

HERCULES OFFSHORE, INC.

Form 424B5

March 20, 2012

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The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities, and are not soliciting an offer to buy these securities, in any jurisdiction where the offer or sale is not permitted.

**Filed Pursuant to Rule 424(b)(5)  
Registration No: 333-170966**

SUBJECT TO COMPLETION, DATED MARCH 20, 2012

PRELIMINARY PROSPECTUS SUPPLEMENT

(To Prospectus Dated February 3, 2011)

20,000,000 Shares  
**Hercules Offshore, Inc.**  
Common Stock

Hercules Offshore, Inc. is offering 20,000,000 shares of its common stock.

Our common stock is listed on the NASDAQ Global Select Market under the symbol HERO. On March 19, 2012, the last reported sale price of the common stock on the NASDAQ Global Select Market was \$5.04 per share.

Investing in our common stock involves risk. See Risk Factors beginning on page S-8 of this prospectus supplement to read about factors you should consider before buying shares of the common stock.

PRICE: \$ PER SHARE

Price to

	Public	Underwriting Discounts and Commissions	Proceeds to Company
Per Share	\$	\$	\$
Total	\$	\$	\$

We have granted the underwriters a 30-day option to purchase up to an additional 3,000,000 shares from us to cover over-allotments of shares.

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The underwriters expect to deliver the shares on or about March , 2012.

*Joint Book-Running Managers*

**Credit Suisse**

**Goldman, Sachs & Co.**

**Deutsche Bank Securities**

March , 2012

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**Industry and Market Data**

In this prospectus supplement or the documents we incorporate by reference, we rely on and refer to information regarding our industry from the U.S. Energy Information Administration and ODS-Petrodata, Inc. These organizations are not affiliated with us and are not aware of and have not consented to being named in this prospectus supplement or the accompanying prospectus. We believe this information is reliable. In addition, in many cases we have made statements in this prospectus supplement and the accompanying prospectus regarding our industry and our position in the industry based on our experience in the industry and our own evaluation of market conditions.

The market position and industry data that are presented herein are based upon internal surveys, market research, publicly available information and industry publications. Although we believe that our internal research and these independent sources are reliable, we have not sought to verify independently such information. Accordingly, we cannot assure you that such information is accurate.

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of this common stock offering and also adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference in the prospectus. The second part is the accompanying prospectus dated February 3, 2011, which we refer to as the accompanying prospectus. The accompanying prospectus gives more general information, some of which does not apply to this offering.

You should rely only on the information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus and in any written communication from us or the underwriters, including any free writing prospectus. If information in this prospectus supplement is inconsistent with the accompanying prospectus, you should rely on this prospectus supplement. We have not, and the underwriters have not, authorized anyone to provide you with different information. We are not, and the underwriters are not, making an offer of these securities in any state where the offer or sale is not permitted. You should not assume that the information provided by this prospectus supplement, the accompanying prospectus or the documents incorporated by reference in this prospectus supplement and in the accompanying 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.

Before you invest in our common stock, you should carefully read the registration statement described in the accompanying prospectus (including the exhibits thereto) of which this prospectus supplement and the accompanying prospectus form a part, as well as this prospectus supplement, the accompanying prospectus and the documents incorporated by reference into this prospectus supplement and the accompanying prospectus. The incorporated documents are described in this prospectus supplement under **Where You Can Find More Information**.

References in this prospectus supplement to **Hercules Offshore**, **we**, **us** and **our** are to Hercules Offshore, Inc., unless otherwise noted.

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### WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission ( SEC ). You can read and copy these materials at the SEC 's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You can obtain information about the operation of the SEC 's public reference room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site that contains information we have filed electronically with the SEC, which you can access over the Internet at <http://www.sec.gov>.

This prospectus supplement and the accompanying prospectus are part of a registration statement we have filed with the SEC relating to the securities we may offer. As permitted by SEC rules, this prospectus supplement does not contain all of the information we have included in the registration statement and the accompanying exhibits and schedules we filed with the SEC. You may refer to the registration statement, exhibits and schedules for more information about us and the securities. The registration statement, exhibits and schedules are available at the SEC 's public reference room or through its Internet site.

The SEC allows us to incorporate by reference the information we have filed with it, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of this prospectus supplement and the accompanying prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until the termination of this offering. The documents we incorporate by reference are:

our annual report on Form 10-K for the year ended December 31, 2011;

the information responsive to Part III of Form 10-K for the fiscal year ended December 31, 2011 provided in our Preliminary Proxy Statement on Schedule 14A filed on March 16, 2011;

our current reports on Form 8-K filed with the SEC on April 27, 2011 (as amended by our amended Current Reports on Form 8-K/A filed on July 8, 2011 and on March 20, 2012 (the unaudited historical consolidated financial statements of Seahawk Drilling, Inc., as of and for the three month period ending March 31, 2011, included in our Form 8-K/A filed with the SEC on March 20, 2012, have not been subject to a review in accordance with Statement on Auditing Standards No. 100, *Interim Financial Information*, by KPMG LLP (or any public accountant)); January 17, 2012, February 16, 2012 and March 2, 2012, in each case other than information furnished under Item 2.02 or 7.01 of Form 8-K; and

the description of our common stock contained in our registration statement on Form 8-A as filed with the SEC on October 21, 2005, as that description may be updated from time to time.

We also are incorporating by reference all additional documents that we may file with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date hereof and before the completion of this offering.

You may request a copy of these filings, other than an exhibit to these filings unless we have specifically incorporated that exhibit by reference into the filing, at no cost, by writing or telephoning us at the following:

Hercules Offshore, Inc.

9 Greenway Plaza, Suite 2200

Houston, Texas 77046

Telephone: (713) 350-5100

Attention: Investor Relations



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**FORWARD-LOOKING STATEMENTS**

This prospectus supplement, including the information we incorporate by reference, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended the Securities Act, and Section 21E of the Securities Exchange Act of 1934. All statements, other than statements of historical fact, included in this prospectus supplement or the documents we incorporate by reference, including statements that address outlook, activities, events or developments that we intend, contemplate, estimate, expect, project, believe or anticipate will or may occur in the future, are forward-looking statements. These include such matters as:

our levels of indebtedness, covenant compliance and access to capital under current market conditions;

our ability to enter into new contracts for our rigs and liftboats and future utilization rates and dayrates for the units;

our ability to renew or extend our international contracts, or enter into new contracts, when such contracts expire;

demand for our rigs and our liftboats;

activity levels of our customers and their expectations of future energy prices and ability to obtain drilling permits;

sufficiency and availability of funds for required capital expenditures, working capital and debt service;

levels of reserves for accounts receivable

success of our plans to dispose of certain assets;

expected completion times for our repair, refurbishment and upgrade projects, including the repair project for the *Hercules 185* and the *Ocean Columbia*, which we recently acquired;

our ability to effectively reactivate rigs that we have stacked;

the timing of shipyard projects and refurbishments and the return of the idle rigs to work;

our plans to increase international operations;

expected useful lives of our rigs and liftboats;

future capital expenditures and refurbishment, reactivation, transportation, repair and upgrade costs;

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liabilities and restrictions under coastwise and other laws of the United States and regulations protecting the environment;

expected outcomes of litigation, investigations, claims and disputes and their expected effects on our financial condition and results of operations; and

expectations regarding offshore drilling activity and dayrates, market conditions, demand for our rigs and liftboats, operating revenues, operating and maintenance expense, insurance coverage, insurance expense and deductibles, interest expense, debt levels and other matters with regard to outlook and future earnings.

We have based these statements on our assumptions and analyses in light of our experience and perception of historical trends, current conditions, expected future developments and other factors we believe are appropriate in the circumstances. Forward-looking statements by their nature involve substantial risks and uncertainties that could significantly affect expected results, and actual future results could differ materially from those described in such statements. Although it is not possible to identify all factors, we continue to face many risks and uncertainties. Among the factors that could cause actual future results to differ materially are the risks and uncertainties described under "Risk Factors" in this prospectus supplement and the accompanying prospectus and our annual report on Form 10-K for the year ended December 31, 2011 and the following:

the ability of our customers in the U.S. Gulf of Mexico to obtain drilling permits in an efficient manner or at all;

oil and natural gas prices and industry expectations about future prices;

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levels of oil and gas exploration and production spending;

demand for and supply of offshore drilling rigs and liftboats;

our ability to enter into and the terms of future contracts;

the worldwide military and political environment, uncertainty or instability resulting from an escalation or additional outbreak of armed hostilities or other crises in the Middle East, North Africa, West Africa and other oil and natural gas producing regions or acts of terrorism or piracy;

the impact of governmental laws and regulations, including new laws and regulations in the U.S. Gulf of Mexico arising out of the Macondo well blowout incident;

the adequacy and costs of sources of credit and liquidity;

uncertainties relating to the level of activity in offshore oil and natural gas exploration, development and production;

competition and market conditions in the contract drilling and liftboat industries;

the availability of skilled personnel and the rising cost of labor;

labor relations and work stoppages, particularly in the West African and Mexican labor environments;

operating hazards such as hurricanes, severe weather and seas, fires, cratering, blowouts, war, terrorism and cancellation or unavailability of insurance coverage, or insufficient insurance coverage;

the effect of litigation, investigations and contingencies; and

our inability to achieve our plans or carry out our strategy.

Many of these factors are beyond our ability to control or predict. Any of these factors, or a combination of these factors, could materially affect our future financial condition or results of operations and the ultimate accuracy of the forward-looking statements. These forward-looking statements are not guarantees of our future performance, and our actual results and future developments may differ materially from those projected in the forward-looking statements. Management cautions against putting undue reliance on forward-looking statements or projecting any future results based on such statements or present or prior earnings levels. In addition, each forward-looking statement speaks only as of the date of the particular statement, and we undertake no obligation to publicly update or revise any forward-looking statements except as required by applicable law.

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**SUMMARY**

*This summary does not contain all of the information that is important to you. You should read carefully the entire prospectus supplement, the accompanying prospectus and the documents incorporated by reference for a more complete understanding of this offering. You should read Risk Factors beginning on page S-8 of this prospectus supplement and the accompanying prospectus and our annual report on Form 10-K for the year ended December 31, 2011 for more information about important risks that you should consider before making a decision to purchase common stock in this offering.*

**Hercules Offshore, Inc.**

Hercules Offshore, Inc. is a leading provider of shallow-water drilling and marine services to the oil and natural gas exploration and production industry globally. We provide these services to national oil and gas companies, major integrated energy companies and independent oil and natural gas operators. As of March 15, 2012, we owned a fleet of 42 jackup rigs, seventeen barge rigs, two submersible rigs, one platform rig, and 58 liftboat vessels. We also operate five liftboat vessels owned by a third party. Our diverse fleet is capable of providing services such as oil and gas exploration and development drilling, well service, platform inspection, maintenance and decommissioning operations in several key shallow-water provinces around the world.

As of March 15, 2012, our business segments include the following:

*Domestic Offshore* includes 34 jackup rigs and two submersible rigs in the U.S. Gulf of Mexico that can drill in maximum water depths ranging from 85 to 350 feet. Eighteen of the jackup rigs are either under contract or available for contracts and sixteen are cold stacked. Both submersibles are cold stacked.

*International Offshore* includes eight jackup rigs and one platform rig outside of the U.S. Gulf of Mexico. We have two jackup rigs contracted offshore Saudi Arabia, one jackup rig preparing for a contract in Indonesia, one jackup rig contracted offshore in the Democratic Republic of Congo and one platform rig contracted offshore in Mexico. In addition, we have one jackup rig warm stacked and one jackup rig cold stacked in Bahrain, one jackup rig warm stacked in Malaysia as well as one jackup rig contracted in Angola, although this rig is currently in a shipyard in Mississippi undergoing repairs and is estimated to be out of service through the first quarter of 2012. In addition to owning and operating our own rigs, we have the Construction Management Agreement and the Services Agreement with Discovery Offshore S.A. ( Discovery ) with respect to each of its jackup rigs.

*Inland* includes a fleet of six conventional and eleven posted barge rigs that operate inland in marshes, rivers, lakes and shallow bay or coastal waterways along the U.S. Gulf Coast. Three of our inland barges are either under contract or available for contracts and fourteen are cold stacked.

*Domestic Liftboats* includes 40 liftboats in the U.S. Gulf of Mexico. Thirty-four are operating or available for contracts and six are cold stacked.

*International Liftboats* includes 23 liftboats. Eighteen are operating or available for contracts offshore West Africa, including five liftboats owned by a third party, three are cold stacked offshore West Africa and two are operating or available for contracts in the Middle East region.

Our jackup rigs, submersible rigs and barge rigs are used primarily for exploration and development drilling in shallow-waters. Under most of our contracts, we are paid a fixed daily rental rate called a dayrate, and we are required to pay all costs associated with our own crews as well as the upkeep and insurance of the rig and equipment. Dayrate drilling contracts typically provide for higher rates while the unit is operating and lower rates or a lump sum payment for periods of mobilization or when operations are interrupted or restricted by equipment breakdowns, adverse weather conditions or other factors.



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Our liftboats are self-propelled, self-elevating vessels with a large open deck space, which provides a versatile, mobile and stable platform to support a broad range of offshore maintenance and construction services throughout the life of an oil or natural gas well. A liftboat contract generally is based on a flat dayrate for the vessel and crew. Our liftboat dayrates are determined by prevailing market rates, vessel availability and historical rates paid by the specific customer. Under most of our liftboat contracts, we receive a variable rate for reimbursement of costs such as catering, fuel, oil, rental equipment, crane overtime and other items. Liftboat contracts generally are for shorter terms than are drilling contracts, although international liftboat contracts may have terms of greater than one year.

### **Competitive Strengths**

We believe our operations benefit from a number of competitive strengths, including the following:

*Leading provider of services.* We are a leading service provider in our core businesses: jackup drilling in the U.S. Gulf of Mexico and domestic and international liftboats. We own the fourth largest jackup rig fleet in the world and have the largest jackup rig fleet in the oil and natural gas prolific U.S. Gulf of Mexico. In addition, our liftboat fleet of 58 vessels is the largest liftboat fleets in the world and has allowed us to gain the leading position in the U.S. Gulf of Mexico and West Africa. We believe this leadership position has been especially favorable since our recent acquisition (the Seahawk Transaction) of Seahawk Drilling, Inc. (Seahawk) in the U.S. Gulf of Mexico, where our results have improved dramatically even with depressed natural gas prices. We believe this improvement is due to our better ability to meet the requirements of our customers through greater efficiencies, economies of scale and operational flexibility.

*Diversity of assets, revenue streams, and geographic footprint.* We have a diversified set of assets that generate revenue streams with complementary cash flow profiles. While the performance of some of our businesses, such as domestic offshore drilling and inland barges, is highly cyclical due to the short-term nature of the contracts and the correlation to changes in commodity prices, our international offshore and liftboat businesses and our investment in Discovery are typically less cyclical due to longer-term contracts and production-related activities. During the fiscal year ended December 31, 2011, we generated 63% of our revenues from liftboats and our international drilling rigs. We also have a geographically balanced revenue stream with operations in several key shallow-water provinces around the world. During the fiscal year ended December 31, 2011, we generated 54% of our revenues internationally. Our breadth of services provided and broad geographic scope of operations help reduce the volatility of our cash flows.

*Meaningful backlog with solid counterparties.* We have a strong revenue backlog of approximately \$419 million as of March 15, 2012. Of this backlog, \$273 million is in our international offshore segment, which experienced gross profit margins of 43% for the fiscal year ended December 31, 2011. Majors, national oil companies and independents with investment grade ratings account for approximately 67% of total contracted revenue. We believe the size of our revenue backlog and the quality of the customers behind it provides us with an attractive and visible stream of cash flows over the next few years.

*Knowledgeable and experienced management team focused in the oilfield services industry.* Our operating level management team has extensive industry experience both in the U.S. Gulf of Mexico and internationally, with an average of over 20 years of experience in the oil service industry. We believe that our management team's considerable knowledge and experience enhance our ability to operate effectively throughout industry cycles and provide us with valuable insight in identifying and executing on business opportunities. Our management team also has extensive experience in managing growth, developing creative businesses solutions and integrating acquisitions, which we expect will provide us with an advantage when market and economic conditions improve.

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### **Business Strategies**

We aim to be the leading provider of shallow-water drilling and liftboat services to the oil and natural gas exploration and production industry. We intend to employ the following strategies to achieve our goal:

*Focus on drilling and liftboat services.* We are one of the largest operators of a diverse fleet of jackup rigs and liftboats globally, and believe we are well-positioned to benefit from any increase in drilling and production maintenance activity. We expect to strengthen this leadership position in the jackup drilling market through our investment in Discovery, which is a new entrant in the high-growth industry of ultra-high specification jackup drilling.

*Maintain our status as an efficient, low-cost service provider.* We intend to maintain an organizational structure and asset base that allow us to be an efficient, low-cost service provider in the industry.

*Continue our focus on safety, reliability and operational excellence.* We intend to continue to devote significant resources to safety, reliability and operational excellence, which we believe promotes a culture of diligence and minimizes risk. Since year end 2007, we have had a 65% improvement in our total recordable incident rate (1.77 in 2007 vs. 0.62 in 2011), and a 69% improvement in our lost time incident rate (0.45 in 2007 vs. 0.14 in 2011).

*Continue our geographic diversification.* We are committed to continuing to expand internationally and leverage our current geographic footprint. We have expanded the number of international rigs that we operate from two jackups in 2007 to the nine rigs we operate today. Our international liftboat business has also grown from the original four liftboats we operated in West Africa in 2005 to the 23 liftboats we operate in the Middle East and West Africa today.

*Pursue growth opportunities with a disciplined approach.* Our long-term strategy is to undertake growth projects and acquisitions that generate an attractive return on capital. All potential projects are carefully evaluated based on their ability to improve our competitive position throughout the business cycle and strengthen our financial profile and liquidity position.

### **Recent Developments**

#### **Purchase of Offshore Drilling Rig**

We recently entered into a definitive agreement to acquire the offshore drilling rig *Ocean Columbia* from Diamond Offshore Services Company (Diamond). The purchase price is \$40 million in cash. *Ocean Columbia* is a LeTourneau Class 82 SD-C self-elevating drilling rig (built in 1978) registered and flagged in the Marshall Islands. Subject to customary closing conditions, we expect the acquisition of *Ocean Columbia* to close in May 2012. We have entered into a three-year drilling contract with Saudi Aramco for the use of the *Ocean Columbia*. Over this three-year period, we expect to generate total revenues of approximately \$160.0 million, including a lump-sum mobilization fee, assuming a utilization rate of 98% for the rig. We expect that the operating costs will be approximately \$50,000 per day. Under the drilling contract, Saudi Aramco has the option to extend the term for an additional one-year period. Prior to commencing work under the contract, we expect to spend approximately \$45.0 million for repairs, upgrades and other contract specific refurbishments to the rig and to mobilize the rig from the Gulf of Mexico to the Middle East. We would expect the rig to commence work under the contract in November 2012.

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### **Concurrent Notes Offering**

Concurrently with this offering, we are launching a private placement of the \$300 million of Senior Secured Notes due 2017 and \$200 million of Senior Notes due 2019 to qualified institutional buyers pursuant to Rule 144A under the Securities Act and to persons outside the United States pursuant to Regulation S under the Securities Act. We expect to use the net proceeds from our concurrent notes offering together with a portion of the net proceeds of this offering to repay all of the indebtedness outstanding under our existing term loan facility. See Use of Proceeds. We expect to use the remaining net proceeds for general corporate purposes including to fund a portion of the purchase price for the acquisition of *Ocean Columbia* as well as the costs associated with the repair, upgrade and mobilization of *Ocean Columbia*. There can be no assurance that the acquisition of *Ocean Columbia* will be consummated. The indenture governing our existing 10.5% Senior Secured Notes provides that all the liens securing our existing 10.5% Senior Secured Notes may be released if our total amount of secured indebtedness, other than our existing 10.5% Senior Secured Notes, does not exceed the lesser of \$375.0 million and 15.0% of our consolidated tangible assets. As a result of the expected use of proceeds of the Senior Secured Notes and Senior Notes Offering to pay all outstanding indebtedness under our secured term loan facility, our existing 10.5% Senior Secured Notes will no longer be secured.

**Our concurrent notes offering is being made by a separate offering memorandum and is not part of the offering to which this prospectus supplement relates. This common stock offering is not conditioned on the closing of our concurrent notes offering and there can be no assurance that the notes offering will be consummated. Neither the Senior Secured Notes nor the Senior Notes will be registered under the Securities Act and will only be offered to qualified institutional buyers and to persons outside of the United States. This prospectus supplement shall not be deemed an offer to sell or a solicitation of an offer to buy the Senior Secured Notes or the Senior Notes.**

### **New Revolving Credit Facility**

In connection with our concurrent notes offering, we expect to enter into a new revolving credit facility providing for an aggregate of \$75.0 million of available borrowing capacity, with a sublimit of \$25.0 million for the issuance of letters of credit. The obligations under the new revolving credit facility will be jointly and severally, and unconditionally, guaranteed by substantially all of our current domestic subsidiaries, and will be secured by a first priority security interest in substantially all of our and the guarantors' tangible and intangible assets (subject to certain exceptions).

### **Operational Update**

As disclosed in our latest Fleet Status Report dated March 15, 2012, we expect to experience downtime on several domestic and international drilling rigs during the first quarter of 2012. While our leading-edge dayrates in our Domestic Offshore segment have improved substantially over the last four months, and our backlog has grown considerably, we expect this downtime to have an adverse impact on our first quarter financial results, and first quarter operating income could be lower than fourth quarter 2011 operating income, excluding the impact of gains on asset sales. A significant portion of the rig downtime is related to drilling rigs that recently completed long-term contracts and are preparing for new contract work.

