

ATLAS AIR WORLDWIDE HOLDINGS INC

Form S-3

June 05, 2009

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As filed with the Securities and Exchange Commission on June 4, 2009

Registration No. 333-

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

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

Atlas Air Worldwide Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware

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

13-4146982

(I.R.S. Employer Identification No.)

**2000 Westchester Avenue
Purchase, New York 10577
(914) 701-8000**

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

**Adam R. Kokas, Esq.
Senior Vice President, General Counsel & Secretary
Atlas Air Worldwide Holdings, Inc.
2000 Westchester Avenue
Purchase, New York 10577-2543
Telephone: (914) 701-8000**

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

Copies of all communications, including communications sent to agent for service, should be sent to:

**David A. Fine, Esq.
Ropes & Gray LLP
One International Place
Boston, MA 02110-2624
Telephone: (617) 951-7473**

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 Securities and Exchange Commission pursuant to Rule 462(e) under the Securities Act, check the following box:

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Debt Securities			
Preferred stock, par value \$1 per share(3)			
Common stock, par value \$0.01 per share(3)(4)			
Total	\$500,000,000	\$500,000,000(5)	\$27,900(6)

(1) If any debt securities are issued with an original issue discount, then the offering price of those debt securities shall be an amount that will result in an aggregate initial offering price not to exceed \$500,000,000, less the dollar amount of any registered securities previously issued.

(2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(o). In no event will the aggregate initial offering price of all securities offered from time to time pursuant to the prospectus included as part of this Registration Statement exceed \$500,000,000 or if any securities are issued in any foreign currency units, the U.S. dollar equivalents of \$500,000,000.

(3) Also includes an indeterminate number of shares of preferred stock or common stock as may be issued upon conversion of or in exchange for convertible or exchangeable debt securities or preferred stock. No separate consideration will be received for any shares of preferred stock or common stock so issued upon conversion or exchange.

(4) Includes associated rights to purchase shares of common stock, which purchase rights are not currently separable from the shares of common stock and are not currently exercisable. The value, if any, attributable to the purchase rights to be offered is included in the proposed offering price of the common stock.

- (5) The proposed maximum aggregate offering price for each class of securities to be registered is not specified pursuant to General Instruction II.D. of Form S-3.
- (6) Calculated in accordance with Rule 457(o).

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 that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this 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 JUNE 4, 2009

PROSPECTUS

\$500,000,000

**Debt Securities
Preferred Stock
Common Stock**

Atlas Air Worldwide Holdings, Inc. may, from time to time, offer and sell in one or more offerings:

Unsecured debt securities consisting of senior or subordinated notes and debentures and/or other unsecured evidences of indebtedness in one or more series, which may be convertible or exchangeable for our common stock or preferred stock;

Shares of preferred stock, in one or more series, which may be convertible or exchangeable for our common stock or debt securities; and

Shares of our common stock;

together or separately, in amounts, at prices and on terms that we will determine at the time of such offering. The specific terms of any of the securities we offer will be provided in one or more supplements to this prospectus.

We may offer and sell the securities through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. The prospectus supplement for each offering will describe in detail the plan of distribution for that offering and will set forth the names of any underwriters, dealers and agents involved in the offering and any applicable fees, commissions or discount arrangements.

Our common stock is listed on The NASDAQ Global Select Market under the ticker symbol AAWW. Each prospectus supplement will indicate if the securities offered thereby will be listed on any securities exchange.

You should read this entire prospectus, the documents that are incorporated by reference into this prospectus and any applicable prospectus supplement carefully before you invest in our securities. This prospectus may not be used to sell securities unless accompanied by a prospectus supplement.

Investing in our securities involves certain risks. Please read **Risk Factors on page 3 and other information included and incorporated by reference in this prospectus for a discussion of the factors that you should carefully consider before deciding to purchase our securities.**

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 _____, 2009.

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ABOUT THIS PROSPECTUS

This prospectus is part of a Registration Statement that we filed with the Securities and Exchange Commission, or SEC, utilizing a shelf registration process. Under this shelf process, we may sell different types of securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we offer securities, we will provide a prospectus supplement and attach it to this prospectus. The prospectus supplement will contain specific information about the nature of the persons offering securities and the terms of the securities being offered at that time. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement, together with additional information under the headings *Where You Can Find More Information* and *Incorporation of Certain Information By Reference* and any other information that you may need to make your investment decision.

