

Grand Canyon Education, Inc.  
Form 10-Q  
November 08, 2018  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES AND EXCHANGE ACT OF 1934**

**For the quarterly period ended September 30, 2018**

**or**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from                      to**

**Commission File Number: 001-34211**

**GRAND CANYON EDUCATION, INC.**

**(Exact name of registrant as specified in its charter)**

**DELAWARE**  
**(State or other jurisdiction of**  
**Incorporation or organization)**

**20-3356009**  
**(I.R.S. Employer**  
**Identification No.)**

**2600 W. Camelback Road**  
**Phoenix, Arizona 85017**

**(Address, including zip code, of principal executive offices)**

**(602) 247-4400**

**(Registrant's telephone number, including area code)**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The total number of shares of common stock outstanding as of November 5, 2018, was 48,133,425.



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Table of Contents**PART I FINANCIAL INFORMATION****Item 1. Financial Statements****GRAND CANYON EDUCATION, INC.****Consolidated Income Statements****(Unaudited)**

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2018</b>	<b>2017</b>	<b>2018</b>	<b>2017</b>
<b><u>(In thousands, except per share data)</u></b>				
Service revenue	\$ 155,454	\$	\$ 155,454	\$
University related revenue		236,209	512,499	702,716
<b>Net revenue</b>	<b>155,454</b>	<b>236,209</b>	<b>667,953</b>	<b>702,716</b>
<b>Costs and expenses:</b>				
Technology and academic services	11,101	10,494	32,476	31,095
Counseling services and support	51,116	46,100	152,701	138,382
Marketing and communication	31,546	28,130	90,168	82,865
General and administrative	10,092	8,343	23,273	21,182
University related expenses	6,569	83,450	173,735	237,784
Loss on Transaction	15,610		17,600	
<b>Total costs and expenses</b>	<b>126,034</b>	<b>176,517</b>	<b>489,953</b>	<b>511,308</b>
<b>Operating income</b>	<b>29,420</b>	<b>59,692</b>	<b>178,000</b>	<b>191,408</b>
Interest income on Secured Note	13,248		13,248	
Interest expense	(558)	(567)	(961)	(1,642)
Investment interest and other	371	1,445	2,919	2,186
<b>Income before income taxes</b>	<b>42,481</b>	<b>60,570</b>	<b>193,206</b>	<b>191,952</b>
Income tax expense	8,720	21,266	39,726	56,889
<b>Net income</b>	<b>\$ 33,761</b>	<b>\$ 39,304</b>	<b>\$ 153,480</b>	<b>\$ 135,063</b>
<b>Earnings per share:</b>				
<b>Basic income per share</b>	<b>\$ 0.71</b>	<b>\$ 0.83</b>	<b>\$ 3.22</b>	<b>\$ 2.87</b>
<b>Diluted income per share</b>	<b>\$ 0.70</b>	<b>\$ 0.81</b>	<b>\$ 3.17</b>	<b>\$ 2.80</b>

<b>Basic weighted average shares outstanding</b>	47,682	47,316	47,592	47,083
<b>Diluted weighted average shares outstanding</b>	48,422	48,292	48,429	48,197

*The accompanying notes are an integral part of these consolidated financial statements.*

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## GRAND CANYON EDUCATION, INC.

## Consolidated Statements of Comprehensive Income

(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
<b>(In thousands)</b>				
<b>Net income</b>	\$ 33,761	\$ 39,304	\$ 153,480	\$ 135,063
<b>Other comprehensive income, net of tax:</b>				
Unrealized gains (losses) on available-for-sale securities, net of taxes of \$44 and \$25 for the three months ended September 30, 2018 and 2017, respectively, and \$6 and \$257 for the nine months ended September 30, 2018 and 2017, respectively	(133)	40	(20)	416
Unrealized gains (losses) on hedging derivatives, net of taxes of \$2 and \$20 for the three months ended September 30, 2018 and 2017, respectively, and \$81 and \$65 for the nine months ended September 30, 2018 and 2017, respectively	(4)	(30)	248	(104)
<b>Comprehensive income</b>	\$ 33,624	\$ 39,314	\$ 153,708	\$ 135,375

*The accompanying notes are an integral part of these consolidated financial statements.*

**Table of Contents****GRAND CANYON EDUCATION, INC.****Consolidated Balance Sheets**

	September 30, 2018 (Unaudited)	December 31, 2017
<b>ASSETS:</b>		
<b>(In thousands, except par value)</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 44,879	\$ 153,474
Restricted cash and cash equivalents	61,667	94,534
Investments	68,754	89,271
Accounts receivable, net	65,120	10,908
Interest receivable on secured note	4,381	
Income tax receivable	1,791	2,086
Other current assets	8,607	24,589
<b>Total current assets</b>	<b>255,199</b>	<b>374,862</b>
Property and equipment, net	110,908	922,284
Note receivable	882,900	
Prepaid royalties		2,763
Goodwill	2,941	2,941
Other assets	743	723
<b>Total assets</b>	<b>\$ 1,252,691</b>	<b>\$ 1,303,573</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY:</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 16,996	\$ 29,139
Accrued compensation and benefits	17,857	23,173
Accrued liabilities	13,511	20,757
Income taxes payable		16,182
Student deposits		95,298
Deferred revenue		46,895
Current portion of notes payable	6,572	6,691
<b>Total current liabilities</b>	<b>54,936</b>	<b>238,135</b>
Other noncurrent liabilities		1,200
Deferred income taxes, noncurrent	4,421	18,362
Notes payable, less current portion	54,976	59,925
<b>Total liabilities</b>	<b>114,333</b>	<b>317,622</b>
Commitments and contingencies		
<b>Stockholders equity</b>		



