 2017, 2016, 2015, 2014 and 2013, the ratio coverage for each period was less than 1:1. We would have needed to generate additional earnings of \$73.2 million, \$63.4 million, \$24.6 million, \$4.8 million and \$5.8 million, respectively, to cover our combined fixed charges and preferred stock dividends in such periods.

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Upon the closing of our initial public offering on September 22, 2015, all outstanding shares of our convertible preferred stock converted into shares of common stock. Since that date, we have no shares of preferred stock outstanding and, consequently, our ratio of earnings to combined fixed charges and preferred stock dividends for the six months ended June 30, 2018 and the years ended December 31, 2017 and 2016 is the same as our ratio of earnings to fixed charges for such periods.

USE OF PROCEEDS

Unless otherwise indicated in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities offered under this prospectus for general corporate purposes, which may include, but are not limited to, providing financing for clinical trials, capital expenditures, additions to working capital, development of our product candidate pipeline, general and administrative expenses or other corporate obligations. We may use a portion of the net proceeds to pay off outstanding indebtedness, if any, or acquire or invest in businesses, products or technologies. We will set forth in the applicable prospectus supplement our intended use for the net proceeds received from the sale of any securities. Pending the use of such proceeds, we intend to invest the net proceeds in short-term, investment grade, interest-bearing instruments.

We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders.

DESCRIPTION OF CAPITAL STOCK

The following description is a general summary of the terms of the shares of common stock and shares of preferred stock that we may issue. In addition, the selling stockholders may sell up to an aggregate of 5,057,458 shares of our common stock from time to time in one or more offerings. The description below and in any prospectus supplement does not include all of the terms of the shares of common stock or shares of preferred stock and should be read together with our restated certificate of incorporation and amended and restated bylaws, copies of which have been filed previously with the SEC. For more information on how you can obtain copies of our restated certificate of incorporation and amended and restated bylaws, see [Where You Can Find More Information](#).

Our authorized capital stock consists of 110,000,000 shares, with a par value of \$0.0001 per share, of which:

100,000,000 shares are designated as common stock; and

10,000,000 shares are designated as preferred stock.

As of August 3, 2018, we had outstanding 32,308,644 shares of common stock held of record by five stockholders. No shares of preferred stock were outstanding as of such date.

Common Stock

General

Subject to preferences that may apply to shares of preferred stock outstanding at the time, the holders of outstanding shares of our common stock are entitled to receive dividends out of assets legally available at the times and in the amounts that our board of directors may determine from time to time. Upon our liquidation, dissolution or winding-up, the holders of common stock are entitled to share ratably in all assets remaining after payment of all

liabilities and the liquidation preferences of any outstanding preferred stock. Holders of common stock have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to our common stock.

Voting Rights

Each holder of common stock is entitled to one vote per share on all matters submitted to a vote of stockholders. Notwithstanding the previous sentence, unless otherwise provided by law holders of common stock are not entitled to vote on any amendment to our restated certificate of incorporation that relates solely to the terms of any preferred stock if the holders of such preferred stock are entitled to vote on such amendment.

We have not provided for cumulative voting in the election of directors.

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The General Corporation Law of the State of Delaware, or the Delaware General Corporation Law, provides that holders of a class of stock will have the right to vote separately as a class on any proposal involving fundamental changes in the rights of the holders of that class of stock for proposals that adversely affect such holders.

Stock Exchange Listing

Our common stock is listed on The Nasdaq Global Select Market under the symbol RGNX.

Transfer Agent and Registrar

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

Preferred Stock

General

We may issue shares of preferred stock from time to time in one or more series, the terms of which may be determined at the time of issuance by our board of directors, without further action by our stockholders. Such series of preferred stock may include voting rights, preferences as to dividends and liquidation, conversion rights, redemption rights and sinking fund provisions. The shares of each series of preferred stock will have preferences, limitations and relative rights, including voting rights, identical with those of other shares of the same series and, except to the extent provided in the description of such series, of those of other series of preferred stock.

The issuance of preferred stock could decrease the amount of earnings and assets available for distribution to the holders of common stock or adversely affect the rights and powers, including voting rights, of the holders of common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of our company, which could depress the market price of our common stock.