In the International Offshore segment, we anticipate four out of our six contracted drilling rigs will incur some downtime during the first half of 2012. We currently expect the *Hercules 261* will be out of service during the first quarter of 2012, returning to service in the second quarter of 2012, as it undergoes repairs and refurbishment in preparation of its new three-year contract with Saudi Aramco. Similarly, the *Hercules 262* is also currently in the shipyard undergoing repairs and refurbishment in preparation for its three-year contract with Saudi Aramco, and we expect the rig to be off-hire through the end of May 2012. Upon commencement of the new contracts, we will receive lump sum payments from Saudi Aramco that are expected to offset the majority of

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the capital costs for the repairs and refurbishments. For the *Hercules 208*, weather delays and difficulties with procurement of required equipment is expected to keep the rig off-hire throughout the first quarter 2012. The *Hercules 185* is expected to remain off-hire throughout the first quarter 2012 and into early second quarter 2012, as it completes leg repair work and is mobilized back to Angola, where it will recommence on its three-year contract.

Our Domestic Offshore segment will also be impacted by downtime on: (1) the *Hercules 214*, related to its ABS five-year special survey which we anticipate will keep the rig off-hire for the majority of the first quarter 2012; and (2) the *Hercules 350*, as operational restrictions on a prior contract, coupled with weather delays to move the rig to the current customer's work location, are anticipated to limit the rig's contracted revenue days from early February 2012 through mid-March 2012.

**PRINCIPAL EXECUTIVE OFFICES**

Our principal executive offices are located at 9 Greenway Plaza, Suite 2200, Houston, Texas 77046, telephone (713) 350-5100. We maintain a website at <http://www.herculesoffshore.com> that provides information about our business and operations. Information contained on this website, however, is not incorporated into or otherwise a part of this prospectus supplement or the accompanying prospectus.

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**THE OFFERING**

Issuer	Hercules Offshore, Inc.
Common stock offered	20,000,000 shares (23,000,000 if the underwriters exercise their over-allotment option in full).
Over-allotment option	3,000,000 shares.
Common stock outstanding after this offering(1)	158,439,325 shares (161,439,325 shares if the underwriters exercise their over-allotment option in full).
Use of proceeds	We expect to receive net proceeds from this offering of approximately \$ , after deducting underwriting discounts and the estimated offering expenses. If the underwriters exercise their over-allotment option in full, we expect to receive net proceeds of approximately \$ million. We intend to use 50% of the net proceeds from this offering to repay indebtedness outstanding under our existing term loan facility. We expect to use the remaining net proceeds to fund a portion of the purchase price for the acquisition of <i>Ocean Columbia</i> as well as the costs associated with the repair, upgrade and mobilization of <i>Ocean Columbia</i> . If the acquisition of <i>Ocean Columbia</i> is not consummated, the portion of the net proceeds from this offering that would have been used to fund the acquisition of <i>Ocean Columbia</i> and the costs associated with the repair, upgrade and mobilization of <i>Ocean Columbia</i> will be used for general corporate purposes. Please see Recent Developments Purchase of Offshore Drilling Rig. Certain of the underwriters or their affiliates are lenders under our existing term loan facility and will receive a portion of the net proceeds of this offering used to repay indebtedness outstanding under our existing term loan facility. Please read Use of Proceeds and Underwriting.
Risk factors	See Risk Factors beginning on page S-8 of this prospectus supplement and the accompanying prospectus and our annual report on Form 10-K for the year ended December 31, 2011 for a discussion of the risk factors you should carefully consider before deciding to invest in our common stock.
NASDAQ Global Select Market symbol	HERO

(1) The number of shares of our common stock to be outstanding after this offering excludes 5.8 million shares of common stock reserved for issuance under our 2004 long-term incentive plan as of March 15, 2012, of which options to purchase 3.7 million shares at a weighted average exercise price of \$8.26 per share had been issued as of March 15, 2012.



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We have derived the following summary condensed consolidated financial information as of December 31, 2010 and 2011 and for the three years ended December 31, 2011 from our audited consolidated financial statements and the related notes thereto included in and incorporated by reference into this prospectus supplement, which have been audited by Ernst & Young LLP, independent registered accounting firm.

We were formed in July 2004 and commenced operations in August 2004. From our formation to December 31, 2011, we completed the Seahawk Transaction, the acquisition of TODCO and several significant asset acquisitions that impact the comparability of our historical financial results. Our financial results reflect the impact of the Seahawk Transaction, TODCO business and the asset acquisitions from the dates of their respective closings.

The summary condensed consolidated financial information below is qualified by reference to and should be read together with our audited consolidated financial statements and the accompanying notes thereto which are incorporated by reference into this prospectus supplement. In addition, the following information may not be deemed indicative of our future operations.

	Year Ended December 31,		
	2009(a)	2010(b)	2011
	(in thousands, except per share data)		
<b>Statement of Operations Data:</b>			
Revenue	\$ 718,601	\$ 624,827	\$ 655,358
Operating loss	(79,469)	(143,427)	(18,749)
Loss from continuing operations	(81,047)	(132,093)	(66,520)
Loss per share from continuing operations:			
Basic	\$ (0.83)	\$ (1.15)	\$ (0.51)
Diluted	(0.83)	(1.15)	(0.51)
<b>Other Financial Data:</b>			
Net cash provided by (used in):			
Operating activities	\$ 137,861	\$ 24,420	\$ 52,025
Investing activities	(60,510)	(21,306)	(32,520)
Financing activities	(42,978)	(7,276)	(21,820)
Capital expenditures	76,141	22,018	39,483
Deferred drydocking expenditures	15,646	15,040	15,739

	December 31,	December 31,
	2010	2011
	(in thousands)	
<b>Balance Sheet Data (as of end of period):</b>		
Cash and cash equivalents	\$ 136,666	\$ 134,351
Working capital	182,276	174,598
Total assets	1,995,309	2,006,704
Long-term debt, net of current portion	853,166	818,146
Total stockholders' equity	853,132	908,553

- (a) Includes \$26.9 million (\$13.1 million, net of taxes or \$0.13 per diluted share) of impairment charges related to the write-down of Hercules 110 to fair value less costs to sell during the second quarter of 2009. The sale of the rig was completed in August 2009. In addition, 2009 includes \$31.6 million (\$20.5 million, net of taxes or \$0.21 per diluted share) related to an allowance for doubtful accounts receivable of approximately \$26.8 million, associated with a customer in our international offshore segment, a non-cash charge of approximately \$7.3 million to fully impair the related deferred mobilization and contract preparation costs, partially offset by a \$2.5 million reduction in previously accrued contract related operating costs that are not expected to be settled if the receivable is not collected.
- (b) Includes \$122.7 million (\$79.8 million, net of taxes or \$0.69 per diluted share) in impairment of property and equipment charges.

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### **RISK FACTORS**

*An investment in our common stock involves risks. You should carefully consider the following discussion of risks and the other information contained in this prospectus supplement and the accompanying prospectus, including the documents incorporated by reference, before deciding whether an investment in our common stock is suitable for you.*

#### **Risks Relating to Our Common Stock**

*Broad market fluctuations could negatively impact the market price of our common stock.*

The capital markets continue to experience extreme price and volume fluctuations that have affected the market price of the shares of many companies in industries similar or related to ours and that have been unrelated to these companies' operating performances. These broad market fluctuations could reduce the market price of our common stock. Furthermore, our operating results and prospects may be below the expectations of public market analysts and investors or may be lower than those of companies with comparable market capitalizations, which could lead to a material decline in the market price of our common stock.

*You may experience significant dilution as a result of additional issuances of our securities, which could harm our stock price.*

Investors in this offering do not have preemptive rights to any shares issued by us in the future. Therefore, investors purchasing shares in this offering may experience dilution of their equity investment if we:

sell additional common shares in the future, whether publicly or privately;

sell securities that are convertible into common shares;

issue restricted shares to our officers or directors; or

issue common stock upon the exercise of options.

After giving effect to the issuance of common stock in this offering, the receipt of the expected net proceeds and the use of those proceeds, we expect that this offering will have a dilutive effect on our earnings per share and funds from operations per share. The actual amount of dilution from this offering, or from any future offering of common or preferred stock, will be based on numerous factors and cannot be determined at this time. Additionally, the market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market pursuant to this offering, or otherwise, or as a result of the perception or expectation that such sales could occur.

#### **Risks Relating to Our Business and Industry**

*New and proposed laws, regulations and legal requirements arising out of the Macondo well blowout incident could prevent or cause delays for our customers in obtaining approval to conduct drilling operations and lead to increased potential liability and costs for us and our customers, which could adversely impact our operations and profitability in the U.S. Gulf of Mexico.*

In response to the Macondo well blowout incident in the U.S. Gulf of Mexico in April 2010, the Obama Administration and regulatory agencies with jurisdiction over oil and gas exploration, including the U.S. Department of the Interior ( DOI ) imposed temporary moratoria on drilling operations, required operators to reapply for exploration plans and drilling permits which had previously been approved, and adopted numerous new regulations and new interpretations of existing regulations regarding operations in the U.S. Gulf of Mexico that are applicable to our oil and gas exploration and production customers and with which their new applications for exploration plans and drilling permits must prove compliant.



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We have significant operations that are either ongoing or scheduled to commence in the U.S. Gulf of Mexico. The requirements set forth in these new laws, regulations and requirements may delay our operations and cause us to incur additional expenses in order for our rigs and operations in the U.S. Gulf of Mexico to be compliant with the new laws, regulations and requirements. These new laws, regulations and requirements and other potential changes in laws and regulations applicable to the offshore drilling industry in the U.S. Gulf of Mexico may also continue to prevent our customers from obtaining new drilling permits and approvals in a timely manner, if at all, which could materially adversely impact our business, financial position or results of operations. Since early 2011, there has been gradual improvement in the number of approved permits per month, however, it is possible that the improvement of this pace could slow or reverse as a result of uncertainties with respect to implementation and interpretation of Notices to Lessees and other regulatory initiatives issued by the DOI and/or the U.S. Bureau of Ocean Energy Management, Regulation and Enforcement ( BOEMRE ), the Bureau of Safety and Environmental Enforcement ( BSEE ) and Bureau of Ocean Energy Management ( BOEM ), as to the ability of the BSEE to timely review submissions and issue drilling permits or because of potential third party challenges to industry drilling operations in the U.S Gulf of Mexico.

In addition to the recently implemented laws, regulations and requirements since the Macondo incident, the federal government has considered additional new laws, regulations and requirements, including those that would have imposed additional equipment requirements and that relate to the protection of the environment, which would be applicable to the offshore drilling industry in the U.S. Gulf of Mexico. The federal government may again consider implementing new laws, regulations and requirements. In particular, the commission appointed by President Obama to study the causes of the Macondo well blowout incident released its report and has recommended certain legislative and regulatory measures that should be taken to minimize the possibility of a reoccurrence of a disastrous spill. The implementation of new, more restrictive laws and regulations could lead to substantially increased potential liability and operating costs for us and our customers, which could cause our customers to discontinue or delay operating in the U.S. Gulf of Mexico and/or redeploy capital to international locations. These actions, if taken by any of our customers, could result in underutilization of our U.S. Gulf of Mexico assets and have an adverse impact on our revenue, profitability and financial position. The regulatory and legal environment in the U.S. Gulf of Mexico remains uncertain and is currently in a state of flux. Accordingly, we cannot predict at this time the impact that any potential changes in laws and regulations relating to offshore oil and gas exploration and development activity in the U.S. Gulf of Mexico may have on our operations or contracts, the extent to which the issuance of drilling permits will continue to be delayed, the effect on the cost or availability of insurance, or the impact on our customers and the demand for our services in the U.S. Gulf of Mexico. Future legislation or regulations may impose new equipment and environmental requirements on us and our customers that could delay or hinder our operations and those of our customers in the U.S. Gulf of Mexico, which could likewise have an adverse impact on our business and financial results.

***Our business depends on the level of activity in the oil and natural gas industry, which is significantly affected by volatile oil and natural gas prices.***

Our business depends on the level of activity of oil and natural gas exploration, development and production in the U.S. Gulf of Mexico and internationally, and in particular, the level of exploration, development and production expenditures of our customers. Demand for our drilling services is adversely affected by declines associated with depressed oil and natural gas prices. Even the perceived risk of a decline in oil or natural gas prices often causes oil and gas companies to reduce spending on exploration, development and production. However, higher prices do not necessarily translate into increased drilling activity since our clients' expectations about future commodity prices typically drive demand for our services. Reductions in capital expenditures of our customers reduce rig utilization and dayrates. Crude oil and condensates are representing a larger proportion of overall production in the U.S. Gulf of Mexico, however, a majority of the production remains natural gas. Oil and natural gas prices are extremely volatile. On July 2, 2008 natural gas prices were \$13.31 per million British thermal unit, or MMBtu, at the Henry Hub. They subsequently declined sharply, reaching a low of \$1.88 per MMBtu at the Henry Hub on September 4, 2009. As of February 23, 2012, the closing price of natural gas at the Henry Hub was \$2.68 per MMBtu. The spot price for West Texas intermediate ( WTI ) crude has recently

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ranged from a high of \$145.29 per barrel as of July 3, 2008, to a low of \$31.41 per barrel as of December 22, 2008, with a closing price of \$107.49 per barrel as of February 23, 2012. Additionally, the spot price for Louisiana Light Sweet ( LLS ) was \$127.79 per barrel as of February 23, 2012. It is our understanding that much of the crude oil produced from the U.S. GOM is sold at LLS posted prices, which trades at a premium to other crude benchmarks, such as WTI. Commodity prices are affected by numerous factors, including the following:

the demand for oil and natural gas in the United States and elsewhere;

the cost of exploring for, developing, producing and delivering oil and natural gas, and the relative cost of onshore production or importation of natural gas;

political, economic and weather conditions in the United States and elsewhere;

advances in drilling, exploration, development and production technology;

the ability of the Organization of Petroleum Exporting Countries, commonly called OPEC, to set and maintain oil production levels and pricing;

the level of production in non-OPEC countries;

domestic and international tax policies and governmental regulations;

the development and exploitation of alternative fuels, and the competitive, social and political position of natural gas as a source of energy compared with other energy sources;

the policies of various governments regarding exploration and development of their oil and natural gas reserves;

the worldwide military and political environment and uncertainty or instability resulting from an escalation or additional outbreak of armed hostilities or other crises in the Middle East (including the recent tensions between the international community and Iran), North Africa, West Africa and other significant oil and natural gas producing regions; and

acts of terrorism or piracy that affect oil and natural gas producing regions, especially in Nigeria, where armed conflict, civil unrest and acts of terrorism have recently increased.

While economic conditions have improved, reduced demand for drilling and liftboat services has materially eroded dayrates and utilization rates for our units, adversely affecting our financial condition and results of operations. Continued hostilities in the Middle East, North Africa and West Africa and the occurrence or threat of terrorist attacks against the United States or other countries could negatively impact the economies of the United States and other countries where we operate. Another decline in the economy could result in a decrease in energy consumption, which in turn would cause our revenue and margins to further decline and limit our future growth prospects.

*The offshore service industry is highly cyclical and experiences periods of low demand and low dayrates. The volatility of the industry, coupled with our short-term contracts, has resulted and could continue to result in sharp declines in our profitability.*

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Historically, the offshore service industry has been highly cyclical, with periods of high demand and high dayrates often followed by periods of low demand and low dayrates. Periods of low demand or increasing supply intensify the competition in the industry and often result in rigs or liftboats being idle for long periods of time. While economic conditions have been improving over the past 24 months, we stacked additional rigs and liftboats and entered into lower dayrate contracts in response to the economic downturn that commenced in late 2008. As a result of the cyclicity of our industry, we expect our results of operations to be volatile and to decrease during market declines such as the recession we recently experienced.

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***Maintaining idle assets or the sale of assets below their then carrying value may cause us to experience losses and may result in impairment charges.***

Prolonged periods of low utilization and dayrates, the cold stacking of idle assets or the sale of assets below their then carrying value may cause us to experience losses. These events may also result in the recognition of impairment charges on certain of our assets if future cash flow estimates, based upon information available to management at the time, indicate that their carrying value may not be recoverable or if we sell assets at below their then carrying value.

***Our industry is highly competitive, with intense price competition. Our inability to compete successfully may reduce our profitability.***

Our industry is highly competitive. Our contracts are traditionally awarded on a competitive bid basis. Pricing is often the primary factor in determining which qualified contractor is awarded a job, although rig and liftboat availability, location and technical capability and each contractor's safety performance record and reputation for quality also can be key factors in the determination. Dayrates also depend on the supply of rigs and vessels. Generally, excess capacity puts downward pressure on dayrates, and we have recently experienced declines in utilized days and dayrates. Excess capacity can occur when newly constructed rigs and vessels enter service, when rigs and vessels are mobilized between geographic areas and when non-marketed rigs and vessels are re-activated.

Several of our competitors also are incorporated in jurisdictions outside the United States, which provides them with significant tax advantages that are not available to us as a U.S. company and, as a result, may materially impair our ability to compete with them for many projects that would be beneficial to our company.

***We have a significant level of debt, and could incur additional debt in the future. Our debt could have significant consequences for our business and future prospects.***

As of December 31, 2011 on an as adjusted basis for our concurrent notes offering and this common stock offering and the application of the net proceeds therefrom, we had total outstanding debt of approximately \$887.4 million. This debt represented approximately 46% of our total book capitalization. In connection with the closing of the concurrent notes offering, we expect to enter into the new revolving credit facility with an aggregate of \$75 million of available borrowing capacity. Our debt and the limitations imposed on us by our existing or future debt agreements could have significant consequences for our business and future prospects, including the following:

we may not be able to obtain necessary financing in the future for working capital, capital expenditures, acquisitions, debt service requirements or other purposes and we may be required under the terms of our existing credit facility, as amended, to use the proceeds of any financing we obtain to repay or prepay existing debt;

we will be required to dedicate a substantial portion of our cash flow from operations to payments of principal and interest on our debt;

we may be exposed to risks inherent in interest rate fluctuations, which will result in higher interest expense to the extent that we do not hedge such risk in the event of increases in interest rates;

we could be more vulnerable during downturns in our business and be less able to take advantage of significant business opportunities and to react to changes in our business and in market or industry conditions; and

we may have a competitive disadvantage relative to our competitors that have less debt.

Our ability to make payments on and to refinance our indebtedness and to fund planned capital expenditures will depend on our ability to generate cash in the future, which is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. Our future cash flows may be





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insufficient to meet all of our debt obligations and other commitments, and any insufficiency could negatively impact our business. To the extent we are unable to repay our indebtedness as it becomes due or at maturity with cash on hand, we will need to refinance our debt, sell assets or repay the debt with the proceeds from equity offerings. Additional indebtedness or equity financing may not be available to us in the future for the refinancing or repayment of existing indebtedness, and we may not be able to complete asset sales in a timely manner sufficient to make such repayments. For further information on our indebtedness, please see Summary Recent Developments.

***Our debt instruments impose significant additional costs and operating and financial restrictions on us, which may prevent us from capitalizing on business opportunities and taking certain actions.***

Our debt instruments will impose significant additional costs and operating and financial restrictions on us. These restrictions limit our ability to, among other things:

make certain types of loans and investments;

pay dividends, redeem or repurchase stock, prepay, redeem or repurchase other debt or make other restricted payments;

incur or guarantee additional indebtedness;

use proceeds from asset sales, new indebtedness or equity issuances for general corporate purposes or investment into our current business;

invest in certain new joint ventures;

create or incur liens;

place restrictions on our subsidiaries' ability to make dividends or other payments to us;

sell our assets or consolidate or merge with or into other companies;

engage in transactions with affiliates; and

enter into new lines of business.

Our compliance with these provisions may materially adversely affect our ability to react to changes in market conditions, take advantage of business opportunities we believe to be desirable, obtain future financing, fund needed capital expenditures, finance our acquisitions, equipment purchases and development expenditures, or withstand the present or any future downturn in our business.

***If we are unable to comply with the restrictions and covenants in our debt instruments, there could be a default, which could result in an acceleration of repayment of funds that we have borrowed.***

Our debt instruments require that we meet certain financial ratios and tests. Our ability to comply with these financial covenants and restrictions can be affected by events beyond our control. Continued reduced activity levels in the oil and natural gas industry could adversely impact our ability to comply with such covenants in the future. Our failure to comply with such covenants would result in an event of default under the new

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revolving credit facility. An event of default could prevent us from borrowing under our new revolving credit facility, which could in turn have a material adverse effect on our available liquidity. In addition, an event of default could result in our having to immediately repay all outstanding indebtedness.

***The continuing worldwide economic problems have materially reduced our revenue, profitability and cash flows.***

The worldwide economic problems that commenced in late 2008 led to a reduction in the availability of liquidity and credit to fund business operations worldwide, and adversely affected our customers, suppliers and lenders. The economic decline caused a reduction in worldwide demand for energy and resulted in lower oil and

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natural gas prices. While oil prices have rebounded, demand for our services depends on oil and natural gas industry activity and capital expenditure levels that are directly affected by trends in oil and natural gas prices. Any prolonged reduction in oil and natural gas prices will further depress the current levels of exploration, development and production activity. Perceptions of longer-term lower oil and natural gas prices by oil and gas companies can similarly reduce or defer major expenditures. Lower levels of activity result in a corresponding decline in the demand for our services, which could have a material adverse effect on our revenue and profitability.

***Global financial and economic circumstances may have impacts on our business and financial condition that we cannot predict, and may limit our ability to finance our business and refinance our debt at a reasonable cost of capital.***

We may face challenges if conditions in the financial markets are inadequate to finance our activities and refinance our debt as it comes due at a reasonable cost of capital. Continuing concerns over the worldwide economic outlook, the availability and costs of credit, and the sovereign debt crisis have contributed to increased volatility in the global financial markets and commodity prices and diminished expectations for the global economy. These conditions could make it more difficult for us to access capital on reasonable terms and to refinance our debt at reasonable costs.

***We may require additional capital in the future, which may not be available to us or may be at a cost which reduces our cash flow and profitability.***

Our business is capital intensive and, to the extent we do not generate sufficient cash from operations, we may need to raise additional funds through public or private debt (which would increase our interest costs) or equity financings to execute our business strategy, to fund capital expenditures or to meet our covenants under the new revolving credit facility. Adequate sources of capital funding may not be available when needed or may not be available on acceptable terms. In addition, under the terms of the new revolving credit facility, we may be required to use the proceeds of any capital that we raise to repay existing indebtedness. If we raise additional funds by issuing additional equity securities, existing stockholders may experience dilution. If funding is insufficient at any time in the future, we may be unable to fund maintenance of our assets, take advantage of business opportunities or respond to competitive pressures, any of which could harm our business.