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Preferred stock, \$0.01 par value, 10,000 shares authorized; 0 shares issued and outstanding at September 30, 2018 and December 31, 2017		
Common stock, \$0.01 par value, 100,000 shares authorized; 52,570 and 52,277 shares issued and 48,134 and 48,125 shares outstanding at September 30, 2018 and December 31, 2017, respectively	526	523
Treasury stock, at cost, 4,436 and 4,152 shares of common stock at September 30, 2018 and December 31, 2017, respectively	(119,982)	(100,694)
Additional paid-in capital	251,828	232,670
Accumulated other comprehensive loss	(652)	(724)
Retained earnings	1,006,638	854,176
<b>Total stockholders equity</b>	<b>1,138,358</b>	<b>985,951</b>
<b>Total liabilities and stockholders equity</b>	<b>\$ 1,252,691</b>	<b>\$ 1,303,573</b>

*The accompanying notes are an integral part of these consolidated financial statements.*

Table of Contents**GRAND CANYON EDUCATION, INC.****Consolidated Statement of Stockholders Equity****(In thousands)****(Unaudited)**

	Common Stock		Treasury Stock		Accumulated		Retained Earnings	Total
	Shares	Par Value	Shares	Cost	Paid-in Capital	Other Comprehensive Loss		
Balance at December 31, 2017	52,277	\$ 523	4,152	\$(100,694)	\$ 232,670	\$ (724)	\$ 854,176	\$ 985,951
Cumulative effect from the adoption of accounting pronouncements, net of taxes							(1,174)	(1,174)
Comprehensive income						228	153,480	153,708
Adoption impact ASU 2018-02						(156)	156	
Common stock purchased for treasury			39	(4,135)				(4,135)
Restricted shares forfeited			94					
Share-based compensation	163	2	151	(15,153)	17,064			1,913
Exercise of stock options	130	1			2,094			2,095
Balance at September 30, 2018	52,570	\$ 526	4,436	\$(119,982)	\$ 251,828	\$ (652)	\$ 1,006,638	\$ 1,138,358

*The accompanying notes are an integral part of these consolidated financial statements.*

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## GRAND CANYON EDUCATION, INC.

## Consolidated Statements of Cash Flows

(Unaudited)

<u>(In thousands)</u>	Nine Months Ended September 30,	
	2018	2017
<b>Cash flows provided by operating activities:</b>		
Net income	\$ 153,480	\$ 135,063

the flip-in date, which is the tenth business day after the first date (or a later date as determined by the board of directors of the Company) of

a public announcement by the Company that any person has become an acquiring person or

the date and time on which any acquiring person becomes the beneficial owner of more than 20% of the outstanding shares of the Company's common stock.

Until the separation time, the rights may be transferred only with the Company's common stock.

***The Company's board of directors may redeem or exchange the rights***

The Company's board of directors may redeem the rights at a price of \$.001 per right at any time prior to the close of business on a flip-in date.

In the event that a flip-in date occurs prior to the expiration of the rights, each right (other than rights owned by an acquiring person, its affiliates or transferees, which will become void) will thereafter constitute the right to receive, upon exercise for the exercise price of \$150, subject to adjustment, that number of shares of the Company's common stock (or, in certain circumstances, cash, property or other securities of the Company) having a value equal to two times the exercise price. However, the Company's board of directors may exchange the rights (other than rights owned by the acquirer, which will become void) at any time after a flip-in date, in whole or in part, at an exchange ratio per

right equal to one times the exercise price.

Until a right is exercised or exchanged, the holder of the right, by virtue of being a right holder, will have no rights as a stockholder of the Company, including, for example, the right to vote or to receive dividends.

***Exercise of rights for shares of an acquiring company***

If before the expiration of the rights the Company enters into, consummates or permits to occur a transaction or series of transactions on or after a flip-in date in which, directly or indirectly:

the Company will consolidate, merge or participate in a share exchange with any other person if, at the time of that transaction, an acquiring person is the beneficial owner of 90% or more of the outstanding shares of the Company's common stock or controls the board of directors of the Company and either

any term of or arrangement concerning the treatment of shares of capital stock in that transaction relating to the acquiring person is not identical to the terms and arrangements relating to other holders of the Company's common stock, or

the person with whom such transaction occurs is the acquiring person (or one of its affiliates or associates), or

the Company or a subsidiary sells or otherwise transfers more than 50% of its assets or assets that generate more than 50% of the operating income or cash flow of the Company and its subsidiaries to any other person or group and, at the time the Company enters into an agreement with respect to such a

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transaction, the acquiring person or its affiliates or associates controls the board of directors of the Company, then the Company must take all required actions so that upon consummation or occurrence of the transaction:

each right will thereafter constitute the right to purchase from the acquiring entity that number of shares of common stock of the acquiring entity having an aggregate market price on the date of the transaction equal to twice the exercise price of the right, for an amount in cash equal to the then current exercise price of the right, and

the acquiring person will thereafter be liable for, and assume, all the obligations and duties of the Company pursuant to the rights agreement.

***Adjustments to exercise price***

The exercise price for each right and the number of shares of participating preferred stock (or other securities or property) issuable upon exercise of the rights are subject to adjustment from time to time to prevent dilution.

***Amendments to terms of the rights***

Any of the provisions of the rights agreement may be amended by the Company's board of directors prior to the close of business on the flip-in date. After the rights are no longer redeemable, the provisions of the rights agreement may be amended by the Company's board of directors in order to cure any ambiguity, defect or inconsistency, or to make changes that do not materially adversely affect the interests of holders of rights.