The terms of any particular series of preferred stock will be described in the prospectus supplement relating to the offering of shares of such series of preferred stock, including, where applicable:

the series designation, stated value and liquidation preference of such preferred stock;

the number of shares offered;

the offering price;

the dividend rate or rates (or method of calculation), the date or dates from which dividends shall accrue, and whether such dividends shall be cumulative or noncumulative and, if cumulative, the dates from which dividends shall commence to cumulate;

any redemption or sinking fund provisions;

the amount that shares of such series shall be entitled to receive in the event of our liquidation, dissolution or winding-up;

the terms and conditions, if any, on which shares of such series shall be convertible or exchangeable for shares of our stock of any other class or classes, or other series of the same class;

the voting rights, if any, of shares of such series in addition to those set forth under the caption entitled, **Voting Rights** below;

the status as to reissuance or sale of shares of such series redeemed, purchased or otherwise reacquired, or surrendered to us on conversion or exchange;

the conditions and restrictions, if any, on the payment of dividends or on the making of other distributions on, or the purchase, redemption or other acquisition by us, of our common stock or of any other class of our stock ranking junior to the shares of such series as to dividends or upon liquidation (including, but not limited to, at such times as there are arrearages in the payment of dividends or sinking fund installments);

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the conditions and restrictions, if any, on the creation of indebtedness, or on the issue of any additional stock ranking on a parity with or prior to the shares of such series as to dividends or upon liquidation; and

any other rights, preferences, privileges, limitations and restrictions of such preferred stock.

If we issue shares of preferred stock under this prospectus and any related prospectus supplement, the shares will be fully paid and non-assessable and will not have, or be subject to, any preemptive or similar rights.

Voting Rights

The Delaware General Corporation Law provides that the holders of shares of preferred stock will have the right to vote separately as a class on any proposal involving fundamental changes in the rights of holders of that preferred stock. This right is in addition to any voting rights that may be provided for in the applicable certificate of designation.

Transfer Agent and Registrar

The transfer agent and registrar for any series of preferred stock will be set forth in the applicable prospectus supplement.

Effects on Common Stock

Our issuance of preferred stock could decrease the amount of earnings and assets available for distribution to the holders of common stock or could adversely affect the rights and powers, including voting rights, of the holders of common stock. The issuance of preferred stock could have the effect of decreasing the market price of our common stock.

Anti-Takeover Effects of Delaware Law and Our Restated Certificate of Incorporation and Amended and Restated Bylaws

Delaware law, our restated certificate of incorporation and our amended and restated bylaws contain provisions that could make it more difficult to effect an acquisition of us by means of a tender offer, proxy contest or otherwise, or to remove our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish, or could deter, transactions that stockholders otherwise consider to be in our or their best interest, including transactions which provide for payment of a premium over the market price for our shares.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unsolicited or unfriendly proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Delaware Business Combination Statute

We are subject to Section 203 of the Delaware General Corporation Law. Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the time of the transaction in which the person or entity became an interested stockholder, unless:

prior to that time, either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder is approved by the board of directors of the corporation;

upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the outstanding voting stock of the corporation, excluding for this purpose shares owned by persons who are directors and also officers of the corporation and by specified employee benefit plans; or

at or after such time, the business combination is approved by the board of directors of the corporation and by the affirmative vote, and not by written consent, of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

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For the purposes of Section 203, a "business combination" is broadly defined to include:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder, subject to limited exceptions;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

An "interested stockholder" is a person who, together with affiliates and associates, owns or within the immediately preceding three years did own 15% or more of the corporation's voting stock.

Undesignated Preferred Stock

The ability of our board of directors, without action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with voting or other rights or preferences as designated by our board of directors could impede the success of any attempt to change control of us. The existence of authorized but unissued shares of preferred stock may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Stockholder Action by Written Consent; Stockholder Meetings

Our restated certificate of incorporation and amended and restated bylaws eliminate the right of stockholders to act by written consent without a meeting. As a result, a holder controlling a majority of our capital stock would not be able to amend our bylaws or remove directors without holding a meeting of our stockholders called in accordance with our amended and restated bylaws. Our amended and restated bylaws provide that a special meeting of stockholders may be called only by our chairman of the board or president, or by a resolution adopted by a majority of our board of directors. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of our capital stock to take any action, including the removal of directors.

Requirements for Advance Notification of Stockholder Nominations and Proposals

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals to be brought before a stockholder meeting and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors. These provisions could have the effect of delaying until the next stockholder meeting stockholder actions that are favored by

the holders of a majority of our outstanding voting securities.

Staggered Board

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. This system of electing and removing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Removal of Directors

Our restated certificate of incorporation provides that no member of our board of directors may be removed from office by our stockholders except for cause and, in addition to any other vote required by law, upon the approval of holders of at least two-thirds of the total voting power of all of our outstanding voting stock then entitled to vote in the election of directors.

Board of Directors Vacancies

Our restated certificate of incorporation and amended and restated bylaws authorize our board of directors to fill vacant directorships. In addition, the number of directors constituting our board of directors is set only by resolution adopted by a majority vote of our entire board of directors. These provisions will prevent a stockholder from increasing the size of our board of directors and gaining control of our board of directors by filling the resulting vacancies with its own nominees.