***Acquisition and integrating such acquisitions create certain risk and may affect our operating results.***

We have completed acquisitions and will consider pursuing acquisitions (including the acquisition of individual rigs) in order to continue to grow and increase profitability. However, acquisitions involve numerous risks and uncertainties, including intense competition for suitable acquisition targets, the potential unavailability of financial resources necessary to consummate acquisitions, difficulties in identifying suitable acquisition targets or in completing any transactions identified on sufficiently favorable terms.

In addition to the risks involved in identifying and completing acquisitions described above, even when acquisitions are completed, integration of acquired entities can involve significant difficulties, such as:

failure to achieve cost savings or other financial or operating objectives with respect to an acquisition;

inability to perform under drilling contracts due to various operational factors, including unscheduled repairs, maintenance, operational delays, health, safety and environmental incidents, weather events and our new customers seeking to cancel or renegotiate our contracts for various reasons;

strain on the operational and managerial controls of our business;

managing geographically separated organization, systems and facilities;

difficulties in the integration and retention of customers or personnel and the integration and effective deployment of operations or technologies;



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assumption of unknown material liabilities or regulatory non-compliance issues;

possible adverse short-term effects on our cash flows or operating results; and

diversion of management's attention from the ongoing operations of our business.

Failure to manage these acquisition risks could have a material adverse effect on our results of operations, financial condition and cash flows. There can be no assurance that we will be able to consummate any acquisitions or expansions, successfully integrate acquired entities, or generate positive cash flow at any acquired company or expansion project.

***Asset sales are currently an important component of our business strategy in reducing our debt. We may be unable to identify appropriate buyers with access to financing or to complete any sales on acceptable terms.***

We are currently considering sales or other dispositions of certain of our assets, and any such disposition could be significant and could significantly affect the results of operations of one or more of our business segments. In the current economic environment, asset sales may occur on less favorable terms than terms that might be available at other times in the business cycle. At any given time, discussions with one or more potential buyers may be at different stages. However, any such discussions may or may not result in the consummation of an asset sale. We may not be able to identify buyers with access to financing or complete any sales on acceptable terms.

***Our contracts are generally short term, and we will experience reduced profitability if our customers reduce activity levels, terminate or seek to renegotiate contracts or if we experience downtime, operational difficulties, or safety-related issues.***

Currently, all of our drilling contracts with major customers are dayrate contracts, where we charge a fixed charge per day regardless of the number of days needed to drill the well. Likewise, under our current liftboat contracts, we charge a fixed fee per day regardless of the success of the operations that are being conducted by our customer utilizing our liftboat. During depressed market conditions, a customer may no longer need a rig or liftboat that is currently under contract or may be able to obtain a comparable rig or liftboat at a lower daily rate. As a result, customers may seek to renegotiate the terms of their existing drilling contracts or avoid their obligations under those contracts. In addition, our customers may have the right to terminate, or may seek to renegotiate, existing contracts if we experience downtime, operational problems above the contractual limit or safety-related issues, if the rig or liftboat is a total loss, if the rig or liftboat is not delivered to the customer within the period specified in the contract or in other specified circumstances, which include events beyond the control of either party.

In the U.S. Gulf of Mexico, contracts are generally short term, and oil and natural gas companies tend to reduce activity levels quickly in response to downward changes in oil and natural gas prices. Due to the short-term nature of most of our contracts, a decline in market conditions can quickly affect our business if customers reduce their levels of operations.

Some of our contracts with our customers include terms allowing them to terminate the contracts without cause, with little or no prior notice and without penalty or early termination payments. In addition, we could be required to pay penalties if some of our contracts with our customers are terminated due to downtime, operational problems or failure to deliver. Some of our other contracts with customers may be cancelable at the option of the customer upon payment of a penalty, which may not fully compensate us for the loss of the contract. Early termination of a contract may result in a rig or liftboat being idle for an extended period of time. The likelihood that a customer may seek to terminate a contract is increased during periods of market weakness. If our customers cancel or require us to renegotiate some of our significant contracts, if we are unable to secure new contracts on substantially similar terms, especially those contracts in our International Offshore segment, or if contracts are suspended for an extended period of time, our revenue and profitability would be materially reduced.

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### ***An increase in supply of rigs or liftboats could adversely affect our financial condition and results of operations.***

Reactivation of non-marketed rigs or liftboats, mobilization of rigs or liftboats back to the U.S. Gulf of Mexico or new construction of rigs or liftboats could result in excess supply in the region, and our dayrates and utilization could be reduced.

Construction of rigs could result in excess supply in international regions, which could reduce our ability to secure new contracts for our stacked rigs and could reduce our ability to renew, extend or obtain new contracts for working rigs at the end of such contract term. The excess supply would also impact the dayrates on future contracts.

If market conditions improve, inactive rigs and liftboats that are not currently being marketed could be reactivated to meet an increase in demand. Improved market conditions in the U.S. Gulf of Mexico, particularly relative to other regions, could also lead to the movement of jackup rigs, other mobile offshore drilling units and liftboats into the U.S. Gulf of Mexico. Improved market conditions in any region worldwide could lead to increased construction and upgraded programs by our competitors. Some of our competitors have already announced plans to upgrade existing equipment or build additional jackup rigs with higher specifications than our rigs. According to ODS-Petrodata, as of February 24, 2012, 79 jackup rigs were under construction or on order globally by industry participants, national oil companies and financial investors for delivery through 2014. Many of the rigs currently under construction have not been contracted for future work, which may intensify price competition as scheduled delivery dates occur. A significant increase in the supply of jackup rigs, other mobile offshore drilling units or liftboats could adversely affect both our utilization and dayrates.

### ***Our business involves numerous operating hazards and exposure to extreme weather and climate risks, and our insurance may not be adequate to cover our losses.***

Our operations are subject to the usual hazards inherent in the drilling and operation of oil and natural gas wells, such as blowouts, reservoir damage, loss of production, loss of well control, punchthroughs, craterings, fires and pollution. The occurrence of these events could result in the suspension of drilling or production operations, claims by the operator, severe damage to or destruction of the property and equipment involved, injury or death to rig or liftboat personnel, and environmental damage. We may also be subject to personal injury and other claims of rig or liftboat personnel as a result of our drilling and liftboat operations. Operations also may be suspended because of machinery breakdowns, abnormal operating conditions, failure of subcontractors to perform or supply goods or services and personnel shortages.

In addition, our drilling and liftboat operations are subject to perils of marine operations, including capsizing, grounding, collision and loss or damage from severe weather. Tropical storms, hurricanes and other severe weather prevalent in the U.S. Gulf of Mexico could have a material adverse effect on our operations. During such severe weather conditions, our liftboats typically leave their location and cease to earn a full dayrate. The liftboats cannot return to the location until the weather improves and the seas are less than U.S. Coast Guard approved limits. In addition, damage to our rigs, liftboats, shorebases and corporate infrastructure caused by high winds, turbulent seas, or unstable sea bottom conditions could potentially cause us to curtail operations for significant periods of time until the damages can be repaired. In addition, we could stack a number of rigs in certain locations offshore. This concentration of rigs in specific locations could expose us to increased liability from a catastrophic event and could cause an increase in our insurance costs.

Damage to the environment could result from our operations, particularly through oil spillage or extensive uncontrolled fires. We may also be subject to property, environmental and other damage claims by oil and natural gas companies and other businesses operating offshore and in coastal areas. Our insurance policies and contractual rights to indemnity may not adequately cover losses, and we may not have insurance coverage or rights to indemnity for all risks. Moreover, pollution and environmental risks generally are subject to significant deductibles and are not totally insurable. Risks from extreme weather and marine hazards may increase in the event of ongoing patterns of adverse changes in weather or climate.

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***A significant portion of our business is conducted in shallow-water areas of the U.S. Gulf of Mexico. The mature nature of this region could result in less drilling activity in the area, thereby reducing demand for our services.***

The U.S. Gulf of Mexico, and in particular the shallow-water region of the U.S. Gulf of Mexico, is a mature oil and natural gas production region that has experienced substantial seismic survey and exploration activity for many years. Because a large number of oil and natural gas prospects in this region have already been drilled, additional prospects of sufficient size and quality could be more difficult to identify. According to the U.S. Energy Information Administration, the average size of the U.S. Gulf of Mexico discoveries has declined significantly since the early 1990s. In addition, the amount of natural gas production in the shallow-water U.S. Gulf of Mexico has declined over the last decade. Moreover, oil and natural gas companies may be unable to obtain financing necessary to drill prospects in this region. The decrease in the size of oil and natural gas prospects, the decrease in production or the failure to obtain such financing may result in reduced drilling activity in the U.S. Gulf of Mexico and reduced demand for our services.

***We can provide no assurance that our current backlog of contract drilling revenue will be ultimately realized.***

As of March 15, 2012, our total contract drilling backlog for our Domestic Offshore, International Offshore and Inland segments was approximately \$418.6 million. We expect that our new drilling contract with Saudi Aramco for the use of *Ocean Columbia* will add approximately \$136.9 million to the contract backlog, excluding the mobilization fee. We calculate our contract revenue backlog, or future contracted revenue, as the contract dayrate multiplied by the number of days remaining on the contract, excluding any penalties or reductions in dayrate for late delivery or non-compliance with contractual obligations, assuming full utilization. Backlog excludes revenue for management agreements, mobilization, demobilization, contract preparation and customer reimbursables. We may not be able to perform under our drilling contracts (including our new contract with Saudi Aramco for use of *Ocean Columbia*) due to various operational factors, including unscheduled repairs, maintenance, operational delays, health, safety and environmental incidents, weather events in the Gulf of Mexico and elsewhere and other factors (some of which are beyond our control), and our customers may seek to cancel or renegotiate our contracts for various reasons. In some of the contracts, our customer has the right to terminate the contract without penalty and in certain instances, with little or no notice (including our new contract with Saudi Aramco for use of *Ocean Columbia*). Our inability or the inability of our customers to perform under our or their contractual obligations may have a material adverse effect on our financial position, results of operations and cash flows.

***Our insurance coverage has become more expensive, may become unavailable in the future, and may be inadequate to cover our losses.***

Our insurance coverage is subject to certain significant deductibles and levels of self-insurance, does not cover all types of losses and, in some situations, may not provide full coverage for losses or liabilities resulting from our operations. In addition, due to the losses sustained by us and the offshore drilling industry in recent years, primarily as a result of Gulf of Mexico hurricanes, we are likely to continue experiencing increased costs for available insurance coverage, which may impose higher deductibles and limit maximum aggregated recoveries, including for hurricane-related windstorm damage or loss. Insurance costs may increase in the event of ongoing patterns of adverse changes in weather or climate.

Further, we may not be able to obtain windstorm coverage in the future, thus putting us at a greater risk of loss due to severe weather conditions and other hazards. If a significant accident or other event resulting in damage to our rigs or liftboats, including severe weather, terrorist acts, piracy, war, civil disturbances, pollution or environmental damage, occurs and is not fully covered by insurance or a recoverable indemnity from a customer, it could adversely affect our financial condition and results of operations. Moreover, we may not be able to maintain adequate insurance in the future at rates we consider reasonable or be able to obtain insurance against certain risks.

As a result of a number of recent catastrophic weather related and other events, insurance underwriters increased insurance premiums for many of the coverages historically maintained and issued general notices of cancellation and significant changes for a wide variety of insurance coverages. The oil and natural gas industry



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has suffered extensive damage from several hurricanes over the past several years. As a result, over the past several years our insurance costs increased significantly, our deductibles increased and our coverage for named windstorm damage was restricted. Any additional severe storm activity in the energy producing areas of the U.S. Gulf of Mexico in the future could cause insurance underwriters to no longer insure U.S. Gulf of Mexico assets against weather-related damage. A number of our customers that produce oil and natural gas have previously maintained business interruption insurance for their production. This insurance is less available and may cease to be available in the future, which could adversely impact our customers' business prospects in the U.S. Gulf of Mexico and reduce demand for our services.

### ***Our customers may be unable or unwilling to indemnify us.***

Consistent with standard industry practice, our clients generally assume, and indemnify us against, well control and subsurface risks under dayrate contracts. These risks are those associated with the loss of control of a well, such as blowout or cratering, the cost to regain control or redrill the well and associated pollution. There can be no assurance, however, that these clients will necessarily be financially able to indemnify us against all these risks. Also, we may be effectively prevented from enforcing these indemnities because of the nature of our relationship with some of our larger clients. Additionally, from time to time we may not be able to obtain agreements from our customers to indemnify us for such damages and risks.

### ***Any violation of the Foreign Corrupt Practices Act or similar laws and regulations could result in significant expenses, divert management attention, and otherwise have a negative impact on us.***

We are subject to the Foreign Corrupt Practices Act (the "FCPA"), which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or retaining business, and the anti-bribery laws of other jurisdictions. On April 4, 2011, we received a subpoena from the SEC requesting that we produce documents relating to our compliance with the FCPA. We have also been advised by the Department of Justice ("DOJ") that it is conducting a similar investigation. Under the direction of the audit committee, we are conducting an internal investigation regarding these matters. Any determination that we have violated the FCPA or laws of any other jurisdiction could have a material adverse effect on our financial condition.

### ***Our international operations may subject us to political and regulatory risks and uncertainties.***

In connection with our international contracts, the transportation of rigs, services and technology across international borders subjects us to extensive trade laws and regulations. Our import and export activities are governed by unique customs laws and regulations in each of the countries where we operate. In each jurisdiction, laws and regulations concerning importation, recordkeeping and reporting, import and export control and financial or economic sanctions are complex and constantly changing. Our business and financial condition may be materially affected by enactment, amendment, enforcement or changing interpretations of these laws and regulations. Rigs and other shipments can be delayed and denied import or export for a variety of reasons, some of which are outside our control and some of which may result in failure to comply with existing laws and regulations and contractual requirements. Shipping delays or denials could cause operational downtime or increased costs, duties, taxes and fees. Any failure to comply with applicable legal and regulatory obligations also could result in criminal and civil penalties and sanctions, such as fines, imprisonment, debarment from government contracts, seizure of goods and loss of import and export privileges.

### ***Our international operations are subject to additional political, economic, and other uncertainties not generally associated with domestic operations.***

An element of our business strategy is to continue to expand into international oil and natural gas producing areas such as West Africa, the Middle East and the Asia-Pacific region. We operate liftboats in West Africa,

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including Nigeria, and in the Middle East. We also operate drilling rigs in Southeast Asia, Saudi Arabia, Mexico and West Africa. Our international operations are subject to a number of risks inherent in any business operating in foreign countries, including:

political, social and economic instability, war and acts of terrorism;

potential seizure, expropriation or nationalization of assets;

damage to our equipment or violence directed at our employees, including kidnappings and piracy;

increased operating costs;

complications associated with repairing and replacing equipment in remote locations;

repudiation, modification or renegotiation of contracts, disputes and legal proceedings in international jurisdictions;

limitations on insurance coverage, such as war risk coverage in certain areas;

import-export quotas;

confiscatory taxation;

work stoppages or strikes, particularly in the West African and Mexican labor environments;

unexpected changes in regulatory requirements;

wage and price controls;

imposition of trade barriers;

imposition or changes in enforcement of local content laws, particularly in West Africa and Southeast Asia, where the legislatures are active in developing new legislation;

restrictions on currency or capital repatriations;

currency fluctuations and devaluations; and

other forms of government regulation and economic conditions that are beyond our control.

Many governments favor or effectively require that liftboat or drilling contracts be awarded to local contractors or require foreign contractors to employ citizens of, or purchase supplies from, a particular jurisdiction. These practices may result in inefficiencies or put us at a disadvantage when bidding for contracts against local competitors.

Our non-U.S. contract drilling and liftboat operations are subject to various laws and regulations in countries in which we operate, including laws and regulations relating to the equipment and operation of drilling rigs and liftboats, currency conversions and repatriation, oil and natural gas exploration and development, taxation of offshore earnings and earnings of expatriate personnel, the use of local employees and suppliers by foreign contractors, the ownership of assets by local citizens and companies, and duties on the importation and exportation of units and other equipment. Governments in some foreign countries have become increasingly active in regulating and controlling the ownership of concessions and companies holding concessions, the exploration for oil and natural gas and other aspects of the oil and natural gas industries in their countries. In some areas of the world, this governmental activity has adversely affected the amount of exploration and development work done by major oil and natural gas companies and may continue to do so. Operations in developing countries can be subject to legal systems which are not as predictable as those in more developed countries, which can lead to greater risk and uncertainty in legal matters and proceedings.

Due to our international operations, we may experience currency exchange losses when revenue is received and expenses are paid in nonconvertible currencies or when we do not hedge an exposure to a foreign currency. We may also incur losses as a result of our inability to collect revenue because of a shortage of convertible currency available to the country of operation, controls over currency exchange or controls over the repatriation of income or capital.

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***A small number of customers account for a significant portion of our revenue, and the loss of one or more of these customers could adversely affect our financial condition and results of operations.***

In recent years there has been a significant consolidation in our customer base. Therefore, we derive a significant amount of our revenue from a few energy companies. Chevron Corporation and Saudi Aramco accounted for 25% and 13% of our revenue for the year ended December 31, 2011, respectively. Our financial condition and results of operations will be materially adversely affected if these customers interrupt or curtail their activities, terminate their contracts with us, fail to renew their existing contracts or refuse to award new contracts to us and we are unable to enter into contracts with new customers at comparable dayrates. The loss of either of these or any other significant customer could adversely affect our financial condition and results of operations.

***Our existing jackup rigs are at a relative disadvantage to higher specification rigs, which may be more likely to obtain contracts than lower specification jackup rigs such as ours.***

Many of our competitors have jackup fleets with generally higher specification rigs than those in our jackup fleet. In addition, all of the new rigs under construction are of higher specification than our existing fleet. While Hercules has signed agreements to manage the construction and operations of the two ultra high specification harsh environment jackup drilling rigs on order for Discovery, 33 of our 42 jackup rigs are mat-supported, which are generally limited to geographic areas with soft bottom conditions like much of the Gulf of Mexico. Most of the rigs under construction are currently without contracts, which may intensify price competition as scheduled delivery dates occur. Particularly in periods in which there is decreased rig demand, such as the current period, higher specification rigs may be more likely to obtain contracts than lower specification jackup rigs such as ours. In the past, lower specification rigs have been stacked earlier in the cycle of decreased rig demand than higher specification rigs and have been reactivated later in the cycle, which may adversely impact our business. In addition, higher specification rigs may be more adaptable to different operating conditions and therefore have greater flexibility to move to areas of demand in response to changes in market conditions. Because a majority of our rigs were designed specifically for drilling in the shallow-water of the U.S. Gulf of Mexico, our ability to move them to other regions in response to changes in market conditions is limited.

Furthermore, in recent years, an increasing amount of exploration and production expenditures have been concentrated in deepwater drilling programs and deeper formations, including deep natural gas prospects, requiring higher specification jackup rigs, semisubmersible drilling rigs or drillships. This trend is expected to continue and could result in a decline in demand for lower specification jackup rigs like ours, which could have an adverse impact on our financial condition and results of operations. One of our customers, PEMEX, has indicated a shifting focus in drilling rig requirements since the beginning of 2008, with more emphasis placed on newer, higher specification rigs. Demand in Mexico for our jackup rig fleet declined and the future contracting opportunities for such rigs in Mexico could diminish.

***We may consider future acquisitions and may be unable to complete and finance future acquisitions on acceptable terms. In addition, we may fail to successfully integrate acquired assets or businesses we acquire or incorrectly predict operating results.***

We may consider future acquisitions which could involve the payment by us of a substantial amount of cash, the incurrence of a substantial amount of debt or the issuance of a substantial amount of equity. Unless we have achieved specified financial covenant levels, our new revolving credit facility restricts our ability to make acquisitions involving the payment of cash or the incurrence of debt. If we are restricted from using cash or incurring debt to fund a potential acquisition, we may not be able to issue, on terms we find acceptable, sufficient equity that may be required for any such permitted acquisition or investment. In addition, barring any restrictions under the new revolving credit facility, we still may not be able to obtain, on terms we find acceptable, sufficient financing or funding that may be required for any such acquisition or investment.

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We cannot predict the effect, if any, that any announcement or consummation of an acquisition would have on the trading price of our common stock.

Any future acquisitions could present a number of risks, including:

the risk of incorrect assumptions regarding the future results of acquired operations or assets or expected cost reductions or other synergies expected to be realized as a result of acquiring operations or assets;

the risk of failing to integrate the operations or management of any acquired operations or assets successfully and timely; and

the risk of diversion of management's attention from existing operations or other priorities.

If we are unsuccessful in integrating our acquisitions in a timely and cost-effective manner, our financial condition and results of operations could be adversely affected.

### ***Failure to retain or attract skilled workers could hurt our operations.***

We require skilled personnel to operate and provide technical services and support for our rigs and liftboats. The shortages of qualified personnel or the inability to obtain and retain qualified personnel could negatively affect the quality and timeliness of our work. In periods of economic crisis or during a recession, we may have difficulty attracting and retaining our skilled workers as these workers may seek employment in less cyclical or volatile industries or employers. In periods of recovery or increasing activity, we may have to increase the wages of our skilled workers, which could negatively impact our operations and financial results.

Although our domestic employees are not covered by a collective bargaining agreement, the marine services industry has been targeted by maritime labor unions in an effort to organize U.S. Gulf of Mexico employees. A significant increase in the wages paid by competing employers or the unionization of our U.S. Gulf of Mexico employees could result in a reduction of our skilled labor force, increases in the wage rates that we must pay, or both. If either of these events were to occur, our capacity and profitability could be diminished and our growth potential could be impaired.