***Redemption***

The board of directors of the Company may, at its option, at any time prior to the close of business on the flip-in date, redeem all (but not less than all) of the then outstanding rights at a price of \$.001 per right. The rights will then terminate immediately and each right, whether or not previously exercised, will thereafter represent only the right to receive the redemption price in cash or securities, as determined by the board of directors.

***Term***

The rights will expire at the close of business on May 2, 2009, unless earlier redeemed, exercised or exchanged by the Company as described above.

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**DESCRIPTION OF DEBT SECURITIES**

Senior Debt Securities may be issued either separately, or together with, or upon the conversion of, or in exchange for, other securities, from time to time in one or more series, under an Indenture dated July 15, 1992 (the Senior Indenture ) between the Company and U.S. Bank National Association, as the ultimate successor trustee to Bank of America Illinois (formerly Continental Bank, National Association), as trustee (the Senior Trustee ), which is an exhibit to the Registration Statement of which this prospectus is a part.

Subordinated Debt Securities may be issued either separately, or together with, or upon the conversion of, or in exchange for, other securities, from time to time in series under an indenture (the Subordinated Indenture ) between the Company and a trustee to be identified in the related prospectus supplement (the Subordinated Trustee ). The Subordinated Indenture is an exhibit to the Registration Statement of which this prospectus is a part. The Senior Indenture and the Subordinated Indenture are sometimes referred to collectively as the Indentures, and the Senior Trustee and the Subordinated Trustee are sometimes referred to collectively as the Debt Trustees. The following statements under this caption are summaries of certain provisions contained or, in the case of the Subordinated Indenture, to be contained in the Indentures, do not purport to be complete and are qualified in their entirety by reference to the Indentures, including the definitions therein of certain terms. Capitalized terms used herein and not defined shall have the meanings assigned to them in the related Indenture. The particular terms of the Debt Securities and any variations from such general provisions applicable to any series of Debt Securities will be set forth in the prospectus supplement applicable to such series.

At November 30, 2006, approximately \$2,300 million principal amount of Senior Debt Securities were outstanding under the Senior Indenture and there were no Subordinated Debt Securities outstanding under the Subordinated Indenture.

**General**

Each Indenture provides or, in the case of the Subordinated Indenture, will provide for the issuance of Debt Securities in one or more series with the same or various maturities. Neither Indenture limits the amount of Debt Securities that can be issued thereunder and each provides that the Debt Securities may be issued in series up to the aggregate principal amount which may be authorized from time to time by the Company. The Debt Securities will be unsecured.

Reference is made to the prospectus supplement for the following terms, if applicable, of the Debt Securities offered thereby:

- (1) the designation, aggregate principal amount, currency or composite currency and denominations;
- (2) the price at which such Debt Securities will be issued and, if an index formula or other method is used, the method for determining amounts of principal or interest;
- (3) the maturity date and other dates, if any, on which principal will be payable;
- (4) the interest rate (which may be fixed or variable), if any;
- (5) the date or dates from which interest will accrue and on which interest will be payable, and the record dates for the payment of interest;

- (6) the manner of paying principal or interest;
- (7) the place or places where principal and interest will be payable;
- (8) the terms of any mandatory or optional redemption by the Company;
- (9) the terms, if any, upon which the debt securities may be convertible into or exchangeable for other securities;
- (10) the terms of any redemption at the option of holders;

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(11) whether such Debt Securities are to be issuable as registered Debt Securities, bearer Debt Securities, or both, and whether and upon what terms any registered Debt Securities may be exchanged for bearer Debt Securities and vice versa;

(12) whether such Debt Securities are to be represented in whole or in part by a Debt Security in global form and, if so, the identity of the depository for any global Debt Security;

(13) any tax indemnity provisions;

(14) if the Debt Securities provide that payments of principal or interest may be made in a currency other than that in which Debt Securities are denominated, the manner for determining such payments;

(15) the portion of principal payable upon acceleration of a Discounted Debt Security (as defined below);

(16) whether and upon what terms Debt Securities may be defeased;

(17) any events of default or restrictive covenants in addition to or in lieu of those set forth in the Indentures;

(18) provisions for electronic issuance of Debt Securities or for Debt Securities in uncertificated form; and

(19) any additional provisions or other special terms not inconsistent with the provisions of the Indentures, including any terms that may be required or advisable under United States or other applicable laws or regulations, or advisable in connection with the marketing of the Debt Securities.

If the principal of, premium, if any, or interest on Debt Securities of any series are payable in a foreign or composite currency, any material risks relating to an investment in such Debt Securities will be described in the prospectus supplement relating to that series.

Debt Securities of any series may be issued as registered Debt Securities, bearer Debt Securities or uncertificated Debt securities, as specified in the terms of the series. Unless otherwise indicated in the applicable prospectus supplement, registered Debt Securities will be issued in denominations of \$1,000 and whole multiples thereof and bearer Debt Securities will be issued in denominations of \$5,000 and whole multiples thereof. The Debt Securities of a series may be issued in whole or in part in the form of one or more global Debt Securities that will be deposited with, or on behalf of, a depository identified in the prospectus supplement relating to the series. Unless otherwise indicated in the prospectus supplement relating to a series, the terms of the depository arrangement with respect to any Debt Securities of a series specified in the prospectus supplement as being represented by global Debt Securities will be as set forth below under Global Debt Securities.

In connection with its original issuance, no bearer Debt Security will be offered, sold, resold, or mailed or otherwise delivered to any location in the United States and a bearer Debt Security in definitive form may be delivered in connection with its original issuance only if the person entitled to receive the bearer Debt Security furnishes certification as described in United States Treasury regulation section 1.163-5(c)(2)(i)(D)(iii). If there is a change in the relevant provisions or interpretation of United States laws, the foregoing restrictions will not apply to a series if the Company determines that such provisions no longer apply to the series or that failure to so comply would not have an adverse tax effect on the Company or on holders or cause the series to be treated as registration-required obligations under United States law.