This prospectus does not contain all of the information that is in the Registration Statement. We omitted certain parts of the Registration Statement from this prospectus as permitted by the SEC. We refer you to the Registration Statement and its exhibits for additional information about us and the securities that may be sold under this prospectus.

You should rely only on the information contained or incorporated by reference in this prospectus or any applicable prospectus supplement. We have not authorized anyone to provide you with different or additional information. This prospectus may only be used where it is legal to sell these securities. You should not assume that the information contained in this prospectus, any applicable prospectus supplement or the documents incorporated by reference into this prospectus is accurate as of any date other than their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.

This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any security other than the securities covered by this prospectus, nor does it constitute an offer to or solicitation of any person in any jurisdiction in which such offer or solicitation may not lawfully be made.

In this prospectus, references to the company, AAWW, we, us and our are to Atlas Air Worldwide Holdings, Inc., a Delaware corporation, and its operating subsidiaries, unless the context requires otherwise.

OUR COMPANY

We are the leading provider of leased wide-body freighter aircraft, furnishing outsourced air cargo operating services and solutions to the global air freight industry. As such, we manage and operate the world's largest fleet of 747 freighters. We provide unique value to our customers by giving them access to highly reliable new production freighters that deliver the lowest unit cost in the marketplace combined with outsourced aircraft operating services that lead the industry in terms of quality and global scale. Our customers include airlines, express delivery providers, freight forwarders, the U.S. military and charter brokers. We provide global services with operations in Asia, the Middle East, Australia, Europe, South America, Africa and North America.

We believe that the scale, scope and quality of our outsourced services are unparalleled in our industry. The relative operating cost efficiency of our current 747-400F aircraft and future 747-8F aircraft, including their superior fuel efficiency, capacity and loading capabilities, create a compelling value proposition for our customers.

Atlas Air Worldwide Holdings, Inc. is a holding company with a principal, wholly-owned, operating subsidiary, Atlas Air, Inc. (Atlas Air). We also have a 51% economic interest and 75% voting interest in Polar Air Cargo Worldwide,

Inc. (Polar), which, since October 27, 2008, is accounted for under the equity method. On June 28, 2007, Polar issued shares representing a 49% economic interest and a 25% voting interest to DHL Network Operations (USA), Inc. (DHL), a subsidiary of Deutsche Post AG (DP). In February 2008, we formed Titan Aviation Leasing Limited (Titan) a wholly owned subsidiary based in Ireland, for the purpose of dry leasing aircraft and engines.

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Our primary service offerings are:

Freighter aircraft leasing services, which encompass the following:

We provide outsourced operating solutions including the provision of crew, maintenance and insurance for the aircraft (hereinafter referred to as ACMI), while customers assume fuel, demand and yield risk. ACMI contracts typically range from three to six year periods for 747-400s and shorter periods for 747-200s. Included in ACMI is the provision of outsourced airport-to-airport wide-body cargo aircraft solutions to Polar for the benefit of DHL and other customers, which we refer to as Express Network ACMI services. Through this arrangement, we provide dedicated 747-400 aircraft servicing the requirements of DHL 's global express operations through Polar as well as the requirements of Polar 's other customers;

Dry leasing, whereby we provide aircraft and engine leasing solutions to third parties for one or more dedicated aircraft. We provide dry leasing services primarily to Global Supply Systems, a private company in which we own a 49% interest. We have also provided dry leasing services to other third party customers through both Atlas Air and our newly formed leasing subsidiary, Titan.

Charter services, which encompass the following:

Military charter services, whereby we provide air cargo services for the U.S. Air Mobility Command;

Commercial charters, whereby we provide all-inclusive cargo aircraft charters to brokers, freight forwarders, direct shippers and airlines. In addition, we have been providing airport-to-airport air cargo services to freight forwarders and other shipping customers in limited markets since October 2008.

AAWW was incorporated in Delaware in 2000. Our principal executive offices are located at 2000 Westchester Avenue, Purchase, New York 10577, and our telephone number is (914) 701-8000.

Our website is www.atlasair.com. The information on our website is not a part of this prospectus.