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Stockholders Not Entitled to Cumulative Voting

Our restated certificate of incorporation does not permit stockholders to cumulate their votes in the election of directors. Accordingly, the holders of a majority of the outstanding shares of our common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they choose, other than any directors that holders of our preferred stock may be entitled to elect.

Amendment of Charter Provisions

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock, would require approval by holders of at least two-thirds of the total voting power of all of our outstanding voting stock.

The provisions of Delaware law, our restated certificate of incorporation and our amended and restated bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board and management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Choice of Forum

Our restated certificate of incorporation provides that the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) will be the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our restated certificate of incorporation or amended and restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Additionally, if the subject matter of any action within the scope of the preceding sentence is filed in a court other than a court located with the State of Delaware, or is a foreign action (as defined in our restated certificate of incorporation), in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the foreign action as agent for such stockholder. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable.

Indemnification

Our restated certificate of incorporation includes provisions that limit the liability of our directors for monetary damages for breach of their fiduciary duty as directors, except for liability that cannot be eliminated under the Delaware General Corporation Law. Accordingly, our directors will not be personally liable for monetary damages for breach of their fiduciary duty as directors, except for liabilities:

for any breach of the 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 unlawful payments of dividends or unlawful stock repurchases or redemptions, as provided under Section 174 of the Delaware General Corporation Law; or

for any transaction from which the director derived an improper personal benefit.

Any amendment or repeal of these provisions will require the approval of the holders of shares representing at least two-thirds of the shares entitled to vote in the election of directors, voting as one class.

Our restated certificate of incorporation and amended and restated bylaws also provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law. Our restated certificate of incorporation and amended and restated bylaws also permit us to purchase insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or

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her actions as our officer, director, employee or agent, regardless of whether Delaware law would permit indemnification. We have entered into separate indemnification agreements with our directors, including affiliates of the selling stockholders, and officers that require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors and to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified. We believe that the limitation of liability provision in our restated certificate of incorporation and the indemnification agreements facilitate our ability to continue to attract and retain qualified individuals to serve as directors and officers. The limitation of liability and indemnification provisions in our restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit us and our stockholders. A stockholder's investment may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of shares of our common stock, shares of our preferred stock or debt securities. The following description sets forth certain general terms and provisions of the warrants that we may offer pursuant to this prospectus. The particular terms of the warrants and the extent, if any, to which the general terms and provisions may apply to the warrants so offered will be described in the applicable prospectus supplement.

Warrants may be issued independently or together with other securities and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants and will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

A copy of the forms of the warrant agreement and the warrant certificate, if any, relating to any particular issue of warrants will be filed with the SEC each time we issue warrants, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the warrant agreement and the related warrant certificate, if any, see [Where You Can Find More Information](#).

Stock Warrants

The prospectus supplement relating to a particular issue of warrants to issue shares of our common stock or shares of our preferred stock will describe the terms of the common share warrants and preferred share warrants, including the following:

the title of the warrants;

the offering price for the warrants, if any;

the aggregate number of the warrants;

the designation and terms of the shares of common stock or shares of preferred stock that may be purchased upon exercise of the warrants;

the terms for changes or adjustments to the exercise price of the warrants;

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

if applicable, the date from and after which the warrants and any securities issued with the warrants will be separately transferable;

the number of shares of common stock or shares of preferred stock that may be purchased upon exercise of a warrant and the price at which the shares may be purchased upon exercise;

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

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

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if applicable, a discussion of material U.S. federal income tax considerations;

anti-dilution provisions of the warrants, if any;

redemption or call provisions, if any, applicable to the warrants;

information with respect to book-entry procedures;

identity of the warrant agent; and

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

Debt Warrants

The prospectus supplement relating to a particular issue of warrants to issue debt securities will describe the terms of those warrants, including the following:

the title of the warrants;

the offering price for the warrants, if any;

the aggregate number of the warrants;

the designation and terms of the debt securities purchasable upon exercise of the warrants;

the terms for changes or adjustments to the exercise price of the warrants;

if applicable, the designation and terms of the debt securities that the warrants are issued with and the number of warrants issued with each debt security;

if applicable, the date from and after which the warrants and any debt securities issued with them will be separately transferable;

the principal amount of debt securities that may be purchased upon exercise of a warrant and the price at which the debt securities may be purchased upon exercise;

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

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

whether the warrants represented by the warrant certificates or debt securities that may be issued upon exercise of the warrants will be issued in registered or bearer form;

information relating to book-entry procedures, if any;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

if applicable, a discussion of material U.S. federal income tax considerations;

anti-dilution provisions of the warrants, if any;

redemption or call provisions, if any, applicable to the warrants;

information with respect to book-entry procedures;

identity of the warrant agent; and

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any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

Exercise of Warrants

Each holder of a warrant will be entitled to purchase, at the exercise price set forth in the applicable prospectus supplement, the number of shares of common stock, shares of preferred stock or the principal amount of debt securities being offered. Holders may exercise warrants at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants are void. Holders may exercise warrants as set forth in the prospectus supplement relating to the warrants being offered.