For purposes of this prospectus, unless otherwise indicated, United States means the United States of America (including the States and the District of Columbia), its territories and possessions and all other areas subject to its jurisdiction. United States person means a citizen or resident of the United States, any corporation, partnership or other entity created or organized in or under the laws of the United States or a political subdivision thereof or any estate or trust the income of which is subject to United States federal income taxation regardless of its source. Any special United States federal income tax considerations applicable to bearer Debt Securities will be described in the prospectus supplement relating thereto.

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To the extent set forth in the applicable prospectus supplement, except in special circumstances set forth in the applicable Indenture, principal and interest on bearer Debt Securities will be payable only upon surrender of bearer Debt Securities and coupons at a paying agency of the Company located outside of the United States. During any period thereafter for which it is necessary in order to conform to United States tax law or regulations, the Company will maintain a paying agent outside the United States to which the bearer Debt Securities and coupons may be presented for payment and will provide the necessary funds therefor to the paying agent upon reasonable notice.

Registration of transfer of registered Debt Securities may be requested upon surrender thereof at any agency of the Company maintained for that purpose and upon fulfillment of all other requirements of the agent. Bearer Debt Securities and the coupons related thereto will be transferable by delivery.

Debt Securities may be issued under the Indentures as Discounted Debt Securities to be offered and sold at a discount from the principal amount thereof. Special United States federal income tax and other considerations applicable thereto will be described in the applicable prospectus supplement relating to such Discounted Debt Securities.

Discounted Debt Security means a Debt Security where the amount of principal due upon acceleration is less than the stated principal amount.

## **Ranking of Debt Securities**

The Senior Debt Securities will be unsecured and will rank on a parity with other unsecured and unsubordinated debt of the Company.

At September 30, 2006, the Company had outstanding approximately \$2,824 million in long-term debt (net of current maturities) consisting of Senior Indebtedness (as defined below).

The obligations of the Company pursuant to any Subordinated Debt Securities will be subordinate in right of payment to all Senior Indebtedness of the Company. Senior Indebtedness of the Company is defined to mean the principal of (and premium, if any) and interest on (a) any and all indebtedness and obligations of the Company (including indebtedness of others guaranteed by the Company) other than the Subordinated Debt Securities, whether or not contingent and whether outstanding on the date of the Subordinated Indenture or thereafter created, incurred or assumed, which (i) are for money borrowed; (ii) are evidenced by any bond, note, debenture or similar instrument; (iii) represent the unpaid balance on the purchase price of any property, business, or asset of any kind; (iv) are obligations of the Company as lessee under any and all leases of property, equipment or other assets required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles; (v) are reimbursement obligations of the Company with respect to letters of credit; and (b) any deferrals, amendments, renewals, extensions, modifications and refundings of any indebtedness or obligations of the types referred to above; provided that Senior Indebtedness shall not include (i) the Subordinated Debt Securities; (ii) any indebtedness or obligation of the Company which, by its express terms or the express terms of the instrument creating or evidencing it, is not superior in right of payment to the Subordinated Debt Securities; or (iii) any indebtedness or obligation incurred by the Company in connection with the purchase of assets, materials or services in the ordinary course of business and which constitutes a trade payable.

The Subordinated Indenture will not contain any limitation on the amount of Senior Indebtedness which may be hereafter incurred by the Company.

The Subordinated Indenture will provide that where notice of certain defaults in respect of Senior Indebtedness has been given to the Company, no payment with respect to the principal of or interest on the Subordinated Debt Securities will be made by the Company unless and until such default has been cured or waived. Upon any payment or

distribution of the Company's assets to creditors of the Company in a liquidation or dissolution of the Company, or in a reorganization, bankruptcy, insolvency, receivership or similar proceeding relating to the Company or its property, whether voluntary or involuntary, the holders of Senior Indebtedness will first be entitled to receive payment in full of all amounts due thereon before the holders of the Subordinated Debt Securities will be entitled to receive any payment upon the principal of or premium, if any, or interest on the Subordinated Debt Securities. By reason of such subordination, in the event of

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insolvency of the Company, holders of Senior Indebtedness of the Company may receive more, ratably, and holders of the Subordinated Debt Securities may receive less, ratably, than the other creditors of the Company. Such subordination will not prevent the occurrence of any event of default in respect of the Subordinated Debt Securities.

## **Certain Covenants**

The Senior Indenture contains, among others, the covenants summarized below, which will be applicable (unless waived or amended) so long as any of the Senior Debt Securities are outstanding, unless otherwise stated in the applicable prospectus supplement.

The Debt Securities will not be secured by any properties or assets and will represent unsecured debt of the Company. Because secured debt ranks ahead of unsecured debt with respect to the assets securing such secured debt, the limitation on liens and the limitation on sale-leaseback transactions place some restrictions on the Company's ability to incur additional secured debt or its equivalent when the asset securing the debt is a material manufacturing facility in the United States. The limitations are subject to a number of qualifications and exceptions described below. There can be no assurance that a facility subject to the limitations at any time will continue to be subject to those limitations at a later time.

Unless otherwise indicated in a prospectus supplement, the covenants contained in the Senior Indenture and the Senior Debt Securities do not afford holders of the Senior Debt Securities protection in the event of a highly leveraged or other transaction involving the Company that may adversely affect holders of the Senior Debt Securities.