Atlas and Polar hold various trademark registrations and have applications for additional registrations pending in several foreign jurisdictions. This prospectus and the documents incorporated herein by reference also include trademarks, trade names and service marks of other companies. Use or display by us of other parties ' trademarks, trade names or service marks is not intended to and does not imply a relationship with, or endorsement or sponsorship of us by, these other parties.

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RISK FACTORS

Investing in our securities involves risk. You should carefully consider and evaluate all of the information included and incorporated by reference in this prospectus and any applicable prospectus supplement, including the risk factors incorporated by reference from our most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2008, filed with the SEC on February 26, 2009, as updated by our Quarterly Reports on Form 10-Q and our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act filed after such annual report. The risk factors we have described are not the only ones we face. Our operations could also be impaired by additional risks and uncertainties. If any of these risks and uncertainties develop into actual events, our business, financial condition and results of operations could be materially and adversely affected. Additional risks may be included in a prospectus supplement relating to a particular series or offering of securities.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

We make forward-looking statements in this prospectus that are subject to risks and uncertainties. These forward-looking statements include information about possible or assumed future results of our business, financial condition, liquidity, results of operations, plans and objectives. The words may, should, expect, anticipate, intend, plan, continue, believe, seek, project, estimate and similar expressions used in this prospectus or incorporated into this prospectus by reference that do not relate to historical facts are intended to identify forward-looking statements. These statements are only predictions. You should not place undue reliance on these forward-looking statements. By way of example, statements regarding the following subjects are forward-looking by their nature:

our business strategy;

our future operating results;

our ability to obtain external financing;

our understanding of our competition;

industry and market trends;

future capital expenditures; and

the impact of technology on our products, operations and business.

The forward-looking statements are based on management's beliefs, plans, expectations and assumptions and on information available to us as of the time such statements were made. These beliefs, plans, expectations and assumptions can change as a result of many possible events or factors, not all of which are known to us. Neither we nor any other person assumes responsibility for the accuracy or completeness of these statements. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements.

The forward-looking statements in this prospectus or incorporated into this prospectus by reference are not representations or guarantees of future performance and involve certain risks, uncertainties and assumptions. Such risks, uncertainties and assumptions include, but are not limited to, any risk factors set forth in our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act or in any supplement to this prospectus.

Many of such factors are beyond our control and are difficult to predict. As a result, our future actions, financial position and results of operations could differ materially from those expressed in any forward-looking statements made by us. Readers are therefore cautioned not to place undue reliance on forward-looking statements. We also do not intend to publicly update any forward-looking statements that may be made from time to time by us or on our behalf, whether as a result of new information, future events or otherwise.

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Unless otherwise set forth in an applicable prospectus supplement, we intend to use the net proceeds from any offering of securities by us for general corporate purposes. Any specific allocation of the net proceeds of an offering of securities to a specific purpose will be determined at the time of the offering and will be described in a prospectus supplement.

RATIO OF EARNINGS TO FIXED CHARGES

Our consolidated ratio of earnings to fixed charges for each of the periods indicated are as follows:

	For the Quarter Ended		For the Years Ended			For the Periods	
	March 31, 2009	December 31, 2008	December 31, 2007	December 31, 2006	December 31, 2005	July 28, 2004 to December 31, 2004	January 1, 2004 to July 27, 2004
Ratio of Earnings to Fixed Charges	2.5	2.0	2.3	1.9	2.0	1.8	1.5

For purposes of the ratio of earnings to fixed charges, earnings consist of income before income taxes, interest and the portions of rentals representative of the interest factor. Fixed charges consist of interest expense, capitalized interest and the portions of rentals representative of the interest factor.

RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

Our consolidated ratio of earnings to fixed charges and preferred stock dividends for each of the periods indicated are as follows:

	For the Quarter Ended		For the Years Ended			For the Periods	
	March 31, 2009	December 31, 2008	December 31, 2007	December 31, 2006	December 31, 2005	July 28, 2004 to December 31, 2004	January 1, 2004 to July 27, 2004
Ratio of Earnings to Fixed Charges and Preferred Stock Dividends	2.5	2.0	2.3	1.9	2.0	1.8	1.5

For purposes of the ratio of earnings to fixed charges and preferred stock dividends, earnings consist of income before income taxes, interest and the portions of rentals representative of the interest factor. Fixed charges consist of interest expense, capitalized interest and the portions of rentals representative of the interest factor.