Until a holder exercises the warrants to purchase our shares of common stock, shares of preferred stock or debt securities, the holder will not have any rights as a holder of our shares of common stock, shares of preferred stock or debt securities, as the case may be, by virtue of ownership of warrants, including, with respect to equity warrants, any right to vote, consent, receive dividends, or receive notice as stockholders with respect to any meeting of the stockholders for the election of directors or any other matter and with respect to debt warrants, any right to receive payment of principal or premium, if any, or interest on the debt securities purchasable upon exercise.

DESCRIPTION OF DEBT SECURITIES

We may issue, separately or together with, or upon conversion, exercise or exchange of other securities, debt securities, including debentures, notes or other evidences of indebtedness as set forth in the applicable prospectus supplement. The debt securities will be issued under one or more separate indentures between us and a trustee to be identified in an accompanying prospectus supplement. The following is a general description of the terms of debt securities we may issue from time to time. Particular terms of any debt securities we offer will be described in the prospectus supplement relating to such debt securities.

Because this section is a summary, it does not describe every aspect of any debt securities we may issue or the indenture governing any such debt securities. Particular terms of any debt securities we offer and the applicable indenture will be described in the prospectus supplement relating to such offering, and we urge you to read such description in its entirety, because it, and not this description, will define the rights of holders of such debt securities.

A prospectus supplement will describe the particular terms of any series of debt securities we may issue, including some or all of the following:

the designation or title of the series of debt securities;

the aggregate principal amount of the series of debt securities, the denominations in which the offered debt securities will be issued and whether the offering may be reopened for additional securities of that series and on what terms;

the percentage of the principal amount at which the series of debt securities will be offered;

the date or dates on which principal will be payable;

the rate or rates (which may be either fixed or variable) and/or the method of determining such rate or rates of interest, if any;

the date or dates from which any interest will accrue, or the method of determining such date or dates, and the date or dates on which any interest will be payable;

the terms for redemption, extension or early repayment, if any;

the currencies in which the series of debt securities are issued and payable;

whether the securities are to be guaranteed and, if so, the guarantor or guarantors and the terms of the guarantees;

whether the amount of payments of principal, interest or premium, if any, on a series of debt securities will be determined with reference to an index, formula or other method and how these amounts will be determined;

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the place or places of payment, transfer, conversion and/or exchange of the debt securities;

the provision for any sinking fund;

any restrictive covenants;

events of default;

whether the series of debt securities are issuable in definitive or global form or in definitive form only upon satisfaction of certain conditions;

any provisions for legal defeasance or covenant defeasance;

whether and under what circumstances we will pay additional amounts in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem the debt securities rather than pay the additional amounts (and the terms of this option);

any provisions for convertibility or exchangeability of the debt securities into or for any other securities;

any listing of the debt securities on any securities exchange;

any paying agents, authenticating agents, security registrars or other agents for debt securities, if other than the trustee;

any provisions relating to any security provided for the debt securities, including any provisions regarding the circumstances under which collateral may be released or substituted;

if applicable, a discussion of certain U.S. federal income tax considerations, including those related to original issue discount, if applicable; and

any other material terms.

Unless the prospectus supplement states otherwise, principal, interest and premium, if any, will be paid by us in immediately available funds.

General

Any debt securities we issue will be governed by a document called an indenture, the form of which is filed as an exhibit to the registration statement of which this prospectus forms a part. An indenture is a contract between us and a financial institution acting as trustee on behalf of the holders of the debt securities, and is subject to and governed by the Trust Indenture Act of 1939. The trustee has two main roles. First, the trustee can enforce holders' rights against us if we default. There are some limitations on the extent to which the trustee acts on holders' behalf, described in the second paragraph under Description of Debt Securities Events of Default. Second, the trustee performs certain administrative duties, such as sending interest and principal payments to holders.

The indenture provides that any debt securities proposed to be sold under this prospectus and the applicable prospectus supplement, including any debt securities issuable upon conversion or exchange of other offered securities, which we refer to as underlying debt securities, may be issued under the indenture in one or more series.

For purposes of this prospectus, any reference to the payment of principal of, or interest or premium, if any, on, debt securities will include additional amounts if required by the terms of the debt securities.

The indenture also provides that there may be more than one trustee thereunder, each with respect to one or more different series of securities issued thereunder. In the event that there is more than one trustee under the indenture, the powers and trust obligations of each trustee described in this prospectus will extend only to the one or more series of debt securities for which it is trustee. If two or more trustees are acting under an indenture, then the debt securities for which each trustee is acting would be treated as if issued under separate indentures.