### ***Governmental laws and regulations, including those related to climate change and emissions of greenhouse gases, may add to our costs or limit drilling activity and liftboat operations.***

Our operations are affected in varying degrees by governmental laws and regulations. We are also subject to the jurisdiction of the Coast Guard, the National Transportation Safety Board, the Customs and Border Protection, the Department of Interior, the BOEM and the BSEE, as well as private industry organizations such as the American Bureau of Shipping. We may be required to make significant capital expenditures to comply with laws and the applicable regulations and standards of governmental authorities and organizations. Moreover, the cost of compliance could be higher than anticipated. Similarly, our international operations are subject to compliance with the FCPA, certain international conventions and the laws, regulations and standards of other foreign countries in which we operate. It is also possible that existing and proposed governmental conventions, laws, regulations and standards, including those related to climate change and emissions of greenhouse gases, may in the future add significantly to our operating costs or limit our activities or the activities and levels of capital spending by our customers.

In addition, as our vessels age, the costs of drydocking the vessels in order to comply with governmental laws and regulations and to maintain their class certifications are expected to increase, which could adversely affect our financial condition and results of operations.

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### ***Compliance with or a breach of environmental laws and regulations can be costly and could limit our operations.***

Our operations are subject to federal, state, local and foreign and/or international laws and regulations that require us to obtain and maintain specified permits or other governmental approvals, control the discharge of materials into the environment, require the removal and cleanup of materials that may harm the environment or otherwise relate to the protection of the environment. For example, as an operator of mobile offshore drilling units and liftboats in navigable U.S. waters and some offshore areas, we may be liable for damages and costs incurred in connection with oil spills or other unauthorized discharges of chemicals or wastes resulting from those operations. Failure to comply with these laws and regulations may result in the assessment of administrative, civil and criminal penalties, the imposition of remedial obligations, and the issuance of injunctions restricting some or all of our activities in the affected areas. Laws and regulations protecting the environment have become more stringent in recent years, and may in some cases impose strict liability, rendering a person liable for environmental damage without regard to negligence or fault on the part of such person. Some of these laws and regulations may expose us to liability for the conduct of or conditions caused by others or for acts that were in compliance with all applicable laws at the time they were performed. The application of these requirements, the modification of existing laws or regulations or the adoption of new requirements, both in U.S. waters and internationally, could have a material adverse effect on our financial condition and results of operations.

### ***We may not be able to maintain or replace our rigs and liftboats as they age.***

The capital associated with the repair and maintenance of our fleet increases with age. We may not be able to maintain our fleet by extending the economic life of existing rigs and liftboats, and our financial resources may not be sufficient to enable us to make expenditures necessary for these purposes or to acquire or build replacement units.

### ***Our operating and maintenance costs with respect to our rigs include fixed costs that will not decline in proportion to decreases in dayrates.***

We do not expect our operating and maintenance costs with respect to our rigs to necessarily fluctuate in proportion to changes in operating revenue. Operating revenue may fluctuate as a function of changes in dayrate, but costs for operating a rig are generally fixed or only semi-variable regardless of the dayrate being earned. Additionally, if our rigs incur idle time between contracts, we typically do not de-man those rigs because we will use the crew to prepare the rig for its next contract. During times of reduced activity, reductions in costs may not be immediate as portions of the crew may be required to prepare our rigs for stacking, after which time the crew members are assigned to active rigs or dismissed. Moreover, as our rigs are mobilized from one geographic location to another, the labor and other operating and maintenance costs can vary significantly. In general, labor costs increase primarily due to higher salary levels and inflation. Equipment maintenance expenses fluctuate depending upon the type of activity the unit is performing and the age and condition of the equipment. Contract preparation expenses vary based on the scope and length of contract preparation required and the duration of the firm contractual period over which such expenditures are amortized.

### ***Upgrade, refurbishment and repair projects are subject to risks, including delays and cost overruns, which could have an adverse impact on our available cash resources and results of operations.***

We make upgrade, refurbishment and repair expenditures for our fleet from time to time, including when we acquire units or when repairs or upgrades are required by law, in response to an inspection by a governmental authority or when a unit is damaged. We also regularly make certain upgrades or modifications to our drilling rigs to meet customer or contract specific requirements. Upgrade, refurbishment and repair projects, including our planned refurbishment and upgrade of *Ocean Columbia*, are subject to the risks of delay or cost overruns inherent in any large construction project, including costs or delays resulting from the following:

unexpectedly long delivery times for, or shortages of, key equipment, parts and materials;

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shortages of skilled labor and other shipyard personnel necessary to perform the work;

unforeseen increases in the cost of equipment, labor and raw materials, particularly steel;

unforeseen design and engineering problems;

latent damages to or deterioration of hull, equipment and machinery in excess of engineering estimates and assumptions;

unanticipated actual or purported change orders;

work stoppages;

failure or delay of third-party service providers and labor disputes;

disputes with shipyards and suppliers;

delays and unexpected costs of incorporating parts and materials needed for the completion of projects;

failure or delay in obtaining acceptance of the rig from our customer;

financial or other difficulties at shipyards;

adverse weather conditions; and

inability or delay in obtaining customer acceptance or flag-state, classification society, certificate of inspection, or regulatory approvals. Significant cost overruns or delays would adversely affect our financial condition and results of operations. Additionally, capital expenditures for rig upgrade and refurbishment projects, including our planned refurbishment and upgrade of *Ocean Columbia*, could exceed our planned capital expenditures. Failure to complete an upgrade, refurbishment or repair project on time may, in some circumstances, result in the delay, renegotiation or cancellation of a drilling or liftboat contract and could put at risk our planned arrangements to commence operations on schedule. We also could be exposed to contractual penalties for failure to complete an upgrade, refurbishment or repair project, including our planned refurbishment and upgrade of *Ocean Columbia*, and commence operations in a timely manner. Our rigs and liftboats undergoing upgrade, refurbishment or repair generally do not earn a dayrate during the period they are out of service.

***We are subject to litigation that could have an adverse effect on us.***

We are from time to time involved in various litigation matters. The numerous operating hazards inherent in our business increases our exposure to litigation, including personal injury litigation brought against us by our employees that are injured operating our rigs and liftboats. These matters may include, among other things, contract dispute, personal injury, environmental, asbestos and other toxic tort, employment, tax and securities litigation, and litigation that arises in the ordinary course of our business. We have extensive litigation brought against us in federal and state courts located in Louisiana, Mississippi and South Texas, areas that were significantly impacted by hurricanes during the last several years and recently by the Macondo well blowout incident. The jury pools in these areas have become increasingly more hostile to defendants,

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particularly corporate defendants in the oil and gas industry. We cannot predict with certainty the outcome or effect of any claim or other litigation matter. Litigation may have an adverse effect on us because of potential negative outcomes, the costs associated with defending the lawsuits, the diversion of our management's resources and other factors.

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***Changes in effective tax rates, taxation of our foreign subsidiaries, limitations on utilization of our net operating losses or adverse outcomes resulting from examination of our tax returns could adversely affect our operating results and financial results.***

Our future effective tax rates could be adversely affected by changes in tax laws, both domestically and internationally. From time to time, Congress and foreign, state and local governments consider legislation that could increase our effective tax rates. We cannot determine whether, or in what form, legislation will ultimately be enacted or what the impact of any such legislation would be on our profitability. If these or other changes to tax laws are enacted, our profitability could be negatively impacted.

Our future effective tax rates could also be adversely affected by changes in the valuation of our deferred tax assets and liabilities, the ultimate repatriation of earnings from foreign subsidiaries to the United States, or by changes in tax treaties, regulations, accounting principles or interpretations thereof in one or more countries in which we operate. In addition, we are subject to the potential examination of our tax returns by the Internal Revenue Service and other tax authorities where we file tax returns. We regularly assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our provision for taxes. There can be no assurance that such examinations will not have an adverse effect on our operating results and financial condition.

***Our business would be adversely affected if we failed to comply with the provisions of U.S. law on coastwise trade, or if those provisions were modified, repealed or waived.***

We are subject to U.S. federal laws that restrict maritime transportation, including liftboat services, between points in the United States to vessels built and registered in the United States and owned and manned by U.S. citizens. We are responsible for monitoring the ownership of our common stock. If we do not comply with these restrictions, we would be prohibited from operating our liftboats in U.S. coastwise trade, and under certain circumstances we would be deemed to have undertaken an unapproved foreign transfer, resulting in severe penalties, including permanent loss of U.S. coastwise trading rights for our liftboats, fines or forfeiture of the liftboats.

During the past several years, interest groups have lobbied Congress to repeal these restrictions to facilitate foreign flag competition for trades currently reserved for U.S.-flag vessels under the federal laws. We believe that interest groups may continue efforts to modify or repeal these laws currently benefiting U.S.-flag vessels. If these efforts are successful, it could result in increased competition, which could adversely affect our results of operations.

***Our liquidity depends upon cash on hand, cash from operations and availability under the new revolving credit facility.***

Our liquidity depends upon cash on hand, cash from operations and availability under our new revolving credit facility. We currently believe we will have adequate liquidity to fund our operations for the foreseeable future. However, to the extent we do not generate sufficient cash from operations, we may need to raise additional funds through public or private debt or equity offerings to fund operations. Furthermore, we may need to raise additional funds through public or private debt or equity offerings or asset sales to avoid a breach of our financial covenants in our new revolving credit facility to refinance our indebtedness, to fund capital expenditures or for general corporate purposes.

***We limit foreign ownership of our company, which may restrict investment in our common stock and could reduce the price of our common stock.***

Our certificate of incorporation limits the percentage of outstanding common stock and other classes of capital stock that can be owned by non-United States citizens within the meaning of statutes relating to the ownership of U.S.-flagged vessels. Applying the statutory requirements applicable today, our certificate of incorporation provides that no more than 20% of our outstanding common stock may be owned by non-United States citizens and establishes mechanisms to maintain compliance with these requirements. These restrictions

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may have an adverse impact on the liquidity or market value of our common stock because holders may be unable to transfer our common stock to non-United States citizens. Any attempted or purported transfer of our common stock in violation of these restrictions will be ineffective to transfer such common stock or any voting, dividend or other rights in respect of such common stock.

Our certificate of incorporation also provides that any transfer, or attempted or purported transfer, of any shares of our capital stock that would result in the ownership or control of in excess of 20% of our outstanding capital stock by one or more persons who are not United States citizens for purposes of U.S. coastwise shipping will be void and ineffective as against us. In addition, if at any time persons other than United States citizens own shares of our capital stock or possess voting power over any shares of our capital stock in excess of 20%, we may withhold payment of dividends, suspend the voting rights attributable to such shares and redeem such shares.

***We have no plans to pay regular dividends on our common stock, so investors in our common stock may not receive funds without selling their shares.***

We do not intend to declare or pay regular dividends on our common stock in the foreseeable future. Instead, we generally intend to invest any future earnings in our business. Subject to Delaware law, our board of directors will determine the payment of future dividends on our common stock, if any, and the amount of any dividends in light of any applicable contractual restrictions limiting our ability to pay dividends, our earnings and cash flows, our capital requirements, our financial condition, and other factors our board of directors deems relevant. Our senior secured credit agreement restricts our ability to pay dividends or other distributions on our equity securities. Accordingly, stockholders may have to sell some or all of their common stock in order to generate cash flow from their investment. Stockholders may not receive a gain on their investment when they sell our common stock and may lose the entire amount of their investment.

***Provisions in our charter documents or Delaware law may inhibit a takeover, which could adversely affect the value of our common stock.***

Our certificate of incorporation, bylaws and Delaware corporate law contain provisions that could delay or prevent a change of control or changes in our management that a stockholder might consider favorable. These provisions will apply even if the offer may be considered beneficial by some of our stockholders. If a change of control or change in management is delayed or prevented, the market price of our common stock could decline.

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**USE OF PROCEEDS**

We expect to receive net proceeds from this offering of approximately \$ \_\_\_\_\_, after deducting underwriting discounts and the offering expenses. If the underwriters exercise their over-allotment option in full, we expect to receive net proceeds of approximately \$ \_\_\_\_\_ million. We intend to use 50% of the net proceeds from this offering to repay indebtedness outstanding under our existing term loan facility. We expect to use the remaining net proceeds to fund a portion of the purchase price for the acquisition of *Ocean Columbia* as well as the costs associated with the repair, upgrade and mobilization of *Ocean Columbia*. If the acquisition of *Ocean Columbia* is not consummated, the portion of the net proceeds from this offering that would have been used to fund the acquisition of *Ocean Columbia* and the costs associated with the repair, upgrade and mobilization of *Ocean Columbia* will be used for general corporate purposes. As of March 1, 2012, approximately \$435.3 million was outstanding under our existing term loan facility and the interest rate was 7.5%. Borrowings under the term loan facility mature July 11, 2013.

Concurrently with this offering, we are launching a private placement of \$300 million of Senior Secured Notes due 2017 ( Senior Secured Notes ) and \$200 million of Senior Notes due 2019 ( Senior Notes ) to qualified institutional buyers pursuant to Rule 144A under the Securities Act and to persons outside the United States pursuant to Regulation S under the Securities Act. We expect to use the net proceeds from our notes offering together with a portion of the net proceeds of this offering to repay all of the indebtedness outstanding under our existing term loan facility. We expect to use the remaining net proceeds for general corporate purposes, including to fund a portion of the purchase price for the acquisition of *Ocean Columbia* as well as the costs associated with the repair, upgrade and mobilization of *Ocean Columbia*. This offering is not conditioned upon completion of the notes offering and there can be no assurance that the notes offering will be consummated.

Certain of the underwriters or their affiliates are lenders under our existing term loan facility and/or our existing revolving credit facility and will receive a portion of the net proceeds of this offering used to reduce indebtedness outstanding under our existing term loan facility. Please read Underwriting.

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The following table sets forth our cash and cash equivalents and our capitalization as of December 31, 2011 on:

An actual basis;

As adjusted to reflect the sale of our common stock in this offering and the application of approximately \$95.5 million assumed net proceeds therefrom, net of offering expenses;

On an as further adjusted basis to give effect to (i) the sale of the \$300 million of Senior Secured Notes and the \$200 million of Senior Notes as described under Summary Recent Developments Concurrent Notes Offering and our application of the estimated net proceeds therefrom assuming pricing at par as described under Use of Proceeds ; and (ii) the entry into a new revolving credit facility as described in Summary Recent Developments New Revolving Credit Facility.

You should read our financial statements and notes that are incorporated by reference into this prospectus supplement and the accompanying base prospectus for additional information about our capital structure. The following table does not reflect any shares of common stock that may be sold to the underwriters upon exercise of their option to purchase additional shares.

		As of December 31, 2011	
	Actual	As adjusted(1) (in thousands)	As further adjusted
Cash and cash equivalents	\$ 134,351	\$ 182,107(2)	\$ 266,454(3)
Long-term debt, including current portion:			
New revolving credit facility, due 2017(4)			
Term loan facility, due July 2013	452,909	405,153	
Existing revolving credit facility, due July 2012(5)			
New Senior Secured Notes due 2017			300,000
3.375% Convertible Senior Notes, due June 2038	90,180	90,180	90,180
New Senior Unsecured Notes due 2019			200,000
7.375% Senior Notes, due April 2018	3,511	3,511	3,511
10.5% Senior Secured Notes, due October 2017(6)	293,676	293,676	293,676
Total long-term debt, including current portion	\$ 840,276	\$ 792,520	\$ 887,367
Stockholders' equity:			
Common stock, par value \$0.01 per share	1,398	1,598	1,598
Capital in excess of par value	2,057,824	2,153,136	2,153,136
Treasury stock, at cost	(52,184)	(52,184)	(52,184)
Retained deficit	(1,098,485)	(1,098,485)	(1,098,485)
Total stockholders' equity	908,553	1,004,065	1,004,065
Total capitalization	\$ 1,748,829	\$ 1,796,585	1,891,432

(1) Proceeds assume closing price of \$5.04 on March 19, 2012.

(2)

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As adjusted cash and cash equivalents assumes that 50% of the proceeds from this offering will initially be credited to cash to reflect that the closing of the acquisition of *Ocean Columbia* is not expected to occur until May 2012.

- (3) It is anticipated that a portion of our cash and cash equivalents will be used to fund a portion of the purchase price for the acquisition of *Ocean Columbia* as well as the costs associated with the repair, upgrade and mobilization of *Ocean Columbia*. As further adjusted cash and cash equivalents does not reflect the payment of the purchase price or the costs associated with the repair, upgrade and mobilization of *Ocean Columbia*. Such amount is expected to be \$85 million.
- (4) Under the new revolving credit facility, we expect to have \$75.0 million of available borrowing capacity upon consummation of this offering.
- (5) As of March 5, 2012, we had \$137.4 million of available borrowing capacity under our existing credit facility, which will be terminated in connection with the execution of the new revolving credit facility.
- (6) Upon consummation of the concurrent notes offering the 10.5% Senior Secured Notes will become unsecured pursuant to the collateral suspension described in Summary Recent Developments Concurrent Notes Offering.

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**Table of Contents****COMMON STOCK PRICE RANGE AND DIVIDENDS**

Our common stock is listed on the NASDAQ Global Select Market. The following table sets forth, for the periods indicated, the range of high and low sales prices of and dividends declared and paid on our common stock:

	Price Range		Cash Dividend Per Share
	High	Low	
2012			
First Quarter through March 19, 2012	\$ 5.57	\$ 3.77	N/A
2011			
Fourth Quarter	\$ 4.58	\$ 2.25	N/A
Third Quarter	5.60	2.90	N/A
Second Quarter	6.99	4.97	N/A
First Quarter	6.72	3.04	N/A
2010			
Fourth Quarter	\$ 3.65	\$ 2.16	N/A
Third Quarter	2.78	2.05	N/A
Second Quarter	4.73	2.39	N/A
First Quarter	5.85	3.51	N/A

The reported last sale price for our common stock on the NASDAQ Global Select Market on March 19, 2012 was \$5.04 per share. As of March 15, 2012, there were 138,439,325 shares of common stock outstanding, and our outstanding shares of common stock were held by approximately 128 shareowner accounts of record.

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### **DESCRIPTION OF COMMON STOCK**

Our authorized capital stock consists of 200,000,000 shares of common stock, par value \$0.01 per share, and 50,000,000 shares of preferred stock, par value \$0.01 per share. The following describes our common stock, preferred stock, certificate of incorporation and bylaws. This description is a summary only. We encourage you to read the complete text of our certificate of incorporation and bylaws, which we have filed as exhibits to the registration statement of which this prospectus is a part.

#### **Common Stock**

Each share of common stock entitles the holder to one vote on all matters on which holders are permitted to vote, including the election of directors. There are no cumulative voting rights. Accordingly, holders of a majority of shares entitled to vote in an election of directors are able to elect all of the directors standing for election.

Subject to preferences that may be applicable to any outstanding preferred stock, the holders of the common stock share equally on a per share basis any dividends when, as and if declared by the board of directors out of funds legally available for that purpose. If we are liquidated, dissolved or wound up, the holders of our common stock will be entitled to a ratable share of any distribution to stockholders, after satisfaction of all of our liabilities and of the prior rights of any outstanding class of our preferred stock. Our common stock carries no preemptive or other subscription rights to purchase shares of our stock and is not convertible, redeemable or assessable or entitled to the benefits of any sinking fund. Our common stock is subject to certain restrictions and limitations on ownership by non-United States citizens. See Certificate of Incorporation and Bylaws Foreign Ownership.

#### **Preferred Stock**

Our board of directors has the authority, without stockholder approval, to issue shares of preferred stock from time to time in one or more series and to fix the number of shares and terms of each such series. The board may determine the designation and other terms of each series, including, among others:

dividend rights;

voting powers;

preemptive rights;

conversion and exchange rights;

redemption rights; and

liquidation preferences.

The prospectus supplement relating to any series of preferred stock we are offering will include specific terms relating to the offering and the name of any transfer agent for that series. We will file the form of the preferred stock with the SEC before we issue any of it, and you should read it for provisions that may be important to you. The prospectus supplement will include some or all of the following terms:

the title of the preferred stock;

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the maximum number of shares of the series;

the dividend rate or the method of calculating the dividend, the date from which dividends will accrue and whether dividends will be cumulative;

any liquidation preference;

any optional redemption provisions;

any sinking fund or other provisions that would obligate us to redeem or purchase the preferred stock;

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any terms for the conversion or exchange of the preferred stock for other securities of us or any other entity;

any voting rights; and

any other preferences and relative, participating, optional or other special rights or any qualifications, limitations or restrictions on the rights of the shares.

In addition, our preferred stock is subject to certain restrictions and limitations on ownership by non-United States citizens. See Certificate of Incorporation and Bylaws Foreign Ownership.

The issuance of preferred stock, while providing us with flexibility in connection with possible acquisitions and other corporate purposes, could reduce the relative voting power of holders of our common stock. It could also affect the likelihood that holders of our common stock will receive dividend payments and payments upon liquidation.

## **Certificate of Incorporation and Bylaws**

### ***Election and Removal of Directors***

Our board of directors consists of between one and 16 directors, excluding any directors elected by holders of preferred stock pursuant to provisions applicable in the case of defaults. The exact number of directors is fixed from time to time by resolution of the board. Our board of directors is divided into three classes serving staggered three-year terms, with only one class being elected each year by our stockholders. At each annual meeting of stockholders, directors are elected to succeed the class of directors whose terms have expired. This system of electing and removing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of our company, because it generally makes it more difficult for stockholders to replace a majority of the directors. In addition, no director may be removed except for cause, and directors may be removed for cause by an affirmative vote of shares representing a majority of the shares then entitled to vote at an election of directors. Any vacancy occurring on the board of directors and any newly created directorship may be filled only by a majority of the remaining directors in office.

### ***Stockholder Meetings***

Our certificate of incorporation and our bylaws provide that special meetings of our stockholders may be called only by the chairman of our board of directors or a majority of the directors. Our certificate of incorporation and our bylaws specifically deny any power of any other person to call a special meeting.

### ***Stockholder Action by Written Consent***

Our certificate of incorporation provides that holders of our common stock are not able to act by written consent without a meeting, unless such consent is unanimous.