## **Definitions**

**Attributable Debt** for a lease means, as of the date of determination, the present value of net rent for the remaining term of the lease. Rent shall be discounted to present value at a discount rate that is compounded semi-annually. The discount rate shall be 10% per annum or, if the Company elects, the discount rate shall be equal to the weighted average Yield to Maturity of the Senior Debt Securities under the Senior Indenture. Such average shall be weighted by the principal amount of the Senior Debt Securities of each series or, in the case of Discounted Senior Debt Securities, the amount of principal that would be due as of the date of determination if payment of the Senior Debt Securities were accelerated on that date.

Rent is the lesser of (a) rent for the remaining term of the lease assuming it is not terminated or (b) rent from the date of determination until the first possible termination date plus the termination payment then due, if any. The remaining term of a lease includes any period for which the lease has been extended. Rent does not include (1) amounts due for maintenance, repairs, utilities, insurance, taxes, assessments and similar charges or (2) contingent rent, such as that based on sales. Rent may be reduced by the discounted present value of the rent that any sublessee must pay from the date of determination for all or part of the same property. If the net rent on a lease is not definitely determinable, the Company may estimate it in any reasonable manner.

**Consolidated Net Tangible Assets** means total assets less (a) total current liabilities (excluding short-term Debt and payments due within one year on long-term Debt) and (b) goodwill, as reflected in the Company's most recent consolidated balance sheet preceding the date of a determination under clause (9) of the **Limitation on Liens** covenant of the Senior Indenture.

**Debt** means any debt for borrowed money or any guarantee of such a debt.

**Lien** means any mortgage, pledge, security interest or lien.

Long-Term Debt means Debt that by its terms matures on a date more than 12 months after the date it was created or Debt that the obligor may extend or renew without the obligee's consent to a date more than 12 months after the date the Debt was created.

Principal Property means (i) any manufacturing facility, whether now or hereafter owned, located in the United States (excluding territories and possessions), except any such facility that in the opinion of the board

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of directors of the Company or any authorized committee of the board is not of material importance to the total business conducted by the Company and its consolidated Subsidiaries, and (ii) any shares of stock of a Restricted Subsidiary. At December 31, 2005, our Principal Properties were our production facilities in Northern Indiana (air separation/hydrogen/carbon dioxide), Houston, Texas (air separation) and Detroit, Michigan (air separation/hydrogen), and, to the extent owned by us, Gulf Coast (hydrogen/carbon monoxide) and Louisiana (hydrogen/carbon monoxide).

**Restricted Subsidiary** means a Wholly-Owned Subsidiary that has substantially all of its assets located in the United States (excluding territories or possessions) or Puerto Rico and owns a Principal Property.

**Sale-Leaseback Transaction** means an arrangement pursuant to which the Company or a Restricted Subsidiary now owns or hereafter acquires a Principal Property, transfers it to a person, and leases it back from the person.

**Subsidiary** means a corporation a majority of whose Voting Stock is owned by the Company or a Subsidiary.

**Voting Stock** means capital stock having voting power under ordinary circumstances to elect directors.

**Wholly-Owned Subsidiary** means a corporation all of whose Voting Stock is owned by the Company or a Wholly-Owned Subsidiary, the accounts of which are consolidated with those of the Company in its consolidated financial statements.

**Yield to Maturity** means the yield to maturity on a Security at the time of its issuance or at the most recent determination of interest on the Security.

**Limitation on Liens**

The Company will not, and will not permit any Restricted Subsidiary to, incur a Lien on Principal Property to secure a Debt unless:

1. the Lien equally and ratably secures the Senior Debt Securities and the Debt. The Lien may equally and ratably secure the Senior Debt Securities and any other obligation of the Company or a Subsidiary. The Lien may not secure an obligation of the Company that is subordinated to the Senior Debt Securities;
2. the Lien secures Debt incurred to finance all or some of the purchase price or the cost of construction or improvement of property of the Company or a Restricted Subsidiary. The Lien may not extend to any other Principal Property owned by the Company or a Restricted Subsidiary at the time the Lien is incurred. However, in the case of any construction or improvement, the Lien may extend to unimproved real property used for the construction or improvement. The Debt secured by the Lien may not be incurred more than one year after the later of the (a) acquisition, (b) completion of construction or improvement or (c) commencement of full operation, of the property subject to the Lien;
3. the Lien is on property of a corporation at the time the corporation merges into or consolidates with the Company or a Restricted Subsidiary;
4. the Lien is on property at the time the Company or a Restricted Subsidiary acquires the property;
5. the Lien is on property of a corporation at the time the corporation becomes a Restricted Subsidiary;
6. the Lien secures Debt of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary;

7. the Lien is in favor of a government or governmental entity and secures (a) payments pursuant to a contract or statute or (b) Debt incurred to finance all or some of the purchase price or cost of construction or improvement of the property subject to the Lien;

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8. the Lien extends, renews or replaces in whole or in part a Lien ( existing Lien ) permitted by any of clauses (1) through (7). The Lien may not extend beyond (a) the property subject to the existing Lien and (b) improvements and construction on such property. However, the Lien may extend to property that at the time is not a Principal Property. The Debt secured by the Lien may not exceed the Debt secured at the time by the existing Lien unless the existing Lien or a predecessor Lien was incurred under clause (1) or (6); or

9. the Debt plus all other Debt secured by Liens on Principal Property at the time does not exceed 10% of Consolidated Net Tangible Assets. However, the following Debt shall be excluded from all other Debt in the determination: (a) Debt secured by a Lien permitted by any of clauses (1) through (8) and (b) Debt secured by a Lien incurred prior to the date of the Senior Indenture that would have been permitted by any of those clauses if the Senior Indenture had been in effect at the time the Lien was incurred. Attributable Debt for any lease permitted by clause (4) of the Limitation on Sale and Leaseback covenant of the Senior Indenture must be included in the determination and treated as Debt secured by a Lien on Principal Property not otherwise permitted by any of clauses (1) through (8).