We have the ability to issue debt securities with terms different from those of debt securities previously issued and, without the consent of the holders thereof, to reopen a previous issue of a series of debt securities and issue additional debt securities of that series unless the reopening is restricted when that series is created.

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Conversion and Exchange

If any debt securities are convertible into or exchangeable for other securities, the related prospectus supplement will explain the terms and conditions of the conversion or exchange, including the conversion price or exchange ratio (or the calculation method), the conversion or exchange period (or how the period will be determined), if conversion or exchange will be mandatory or at the option of the holder or us, provisions for adjusting the conversion price or the exchange ratio and provisions affecting conversion or exchange in the event of the redemption of the underlying debt securities. These terms may also include provisions under which the number or amount of other securities to be received by the holders of the debt securities upon conversion or exchange would be calculated according to the market price of the other securities as of a time stated in the prospectus supplement.

Payment and Paying Agents

Unless otherwise indicated in a prospectus supplement, the provisions described in this paragraph will apply to the debt securities. Payment of interest on a debt security on any interest payment date will be made to the person in whose name the debt security is registered at the close of business on the regular record date. Payment on debt securities of a particular series will be payable at the office of a paying agent or paying agents designated by us. Unless otherwise designated in the applicable prospectus supplement, the trustee will be designated as our paying agent.

We may also name any other paying agents in a prospectus supplement. We may designate additional paying agents, change paying agents or change the office of any paying agent. However, we will be required to maintain a paying agent in each place of payment for the debt securities of a particular series.

All moneys paid by us to a paying agent for payment on any debt security that remain unclaimed for a period of two years after the principal, premium or interest has become due and payable and was deposited with the paying agent will be paid to us, subject to any applicable abandoned property law.

Global Securities

The debt securities of any series may be represented, in whole or in part, by one or more global securities. Each global security will:

be registered in the name of a depository, or its nominee, that we will identify in a prospectus supplement;

be deposited with the trustee as custodian for the depository; and

bear any required legends.

No global security may be exchanged in whole or in part for debt securities registered in the name of any person other than the depository or any nominee unless:

the depositary has notified us that it is unwilling or unable to continue as depositary or has ceased to be qualified to act as depositary;

an event of default has occurred and is continuing with respect to the debt securities of the applicable series; or

any other circumstance described in a prospectus supplement has occurred permitting or requiring the issuance of any such security.

As long as the depositary, or its nominee, is the registered owner of a global security, the depositary or nominee will be considered the absolute owner of the debt securities represented by the global security for all purposes under the indenture. Participants in the depositary have no rights under the indenture with respect to the global securities held on their behalf by the depositary.

Payments on a global security will be made to the depositary or its nominee as the holder of the global security. Some jurisdictions have laws that require that certain purchasers of securities take physical delivery of such securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

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Ownership of beneficial interests in a global security are required to be shown on and effected through the book entry system maintained by the depository (or its nominee), with respect to participants' interests, or any participant, with respect to interests of persons held by participants on their behalf.

Payments, transfers and exchanges relating to beneficial interests in a global security will be subject to policies and procedures of the depository and must be effected through the depository's (or its nominee's) book entry system. The depository's policies and procedures may change from time to time. We and the trustee have no responsibility or liability for the depository's or any participant's records with respect to beneficial interests in a global security.

Events of Default

Unless we indicate otherwise in a prospectus supplement with respect to a particular series of debt securities, the following will be events of default for any series of debt securities under the indenture:

we do not pay the principal of, or any premium on, a debt security of the series on its due date;

we do not pay interest on a debt security of the series within 30 days of its due date;

any guarantee with respect to the particular series of debt securities ceases to be of full force and effect;

we (or any guarantor) remain in breach of a covenant in respect of debt securities of the series for 60 days after we (or the applicable guarantor) receive a written notice of default from the trustee or holders of at least 25% of the aggregate principal amount of debt securities of the series specifying the default and demanding that it be remedied;

we file for bankruptcy or certain other events of bankruptcy, insolvency or reorganization occur; and

any other event of default occurs in respect of debt securities of the series described in the prospectus supplement.

The trustee may withhold notice to the holders of debt securities of any default, except in the payment of principal, premium or interest, if it considers the withholding of notice to be in the best interests of the holders.

Remedies if an Event of Default Occurs

If an event of default has occurred and has not been cured or waived, the trustee or the holders of not less than 25% in aggregate principal amount of the debt securities of the affected series may declare the unpaid principal, premium, if any, and accrued and unpaid interest of all the debt securities of that series to be due and immediately payable. This is called a declaration of acceleration. A declaration of acceleration may be canceled by the holders of a majority in principal amount of the debt securities of the affected series if the default is cured or waived and certain other conditions are satisfied.