### ***Amendment of Certificate of Incorporation***

The provisions of our certificate of incorporation described above under Election and Removal of Directors , Stockholder Meetings and Stockholder Action by Written Consent may be amended only by the affirmative vote of holders of at least 75% of the voting power of our outstanding shares of voting stock, voting together as a single class. The affirmative vote of holders of at least a majority of the voting power of our outstanding shares of stock will generally be required to amend other provisions of our certificate of incorporation.

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### ***Amendment of Bylaws***

Our bylaws may generally be altered, amended or repealed, and new bylaws may be adopted, with:

the affirmative vote of a majority of directors present at any regular or special meeting of the board of directors called for that purpose, provided that any alteration, amendment or repeal of, or adoption of any bylaw inconsistent with, specified provisions of the bylaws, including those related to special and annual meetings of stockholders, action of stockholders by written consent, classification of the board of directors, nomination of directors, special meetings of directors, removal of directors, committees of the board of directors and indemnification of directors and officers, requires the affirmative vote of at least 75% of all directors in office at a meeting called for that purpose; or

the affirmative vote of holders of 75% of the voting power of our outstanding shares of voting stock, voting together as a single class.

### ***Other Limitations on Stockholder Actions***

Our bylaws also impose some procedural requirements on stockholders who wish to:

make nominations in the election of directors;

propose that a director be removed;

propose any repeal or change in our bylaws; or

propose any other business to be brought before an annual or special meeting of stockholders.

Under these procedural requirements, in order to bring a proposal before a meeting of stockholders, a stockholder must deliver timely notice of a proposal pertaining to a proper subject for presentation at the meeting to our corporate secretary along with the following:

a description of the business or nomination to be brought before the meeting and the reasons for conducting such business at the meeting;

the stockholder's name and address;

any material interest of the stockholder in the proposal;

the number of shares beneficially owned by the stockholder and evidence of such ownership; and

the names and addresses of all persons with whom the stockholder is acting in concert and a description of all arrangements and understandings with those persons, and the number of shares such persons beneficially own.

To be timely, a stockholder must generally deliver notice:

in connection with an annual meeting of stockholders, not less than 90 nor more than 120 days prior to the first anniversary of the date on which the annual meeting of stockholders was held in the immediately preceding year, but in the event that the date of the annual meeting is more than 30 days before or more than 60 days after the anniversary date of the preceding annual meeting of stockholders, a stockholder notice will be timely if received by us not earlier than the close of business on the 120th day prior to the annual meeting and not later than the close of business on the later of the 90th day prior to the annual meeting and the 10th day following the day on which we first publicly announce the date of the annual meeting; or

in connection with the election of a director at a special meeting of stockholders, not less than 40 nor more than 60 days prior to the date of the special meeting, but in the event that less than 55 days notice or prior public disclosure of the date of the special meeting of the stockholders is given or made to the stockholders, a stockholder notice will be timely if received by us not later than the close of business on the 10th day following the day on which a notice of the date of the special meeting was mailed to the stockholders or the public disclosure of that date was made.

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In order to submit a nomination for our board of directors, a stockholder must also submit any information with respect to the nominee that we would be required to include in a proxy statement, as well as some other information. If a stockholder fails to follow the required procedures, the stockholder's proposal or nominee will be ineligible and will not be voted on by our stockholders.

### ***Limitation of Liability of Directors and Officers***

Our certificate of incorporation provides that no director will be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except as required by applicable law, as in effect from time to time. Currently, Delaware law requires that liability be imposed for the following:

any breach of the director's duty of loyalty to our company or our stockholders;

any act or omission not in good faith or which involved intentional misconduct or a knowing violation of law;

unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; and

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

As a result, neither we nor our stockholders have the right, through stockholders' derivative suits on our behalf, to recover monetary damages against a director for breach of fiduciary duty as a director, including breaches resulting from grossly negligent behavior, except in the situations described above.

Our bylaws provide that, to the fullest extent permitted by law, we will indemnify any officer or director of our company against all damages, claims and liabilities arising out of the fact that the person is or was our director or officer, or served any other enterprise at our request as a director, officer, employee, agent or fiduciary. We will reimburse the actual and reasonable expenses, including attorneys' fees, incurred by a person indemnified by this provision when we receive an undertaking to reimburse such amounts if it is ultimately determined that the person is not entitled to be indemnified by us. Amending this provision will not reduce our indemnification obligations relating to actions taken before an amendment. We have entered into indemnification agreements with each of our directors that provide that we will indemnify the indemnitee against, and advance certain expenses relating to, liabilities incurred in the performance of such indemnitee's duties on our behalf to the fullest extent permitted under Delaware law and our bylaws.

### ***Foreign Ownership***

In order to continue to enjoy the benefits of U.S. flag registry for our liftboats, we must maintain U.S. citizenship for U.S. coastwise trade purposes as defined in the Merchant Marine Act of 1936, the Shipping Act of 1916 and applicable federal regulations. Under these regulations, to maintain U.S. citizenship and, therefore, be qualified to engage in U.S. coastwise trade:

our president or chief executive officer, our chairman of the board and a majority of a quorum of our board of directors must be U.S. citizens; and

at least 75% of the ownership and voting power of each class of our stock must be held by U.S. citizens free of any trust, fiduciary arrangement or other agreement, arrangement or understanding whereby voting power may be exercised directly or indirectly by non-U.S. citizens, as defined in the Merchant Marine Act, the Shipping Act and applicable federal regulations.

In order to protect our ability to register our liftboats under federal law and operate our liftboats in U.S. coastwise trade, our certificate of incorporation contains provisions that limit foreign ownership of our capital stock to a fixed percentage that is equal to 5% less than the percentage that would prevent us from being a U.S. citizen (currently 25%) for purposes of the Merchant Marine Act and the Shipping Act. We

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refer to the percentage limitation on foreign ownership as the permitted percentage. The permitted percentage is currently 20%.

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Our certificate of incorporation provides that:

any transfer, or attempted or purported transfer, of any shares of our capital stock that would result in the ownership or control in excess of the permitted percentage by one or more persons who is not a U.S. citizen for purposes of U.S. coastwise shipping will be void and ineffective as against us; and

if, at any time, persons other than U.S. citizens own shares of our capital stock or possess voting power over any shares of our capital stock, in each case (either of record or beneficially) in excess of the permitted percentage, we may withhold payment of dividends on and suspend the voting rights attributable to such shares.

Certificates representing our common stock may bear legends concerning the restrictions on ownership by persons other than U.S. citizens. In addition, our certificate of incorporation permits us to:

require, as a condition precedent to the transfer of shares of capital stock on our records, representations and other proof as to the identity of existing or prospective stockholders;

establish and maintain a dual stock certificate system under which different forms of certificates may be used to reflect whether the owner thereof is a U.S. citizen; and

redeem any shares held by non-U.S. citizens that exceed the permitted percentage at a price based on the then-current market price of the shares, subject to certain terms and conditions.

### ***Anti-Takeover Effects of Some Provisions***

Some provisions of our certificate of incorporation and bylaws could make the following more difficult:

acquisition of control of us by means of a proxy contest or otherwise, or

removal of our incumbent officers and directors.

These provisions, as well as our ability to issue preferred stock, are designed 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 increased protection give us the potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us, and that the benefits of this increased protection outweigh the disadvantages of discouraging those proposals, because negotiation of those proposals could result in an improvement of their terms.

### **Delaware Business Combination Statute**

We have elected to be subject to Section 203 of the Delaware General Corporation Law, which regulates corporate acquisitions. Section 203 prevents an interested stockholder, which is defined generally as a person owning 15% or more of a corporation's voting stock, or any affiliate or associate of that person, from engaging in a broad range of business combinations with the corporation for three years after becoming an interested stockholder unless:

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the board of directors of the corporation had previously approved either the business combination or the transaction that resulted in the stockholder s becoming an interested stockholder;

upon completion of the transaction that resulted in the stockholder s becoming an interested stockholder, that person owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, other than statutorily excluded shares; or

following the transaction in which that person became an interested stockholder, the business combination is approved by the board of directors of the corporation and holders of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

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Under Section 203, the restrictions described above also do not apply to specific business combinations proposed by an interested stockholder following the announcement or notification of designated extraordinary transactions involving the corporation and a person who had not been an interested stockholder during the previous three years or who became an interested stockholder with the approval of a majority of the corporation's directors, if such extraordinary transaction is approved or not opposed by a majority of the directors who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors.

Section 203 may make it more difficult for a person who would be an interested stockholder to effect various business combinations with a corporation for a three-year period. Section 203 also may have the effect of preventing changes in our management and could make it more difficult to accomplish transactions which our stockholders may otherwise deem to be in their best interests.

## **Listing of Common Stock**

Our common stock is listed on the NASDAQ Global Select Market under the symbol HERO.

## **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company.



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**MATERIAL UNITED STATES FEDERAL INCOME AND ESTATE TAX CONSIDERATIONS**

**FOR NON-U.S. HOLDERS**

The following is a summary of the material United States federal income and estate tax considerations applicable to non-U.S. (as defined below) holders relating to the purchase, ownership and disposition of our common stock, which does not purport to be a complete analysis of all the related potential tax considerations. The rules governing the United States federal income and estate taxation of non-U.S. holders are complex, and no attempt will be made in this prospectus to provide more than a summary of certain of those rules. This summary is based on the Internal Revenue Code of 1986, as amended (the Internal Revenue Code), Treasury regulations, rulings and pronouncements of the Internal Revenue Service, and judicial decisions, all as of the date of this prospectus supplement. These authorities may be changed, perhaps retroactively, so as to result in United States federal income and estate tax consequences different than those described in this summary. We have not sought any ruling from the IRS with respect to the statements made and conclusions reached in this summary, and there can be no assurance that the IRS will agree with these statements and conclusions.

This summary is addressed only to persons who are non-U.S. holders who hold our common stock as a capital asset (generally property held for investment). As used in this discussion, except as modified for estate tax purposes (as described below), a non-U.S. holder means a beneficial owner of our common stock that, for United States federal income tax purposes, is an individual, corporation, estate or trust other than:

an individual who is a citizen or resident of the United States;

a corporation created or organized under the laws of the United States, any state thereof or the District of Columbia;

an estate whose income is subject to United States federal income taxation regardless of its source; or

a trust (1) if it is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) that has a valid election in effect under applicable Treasury regulations to be treated as a United States person.

This summary does not address any tax considerations arising under the laws of any foreign, state or local jurisdiction, the effect of any income or estate tax treaty or any U.S. federal tax laws other than income and estate tax laws (such as gift tax laws or the Medicare tax on investment income). In addition, this discussion does not address tax considerations that are the result of a holder's particular circumstances or of special rules, such as those that apply to holders subject to the alternative minimum tax, financial institutions, tax-exempt organizations, insurance companies, dealers or traders in securities or commodities, partnerships or other pass through entities (or investors therein), regulated investment companies, real estate investment trusts, former citizens or former long-term residents of the United States, or persons who will hold our common stock as a position in a hedging transaction, straddle or conversion transaction. If an entity treated as a partnership for United States federal income tax purposes holds our common stock, the United States federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partnerships and their partners considering an investment in our common stock are encouraged to consult their own tax advisors as to their tax consequences.

**This discussion does not constitute legal advice to any prospective purchaser of our common stock. Investors considering the purchase of our common stock are encouraged to consult their own tax advisors with respect to the application of the United States federal tax laws to their particular situations as well as to any tax consequences arising under the laws of any other taxing jurisdiction or under any applicable tax treaty.**

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### **Distributions on Our Common Stock**

Distributions on our common stock will constitute dividends for United States federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under United States federal income tax principles. To the extent distributions exceed our current or accumulated earnings and profits, such distributions on our common stock will first be applied against and reduce a holder's adjusted basis in our common stock (on a share by share basis), but not below zero, and then the excess, if any, will be treated as gain from the sale of common stock.

Dividends paid on our common stock to a non-U.S. holder generally will be subject to withholding of United States federal income tax at a 30% rate or a lower rate specified by an applicable income tax treaty. However, dividends that are effectively connected with the conduct of a trade or business within the United States by the non-U.S. holder are not subject to the withholding tax, provided certain certification and disclosure requirements are satisfied (including the execution of IRS Form W-8ECI or other applicable form). Instead, such dividends are subject to United States federal income tax on a net income basis in generally the same manner as if the non-U.S. holder were a United States person as defined under the Internal Revenue Code. If a non-U.S. holder is a foreign corporation, any effectively connected earnings and profits (subject to adjustments) may be subject to an additional branch profits tax at a 30% rate or a lower rate specified by an applicable income tax treaty.

A non-U.S. holder of our common stock who wishes to claim the benefit of an applicable income tax treaty rate and avoid backup withholding, as discussed below, for dividends will generally be required to complete IRS Form W-8BEN (or valid substitute or successor form) and certify under penalties of perjury that such holder is not a United States person as defined under the Internal Revenue Code. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities and to non-U.S. holders whose stock is held through certain foreign intermediaries.

A non-U.S. holder of our common stock eligible for a reduced rate of United States withholding tax pursuant to a treaty may obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim with the IRS.

### **Dispositions of Our Common Stock**

A non-U.S. holder will generally not be subject to United States federal income tax on any gain realized on the sale, exchange or other disposition of our common stock unless:

the gain is effectively connected with the conduct of a trade or business in the United States (and, where an income tax treaty applies, is attributable to a United States permanent establishment of the non-U.S. holder); in these cases, the non-U.S. holder will be subject to tax on the net gain derived from the disposition in the same manner as if the non-U.S. holder were a United States person as defined in the Internal Revenue Code, and if the non-U.S. holder is a foreign corporation, the non-U.S. holder may be subject to an additional branch profits tax on its effectively connected earnings and profits (subject to adjustments) at a 30% rate or a lower rate specified by an applicable income tax treaty;

the non-U.S. holder is an individual present in the United States for 183 days or more in the taxable year in which the disposition occurs and certain other conditions are met; in these cases, the individual non-U.S. holder will be subject to a flat 30% tax (or tax at a lower applicable treaty rate) on the gain derived from the disposition, which tax may be offset by United States source capital losses, even though the individual is not considered a resident of the United States; or

we are or have been a United States real property holding corporation for United States federal income tax purposes (a USRPHC) at any time during the shorter of the non-U.S. holder's holding period for our common stock and the five year period ending on the date of disposition (the applicable period).

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Generally, a corporation is a USRPHC if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business. We believe that we are not currently and do not anticipate becoming a USRPHC. Even if we are or become a USRPHC, so long as our common stock remains regularly traded on an established securities market for U.S. federal income tax purposes, a non-U.S. holder generally will not be subject to United States federal income tax on any gain from the disposition of our common stock by virtue of our being a USRPHC unless such non-U.S. holder actually or constructively owned more than 5% of our outstanding common stock at some time during the applicable period. Any gain that is taxable because we are a USRPHC will generally be taxable in the same manner as gain that is effectively connected income (as described above), except that the branch profits tax will not apply.

### **Certain United States Federal Estate Tax Considerations**

Any of our common stock that is beneficially owned (or deemed to be owned) by an individual who is not a citizen or resident of the United States (as defined for United States federal estate tax purposes) at the time of death will generally be includable in the decedent's gross estate for United States federal estate tax purposes, unless an applicable estate tax treaty provides otherwise.

### **Information Reporting and Backup Withholding**

Dividends paid to a non-U.S. holder generally are subject to information reporting. United States federal backup withholding will also apply unless the non-U.S. holder properly provides an applicable IRS Form W-8 (or valid substitute or successor form) certifying under penalties of perjury that such stockholder is a non-U.S. person or otherwise meets documentary evidence requirements for establishing that such stockholder is a non-U.S. person or otherwise qualifies for an exemption. Copies of information returns may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

The gross proceeds from the disposition of our common stock may be subject to information reporting and backup withholding. If a non-U.S. holder disposes of its common stock outside the United States through a non-U.S. office of a non-U.S. broker and the proceeds are paid to such stockholder outside the United States, then the United States backup withholding and information reporting requirements generally will not apply to that payment. However, United States information reporting will generally apply to a payment of disposition proceeds, even if that payment is made outside the United States, if a non-U.S. holder sells our common stock through a non-U.S. office of a broker that:

is a United States person for United States federal income tax purposes;

is a foreign person that derives 50% or more of its gross income in specific periods from the conduct of a trade or business in the United States;

is a controlled foreign corporation for United States tax purposes; or

is a foreign partnership, if at any time during its tax year (1) one or more of its partners are United States persons who in the aggregate hold more than 50% of the income or capital interests in the partnership; or (2) the foreign partnership is engaged in a United States trade or business,

unless the broker has documentary evidence in its files that the non-U.S. holder is a non-U.S. person and certain other conditions are met, or the non-U.S. holder otherwise establishes an exemption.

If a non-U.S. holder receives payment of the proceeds of a disposition of our common stock to or through a United States office of a broker, the payment is generally subject to both United States backup withholding and information reporting unless such non-U.S. holder properly provides an applicable IRS Form W-8 (or valid substitute or successor form) certifying under penalties of perjury that such stockholder is a non-U.S. person or otherwise establishes an exemption.

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Backup withholding is not an additional tax. A non-U.S. holder generally may obtain a refund of any amounts withheld under the backup withholding rules that exceed such non-U.S. holder's United States federal income tax liability by timely providing the required information and appropriate claim for refund with the IRS.

## **Recent Legislation**

On March 18, 2010, President Obama signed the Hiring Incentives to Restore Employment Act (the HIRE Act) into law. The HIRE Act added a new chapter 4 to the Code. Effective for payments made after December 31, 2013 (in the case of dividends), and December 31, 2014 (in the case of disposition proceeds), chapter 4 generally requires us or our paying agent (in its capacity as such) to deduct and withhold a tax equal to 30% of any dividend payments made to a foreign financial institution or non-financial foreign entity (including, in some cases, when such foreign institution or entity is acting as an intermediary), and requires any person having the control, receipt, custody, disposal, or payment of any gross proceeds of sale or other disposition of our common stock to deduct and withhold a tax equal to 30% of any such proceeds, unless (i) in the case of a foreign financial institution, such institution enters into an agreement with the U.S. government to withhold on certain payments, and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institutions (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners), and (ii) in the case of a non-financial foreign entity, such entity provides the withholding agent with a certification identifying the direct and indirect U.S. owners of the entity. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes. Prospective investors are encouraged to consult with their own tax advisors regarding the possible implication of this recently enacted legislation on an investment in our common stock.

**Table of Contents****UNDERWRITING**

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus supplement, the underwriters named below, for whom Credit Suisse Securities (USA) LLC is acting as representative, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

<b>Name</b>	<b>Number of Shares</b>
Credit Suisse Securities (USA) LLC	
Goldman, Sachs & Co.	
Deutsche Bank Securities Inc.	
Total	20,000,000

The underwriters and the representative are collectively referred to as the underwriters and the representative, respectively. The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus supplement are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus supplement if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters over-allotment option described below.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the offering price listed on the cover page of this prospectus supplement and part to certain dealers. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representative.

The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus supplement, to purchase up to 3,000,000 additional shares of common stock at the public offering price listed on the cover page of this prospectus supplement, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus supplement. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional shares of common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table.

The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase up to an additional 3,000,000 shares of common stock.

	<b>Per Share</b>	<b>No Exercise</b>	<b>Total Full Exercise</b>
Public offering price	\$	\$	\$
Underwriting discounts and commissions to be paid by us	\$	\$	\$
Proceeds, before expenses, to us	\$	\$	\$

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The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately \$0.5 million.

Our common stock is listed on the NASDAQ Global Select Market under the symbol HERO.

We and all of our directors and officers have agreed that, without the prior written consent of Credit Suisse Securities (USA) LLC on behalf of the underwriters, we and they will not, during the period ending 60 days after the date of this prospectus supplement:

offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock;

file any registration statement with the Securities and Exchange Commission relating to the offering of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or

enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock,

whether any such transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise. In addition, we and each such person agrees that, without the prior written consent of Credit Suisse Securities (USA) LLC on behalf of the underwriters, it will not, during the period ending 60 days after the date of this prospectus supplement, make any demand for, or exercise any right with respect to, the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock.

The restrictions described in this paragraph do not apply to:

the sale of shares to the underwriters;

the issuance by us of shares of common stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus supplement of which the underwriters have been advised in writing;

a transfer of shares to a family member or trust for the benefit of a family member;

a bona fide gift of shares, provided the transferee agrees to be bound by the restrictions described in this paragraph; or

a sale of the shares pursuant to a written plan meeting the requirements of Rule 10b-5 of the Securities and Exchange Act of 1934. In order to facilitate the offering of the common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option. The underwriters can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open



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market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representative has repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

We and the several underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus supplement in electronic format may be made available on websites maintained by one or more underwriters, or selling group members, if any, participating in this offering. The representative may agree to allocate a number of shares of common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representative to underwriters that may make Internet distributions on the same basis as other allocations.

## **European Economic Area**

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State), each underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date) it has not made and will not make an offer of shares which are the subject of the offering contemplated by this prospectus supplement to the public in that Relevant Member State other than:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the relevant Dealer or Dealers nominated by us for any such offer; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an offer of shares to the public in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression Prospectus Directive means Directive 2003/71/EC (and amendments thereto, including the 2010PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State and the expression 2010PD Amending Directive means Directive 2010/73/EU.

## **United Kingdom**

Each underwriter has represented and agreed that:

- (a) (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell the shares other than to persons whose ordinary activities involve them in acquiring,



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holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the shares would otherwise constitute a contravention of Section 19 of the FSMA by us;

(b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the shares in circumstances in which Section 21(1) of the FSMA does not apply to us; and

(c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares in, from or otherwise involving the United Kingdom.

### **Hong Kong**

The shares may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), or (ii) to professional investors within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a prospectus within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

### **Singapore**

This prospectus supplement has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus supplement and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the SFA), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the shares under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.