We have the authority to issue up to 10,000,000 shares of preferred stock, par value \$1.00 per share; however, as of the dates for which information is presented in the above table, no shares were outstanding, and we did not have a preferred stock dividend obligation. Therefore, the ratio of earnings to fixed charges and preferred stock dividends is equal to the ratio of earnings to fixed charges.

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DESCRIPTION OF THE DEBT SECURITIES

The following description sets forth certain material terms and provisions of the debt securities to which any prospectus supplement may relate. The specific terms applicable to a particular issuance of debt securities and any variations from the terms set forth below will be set forth in the applicable prospectus supplement. The debt securities will constitute either our senior debt securities or our subordinated debt securities.

Senior debt securities will be issued under an indenture (the "senior indenture") to be entered into between us and a trustee (the "senior trustee") to be designated prior to the issuance of any such senior debt securities, the form of which senior indenture is filed as an exhibit to the Registration Statement. Subordinated debt securities will be issued under a separate indenture (the "subordinated indenture") to be entered into between us and a trustee (the "subordinated trustee") to be designated prior to the issuance of any such subordinated debt securities, the form of which subordinated indenture is also filed as an exhibit to the Registration Statement. The senior indenture and the subordinated indenture are sometimes collectively referred to herein as the "indentures," the senior debt securities and the subordinated debt securities are sometimes collectively referred to herein as the "debt securities," and the senior trustee and the subordinated trustee sometimes collectively referred to herein as the "trustees" and individually as the "trustee." We and the respective trustee may enter into supplements to the indentures from time to time.

The following is a summary of the material terms and provisions of the indentures and the debt securities. You should refer to the respective indenture and the applicable prospectus supplement for complete information regarding the terms and provisions of the respective indenture and the debt securities.

General

Neither indenture limits the amount of debt securities that we may issue. The senior debt securities will be our senior unsecured obligations and will rank equal in right of payment to all of our other existing and future indebtedness and other liabilities that are not, by their terms, expressly subordinated in the right of payment to the senior debt securities. The subordinated debt securities will be unsecured obligations and subordinated in right of payment to all of our existing and future senior indebtedness, in the manner and to the extent described below under "Subordination of Subordinated Debt Securities."

The debt securities may be issued in one or more separate series of senior debt securities or subordinated debt securities. A prospectus supplement relating to any series of debt securities being offered will include specific terms relating to the offered debt securities. These terms will include some or all of the following:

the title and type of the debt securities;

any limit on the amount(s) that may be issued;

the person to whom any interest on the debt securities shall be payable if other than the registered holder;

the maturity date(s) or the method by which this date or these dates will be determined;

the interest rate, if any, or the method of computing the interest rate;

the date or dates from which interest will accrue, or how this date or these dates will be determined, and the interest payment date or dates, if any, and any related record dates;

the place(s) where payments, if any, will be made on the debt securities and the place(s) where debt securities may be presented for transfer or exchange;

the period or periods within which, the price or prices at which and the terms and conditions on which we may redeem, or be required to redeem, the debt securities;

any provisions relating to the convertibility or exchangeability of the debt securities for other debt securities or equity securities;

any mandatory or optional sinking fund or similar provisions;

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

if other than the principal amount, the portion of the principal amount, or the method by which the portion will be determined, of the debt securities that will be payable upon declaration of acceleration of the maturity of the debt securities;

if other than United States dollars, the foreign currency or units of two or more foreign currencies in which payment of the principal of (and premium, if any) or interest on the debt securities shall be payable;

if the principal of (and premium, if any) or interest on the debt securities is payable, at our election or election of the holders, in a foreign currency or units of two or more foreign currencies other than that in which the debt securities are stated to be payable, the period or periods within which, and the terms and conditions, upon which, such election may be made;

any index used to determine the amount of payment of principal of (and premium, if any) or interest on the debt securities;

whether the debt securities will be subject to defeasance in advance of the date for redemption or the stated maturity date;

whether the debt securities will be issued in the form of one or more global securities and, if so, the identity of the depository for the global security or securities;

any additional or different events of default and any change in the right of the trustee or the holders to declare principal due and payable;

in the case of an issue of subordinated debt securities, the subordination provisions, if different from those described under **Subordination of Subordinated Debt Securities** below;

any additional or different covenants;

the form of debt securities; and

any other terms of the debt securities.