Except in cases of default, the trustee typically is not required to take any action under an indenture at the request of any holders unless the holders offer the trustee reasonable protection from expenses and liability, or an indemnity. If reasonable indemnity is provided, the holders of a majority in aggregate principal amount of the outstanding debt securities of the relevant series may direct the time, method and place of conducting any lawsuit or other formal legal action seeking any remedy available to the trustee.

Before a holder is allowed to bring its own lawsuit or other formal legal action or take other steps to enforce its rights or protect its interests relating to any debt securities, the following must occur:

the holder must give the trustee written notice that an event of default has occurred and remains uncured;

the holders of at least 25% in aggregate principal amount of all outstanding debt securities of the relevant series must make a written request that the trustee take action because of the default and must offer reasonable indemnity to the trustee against the cost and other liabilities of taking that action;

the trustee must not have taken action for 60 days after receipt of the above notice and offer of indemnity; and

the holders of a majority in aggregate principal amount of the debt securities must not have given the trustee a direction inconsistent with the above notice during that 60-day period.

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However, a holder is entitled at any time to bring a lawsuit for the payment of money due on its debt securities on or after the due date. Each year, we will furnish to each trustee a written statement of certain of our officers certifying that to their knowledge we are in compliance with the indenture and the debt securities, or else specifying any default.

Waiver of Default

The holders of a majority in aggregate principal amount of the relevant series of debt securities may waive a default or event of default for such series of debt securities. If this happens, the default will be treated as if it had not occurred.

Merger or Consolidation

Under the terms of an indenture, we may be permitted to consolidate or merge with another entity. We may also be permitted to sell all or substantially all of our assets to another entity. However, typically we may not take any of these actions unless all the following conditions are met:

if we do not survive such transaction or we convey, transfer or lease our properties and assets substantially as an entirety, the acquiring company must be a corporation, limited liability company, partnership or trust, or other corporate form, organized under the laws of the United States, any state of the United States or the District of Columbia, and such company must agree to be legally responsible for our debt securities;

alternatively, we must be the surviving company;

immediately after the transaction no event of default, or event that, after notice or lapse of time or both, would constitute an event of default, will have occurred or be continuing;

we must deliver certain certificates and documents to the trustee; and

we must satisfy any other requirements specified in the prospectus supplement relating to a particular series of debt securities.

Modification or Waiver

Unless we indicate otherwise in a prospectus supplement, there are three types of changes we may make to an indenture and the debt securities issued thereunder, as described below.

Changes Requiring Approval of Holders

The following is a list of the types of changes that require specific approval of all of the holders of debt securities:

reduce the percentage in principal amount of debt securities of any series whose holders must consent to an amendment, supplement or waiver;

change the stated maturity of the principal of or the time for payment of interest on any debt security;

reduce the principal amount or the rate of interest or any premium payable upon the redemption of any debt security;

change the payment office where any payment on a debt security is payable;

change the currency in which any debt security is payable;

impair the right to bring suit to enforce payment of principal, premium, if any, or interest on or after the maturity of a debt security or, in the case of redemption, on or after the redemption date;

modify the percentage of holders of debt securities whose consent is needed to supplement the indenture or amend a series of debt securities, waive compliance with certain covenants or waive defaults or events of default, other than to increase such percentage or to provide that certain other provisions of the indenture cannot be modified except with the consent of all affected holders;

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change in any manner adverse to the interests of the holders the terms and conditions of the obligations of any guarantors in respect of the due and punctual payment of the principal thereof, premium, if any, and interest thereon, or any additional amounts or any sinking fund or analogous payments; and

impair the rights of holders with respect to any series of debt securities that are exchangeable or convertible to receive payment or delivery of any consideration due upon the conversion or exchange.

The holders of a majority in aggregate principal amount of all of the series of debt securities affected by a certain action, voting together as one class for this purpose, may amend or supplement the indenture or waive our compliance obligations with respect to some of our covenants in that indenture. However, we cannot obtain a waiver of a payment default or of any of the matters covered by the bullet points included above.

Changes Not Requiring Approval

Clarifications and certain other changes that would not adversely affect holders of the outstanding debt securities in any material respect, including the addition of covenants and guarantees, do not require any vote by the holders of outstanding debt securities. We also do not need to obtain any approval from holders to make any change that affects only debt securities to be issued under the indenture after the change takes effect or any changes that are required to comply with the requirements of the SEC or the Trust Indenture Act of 1939.

Further Details Concerning Voting

When taking a vote on proposed changes to the indenture and the debt securities, each holder will be entitled to one vote for each \$1,000 in principal amount of the securities of such series.

Debt securities will not be eligible to vote if they have been fully defeased as described under **Description of Debt Securities** **Defeasance** **Legal Defeasance**.