### **Japan**

The shares have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any shares, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as

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used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

### **Switzerland**

Our securities may not and will not be publicly offered, distributed or re-distributed on a professional basis in or from Switzerland only on the basis of a non-public offering, and neither this prospectus supplement nor any other solicitation for investments in our securities may be communicated or distributed in Switzerland in any way that could constitute a public offering within the meaning of articles 652a or 1156 of the Swiss Federal Code of Obligations or of Article 2 of the Federal Act on Investment Funds of March 18, 1994. This offering memorandum may not be copied, reproduced, distributed or passed on to others without the underwriters' and agents' prior written consent. This prospectus supplement is not a prospectus within the meaning of Articles 1156 and 652a of the Swiss Code of Obligations or a listing prospectus according to article 32 of the Listing Rules of the Swiss exchange and may not comply with the information standards required thereunder. We will not apply for a listing of our securities on any Swiss stock exchange or other Swiss regulated market and this prospectus supplement may not comply with the information required under the relevant listing rules. The securities have not been and will not be approved by any Swiss regulatory authority. The securities have not been and will not be registered with or supervised by the Swiss Federal Banking Commission, and have not been and will not be authorized under the Federal Act on Investment Funds of March 18, 1994. The investor protection afforded to acquirers of investment fund certificates by the Federal Act on Investment Funds of March 18, 1994 does not extend to acquirers of our securities.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities.

Certain of the underwriters and their respective affiliates perform various financial advisory, investment banking and commercial banking services from time to time for us and our affiliates, for which they received or will receive customary fees and expense reimbursement. Credit Suisse Securities (USA) LLC is a lender under our existing term loan facility and will receive a portion of the net proceeds from this offering pursuant to the repayment of indebtedness outstanding under our existing term loan facility. In addition, affiliates of certain of the underwriters are lenders under our existing revolving credit facility. The underwriters and their affiliates may provide similar services in the future.

In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments of the issuer. The underwriters and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

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**LEGAL MATTERS**

The validity of the offered securities and other matters in connection with any offering of the securities will be passed upon for us by Vinson & Elkins LLP, Houston, Texas. Certain legal matters will be passed upon for the underwriters by Cahill Gordon & Reindel LLP, New York, New York.

**EXPERTS**

The consolidated financial statements of Hercules Offshore, Inc. appearing in Hercules Offshore, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2011, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are, and audited financial statements to be included in subsequently filed documents will be, incorporated herein in reliance upon the report of Ernst & Young LLP pertaining to such financial statements (to the extent covered by consents filed with the Securities and Exchange Commission) given on the authority of such firm as experts in accounting and auditing.

The consolidated and combined financial statements of Seahawk Drilling, Inc. as of December 31, 2010 and 2009, and for each of the years in the three-year period ended December 31, 2010 have been incorporated by reference herein (and in the registration statement) in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing. Their report contains an explanatory paragraph that states that prior to August 24, 2009 (the "Spin-off Date"), the combined financial statements have been prepared from the separate records maintained by Seahawk Drilling, Inc.'s former parent, Pride International, Inc., and may not necessarily be indicative of the conditions that would have existed or the results of operations if Seahawk Drilling, Inc. had been operated as an unaffiliated entity. In addition, their report contains an explanatory paragraph that states that Seahawk Drilling, Inc. and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code on February 11, 2011 and sold substantially all operating assets and liabilities to Hercules Offshore, Inc. on April 27, 2011. These conditions and events raise substantial doubt about Seahawk Drilling, Inc.'s ability to continue as a going concern. The consolidated and combined financial statements do not include any adjustments that might result from the outcome of this uncertainty.

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Prospectus

# **Hercules Offshore, Inc.**

**9 Greenway Plaza, Suite 2200**

**Houston, Texas 77046**

**(713) 350-5100**

**\$750,000,000**

**Debt Securities**

**Preferred Stock**

**Common Stock**

**Warrants**

**Purchase Contracts**

**Units**

We will provide the specific terms of the securities in supplements to this prospectus. You should read this prospectus and any supplement carefully before you invest. Our common stock is listed on the NASDAQ Global Select Market under the trading symbol HERO.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined whether this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is February 3, 2011

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we have filed with the U.S. Securities and Exchange Commission using a “shelf” registration process. Using this process, we may offer any combination of the securities described in this prospectus in one or more offerings with a total initial offering price of up to \$750,000,000. This prospectus provides you with a general description of the securities that may be offered. Each time this prospectus is used to offer securities, we will provide a prospectus supplement and, if applicable, a pricing supplement that will describe the specific terms of the offering. The prospectus supplement and any pricing supplement may also add to, update or change the information contained in this prospectus. Please carefully read this prospectus, the prospectus supplement and any pricing supplement, in addition to the information contained in the documents we refer to under the heading “Where You Can Find More Information.”

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**ABOUT HERCULES OFFSHORE, INC.**

We provide shallow-water drilling and marine services to the oil and natural gas exploration and production industry in the U.S. Gulf of Mexico and internationally. We provide these services to major integrated energy companies, independent oil and natural gas operators and national oil companies. Our principal executive office is located at 9 Greenway Plaza, Suite 2200, Houston, Texas 77046, telephone (713) 350-5100.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You can read and copy these materials at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You can obtain information about the operation of the SEC's public reference room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site that contains information we have filed electronically with the SEC, which you can access over the Internet at <http://www.sec.gov>.

This prospectus is part of a registration statement we have filed with the SEC relating to the securities we may offer. As permitted by SEC rules, this prospectus does not contain all of the information we have included in the registration statement and the accompanying exhibits and schedules we file with the SEC. You may refer to the registration statement, exhibits and schedules for more information about us and the securities. The registration statement, exhibits and schedules are available at the SEC's public reference room or through its Internet site.

The SEC allows us to incorporate by reference the information we have filed with it, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until the termination of this offering. The documents we incorporate by reference are:

our annual report on Form 10-K for the year ended December 31, 2009;

our quarterly reports on Form 10-Q for the periods ended March 31, 2010, June 30, 2010 and September 30, 2010;

our current reports on Form 8-K filed with the SEC on March 2, 2010, May 10, 2010, May 13, 2010, June 23, 2010, August 17, 2010, September 21, 2010 and October 21, 2010, in each case other than information furnished under Item 2.02 or 7.01 of Form 8-K; and

the description of our common stock (including the related preferred share purchase rights) contained in our registration statement on Form 8-A as filed with the SEC on October 21, 2005, as that description may be updated from time to time.

We also are incorporating by reference all additional documents that we may file with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date hereof and prior to the effectiveness of the registration statement.

You may request a copy of these filings, other than an exhibit to these filings unless we have specifically incorporated that exhibit by reference into the filing, at no cost, by writing or telephoning us at the following address:

Hercules Offshore, Inc.

9 Greenway Plaza, Suite 2200

Houston, Texas 77046

Telephone: (713) 350-5100

Attention: Investor Relations



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**You should rely only on the information contained or incorporated by reference in this prospectus, the prospectus supplement and any pricing supplement. We have not authorized any person, including any salesman or broker, to provide information other than that provided in this prospectus, the prospectus supplement or any pricing supplement. We have not authorized anyone to provide you with different information. We are not making an offer of the securities in any jurisdiction where the offer is not permitted. You should assume that the information in this prospectus, the prospectus supplement and any pricing supplement is accurate only as of the date on its cover page and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference.**

### **FORWARD-LOOKING INFORMATION**

This prospectus, including the information we incorporate by reference, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements, other than statements of historical fact, included in this prospectus or the documents we incorporate by reference that address activities, events or developments that we expect, project, believe or anticipate will or may occur in the future are forward-looking statements. These include such matters as:

our levels of indebtedness, covenant compliance and access to capital under current market conditions;

our ability to enter into new contracts for our rigs and liftboats and future utilization rates and dayrates for the units;

our ability to renew or extend our long-term international contracts, or enter into new contracts, at current dayrates when such contracts expire;

demand for our rigs and our liftboats;

activity levels of our customers and their expectations of future energy prices and ability to obtain drilling permits;

sufficiency and availability of funds for required capital expenditures, working capital and debt service;

levels of reserves for accounts receivable;

success of our cost cutting measures and plans to dispose of certain assets;

expected completion times for our refurbishment and upgrade projects;

our plans to increase international operations;

expected useful lives of our rigs and liftboats;

future capital expenditures and refurbishment, reactivation, transportation, repair and upgrade costs;



our ability to effectively reactivate rigs that we have stacked;

liabilities and restrictions under coastwise and other laws of the United States and regulations protecting the environment;

expected outcomes of litigation, claims and disputes and their expected effects on our financial condition and results of operations; and

expectations regarding offshore drilling activity and dayrates, market conditions, demand for our rigs and liftboats, our earnings, operating revenues, operating and maintenance expense, insurance coverage, insurance expense and deductibles, interest expense, debt levels and other matters with regard to outlook.

We have based these statements on our assumptions and analyses in light of our experience and perception of historical trends, current conditions, expected future developments and other factors we believe are

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appropriate in the circumstances. Forward-looking statements by their nature involve substantial risks and uncertainties that could significantly affect expected results, and actual future results could differ materially from those described in such statements. Although it is not possible to identify all factors, we continue to face many risks and uncertainties. Among the factors that could cause actual future results to differ materially are the risks and uncertainties described under "Risk Factors" in our most recent annual report on Form 10-K and quarterly reports on Form 10-Q and the following:

the ability of our customers in the U.S. Gulf of Mexico to obtain drilling permits;

oil and natural gas prices and industry expectations about future prices;

levels of oil and gas exploration and production spending;

demand for and supply of offshore drilling rigs and liftboats;

our ability to enter into and the terms of future contracts;

the worldwide military and political environment, uncertainty or instability resulting from an escalation or additional outbreak of armed hostilities or other crises in the Middle East, West Africa and other oil and natural gas producing regions or acts of terrorism or piracy;

the impact of governmental laws and regulations, including new laws and regulations in the U.S. Gulf of Mexico arising out of the Macondo well blowout incident;

the adequacy and costs of sources of credit and liquidity;

uncertainties relating to the level of activity in offshore oil and natural gas exploration, development and production;

competition and market conditions in the contract drilling and liftboat industries;

the availability of skilled personnel in view of recent reductions in our personnel;

labor relations and work stoppages, particularly in the West African and Mexican labor environments;

operating hazards such as hurricanes, severe weather and seas, fires, cratering, blowouts, war, terrorism and cancellation or unavailability of insurance coverage, or insufficient coverage;

the effect of litigation and contingencies; and

our inability to achieve our plans or carry out our strategy.

Many of these factors are beyond our ability to control or predict. Any of these factors, or a combination of these factors, could materially affect our future financial condition or results of operations and the ultimate accuracy of the forward-looking statements. These forward-looking statements are not guarantees of our future performance, and our actual results and future developments may differ materially from those projected in the forward-looking statements. Management cautions against putting undue reliance on forward-looking statements or projecting any future results based on such statements or present or prior earnings levels. In addition, each forward-looking statement speaks only as of the date of the particular statement, and we undertake no obligation to publicly update or revise any forward-looking statements except as required by applicable law.

#### **USE OF PROCEEDS**

Unless we inform you otherwise in the prospectus supplement, we expect to use the net proceeds from the sale of the securities described in this prospectus for general corporate purposes, including repayment or refinancing of debt, acquisitions, working capital, capital expenditures and repurchases and redemptions of securities. Pending any specific application, we may initially invest funds in short-term marketable securities or apply them to the reduction of indebtedness.

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

We have presented in the table below our historical consolidated ratio of earnings to fixed charges for the periods shown. We had no preferred stock outstanding for any period presented, and accordingly, the ratio of earnings to combined fixed charges and preferred stock dividends is the same as the ratio of earnings to fixed charges.

	Nine Months Ended September 30,			Year Ended December 31,		
	2010	2009	2008	2007	2006	2005
	(a)	(b)	(c)	6.0x	19.7x	5.3x
Ratio of earnings to fixed charges						

- (a) Earnings as adjusted were insufficient to cover our fixed charges by \$88.1 million for the nine months ended September 30, 2010.  
 (b) Earnings as adjusted were insufficient to cover our fixed charges by \$168.8 million for the year ended December 31, 2009.  
 (c) For the year ended December 31, 2008 our earnings were insufficient to cover our fixed charges by \$1.2 billion. For the year ended December 31, 2008, we recorded charges totaling \$950.3 million and \$376.7 million for impairment of goodwill and impairment of property and equipment, respectively.

We have computed the ratios of earnings to fixed charges by dividing earnings by fixed charges. For this purpose, earnings consist of income from continuing operations before income taxes plus fixed charges and amortization of capitalized interest, less capitalized interest. Fixed charges consist of interest expensed and capitalized (including amortization of debt issuance costs) and our estimate of the interest component of rental expense.

**DESCRIPTION OF DEBT SECURITIES**

Any debt securities that we offer under a prospectus supplement will be direct, unsecured general obligations. The debt securities will be either senior debt securities or subordinated debt securities. The debt securities will be issued under one or more separate indentures between us and U.S. Bank National Association, as trustee. Senior debt securities will be issued under a senior indenture and subordinated debt securities will be issued under a subordinated indenture. Together, the senior indenture and the subordinated indenture are called indentures. The indentures will be supplemented by supplemental indentures, the material provisions of which will be described in a prospectus supplement.

As used in this description, the words we, us and our refer to Hercules Offshore, Inc. and not to any of its subsidiaries or affiliates.

We have summarized some of the material provisions of the indentures below. This summary does not restate those agreements in their entirety. A form of senior indenture and a form of subordinated indenture have been filed as exhibits to the registration statement of which this prospectus is a part. We urge you to read each of the indentures because each one, and not this description, defines the rights of holders of debt securities.

Capitalized terms defined in the indentures have the same meanings when used in this prospectus.

**General**

The debt securities issued under the indentures will be our direct, unsecured general obligations. The senior debt securities will rank equally with all of our other senior and unsubordinated debt. The subordinated debt securities will have a junior position to all of our senior debt.

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The following description sets forth the general terms and provisions that could apply to debt securities that we may offer to sell. A prospectus supplement relating to any series of debt securities being offered will include specific terms relating to the offering. These terms will include some or all of the following, among others:

the title and type of the debt securities;

the total principal amount of the debt securities;

the percentage of the principal amount at which the debt securities will be issued and any payments due if the maturity of the debt securities is accelerated;

the dates on which the principal of the debt securities will be payable;

the interest rate which the debt securities will bear and the interest payment dates for the debt securities;

any conversion or exchange features;

any optional redemption periods;

any sinking fund or other provisions that would obligate us to repurchase or otherwise redeem some or all of the debt securities;

any provisions granting special rights to holders when a specified event occurs;

any changes to or additional events of default or covenants;

any special tax implications of the debt securities, including provisions for original issue discount securities, if offered; and

any other terms of the debt securities.

Neither of the indentures will limit the amount of debt securities that may be issued. Each indenture will allow debt securities to be issued up to the principal amount that may be authorized by us and may be in any currency or currency unit designated by us.

Debt securities of a series may be issued in registered or global form.

## **Subsidiary Guarantees**

If the applicable prospectus supplement relating to a series of our senior debt securities provides that those senior debt securities will have the benefit of a guarantee by any or all of our subsidiaries, payment of the principal, premium, if any, and interest on those senior debt securities will be unconditionally guaranteed on an unsecured, unsubordinated basis by such subsidiary or subsidiaries. The guarantee of senior debt securities will rank equally in right of payment with all of the unsecured and unsubordinated indebtedness of such subsidiary or subsidiaries.

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If the applicable prospectus supplement relating to a series of our subordinated debt securities provides that those subordinated debt securities will have the benefit of a guarantee by any or all of our subsidiaries, payment of the principal, premium, if any, and interest on those subordinated debt securities will be unconditionally guaranteed on an unsecured, subordinated basis by such subsidiary or subsidiaries. The guarantee of the subordinated debt securities will be subordinated in right of payment to all of such subsidiary s or subsidiaries existing and future senior indebtedness (as defined in the related prospectus supplement), including any guarantee of the senior debt securities, to the same extent and in the same manner as the subordinated debt securities are subordinated to our senior indebtedness (as defined in the related prospectus supplement). See Subordination below.

The obligations of our subsidiaries under any such guarantee will be limited as necessary to prevent the guarantee from constituting a fraudulent conveyance or fraudulent transfer under applicable law.

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### **Covenants**

Under the indentures, we:

will pay the principal of, and interest and any premium on, the debt securities when due;

will maintain a place of payment;

will deliver a certificate to the trustee each fiscal year reviewing our compliance with our obligations under the indentures;

will preserve our corporate existence; and

will segregate or deposit with any paying agent sufficient funds for the payment of any principal, interest or premium on or before the due date of such payment.

### **Mergers and Sale of Assets**

Each of the indentures will provide that we may not consolidate with or merge into any other Person or sell, convey, transfer or lease all or substantially all of our properties and assets (on a consolidated basis) to another Person, unless:

either: (a) we are the surviving Person; or (b) the Person formed by or surviving any such consolidation, amalgamation or merger or resulting from such conversion (if other than us) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, limited liability company or limited partnership organized or existing under the laws of the United States, any State thereof or the District of Columbia;

the Person formed by or surviving any such conversion, consolidation, amalgamation or merger (if other than us) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all of our obligations under such indenture and the debt securities governed thereby pursuant to agreements reasonably satisfactory to the trustee, which may include a supplemental indenture;

we or the successor will not immediately be in default under such indenture; and

we deliver an officer's certificate and opinion of counsel to the trustee stating that such consolidation, amalgamation, merger, conveyance, sale, transfer or lease and any supplemental indenture comply with such indenture and that all conditions precedent set forth in such indenture have been complied with.

Upon the assumption of our obligations under each indenture by a successor, we will be discharged from all obligations under such indenture.

As used in the indenture and in this description, the word *Person* means any individual, corporation, company, limited liability company, partnership, limited partnership, joint venture, association, joint-stock company, trust, other entity, unincorporated organization or government or any agency or political subdivision thereof.

### **Events of Default**

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*Event of default*, when used in the indentures with respect to debt securities of any series, will mean any of the following:

- (1) default in the payment of any interest upon any debt security of that series when it becomes due and payable, and continuance of such default for a period of 30 days;
- (2) default in the payment of the principal of (or premium, if any, on) any debt security of that series at its maturity;
- (3) default in the performance, or breach, of any covenant set forth in Article Ten of the applicable indenture (other than a covenant a default in the performance of which or the breach of which is elsewhere



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specifically dealt with as an event of default or which has expressly been included in such indenture solely for the benefit of one or more series of debt securities other than that series), and continuance of such default or breach for a period of 90 days after there has been given, 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 then-outstanding debt securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a Notice of Default thereunder;

(4) default in the performance, or breach, of any covenant in the applicable indenture (other than a covenant set forth in Article Ten of such indenture or any other covenant a default in the performance of which or the breach of which is elsewhere specifically dealt with as an event of default or which has expressly been included in such indenture solely for the benefit of one or more series of debt securities other than that series), and continuance of such default or breach for a period of 180 days after there has been given, 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 then-outstanding debt securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a Notice of Default thereunder;

(5) we, pursuant to or within the meaning of any bankruptcy law, (i) commence a voluntary case, (ii) consent to the entry of any order for relief against us in an involuntary case, (iii) consent to the appointment of a custodian of us or for all or substantially all of our property, or (iv) make a general assignment for the benefit of our creditors;

(6) a court of competent jurisdiction enters an order or decree under any bankruptcy law that (i) is for relief against us in an involuntary case, (ii) appoints a custodian of us or for all or substantially all of our property, or (iii) orders the liquidation of us, and the order or decree remains unstayed and in effect for 60 consecutive days;

(7) default in the deposit of any sinking fund payment when due; or

(8) any other event of default provided with respect to debt securities of that series in accordance with provisions of the indenture related to the issuance of such debt securities.

An event of default for a particular series of debt securities does not necessarily constitute an event of default for any other series of debt securities issued under an indenture. The trustee may withhold notice to the holders of debt securities of any default (except in the payment of principal, interest or any premium) if it considers the withholding of notice to be in the interests of the holders.

If an event of default for any series of debt securities occurs and continues, the trustee or the holders of 25% in aggregate principal amount of the debt securities of the series may declare the entire principal of all of the debt securities of that series to be due and payable immediately. If this happens, subject to certain conditions, the holders of a majority of the aggregate principal amount of the debt securities of that series can void the declaration.

Other than its duties in case of a default, a trustee is not obligated to exercise any of its rights or powers under any indenture at the request, order or direction of any holders, unless the holders offer the trustee reasonable indemnity. If they provide this reasonable indemnification, the holders of a majority in principal amount outstanding of any series of debt securities may direct the time, method and place of conducting any proceeding or any remedy available to the trustee, or exercising any power conferred upon the trustee, for any series of debt securities.

## **Amendments and Waivers**

Subject to certain exceptions, the indentures, the debt securities issued thereunder or the subsidiary guarantees may be amended or supplemented with the consent of the holders of a majority in aggregate principal

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amount of the then-outstanding debt securities of each series affected by such amendment or supplemental indenture, with each such series voting as a separate class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, debt securities) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with respect to each series of debt securities with the consent of the holders of a majority in principal amount of the then-outstanding debt securities of such series voting as a separate class (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, debt securities).

Without the consent of each holder of the outstanding debt securities affected, an amendment, supplement or waiver may not, among other things:

(1) change the stated maturity of the principal of, or any installment of principal of or interest on, any debt security, reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, reduce the amount of the principal of an original issue discount security that would be due and payable upon a declaration of acceleration of the maturity thereof pursuant to the applicable indenture, change the coin or currency in which any debt security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption, on or after the redemption date therefor);

(2) reduce the percentage in principal amount of the then-outstanding debt securities of any series, the consent of the holders of which is required for any such amendment or supplemental indenture, or the consent of the holders of which is required for any waiver of compliance with certain provisions of the applicable indenture or certain defaults thereunder and their consequences provided for in the applicable indenture;

(3) modify any of the provisions set forth in (i) the provisions of the applicable indenture related to the holder's unconditional right to receive principal, premium, if any, and interest on the debt securities or (ii) the provisions of the applicable indenture related to the waiver of past defaults under such indenture;

(4) waive a redemption payment with respect to any debt security; provided, however, that any purchase or repurchase of debt securities shall not be deemed a redemption of the debt securities;

(5) release any guarantor from any of its obligations under its guarantee or the applicable indenture, except in accordance with the terms of such indenture (as amended or supplemented); or

(6) make any change in the foregoing amendment and waiver provisions, except to increase any percentage provided for therein or to provide that certain other provisions of the applicable indenture cannot be modified or waived without the consent of the holder of each then-outstanding debt security affected thereby.