In general, clause (9) above, sometimes called a basket clause, permits Liens to be incurred that are not permitted by any of the exceptions enumerated in clauses (1) through (8) above if the Debt secured by all such additional Liens does not exceed 10% of Consolidated Net Tangible Assets at the time. At September 30, 2006, Consolidated Net Tangible Assets were approximately \$7,784 million. At that date, additional Liens securing Debt equal to 10% of that amount could have been incurred under clause (9).

### **Limitation on Sale and Leaseback**

The Company will not, and will not permit any Restricted Subsidiary to, enter into a Sale-Leaseback Transaction unless:

1. the lease has a term of three years or less;
2. the lease is between the Company and a Restricted Subsidiary or between Restricted Subsidiaries;
3. the Company or a Restricted Subsidiary under clauses (2) through (8) of the Limitation on Liens covenant could create a Lien on the property to secure Debt at least equal in amount to the Attributable Debt for the lease;
4. the Company or a Restricted Subsidiary under clause (9) of the Limitation on Liens covenant could create a Lien on the property to secure Debt at least equal in amount to the Attributable Debt for the lease; or
5. the Company or a Restricted Subsidiary within 180 days of the effective date of the lease retires Long-Term Debt of the Company or a Restricted Subsidiary at least equal in amount to the Attributable Debt for the lease. A Debt is retired when it is paid or cancelled. However, the Company or a Restricted Subsidiary may not receive credit for retirement of: Debt of the Company that is subordinated to the Senior Debt Securities; or Debt, if paid in cash, that is owned by the Company or a Restricted Subsidiary.

In clauses (3) and (4) above, Sale-Leaseback Transactions and Liens are treated as equivalents. Thus, if the Company or a Restricted Subsidiary could create a Lien on a property, it may enter into a Sale-Leaseback Transaction to the same extent.

### **Limitation on Debt of Restricted Subsidiaries**

The Company will not permit any Restricted Subsidiary to incur any Debt unless:



1. such Restricted Subsidiary could create Debt secured by Liens in accordance with the Limitation on Liens covenant in an amount equal to such Debt, without equally and ratably securing the Senior Debt Securities;

2. the Debt is owed to the Company or another Restricted Subsidiary;

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3. the Debt is Debt of a corporation at the time the corporation becomes a Restricted Subsidiary;
4. the Debt is Debt of a corporation at the time the corporation merges into or consolidates with a Restricted Subsidiary or at the time of a sale, lease or other disposition of its properties as an entirety or substantially as an entirety to a Restricted Subsidiary;
5. the Debt is incurred to finance all or some of the purchase price or the cost of construction or improvement of property of the Restricted Subsidiary. The Debt may not be incurred more than one year after the later of the (a) acquisition, (b) completion of construction or improvement or (c) commencement of full operation, of the property;
6. the Debt is incurred for the purpose of extending, renewing or replacing in whole or in part Debt permitted by any of clauses (1) through (5); or
7. the Debt plus all other Debt of Restricted Subsidiaries at the time does not exceed 10% of Consolidated Net Tangible Assets. However, the following Debt shall be excluded from all other Debt in the determination: (a) Debt permitted by any of clauses (1) through (6) and (b) Debt incurred prior to the date of the Senior Indenture that would have been permitted by any of those clauses if the Senior Indenture had been in effect at the time the Debt was incurred.

## **Successor Obligor**

The Indentures provide or, in the case of the Subordinated Indenture, will provide that the Company will not consolidate with or merge into, or transfer all or substantially all of its assets to, any person, unless (1) the person is organized under the laws of the United States or a State thereof; (2) the person assumes by supplemental indenture all the obligations of the Company under the applicable Indenture, the Debt Securities issued under such Indenture and any coupons pertaining thereto; (3) immediately after the transaction no default exists; and (4) if, as a result of the transaction, a Principal Property would become subject to a Lien not permitted by the Limitation on Liens covenant of the Senior Indenture, the Company or such person secures the Senior Debt Securities equally and ratably with or prior to all obligations secured by the Lien.

The successor will be substituted for the Company, and thereafter all obligations of the Company under the applicable Indenture, the Debt Securities issued under such Indenture and any coupons shall terminate.

## **Exchange of Securities**

Registered Debt Securities may be exchanged for an equal aggregate principal amount of registered Debt Securities of the same series and date of maturity in such authorized denominations as may be requested upon surrender of the registered Debt Securities at an agency of the Company maintained for such purpose and upon fulfillment of all other requirements of the agent.

To the extent permitted by the terms of a series of Debt Securities authorized to be issued in registered form and bearer form, bearer Debt Securities may be exchanged for an equal aggregate principal amount of registered or bearer Debt Securities of the same series and date of maturity in such authorized denominations as may be requested upon surrender of the bearer Debt Securities with all unpaid coupons relating thereto (except as may otherwise be provided in the Debt Securities) at an agency of the Company maintained for such purpose and upon fulfillment of all other requirements of the agent. As of the date of this prospectus, it is expected that the terms of a series of Debt Securities will not permit registered Debt Securities to be exchanged for bearer Debt Securities.