We will have the ability under the indentures to reopen a previously issued series of debt securities and issue additional debt securities of that series or establish additional terms of that series.

Unless otherwise indicated in the applicable prospectus supplement, the covenants contained in the indentures may not protect holders of the debt securities in the event of a highly leveraged or other transaction involving us or our subsidiaries that may adversely affect the holders of the debt securities.

Debt securities may be issued under the indentures as original issue discount securities. An original issue discount security is a security, including any zero-coupon security, which:

is issued at a price lower than the amount payable upon its stated maturity and

provides that upon redemption or acceleration of the maturity, an amount less than the amount payable upon the stated maturity, shall become due and payable.

If a series of debt securities is issued as original issue discount securities, the special U.S. federal income tax, accounting and other considerations applicable to original issue discount securities will be discussed in the applicable prospectus supplement.

Holding Company Status. The debt securities are obligations exclusively of Atlas Air Worldwide Holdings, Inc., which, as a holding company, has no material assets other than its ownership of the common stock of its subsidiaries. We will rely entirely upon distributions from our subsidiaries to meet the payment obligations under the debt securities. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay amounts due under the debt securities or otherwise to make any funds available to us including the payment of dividends or other distributions or the extension of loans or

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advances. Furthermore, the ability of our subsidiaries to make any payments to us would be dependent upon the terms of any credit facilities or other agreements of the subsidiaries and upon the subsidiaries' earnings, which are subject to various business risks. In a bankruptcy or insolvency proceeding, claims of holders of the debt securities would be satisfied solely from our equity interests in our subsidiaries remaining after the satisfaction of claims of creditors of the subsidiaries. Accordingly, the debt securities are effectively subordinated to existing and future liabilities of our subsidiaries to their respective creditors. The debt securities also are effectively subordinated to any secured debt that we incur to the extent of the value of the assets securing that indebtedness.

Form, Exchange and Transfer

The debt securities will be issuable as registered securities. The ownership or transfer of debt securities will be listed in the security register described in the applicable indenture.

The indentures provide that debt securities may be issuable in global form which will be deposited with, or on behalf of, a depository, identified in an applicable prospectus supplement. If debt securities are issued in global form, one certificate will represent a large number of outstanding debt securities which may be held by separate persons, rather than each debt security being represented by a separate certificate.

If the purchase price, or the principal of, or any premium or interest on any debt securities is payable in, or if any debt securities are denominated in, one or more foreign currencies, the restrictions, elections, U.S. federal income tax considerations, specific terms and other information will be set forth in the applicable prospectus supplement.

Unless otherwise specified in the applicable prospectus supplement, debt securities denominated in U.S. dollars will be issued only in denominations of \$1,000 and integral multiples thereof.

Debt securities may be presented for registration of transfer with the applicable form of transfer duly executed, at the office of the Security Registrar, as defined in the applicable indenture, without service charge and upon payments of any taxes and other governmental charges as described in the applicable indenture. This registration of transfer or exchange will be effected upon the Security Registrar being satisfied with the documents of title and identity of the person making the request.

A debt security in global form may not be transferred except as a whole by or between the depository for the debt security and any of its nominees or successors. If any debt security of a series is issuable in global form, the applicable prospectus supplement will describe:

any circumstances under which beneficial owners of interests in that global debt security may exchange their interests for definitive debt securities of that series of like tenor and principal amount in any authorized form and denomination,

the manner of payment of principal, premium and interest, if any, on that global debt security, and

the specific terms of the depository arrangement with respect to that global debt security.

Payment and Paying Agents

Unless otherwise specified in an applicable prospectus supplement, we will pay principal, any premium and interest on debt securities at the office of the paying agents we have designated, except that we may pay interest by check mailed to, or wire transfer to the account of, the holder. Unless otherwise specified in any applicable prospectus supplement, payment of any installment of interest on debt securities will be made to the person in whose name the

debt security is registered at the close of business on the record date for this interest payment.

The paying agents outside the United States initially appointed by us for a series of debt securities will be named in the applicable prospectus supplement. In addition, we will be required to maintain at least one paying agent in each place of payment for the series.