Notwithstanding the foregoing, without the consent of any holder of debt securities, we, the guarantors and the trustee may amend each of the indentures or the debt securities issued thereunder to:

(1) cure any ambiguity or defect or to correct or supplement any provision therein that may be inconsistent with any other provision therein;

(2) evidence the succession of another Person to us and the assumption by any such successor of our covenants therein and, to the extent applicable, of the debt securities;

(3) provide for uncertificated debt securities in addition to or in place of certificated debt securities; provided that the uncertificated debt securities are issued in registered form for purposes of Section 163(f) of the Internal Revenue Code of 1986, as amended (the "Code"), or in the manner such that the uncertificated debt securities are described in Section 163(f)(2)(B) of the Code;

(4) add a guarantee and cause any Person to become a guarantor, and/or to evidence the succession of another Person to a guarantor and the assumption by any such successor of the guarantee of such guarantor therein and, to the extent applicable, endorsed upon any debt securities of any series;

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- (5) secure the debt securities of any series;
- (6) add to the covenants such further covenants, restrictions, conditions or provisions as we shall consider to be appropriate for the benefit of the holders of all or any series of debt securities (and if such covenants, restrictions, conditions or provisions are to be for the benefit of less than all series of debt securities, stating that such covenants are expressly being included solely for the benefit of such series), to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default permitting the enforcement of all or any of the several remedies provided in the applicable indenture as set forth therein, or to surrender any right or power therein conferred upon us; provided, that in respect of any such additional covenant, restriction, condition or provision, such amendment or supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an event of default or may limit the remedies available to the trustee upon such an event of default or may limit the right of the holders of a majority in aggregate principal amount of the debt securities of such series to waive such an event of default;
- (7) make any change to any provision of the applicable indenture that does not adversely affect the rights or interests of any holder of debt securities issued thereunder;
- (8) provide for the issuance of additional debt securities in accordance with the provisions set forth in the applicable indenture;
- (9) add any additional defaults or events of default in respect of all or any series of debt securities;
- (10) add to, change or eliminate any of the provisions of the applicable indenture to such extent as shall be necessary to permit or facilitate the issuance of debt securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons;
- (11) change or eliminate any of the provisions of the applicable indenture; provided that any such change or elimination shall become effective only when there is no debt security outstanding of any series created prior to the execution of such amendment or supplemental indenture that is entitled to the benefit of such provision;
- (12) establish the form or terms of debt securities of any series as permitted thereunder, including to reopen any series of any debt securities as permitted thereunder;
- (13) evidence and provide for the acceptance of appointment thereunder by a successor trustee with respect to the debt securities of one or more series and to add to or change any of the provisions of the applicable indenture as shall be necessary to provide for or facilitate the administration of the trusts thereunder by more than one trustee, pursuant to the requirements of such indenture;
- (14) conform the text of the applicable indenture (and/or any supplemental indenture) or any debt securities issued thereunder to any provision of a description of such debt securities appearing in a prospectus or prospectus supplement or an offering memorandum or offering circular to the extent that such provision appears on its face to have been intended to be a verbatim recitation of a provision of such indenture (and/or any supplemental indenture) or any debt securities issued thereunder; or
- (15) modify, eliminate or add to the provisions of the applicable indenture to such extent as shall be necessary to effect the qualification of such indenture under the Trust Indenture Act of 1939, as amended (the *Trust Indenture Act* ), or under any similar federal statute subsequently enacted, and to add to such indenture such other provisions as may be expressly required under the Trust Indenture Act.

The consent of the holders is not necessary under either indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment. After an amendment with the consent of the holders under an indenture becomes effective, we are required to mail to the holders of debt securities thereunder a notice briefly describing such amendment. However, the failure to give such notice to all such holders, or any defect therein, will not impair or affect the validity of the amendment.

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**Legal Defeasance and Covenant Defeasance**

Each indenture provides that we may, at our option and at any time, elect to have all of our obligations discharged with respect to the debt securities outstanding thereunder and all obligations of any guarantors of such debt securities discharged with respect to their guarantees ( *Legal Defeasance* ), except for:

- (1) the rights of holders of outstanding debt securities to receive payments in respect of the principal of, or interest or premium, if any, on, such debt securities when such payments are due from the trust referred to below;
- (2) our obligations with respect to the debt securities concerning temporary debt securities, registration of debt securities, mutilated, destroyed, lost or stolen debt securities, the maintenance of an office or agency for payment and money for security payments held in trust;
- (3) the rights, powers, trusts, duties and immunities of the trustee, and our and each guarantor's obligations in connection therewith; and
- (4) the Legal Defeasance and Covenant Defeasance (as defined below) provisions of the applicable indenture.

In addition, we may, at our option and at any time, elect to have our obligations released with respect to certain provisions of each indenture, including certain provisions described in any prospectus supplement (such release and termination being referred to as *Covenant Defeasance* ), and thereafter any failure to comply with such obligations or provisions will not constitute a default or event of default. In addition, in the event Covenant Defeasance occurs in accordance with the applicable indenture, any defeasible event of default will no longer constitute an event of default.

In order to exercise either Legal Defeasance or Covenant Defeasance:

- (1) we must irrevocably deposit with the trustee, in trust, for the benefit of the holders of the debt securities, cash in U.S. dollars, non-callable government securities, or a combination of cash in U.S. dollars and non-callable U.S. government securities, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, and interest and premium, if any, on, the outstanding debt securities on the stated date for payment thereof or on the applicable redemption date, as the case may be, and we must specify whether the debt securities are being defeased to such stated date for payment or to a particular redemption date;
- (2) in the case of Legal Defeasance, we must deliver to the trustee an opinion of counsel reasonably acceptable to the trustee confirming that (a) we have received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the issue date of the debt securities, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion of counsel will confirm that, the holders of the outstanding debt securities will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same time as would have been the case if such Legal Defeasance had not occurred;
- (3) in the case of Covenant Defeasance, we must deliver to the trustee an opinion of counsel reasonably acceptable to the trustee confirming that the holders of the outstanding debt securities will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;
- (4) no default or event of default shall have occurred and be continuing on the date of such deposit (other than a default or event of default resulting from the borrowing of funds to be applied to such deposit);
- (5) the deposit must not result in a breach or violation of, or constitute a default under, any other instrument to which we are, or any guarantor is, a party or by which we are, or any guarantor is, bound;

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(6) such Legal Defeasance or Covenant Defeasance must not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than the applicable indenture) to which we are, or any of our subsidiaries is, a party or by which we are, or any of our subsidiaries is, bound;

(7) we must deliver to the trustee an officer's certificate stating that the deposit was not made by us with the intent of preferring the holders of debt securities over our other creditors with the intent of defeating, hindering, delaying or defrauding our creditors or the creditors of others;

(8) we must deliver to the trustee an officer's certificate stating that all conditions precedent set forth in clauses (1) through (6) of this paragraph have been complied with; and

(9) we must deliver to the trustee an opinion of counsel (which opinion of counsel may be subject to customary assumptions, qualifications, and exclusions) stating that all conditions precedent set forth in clauses (2), (3) and (6) of this paragraph have been complied with.

### **Satisfaction and Discharge**

Each of the indentures will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of debt securities and certain rights of the trustee, as expressly provided for in such indenture) as to all outstanding debt securities issued thereunder and the guarantees issued thereunder when:

(1) either (a) all of the debt securities theretofore authenticated and delivered under such indenture (except lost, stolen or destroyed debt securities that have been replaced or paid and debt securities for the payment of which money has theretofore been deposited in trust or segregated and held in trust by us and thereafter repaid to us or discharged from such trust) have been delivered to the trustee for cancellation or (b) all debt securities not theretofore delivered to the trustee for cancellation have become due and payable, will become due and payable at their stated maturity within one year, or are to be called for redemption within one year under arrangements satisfactory to the trustee for the giving of notice of redemption by the trustee in the name, and at the expense, of us, and we have irrevocably deposited or caused to be deposited with the trustee funds, in an amount sufficient to pay and discharge the entire indebtedness on the debt securities not theretofore delivered to the trustee for cancellation, for principal of and premium, if any, and interest on the debt securities to the date of deposit (in the case of debt securities that have become due and payable) or to the stated maturity or redemption date, as the case may be, together with instructions from us irrevocably directing the trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(2) we have paid all other sums then due and payable under such indenture by us; and

(3) we have delivered to the trustee an officer's certificate and an opinion of counsel, which, taken together, state that all conditions precedent under such indenture relating to the satisfaction and discharge of such indenture have been complied with.

### **No Personal Liability of Directors, Managers, Officers, Employees, Partners, Members and Stockholders**

No director, manager, officer, employee, incorporator, partner, member or stockholder of us or any guarantor, as such, shall have any liability for any of our obligations or those of the guarantors under the debt securities, the indentures, the guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of debt securities, upon our issuance of the debt securities and execution of the indentures, waives and releases all such liability. The waiver and release are part of the consideration for issuance of the debt securities. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

### **Denominations**

Unless stated otherwise in the prospectus supplement for each issuance of debt securities, the debt securities will be issued in denominations of \$1,000 each or integral multiples of \$1,000.

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### **Paying Agent and Registrar**

The trustee will initially act as paying agent and registrar for the debt securities. We may change the paying agent or registrar without prior notice to the holders of the debt securities, and we may act as paying agent or registrar.

### **Transfer and Exchange**

A holder may transfer or exchange debt securities in accordance with the applicable indenture. The registrar and the trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents, and we may require a holder to pay any taxes and fees required by law or permitted by the applicable indenture. We are not required to transfer or exchange any debt security selected for redemption. In addition, we are not required to transfer or exchange any debt security for a period of 15 days before a selection of debt securities to be redeemed.

### **Subordination**

The payment of the principal of and premium, if any, and interest on subordinated debt securities and any of our other payment obligations in respect of subordinated debt securities (including any obligation to repurchase subordinated debt securities) is subordinated in certain circumstances in right of payment, as set forth in the subordinated indenture, to the prior payment in full in cash of all senior debt.

We also may not make any payment, whether by redemption, purchase, retirement, defeasance or otherwise, upon or in respect of subordinated debt securities, except from a trust described under Legal Defeasance and Covenant Defeasance, if

a default in the payment of all or any portion of the obligations on any designated senior debt ( *payment default* ) occurs that has not been cured or waived, or

any other default occurs and is continuing with respect to designated senior debt pursuant to which the maturity thereof may be accelerated ( *non-payment default* ) and, solely with respect to this clause, the trustee for the subordinated debt securities receives a notice of the default (a *payment blockage notice* ) from the trustee or other representative for the holders of such designated senior debt.

Cash payments on subordinated debt securities will be resumed (a) in the case of a payment default, upon the date on which such default is cured or waived, and (b) in case of a nonpayment default, the earliest of the date on which such nonpayment default is cured or waived, the termination of the payment blockage period by written notice to the trustee for the subordinated debt securities from the trustee or other representative for the holders of such designated senior debt, the payment in full of such designated senior debt or 179 days after the date on which the applicable payment blockage notice is received. No new payment blockage period may be commenced unless and until 360 days have elapsed since the date of commencement of the payment blockage period resulting from the immediately prior payment blockage notice. No nonpayment default in respect of designated senior debt that existed or was continuing on the date of delivery of any payment blockage notice to the trustee for the subordinated debt securities will be, or be made, the basis for a subsequent payment blockage notice unless such default shall have been cured or waived for a period of no less than 90 consecutive days.

Upon any payment or distribution of our assets or securities (other than with the money, securities or proceeds held under any defeasance trust established in accordance with the subordinated indenture) in connection with any dissolution or winding up or total or partial liquidation or reorganization of us, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other proceedings or other marshalling of assets for the benefit of creditors, all amounts due or to become due upon all senior debt shall first be paid in full, in cash or cash equivalents, before the holders of the subordinated debt securities or the trustee on their behalf shall be entitled to receive any payment by or on behalf of us on account of the subordinated debt securities, or

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any payment to acquire any of the subordinated debt securities for cash, property or securities, or any distribution with respect to the subordinated debt securities of any cash, property or securities. Before any payment may be made by, or on behalf of, us on any subordinated debt security (other than with the money, securities or proceeds held under any defeasance trust established in accordance with the subordinated indenture) in connection with any such dissolution, winding up, liquidation or reorganization, any payment or distribution of our assets or securities, to which the holders of subordinated debt securities or the trustee on their behalf would be entitled, shall be made by us or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other similar Person making such payment or distribution, or by the holders or the trustee if received by them or it, directly to the holders of senior debt or their representatives or to any trustee or trustees under any indenture pursuant to which any such senior debt may have been issued, as their respective interests appear, to the extent necessary to pay all such senior debt in full, in cash or cash equivalents, after giving effect to any concurrent payment, distribution or provision therefor to or for the holders of such senior debt.

As a result of these subordination provisions, in the event of our liquidation, bankruptcy, reorganization, insolvency, receivership or similar proceeding or an assignment for the benefit of our creditors or a marshalling of our assets or liabilities, holders of subordinated debt securities may receive ratably less than other creditors.

### **Payment and Transfer**

Principal, interest and any premium on fully registered debt securities will be paid at designated places. Payment will be made by check mailed to the persons in whose names the debt securities are registered on days specified in the indentures or any prospectus supplement. Debt securities payments in other forms will be paid at a place designated by us and specified in a prospectus supplement.

Fully registered debt securities may be transferred or exchanged at the office of the trustee or at any other office or agency maintained by us for such purposes, without the payment of any service charge except for any tax or governmental charge.

### **Global Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global certificates that we will deposit with a depositary identified in the applicable prospectus supplement. Unless and until it is exchanged in whole or in part for the individual debt securities that it represents, a global security may not be transferred except as a whole:

by the applicable depositary to a nominee of the depositary;

by any nominee to the depositary itself or another nominee; or

by the depositary or any nominee to a successor depositary or any nominee of the successor.

We will describe the specific terms of the depositary arrangement with respect to a series of debt securities in the applicable prospectus supplement. We anticipate that the following provisions will generally apply to depositary arrangements.

When we issue a global security in registered form, the depositary for the global security or its nominee will credit, on its book-entry registration and transfer system, the respective principal amounts of the individual debt securities represented by that global security to the accounts of persons that have accounts with the depositary ( *participants* ). Those accounts will be designated by the dealers, underwriters or agents with respect to the underlying debt securities or by us if those debt securities are offered and sold directly by us. Ownership of beneficial interests in a global security will be limited to participants or persons that may hold interests through participants. For interests of participants, ownership of beneficial interests in the global security will be shown on records maintained by the applicable depositary or its nominee. For interests of persons other than participants,

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that ownership information will be shown on the records of participants. Transfer of that ownership will be effected only through those records. The laws of some states require that certain purchasers of securities take physical delivery of securities in definitive form. These limits and laws may impair our ability to transfer beneficial interests in a global security.

As long as the depository for a global security, or its nominee, is the registered owner of that global security, the depository or nominee will be considered the sole owner or holder of the debt securities represented by the global security for all purposes under the applicable indenture. Except as provided below, owners of beneficial interests in a global security:

will not be entitled to have any of the underlying debt securities registered in their names;

will not receive or be entitled to receive physical delivery of any of the underlying debt securities in definitive form; and

will not be considered the owners or holders under the indenture relating to those debt securities.

Payments of the principal of, any premium on and any interest on individual debt securities represented by a global security registered in the name of a depository or its nominee will be made to the depository or its nominee as the registered owner of the global security representing such debt securities. Neither we, the trustee for the debt securities, any paying agent nor the registrar for the debt securities will be responsible for any aspect of the records relating to or payments made by the depository or any participants on account of beneficial interests in the global security.

We expect that the depository or its nominee, upon receipt of any payment of principal, any premium or interest relating to a global security representing any series of debt securities, immediately will credit participants' accounts with the payments. Those payments will be credited in amounts proportional to the respective beneficial interests of the participants in the principal amount of the global security as shown on the records of the depository or its nominee. We also expect that payments by participants to owners of beneficial interests in the global security held through those participants will be governed by standing instructions and customary practices. This is now the case with securities held for the accounts of customers registered in street name. Those payments will be the sole responsibility of those participants.

If the depository for a series of debt securities is at any time unwilling, unable or ineligible to continue as depository and we do not appoint a successor depository within 90 days, we will issue individual debt securities of that series in exchange for the global security or securities representing that series. In addition, we may at any time in our sole discretion determine not to have any debt securities of a series represented by one or more global securities. In that event, we will issue individual debt securities of that series in exchange for the global security or securities. Furthermore, if we specify, an owner of a beneficial interest in a global security may, on terms acceptable to us, the trustee and the applicable depository, receive individual debt securities of that series in exchange for those beneficial interests. The foregoing is subject to any limitations described in the applicable prospectus supplement. In any such instance, the owner of the beneficial interest will be entitled to physical delivery of individual debt securities equal in principal amount to the beneficial interest and to have the debt securities registered in its name. Those individual debt securities will be issued in any authorized denominations.

## **Governing Law**

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



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**Information Concerning the Trustee**

U.S. Bank National Association will be the trustee under the indentures. A successor trustee may be appointed in accordance with the terms of the indentures.

The indentures and the provisions of the Trust Indenture Act incorporated by reference therein will contain certain limitations on the rights of the trustee, should it become a creditor of us, to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest (within the meaning of the Trust Indenture Act), it must eliminate such conflicting interest or resign.

A single banking or financial institution may act as trustee with respect to both the subordinated indenture and the senior indenture. If this occurs, and should a default occur with respect to either the subordinated debt securities or the senior debt securities, such banking or financial institution would be required to resign as trustee under one of the indentures within 90 days of such default, pursuant to the Trust Indenture Act, unless such default were cured, duly waived or otherwise eliminated.

**DESCRIPTION OF GUARANTEES OF DEBT SECURITIES**

Our subsidiaries may issue unconditional guarantees on an unsecured, unsubordinated basis with respect to senior debt securities that we offer in any prospectus supplement and may issue unconditional guarantees on an unsecured, subordinated basis with respect to subordinated debt securities that we offer in any prospectus supplement. The guarantee of senior debt securities will rank equally in right of payment with all of the unsecured and unsubordinated indebtedness of such subsidiary or subsidiaries. The guarantee of the subordinated debt securities will be subordinated in right of payment to all such subsidiary s or subsidiaries existing and future senior indebtedness (as defined in the related prospectus supplement), including any guarantee of senior debt securities, to the same extent and in the same manner as the subordinated debt securities are subordinated to our senior indebtedness (as defined in the related prospectus supplement). Each guarantee will be issued under a supplement to an indenture. The prospectus supplement relating to a particular issue of guarantees will describe the terms of those guarantees, including the following:

the series of debt securities to which the guarantees apply;

whether the guarantees are secured or unsecured;

whether the guarantees are senior or subordinate to other guarantees or debt;

the terms under which the guarantees may be amended, modified, waived, released or otherwise terminated, if different from the provisions applicable to the guaranteed debt securities; and

any additional terms of the guarantees.

The obligations of our subsidiaries under any such guarantee will be limited as necessary to prevent the guarantee from constituting a fraudulent conveyance or fraudulent transfer under applicable law.

**DESCRIPTION OF CAPITAL STOCK**

Our authorized capital stock consists of 200,000,000 shares of common stock, par value \$0.01 per share, and 50,000,000 shares of preferred stock, par value \$0.01 per share. The following describes our common stock, preferred stock, certificate of incorporation and bylaws and the rights agreement we have entered into with American Stock Transfer & Trust Company, as rights agent. This description is a summary only. We encourage



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you to read the complete text of our certificate of incorporation and bylaws and the rights agreement, which we have filed as exhibits to the registration statement of which this prospectus is a part.

### **Common Stock**

Each share of common stock entitles the holder to one vote on all matters on which holders are permitted to vote, including the election of directors. There are no cumulative voting rights. Accordingly, holders of a majority of shares entitled to vote in an election of directors are able to elect all of the directors standing for election.

Subject to preferences that may be applicable to any outstanding preferred stock, the holders of the common stock share equally on a per share basis any dividends when, as and if declared by the board of directors out of funds legally available for that purpose. If we are liquidated, dissolved or wound up, the holders of our common stock will be entitled to a ratable share of any distribution to stockholders, after satisfaction of all of our liabilities and of the prior rights of any outstanding class of our preferred stock. Our common stock carries no preemptive or other subscription rights to purchase shares of our stock and is not convertible, redeemable or assessable or entitled to the benefits of any sinking fund. Our common stock is subject to certain restrictions and limitations on ownership by non-United States citizens. See Certificate of Incorporation and Bylaws Foreign Ownership.

### **Preferred Stock**

Our board of directors has the authority, without stockholder approval, to issue shares of preferred stock from time to time in one or more series and to fix the number of shares and terms of each such series. The board may determine the designation and other terms of each series, including, among others:

dividend rights;

voting powers;

preemptive rights;

conversion and exchange rights;

redemption rights; and

liquidation preferences.

The prospectus supplement relating to any series of preferred stock we are offering will include specific terms relating to the offering and the name of any transfer agent for that series. We will file the form of the preferred stock with the SEC before we issue any of it, and you should read it for provisions that may be important to you. The prospectus supplement will include some or all of the following terms:

the title of the preferred stock;

the maximum number of shares of the series;

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the dividend rate or the method of calculating the dividend, the date from which dividends will accrue and whether dividends will be cumulative;

any liquidation preference;

any optional redemption provisions;

any sinking fund or other provisions that would obligate us to redeem or purchase the preferred stock;

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any terms for the conversion or exchange of the preferred stock for other securities of us or any other entity;

any voting rights; and

any other preferences and relative, participating, optional or other special rights or any qualifications, limitations or restrictions on the rights of the shares.