We generally will be entitled to set any day as a record date for the purpose of determining the holders of outstanding debt securities that are entitled to vote or take other action under the indenture. Any record date must not be more than 90 calendar days nor less than 20 calendar days prior to the proposed date of such vote or action. If we set a record date for a vote or other action to be taken by holders of one or more series, that vote or action may be taken only by persons who are holders of outstanding debt securities of those series on the record date and must be taken within 11 months following the record date.

Book-entry and other indirect holders will need to consult their banks or brokers for information on how approval may be granted or denied if we seek to change the indenture or the debt securities or request a waiver.

Defeasance

The following provisions will be applicable to each series of debt securities unless we state in the applicable prospectus supplement that the provisions of covenant defeasance and legal defeasance will not be applicable to that series.

Covenant Defeasance

We can make the deposit described below and be released from some of the restrictive covenants in the indenture under which the particular series was issued. This is called **covenant defeasance**. In that event, the holders would lose

the protection of those restrictive covenants but would gain the protection of having money and government securities set aside in trust to repay holders' debt securities. In order to achieve covenant defeasance, we must do the following:

we must deposit in trust for the benefit of all holders of such debt securities money, non-callable U.S. government securities, or a combination thereof that will generate enough cash to pay and discharge the principal, premium, if any, and interest on the debt securities on their various due dates;

we must deliver to the trustee a legal opinion of our counsel confirming that, under current U.S. federal income tax law, we may make the above deposit without causing the holders to be taxed on the debt securities any differently than if we did not make the deposit and repaid the debt securities ourselves at maturity; and

we must deliver to the trustee certain documentation stating that all conditions precedent to covenant defeasance have been complied with.

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If we accomplish covenant defeasance, holders can still look to us for repayment of the debt securities if there were a shortfall in the trust deposit or the trustee is prevented from making payment. In fact, if one of the remaining events of default occurs (such as our bankruptcy) and the debt securities become immediately due and payable, there might be a shortfall. Depending on the event causing the default, holders may not be able to obtain payment of the shortfall.

Legal Defeasance

We can make the deposit described below and be legally released from all payment and other obligations on the debt securities of a particular series, which we refer to as legal defeasance. In that event, we and any guarantor shall have been deemed to have been discharged from obligations with respect to such debt securities and related guarantees, respectively. In order to achieve legal defeasance, we must do the following:

we must deposit in trust for the benefit of all holders of such debt securities money, non-callable U.S. government securities, or a combination thereof that will generate enough cash to pay and discharge the principal, premium, if any, and interest on the debt securities on their various due dates;

we must deliver to the trustee a legal opinion confirming that there has been a change in current U.S. federal tax law or an Internal Revenue Service ruling that allows us to make the above deposit without causing the holders to be taxed on the debt securities any differently than if we did not make the deposit and repaid the debt securities ourselves at maturity; and

we must deliver to the trustee a legal opinion and officers' certificate stating that all conditions precedent to legal defeasance have been complied with.

If we accomplish legal defeasance, holders would have to rely solely on the trust deposit for repayment of the debt securities. Holders could not look to us for repayment in the unlikely event of any shortfall. Conversely, the trust deposit would most likely be protected from claims of our lenders and other creditors if we ever became bankrupt or insolvent.

Resignation of Trustee

Each trustee may resign or be removed with respect to one or more series of debt securities provided that a successor trustee is appointed to act with respect to such series. In the event that two or more persons are acting as trustee with respect to different series of debt securities, each of the trustees will be a trustee of a trust separate and apart from the trust administered by any other trustee.

Trustee

We intend to name the indenture trustee for each series of debt securities in the related prospectus supplement.

Certain Considerations Relating to Foreign Currencies

Debt securities denominated or payable in foreign currencies may entail significant risks. These risks include the possibility of significant fluctuations in the foreign currency markets, the imposition or modification of foreign exchange controls and potential illiquidity in the secondary market. These risks will vary depending upon the currency

or currencies involved and will be described in the applicable prospectus supplement.

Governing Law

The indenture and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York.

DESCRIPTION OF RIGHTS

The following is a general description of the terms of the rights we may issue from time to time unless we provide otherwise in the applicable prospectus supplement. Particular terms of any rights we offer will be described in the prospectus supplement relating to such rights.

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General

We may issue rights to purchase common stock, preferred stock, debt securities or units. Rights may be issued independently or together with other securities and may or may not be transferable by the person purchasing or receiving the rights. In connection with any rights offering to our stockholders, we may enter into a standby underwriting, backstop or other arrangement with one or more underwriters or other persons pursuant to which such underwriters or other persons would purchase any offered securities remaining unsubscribed for after such rights offering. In connection with a rights offering to our stockholders, we would distribute certificates evidencing the rights and a prospectus supplement to our stockholders on or about the record date that we set for receiving rights in such rights offering.