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Consolidation, Merger or Conveyance

We have the ability to merge or consolidate with, or convey, transfer or lease all or substantially all of our property, to another corporation, provided that:

in the case we consolidate with or merge into another corporation or convey, transfer or lease our properties and assets substantially as an entirety to any person, the corporation formed by such consolidation or into which we are merged or the person which acquires by conveyance or transfer, or which leases, our properties and assets substantially as an entirety is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and expressly assumes, by a supplemental indenture, executed and delivered to the trustee, in form reasonably satisfactory to the trustee, the due and punctual payment of the principal of (and premium, if any) and interest on all the securities and the performance and observance of every covenant in the indenture on the part of us to be performed or observed;

immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of ours or a subsidiary as a result of such transaction as having been incurred by us or such subsidiary at the time of such transaction, no event of default, and no event which, after notice or lapse of time or both, would become an event of default, has happened and is continuing; and

we have delivered to the applicable trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with all requirements of the applicable indenture and that all conditions precedent to the transaction have been complied with.

Events of Default

The following are events of default with respect to any series of debt securities issued:

default in the payment of any interest upon any security of that series when it becomes due and payable, and continuance of such default for a period of 30 days;

default in the payment of the principal of (or premium, if any, on) any security of that series at its maturity;

default in the deposit of any sinking fund payment, when and as due by the terms of a security of that series;

default in the performance, or breach, of any covenant or warranty in the indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in the indenture specifically dealt with or which has expressly been included in the indenture solely for the benefit of a series of securities other than the series in respect of which the event of default is being determined), and continuance of such default or breach for a period of 60 days after there has been given a written notice, by registered or certified mail, to us by the trustee or to us and the trustee by the holders of at least 25% in principal amount of the outstanding securities of that series, specifying such default or breach and requiring it to be remedied;

a default under any bond, debenture, note or other evidence of or agreement for indebtedness by us (including a default with respect to securities of any series other than that series) or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by us (including the indenture), whether such indebtedness exists now or is created in the future, which default results in such indebtedness in an aggregate principal amount of \$25,000,000 or more becoming or being declared due and payable prior to the date on which it would otherwise have become due

and payable, without such acceleration having been rescinded or annulled, within a period of 10 days after there has been given a written notice, by registered or certified mail, to us by the trustee or to us and the trustee by the holders of at

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least 25% in principal amount of the outstanding securities of that series, specifying such default and requiring us to cause such acceleration to be rescinded or annulled;

specified events of bankruptcy, insolvency or reorganization; or

any other events of default provided with respect to debt securities of that series.

If an event of default occurs and is continuing, the trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series may declare each debt security of that series due and payable immediately by a notice in writing to us, and to the applicable trustee if given by holders. If an event of default occurs because of specified events in bankruptcy, insolvency or reorganization, the principal amount of each series of debt securities will be automatically accelerated, without any action by the trustee or any holder thereof.

A holder of the debt securities of any series will only have the right to institute a proceeding under the applicable indenture or to seek other remedies if:

the holder has given written notice to the applicable trustee of a continuing event of default;

the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request;

these holders have offered indemnity reasonably satisfactory to the applicable trustee to institute proceedings as trustee;

the applicable trustee does not institute a proceeding within 60 days; and

the applicable trustee has not received written directions inconsistent with the request from the holders of a majority of the principal amount of the outstanding debt securities of that series during that 60 day period.

We will annually file statements with the applicable trustee regarding our compliance with the covenants in the applicable indenture. The applicable trustee will generally give the holders of debt securities notice within 90 days of the occurrence of an event of default known to such trustee.

Subordination of Subordinated Debt Securities

The indebtedness evidenced by the subordinated debt securities will be subordinated and junior in right of payment to the extent set forth in the subordinated indenture to the prior payment in full of amounts then due on all Senior Indebtedness (as defined below). No payment shall be made on the subordinated debt securities, including by way of redemption, purchase, or in any other manner, if the subordinated trustee shall have received notice from us or any Senior Lender (as defined below), that (i) there exists a default which shall be continuing in the payment of principal of, or premium, if any, or interest on any Senior Indebtedness, beyond any applicable grace period with respect thereto, or (ii) there exists a default (other than a default specified in clause (i) above) with respect to any Senior Indebtedness which shall be continuing; provided, however, that no notice given with respect to one or more defaults

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