In addition, our preferred stock is subject to certain restrictions and limitations on ownership by non-United States citizens. See Certificate of Incorporation and Bylaws Foreign Ownership.

The issuance of preferred stock, while providing us with flexibility in connection with possible acquisitions and other corporate purposes, could reduce the relative voting power of holders of our common stock. It could also affect the likelihood that holders of our common stock will receive dividend payments and payments upon liquidation.

For purposes of the rights plan described below, our board of directors has designated 2,000,000 shares of preferred stock to constitute the Series A Junior Participating Preferred Stock. For a description of the rights plan, please read Stockholder Rights Plan.

The issuance of shares of capital stock, or the issuance of rights to purchase shares of capital stock, could be used to discourage an attempt to obtain control of our company. For example, if, in the exercise of its fiduciary obligations, our board of directors determined that a takeover proposal was not in the best interest of our stockholders, the board could authorize the issuance of preferred stock or common stock without stockholder approval. The shares could be issued in one or more transactions that might prevent or make the completion of the change of control transaction more difficult or costly by:

diluting the voting or other rights of the proposed acquiror or insurgent stockholder group;

creating a substantial voting block in institutional or other hands that might undertake to support the position of the incumbent board; or

effecting an acquisition that might complicate or preclude the takeover.

In this regard, our certificate of incorporation grants our board of directors broad power to establish the rights and preferences of the authorized and unissued preferred stock. Our board could establish one or more series of preferred stock that entitle holders to:

vote separately as a class on any proposed merger or consolidation;

cast a proportionately larger vote together with our common stock on any transaction or for all purposes;

elect directors having terms of office or voting rights greater than those of other directors;

convert preferred stock into a greater number of shares of our common stock or other securities;

demand redemption at a specified price under prescribed circumstances related to a change of control of our company; or

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exercise other rights designed to impede a takeover.

Alternatively, a change of control transaction deemed by the board to be in the best interest of our stockholders could be facilitated by issuing a series of preferred stock having sufficient voting rights to provide a required percentage vote of the stockholders.

### **Certificate of Incorporation and Bylaws**

#### ***Election and Removal of Directors***

Our board of directors consists of between one and 16 directors, excluding any directors elected by holders of preferred stock pursuant to provisions applicable in the case of defaults. The exact number of directors is fixed

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from time to time by resolution of the board. Our board of directors is divided into three classes serving staggered three-year terms, with only one class being elected each year by our stockholders. At each annual meeting of stockholders, directors are elected to succeed the class of directors whose terms have expired. This system of electing and removing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of our company, because it generally makes it more difficult for stockholders to replace a majority of the directors. In addition, no director may be removed except for cause, and directors may be removed for cause by an affirmative vote of shares representing a majority of the shares then entitled to vote at an election of directors. Any vacancy occurring on the board of directors and any newly created directorship may be filled only by a majority of the remaining directors in office.

### ***Stockholder Meetings***

Our certificate of incorporation and our bylaws provide that special meetings of our stockholders may be called only by the chairman of our board of directors or a majority of the directors. Our certificate of incorporation and our bylaws specifically deny any power of any other person to call a special meeting.

### ***Stockholder Action by Written Consent***

Our certificate of incorporation provides that holders of our common stock are not able to act by written consent without a meeting, unless such consent is unanimous.

### ***Amendment of Certificate of Incorporation***

The provisions of our certificate of incorporation described above under Election and Removal of Directors , Stockholder Meetings and Stockholder Action by Written Consent may be amended only by the affirmative vote of holders of at least 75% of the voting power of our outstanding shares of voting stock, voting together as a single class. The affirmative vote of holders of at least a majority of the voting power of our outstanding shares of stock will generally be required to amend other provisions of our certificate of incorporation.

### ***Amendment of Bylaws***

Our bylaws may generally be altered, amended or repealed, and new bylaws may be adopted, with:

the affirmative vote of a majority of directors present at any regular or special meeting of the board of directors called for that purpose, provided that any alteration, amendment or repeal of, or adoption of any bylaw inconsistent with, specified provisions of the bylaws, including those related to special and annual meetings of stockholders, action of stockholders by written consent, classification of the board of directors, nomination of directors, special meetings of directors, removal of directors, committees of the board of directors and indemnification of directors and officers, requires the affirmative vote of at least 75% of all directors in office at a meeting called for that purpose; or

the affirmative vote of holders of 75% of the voting power of our outstanding shares of voting stock, voting together as a single class.

### ***Other Limitations on Stockholder Actions***

Our bylaws also impose some procedural requirements on stockholders who wish to:

make nominations in the election of directors;

propose that a director be removed;

propose any repeal or change in our bylaws; or

propose any other business to be brought before an annual or special meeting of stockholders.



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Under these procedural requirements, in order to bring a proposal before a meeting of stockholders, a stockholder must deliver timely notice of a proposal pertaining to a proper subject for presentation at the meeting to our corporate secretary along with the following:

a description of the business or nomination to be brought before the meeting and the reasons for conducting such business at the meeting;

the stockholder's name and address;

any material interest of the stockholder in the proposal;

the number of shares beneficially owned by the stockholder and evidence of such ownership; and

the names and addresses of all persons with whom the stockholder is acting in concert and a description of all arrangements and understandings with those persons, and the number of shares such persons beneficially own.

To be timely, a stockholder must generally deliver notice:

in connection with an annual meeting of stockholders, not less than 90 nor more than 120 days prior to the first anniversary of the date on which the annual meeting of stockholders was held in the immediately preceding year, but in the event that the date of the annual meeting is more than 30 days before or more than 60 days after the anniversary date of the preceding annual meeting of stockholders, a stockholder notice will be timely if received by us not earlier than the close of business on the 120th day prior to the annual meeting and not later than the close of business on the later of the 90th day prior to the annual meeting and the 10th day following the day on which we first publicly announce the date of the annual meeting; or

in connection with the election of a director at a special meeting of stockholders, not less than 40 nor more than 60 days prior to the date of the special meeting, but in the event that less than 55 days' notice or prior public disclosure of the date of the special meeting of the stockholders is given or made to the stockholders, a stockholder notice will be timely if received by us not later than the close of business on the 10th day following the day on which a notice of the date of the special meeting was mailed to the stockholders or the public disclosure of that date was made.

In order to submit a nomination for our board of directors, a stockholder must also submit any information with respect to the nominee that we would be required to include in a proxy statement, as well as some other information. If a stockholder fails to follow the required procedures, the stockholder's proposal or nominee will be ineligible and will not be voted on by our stockholders.

### ***Limitation of Liability of Directors and Officers***

Our certificate of incorporation provides that no director will be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except as required by applicable law, as in effect from time to time. Currently, Delaware law requires that liability be imposed for the following:

any breach of the director's duty of loyalty to our company or our stockholders;

any act or omission not in good faith or which involved intentional misconduct or a knowing violation of law;

unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; and

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

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As a result, neither we nor our stockholders have the right, through stockholders' derivative suits on our behalf, to recover monetary damages against a director for breach of fiduciary duty as a director, including breaches resulting from grossly negligent behavior, except in the situations described above.

Our bylaws provide that, to the fullest extent permitted by law, we will indemnify any officer or director of our company against all damages, claims and liabilities arising out of the fact that the person is or was our director or officer, or served any other enterprise at our request as a director, officer, employee, agent or fiduciary. We will reimburse the actual and reasonable expenses, including attorneys' fees, incurred by a person indemnified by this provision when we receive an undertaking to reimburse such amounts if it is ultimately determined that the person is not entitled to be indemnified by us. Amending this provision will not reduce our indemnification obligations relating to actions taken before an amendment. We have entered into indemnification agreements with each of our directors that provide that we will indemnify the indemnitee against, and advance certain expenses relating to, liabilities incurred in the performance of such indemnitee's duties on our behalf to the fullest extent permitted under Delaware law and our bylaws.

### ***Foreign Ownership***

In order to continue to enjoy the benefits of U.S. flag registry for our liftboats, we must maintain U.S. citizenship for U.S. coastwise trade purposes as defined in the Merchant Marine Act of 1936, the Shipping Act of 1916 and applicable federal regulations. Under these regulations, to maintain U.S. citizenship and, therefore, be qualified to engage in U.S. coastwise trade:

our president or chief executive officer, our chairman of the board and a majority of a quorum of our board of directors must be U.S. citizens; and

at least 75% of the ownership and voting power of each class of our stock must be held by U.S. citizens free of any trust, fiduciary arrangement or other agreement, arrangement or understanding whereby voting power may be exercised directly or indirectly by non-U.S. citizens, as defined in the Merchant Marine Act, the Shipping Act and applicable federal regulations.

In order to protect our ability to register our liftboats under federal law and operate our liftboats in U.S. coastwise trade, our certificate of incorporation contains provisions that limit foreign ownership of our capital stock to a fixed percentage that is equal to 5% less than the percentage that would prevent us from being a U.S. citizen (currently 25%) for purposes of the Merchant Marine Act and the Shipping Act. We refer to the percentage limitation on foreign ownership as the permitted percentage. The permitted percentage is currently 20%.

Our certificate of incorporation provides that:

any transfer, or attempted or purported transfer, of any shares of our capital stock that would result in the ownership or control in excess of the permitted percentage by one or more persons who is not a U.S. citizen for purposes of U.S. coastwise shipping will be void and ineffective as against us; and

if, at any time, persons other than U.S. citizens own shares of our capital stock or possess voting power over any shares of our capital stock, in each case (either of record or beneficially) in excess of the permitted percentage, we may withhold payment of dividends on and suspend the voting rights attributable to such shares.

Certificates representing our common stock may bear legends concerning the restrictions on ownership by persons other than U.S. citizens. In addition, our certificate of incorporation permits us to:

require, as a condition precedent to the transfer of shares of capital stock on our records, representations and other proof as to the identity of existing or prospective stockholders;

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establish and maintain a dual stock certificate system under which different forms of certificates may be used to reflect whether the owner thereof is a U.S. citizen; and

redeem any shares held by non-U.S. citizens that exceed the permitted percentage at a price based on the then-current market price of the shares, subject to certain terms and conditions.

### ***Anti-Takeover Effects of Some Provisions***

Some provisions of our certificate of incorporation and bylaws could make the following more difficult:

acquisition of control of us by means of a proxy contest or otherwise, or

removal of our incumbent officers and directors.

These provisions, as well as our ability to issue preferred stock, are designed 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 increased protection give us the potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us, and that the benefits of this increased protection outweigh the disadvantages of discouraging those proposals, because negotiation of those proposals could result in an improvement of their terms.

### **Stockholder Rights Plan**

We have adopted a preferred share purchase rights plan. Under the plan, each share of our common stock includes one right to purchase preferred stock. The rights will separate from the common stock and become exercisable (1) ten days after public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of 15% of our outstanding common stock or (2) ten business days following the start of a tender offer or exchange offer that would result in a person's acquiring beneficial ownership of 15% of our outstanding common stock. A 15% beneficial owner is referred to as an acquiring person under the plan.

Our board of directors can elect to delay the separation of the rights from the common stock beyond the ten-day periods referred to above. The plan also confers on our board the discretion to increase or decrease the level of ownership that causes a person to become an acquiring person. Until the rights are separately distributed, the rights will be evidenced by the common stock certificates and will be transferred with and only with the common stock certificates.

After the rights are separately distributed, each right will entitle the holder to purchase from us one one-hundredth of a share of Series A Junior Participating Preferred Stock for a purchase price of \$90.00. The rights will expire at the close of business on the tenth anniversary of the effective date of the agreement, unless we redeem or exchange them earlier as described below.

If a person becomes an acquiring person, the rights will become rights to purchase shares of our common stock for one-half the current market price, as defined in the rights agreement, of the common stock. This occurrence is referred to as a flip-in event under the plan. After any flip-in event, all rights that are beneficially owned by an acquiring person, or by certain related parties, will be null and void. Our board of directors will have the power to decide that a particular tender or exchange offer for all outstanding shares of our common stock is fair to and otherwise in the best interests of our stockholders. If the board makes this determination, the purchase of shares under the offer will not be a flip-in event.

If, after there is an acquiring person, we are acquired in a merger or other business combination transaction or 50% or more of our assets, earning power or cash flow are sold or transferred, each holder of a right will have

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the right to purchase shares of the common stock of the acquiring company at a price of one-half the current market price of that stock. This occurrence is referred to as a flip-over event under the plan. An acquiring person will not be entitled to exercise its rights, which will have become void.

Until ten days after the announcement that a person has become an acquiring person, our board of directors may decide to redeem the rights at a price of \$0.01 per right, payable in cash, shares of our common stock or other consideration. The rights will not be exercisable after a flip-in event until the rights are no longer redeemable.

At any time after a flip-in event and prior to either a person's becoming the beneficial owner of 50% or more of the shares of our common stock or a flip-over event, our board of directors may decide to exchange the rights for shares of our common stock on a one-for-one basis. Rights owned by an acquiring person, which will have become void, will not be exchanged.

Other than provisions relating to the redemption price of the rights, the rights agreement may be amended by our board of directors at any time that the rights are redeemable. Thereafter, the provisions of the rights agreement other than the redemption price may be amended by the board of directors to cure any ambiguity, defect or inconsistency, to make changes that do not materially adversely affect the interests of holders of rights (excluding the interests of any acquiring person), or to shorten or lengthen any time period under the rights agreement. No amendment to lengthen the time period for redemption may be made if the rights are not redeemable at that time.

The rights have certain anti-takeover effects. The rights will cause substantial dilution to any person or group that attempts to acquire us without the approval of our board of directors. As a result, the overall effect of the rights may be to render more difficult or discourage any attempt to acquire us even if the acquisition may be favorable to the interests of our stockholders. Because the board of directors can redeem the rights or approve a tender or exchange offer, the rights should not interfere with a merger or other business combination approved by the board.

## **Delaware Business Combination Statute**

We have elected to be subject to Section 203 of the Delaware General Corporation Law, which regulates corporate acquisitions. Section 203 prevents an interested stockholder, which is defined generally as a person owning 15% or more of a corporation's voting stock, or any affiliate or associate of that person, from engaging in a broad range of business combinations with the corporation for three years after becoming an interested stockholder unless:

the board of directors of the corporation had previously approved either the business combination or the transaction that resulted in the stockholder's becoming an interested stockholder;

upon completion of the transaction that resulted in the stockholder's becoming an interested stockholder, that person owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, other than statutorily excluded shares; or

following the transaction in which that person became an interested stockholder, the business combination is approved by the board of directors of the corporation and holders of at least two-thirds of the outstanding voting stock not owned by the interested stockholder. Under Section 203, the restrictions described above also do not apply to specific business combinations proposed by an interested stockholder following the announcement or notification of designated extraordinary transactions involving the corporation and a person who had not been an interested stockholder during the previous three years or who became an interested stockholder with the approval of a majority of the corporation's directors, if such extraordinary transaction is approved or not opposed by a majority of the directors who were

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directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors.

Section 203 may make it more difficult for a person who would be an interested stockholder to effect various business combinations with a corporation for a three-year period. Section 203 also may have the effect of preventing changes in our management and could make it more difficult to accomplish transactions which our stockholders may otherwise deem to be in their best interests.

## **Listing of Common Stock**

Our common is listed on the NASDAQ Global Select Market under the symbol HERO.

## **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company.

## **DESCRIPTION OF WARRANTS**

We may issue warrants to purchase any combination of debt securities, common stock, preferred stock or other securities of our company or any other entity. We may issue warrants independently or together with other securities. Warrants sold with other securities may be attached to or separate from the other securities. We will issue warrants under one or more warrant agreements between us and a warrant agent that we will name in the prospectus supplement.

The prospectus supplement relating to any warrants we are offering will include specific terms relating to the offering. We will file the form of any warrant agreement with the SEC, and you should read the warrant agreement for provisions that may be important to you. The prospectus supplement will include some or all of the following terms:

the title of the warrants;

the aggregate number of warrants offered;

the designation, number and terms of the debt securities, common stock, preferred stock or other securities purchasable upon exercise of the warrants, and procedures by which the number of securities purchasable may be adjusted;

the exercise price of the warrants;

the dates or periods during which the warrants are exercisable;

the designation and terms of any securities with which the warrants are issued;

if the warrants are issued as a unit with another security, the date, if any, on and after which the warrants and the other security will be separately transferable;

if the exercise price is not payable in U.S. dollars, the foreign currency, currency unit or composite currency in which the exercise price is denominated;

any minimum or maximum amount of warrants that may be exercised at any one time; and

any terms, procedures and limitations relating to the transferability, exchange or exercise of the warrants.

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**DESCRIPTION OF PURCHASE CONTRACTS**

We may issue purchase contracts for the purchase or sale of:

debt or equity securities issued by us or securities of third parties, a basket of such securities, an index or indices of such securities or any combination of the above as specified in the applicable prospectus supplement;

currencies; or

commodities.

Each purchase contract will entitle the holder thereof to purchase or sell, and obligate us to sell or purchase, on specified dates, such securities, currencies or commodities at a specified purchase price, which may be based on a formula, all as set forth in the applicable prospectus supplement. We may, however, satisfy our obligations, if any, with respect to any purchase contract by delivering the cash value of such purchase contract or the cash value of the property otherwise deliverable or, in the case of purchase contracts on underlying currencies, by delivering the underlying currencies, as set forth in the applicable prospectus supplement. The applicable prospectus supplement will also specify the methods by which the holders may purchase or sell such securities, currencies or commodities and any acceleration, cancellation or termination provisions or other provisions relating to the settlement of a purchase contract.

The purchase contracts may require us to make periodic payments to the holders thereof or vice versa, which payments may be deferred to the extent set forth in the applicable prospectus supplement, and those payments may be unsecured or prefunded on some basis. The purchase contracts may require the holders thereof to secure their obligations in a specified manner to be described in the applicable prospectus supplement. Alternatively, purchase contracts may require holders to satisfy their obligations thereunder when the purchase contracts are issued. Our obligation to settle such pre-paid purchase contracts on the relevant settlement date may constitute indebtedness. Accordingly, pre-paid purchase contracts will be issued under one of the indentures.

**DESCRIPTION OF UNITS**

As specified in the applicable prospectus supplement, we may issue units consisting of one or more purchase contracts, warrants, debt securities, shares of preferred stock, shares of common stock or any combination of such securities. The applicable prospectus supplement will describe:

the terms of the units and of any of the purchase contracts, warrants, debt securities, preferred stock and common stock comprising the units, including whether and under what circumstances the securities comprising the units may be traded separately;

a description of the terms of any unit agreement governing the units; and

a description of the provisions for the payment, settlement, transfer or exchange of the units.

**PLAN OF DISTRIBUTION**

We may sell the securities in and outside the United States through underwriters or dealers, directly to purchasers, through agents or through a combination of these methods.

**Sale Through Underwriters or Dealers**

If we use underwriters in the sale of securities, the underwriters will acquire the securities for their own account. The underwriters may resell the securities from time to time in one or more transactions, including





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negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to conditions, and the underwriters will be obligated to purchase all the securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

During and after an offering through underwriters, the underwriters may purchase and sell the securities in the open market. These transactions may include over-allotment and stabilizing transactions and purchases to cover syndicate short positions created in connection with the offering. The underwriters may also impose a penalty bid, whereby selling concessions allowed to syndicate members or other broker-dealers for the offered securities sold for their account may be reclaimed by the syndicate if such offered securities are repurchased by the syndicate in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the offered securities, which may be higher than the price that might otherwise prevail in the open market. If commenced, these activities may be discontinued at any time.

If we use dealers in the sale of securities, we will sell the securities to them as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale. The dealers participating in any sale of the securities may be deemed to be underwriters within the meaning of the Securities Act of 1933 with respect to any sale of those securities. We will include in the prospectus supplement the names of the dealers and the terms of the transaction.

### **Direct Sales and Sales Through Agents**

We may sell the securities directly. In that event, no underwriters or agents would be involved. We may also sell the securities through agents designated from time to time. In the prospectus supplement, we will name any agent involved in the offer or sale of the securities, and we will describe any commissions payable by us to the agent. Unless we inform you otherwise in the prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act of 1933 with respect to any sale of those securities. We will describe the terms of any such sales in the prospectus supplement.

### **Delayed Delivery Contracts**

If we so indicate in the prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement will describe the commission payable for solicitation of those contracts.

### **Remarketing**

We may offer and sell any of the securities in connection with a remarketing upon their purchase, in accordance with a redemption or repayment by their terms or otherwise, by one or more remarketing firms acting as principals for their own accounts or as our agents. We will identify any remarketing firm, the terms of any remarketing agreement and the compensation to be paid to the remarketing firm in the prospectus supplement. Remarketing firms may be deemed underwriters under the Securities Act of 1933.

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### **Derivative Transactions**

We may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third parties may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock, and may use securities received from us in settlement of those derivatives to close out any related open borrowings of stock. The third parties in these sale transactions will be underwriters and will be identified in the applicable prospectus supplement or in a post-effective amendment to the registration statement of which this prospectus forms a part.

### **General Information**

We may have agreements with the agents, dealers and underwriters to indemnify them against civil liabilities, including liabilities under the Securities Act of 1933, or to contribute with respect to payments that the agents, dealers or underwriters may be required to make. Agents, dealers and underwriters may engage in transactions with us or perform services for us in the ordinary course of their businesses.

### **LEGAL MATTERS**

The validity of the offered securities and other matters in connection with any offering of the securities will be passed upon for us by Andrews Kurth LLP, Houston, Texas. Any underwriters will be advised about legal matters relating to any offering by their own legal counsel.

### **EXPERTS**

The consolidated financial statements of Hercules Offshore, Inc. appearing in Hercules Offshore, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2009, and the effectiveness of Hercules Offshore, Inc.'s internal control over financial reporting as of December 31, 2009, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated herein by reference. Such financial statements are, and audited financial statements to be included in subsequently filed documents will be, incorporated herein in reliance upon the reports of Ernst & Young LLP pertaining to such financial statements and the effectiveness of our internal control over financial reporting as of the respective dates (to the extent covered by consents filed with the Securities and Exchange Commission) given on the authority of such firm as experts in accounting and auditing.

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