The applicable prospectus supplement will describe the following terms of any rights we may issue, including some or all of the following:

the title and aggregate number of the rights;

the subscription price or a formula for the determination of the subscription price for the rights and the currency or currencies in which the subscription price may be payable;

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

the number or a formula for the determination of the number of the rights issued to each stockholder;

the extent to which the rights are transferable;

in the case of rights to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one right;

in the case of rights to purchase common stock or preferred stock, the type of stock and number of shares of stock purchasable upon exercise of one right;

the date on which the right to exercise the rights will commence, and the date on which the rights will expire (subject to any extension);

if applicable, the minimum or maximum amount of the rights that may be exercised at any one time;

the extent to which such rights include an over-subscription privilege with respect to unsubscribed securities;

if applicable, the procedures for adjusting the subscription price and number of shares of common stock or preferred stock purchasable upon the exercise of each right upon the occurrence of certain events, including stock splits, reverse stock splits, combinations, subdivisions or reclassifications of common stock or preferred stock;

the effect on the rights of any merger, consolidation, sale or other disposition of our business;

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

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

the terms of the securities issuable upon exercise of the rights;

if applicable, the material terms of any standby underwriting, backstop or other purchase arrangement that we may enter into in connection with the rights offering;

if applicable, a discussion of certain U.S. federal income tax considerations; and

any other terms of the rights, including terms, procedures and limitations relating to the exchange and exercise of the rights.

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Exercise of Rights

Each right will entitle the holder to purchase for cash or other consideration such shares of stock or principal amount of securities at the subscription price as shall in each case be set forth in, or be determinable as set forth in, the prospectus supplement relating to the rights offered thereby. Rights may be exercised as set forth in the applicable prospectus supplement beginning on the date specified therein and continuing until the close of business on the expiration date set forth in the prospectus supplement relating to the rights offered thereby. After the close of business on the expiration date, unexercised rights will become void.

Upon receipt of payment and a subscription certificate properly completed and duly executed at the corporate trust office of the subscription agent or any other office indicated in the prospectus supplement, we will, as soon as practicable, forward the securities purchasable upon such exercise. If less than all of the rights represented by such subscription certificate are exercised, a new subscription certificate will be issued for the remaining rights. If we so indicate in the applicable prospectus supplement, holders of the rights may surrender securities as all or part of the exercise price for rights.

We may determine to offer any unsubscribed offered securities directly to stockholders, persons other than stockholders, to or through agents, underwriters or dealers or through a combination of such methods, including pursuant to standby underwriting, backstop or other arrangements, as set forth in the applicable prospectus supplement.

Prior to exercising their rights, holders of rights will not have any of the rights of holders of the securities purchasable upon subscription, including, in the case of rights 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 any voting rights or, in the case of rights to purchase debt securities, the right to receive principal, premium, if any, or interest payments, on the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture.

DESCRIPTION OF UNITS

We may issue units comprising one or more securities described in this prospectus in any combination. The following description sets forth certain general terms and provisions of the units that we may offer pursuant to this prospectus. The particular terms of the units and the extent, if any, to which the general terms and provisions may apply to the units so offered will be described in the applicable prospectus supplement.

Each unit will be issued so that the holder of the unit also is the holder of each security included in the unit. Thus, the unit will have the rights and obligations of a holder of each included security. Units will be issued pursuant to the terms of a unit agreement, which may provide that the securities included in the unit may not be held or transferred separately at any time or at any time before a specified date. A copy of the forms of the unit agreement and the unit certificate relating to any particular issue of units will be filed with the SEC each time we issue units, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the unit agreement and the related unit certificate, see [Where You Can Find More Information](#).

The prospectus supplement relating to any particular issuance of units will describe the terms of those units, including, to the extent applicable, the following:

the designation and terms of the units and the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;

any provision for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units; and

whether the units will be issued in fully registered or global form.

SELLING STOCKHOLDERS

The following table sets forth the identity of each of the selling stockholders, the number of shares of our common stock and the percentage of shares of our common stock beneficially owned by each of the selling stockholders prior to this offering, the number of shares that may be offered under this prospectus by each of the selling stockholders, and the number of shares of our common stock and the percentage of our common stock to be beneficially owned by each of the selling stockholders after the completion of this offering, assuming that all shares offered hereunder are sold as contemplated herein. The number of shares in the column Maximum number of shares that may be offered represents all of the shares that each of the selling stockholders may offer under this prospectus.

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Beneficial ownership is determined in accordance with SEC rules. The information is not necessarily indicative of beneficial ownership for any other purpose. In general, under these rules a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares voting power or investment power with respect to such security. A person is also deemed to be a beneficial owner of a security if that person has the right to acquire beneficial ownership of such security within 60 days. To our knowledge, except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock beneficially owned by that person.

For purposes of the table below, t