**Defaults and Remedies**

An event of default with respect to any series of Debt Securities will occur if:

1. the Company defaults in any payment of interest on any Debt Securities of the series when the same becomes due and payable and the default continues for a period of 10 days;

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2. the Company defaults in the payment of the principal of any Debt Securities of the series when the same becomes due and payable at maturity or upon redemption, acceleration or otherwise;
3. the Company defaults in the performance of any of its other agreements applicable to the series and the default continues for 90 days after the notice specified below;
4. the Company pursuant to or within the meaning of any Bankruptcy Law:
  - commences a voluntary case,
  - consents to the entry of an order for relief against it in an involuntary case,
  - consents to the appointment of a custodian for it or for all or substantially all of its property, or
  - makes a general assignment for the benefit of its creditors;
5. a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - is for relief against the Company in an involuntary case,
  - appoints a custodian for the Company or for all or substantially all of its property, or
  - orders the liquidation of the Company;and the order or decree remains unstayed and in effect for 60 days; or
6. any other event of default provided for in the series.

The term **Bankruptcy Law** means Title 11, U.S. Code or any similar Federal or State law for the relief of debtors. The term **custodian** means any receiver, trustee, assignee, liquidator or a similar official under any Bankruptcy Law.

A default under clause (3) is not an event of default until the applicable Debt Trustee or the holders of at least 25% in principal amount of the series notify the Company of the default and the Company does not cure the default within the time specified after receipt of the notice. The applicable Debt Trustee may require indemnity satisfactory to it before it enforces the applicable Indenture or the Debt Securities of the series. Subject to certain limitations, holders of a majority in principal amount of the Debt Securities of the series may direct the applicable Debt Trustee in its exercise of any trust or power. A Debt Trustee may withhold from holders of the series notice of any continuing default (except a default in payment of principal or interest) if it determines that withholding notice is in their interest.

The Indentures do not have or, in the case of the Subordinated Indenture, will not have cross-default provisions. Thus, a default by the Company or a Subsidiary on any other debt would not constitute an event of default.

**Amendments and Waivers**

Unless the resolution establishing the terms of a series otherwise provides, the applicable Indenture and the Debt Securities or any coupons of the series may be amended, and any default may be waived as follows: The Debt Securities and the applicable Indenture may be amended with the consent of the holders of a majority in principal amount of the Debt Securities of all series affected voting as one class. A default on a series may be waived with the

consent of the holders of a majority in principal amount of the Debt Securities of the series. However, without the consent of each holder affected, no amendment or waiver may (1) reduce the amount of Debt Securities whose holders must consent to an amendment or waiver, (2) reduce the interest on or change the time for payment of interest on any Debt Security, (3) change the fixed maturity of any Debt Security, (4) reduce the principal of any non-Discounted Debt Security or reduce the amount of principal of any Discounted Debt Security that would be due on acceleration thereof, (5) change the currency in which principal or interest on a Debt Security is payable, (6) waive any default in payment of interest on or principal of a Debt Security or (7) change certain provisions of the applicable Indenture regarding waiver of past defaults and amendments with the consent of holders other than to increase the principal amount of Debt Securities required to consent. Without the consent of any holder, the applicable Indenture, the Debt Securities

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or any coupons may be amended to cure any ambiguity, omission, defect or inconsistency; to provide for assumption of Company obligations to holders in the event of a merger or consolidation requiring such assumption; to provide that specific provisions of the applicable Indenture not apply to a series of Debt Securities not previously issued; to create a series and establish its terms; to provide for a separate Debt Trustee for one or more series; or to make any change that does not materially adversely affect the rights of any holder.

## **Legal Defeasance and Covenant Defeasance**

Debt Securities of a series may be defeased in accordance with their terms and, unless the resolution establishing the terms of the series otherwise provides, as set forth below. The Company at any time may terminate as to a series all of its obligations (except for certain obligations with respect to the defeasance trust and obligations to register the transfer or exchange of a Debt Security, to replace destroyed, lost or stolen Debt Securities and coupons and to maintain agencies in respect of the Debt Securities) with respect to the Debt Securities of the series and any related coupons and the applicable Indenture ( legal defeasance ). The Company at any time may terminate as to a series its obligations with respect to the Debt Securities and coupons of the series under the covenants described under Certain Covenants ( covenant defeasance ).

The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the Company exercises its legal defeasance option, a series may not be accelerated because of an event of default. If the Company exercises its covenant defeasance option, a series may not be accelerated by reference to the covenants described under Certain Covenants.

To exercise either option as to a series, the Company must deposit in trust (the defeasance trust ) with the applicable Debt Trustee money or U.S. Government Obligations for the payment of principal, premium, if any, and interest on the Debt Securities of the series to redemption or maturity and must comply with certain other conditions. In particular, the Company must obtain an opinion of tax counsel that the defeasance will not result in recognition for Federal income tax purposes of any gain or loss to holders of the series. U.S. Government Obligations are direct obligations of the United States of America which have the full faith and credit of the United States of America pledged for payment and which are not callable at the issuer's option, or certificates representing an ownership interest in such obligations.

## **Global Debt Securities**

Global Debt Securities may be issued in registered, bearer or uncertificated form and in either temporary or permanent form. If Debt Securities of a series are to be issued as global Debt Securities, one or more global Debt Securities will be issued in a denomination or aggregate denominations equal to the aggregate principal amount of outstanding Debt Securities of the series to be represented by such global Debt Security or Securities.

Ownership of beneficial interests in global Debt Securities will be limited to participants and to persons that have accounts with the depository ( participants ) or persons that may hold interests through participants. Ownership interests in global Debt Securities will be shown on, and the transfer of that ownership interest will be effected only through, records maintained by the depository or its nominee for such global Debt Securities (with respect to a participant's interest) and records maintained by participants (with respect to interests of persons other than participants).

Unless otherwise indicated in a prospectus supplement, payment of principal of and any premium and interest on the book-entry Debt Securities represented by a global Debt Security will be made to the depository or its nominee, as the case may be, as the sole registered owner and the sole holder of the book-entry Debt Securities represented thereby for all purposes under the applicable Indenture. Neither the Company or the applicable Debt Trustee, nor any agent of the Company or the applicable Debt Trustee, will have any responsibility or liability for any acts or omissions of the

depository for any records of the depository relating to beneficial ownership interests in any global Debt Security for any transactions between a depository and beneficial owners.

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Upon receipt of any payment of principal of or any premium or interest on a global Debt Security, the depository will immediately credit, on its book-entry registration and transfer system, the accounts of participants with payments in amounts proportionate to their respective beneficial interests in the principal amount of such global Debt Security as shown on the records of the depository. Payments by participants to owners of beneficial interests in global Debt Securities held through such participants will be governed by standing instructions and customary practices, as is now the case with securities held for customer accounts registered in street name, and will be the sole responsibility of such participants.

Unless otherwise stated in a prospectus supplement, global Debt Securities will not be transferred except as a whole by the depository to a nominee of the depository. Global Debt Securities will be exchangeable only if (i) the depository notifies the Company that it is unwilling or unable to continue as depository for such global Debt Securities or if at any time the depository ceases to be a clearing agency registered under the Exchange Act, (ii) the Company in its sole discretion determines that such global Debt Securities shall be exchangeable for definitive Debt Securities in registered form, or (iii) an event of default with respect to the series of Debt Securities represented by such global Debt Securities has occurred and is continuing. Any global Debt Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for Registered Debt Securities issuable in denominations of \$1,000 and integral multiples thereof and registered in such names as the depository holding such global Debt Security shall direct. Subject to the foregoing, the global Debt Security is not exchangeable, except for a global Debt Security of like denomination to be registered in the name of the depository or its nominee.

So long as the depository for global Debt Securities of a series, or its nominee, is the registered owner of such global Debt Securities, such depository or such nominee, as the case may be, will be considered the sole holder of Debt Securities represented by such global Debt Securities for the purposes of receiving payment on such global Debt Securities, receiving notices and for all other purposes under the applicable Indenture and such global Debt Securities. Except as provided above, owners of beneficial interests in global Debt Securities of a series will not be entitled to receive physical delivery of Debt Securities of such series in definitive form and will not be considered the holders thereof for any purpose under the applicable Indenture. Accordingly, each person owning a beneficial interest in a global Debt Security must rely on the procedures of the depository and, if such person is not a participant, on the procedures of the participant through which such person owns its interest, to exercise any rights of a holder under the applicable Indenture. The depository may grant proxies and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a holder is entitled to give or take under the applicable Indenture. The Company understands that under existing industry practices, in the event that the Company requests any action of holders or that an owner of a beneficial interest in such a global Debt Security desires to give or take any action which a holder is entitled to give or take under the applicable Indenture, the depository would authorize the participants holding the relevant beneficial interests to give or take such action, and such participants would authorize beneficial owners owning through such participants to give or take such action or would otherwise act upon the instructions of beneficial owners owning through them.

Unless otherwise specified in a prospectus supplement relating to Debt Securities of a series to be issued as global Debt Securities, The Depository Trust Company will be the depository. DTC has advised the Company that it is a limited-purpose trust company organized under the law of the State of New York, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code, and a clearing agency registered under the Exchange Act. DTC was created to hold the securities of its participants and to facilitate the clearance and settlement of securities transactions among its participants in such securities through electronic book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers (which may include the underwriters, dealers or agents with respect to the Debt Securities), banks, trust companies, clearing corporations, and certain other organizations some of whom (and/or their representatives) own DTC. Access to DTC's book-entry system is also



available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant either directly or indirectly.

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**Conversion and Exchange**

The terms, if any, on which debt securities of any series are convertible into or exchangeable for our common stock, preferred stock, or other debt securities will be set forth in the applicable prospectus supplement and a supplemental indenture. Those terms may include provisions for conversion or exchange, whether mandatory, at the option of the holders or at our option.

**Trustee**

U.S. Bank National Association, as the ultimate successor trustee to Bank of America Illinois (formerly Continental Bank, National Association), is Senior Trustee for Debt Securities issued under the Senior Indenture. The Subordinated Trustee for Debt Securities issued under the Subordinated Indenture will be identified in the related prospectus supplement. The Senior Trustee is one of several banks which provide credit and banking services to the Company.

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**PLAN OF DISTRIBUTION**

The Company may sell the securities described in this prospectus in any of the following ways:

- (1) through underwriters or dealers;
- (2) directly to one or more purchasers;
- (3) through agents; or
- (4) through a combination of any such methods of sale.

Any of these underwriters, dealers or agents may be deemed to be an underwriter within the meaning of the Securities Act of 1933. The prospectus supplement with respect to the securities being offered thereby will set forth the terms of the offering of such securities, including the name or names of any underwriters or agents, the purchase price of such securities and the proceeds to the Company from such sale, any underwriting discounts, commissions and other items constituting underwriters' compensation under the Securities Act of 1933, any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers and any securities exchanges on which such securities may be listed.

If underwriters are used in the sale of securities, such securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by managing underwriters designated by the Company), or directly by one or more underwriters acting alone. Unless otherwise set forth in the prospectus supplement, the obligations of the underwriters to purchase the securities offered thereby will be subject to certain customary conditions precedent, and the underwriters will be obligated to purchase all such securities if any are purchased. Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

The securities may be sold directly by the Company or through agents designated by the Company from time to time. The prospectus supplement with respect to any securities sold in this manner will set forth the name of any agent involved in the offer or sale of the securities as well as any commissions payable by the Company to such agent. Unless otherwise indicated in the prospectus supplement, any such agent is acting on a best efforts basis for the period of its appointment.

If dealers are utilized in the sale of any securities, the Company will sell the securities to the dealers, as principals. Any dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale. The name of any dealer and the terms of the transaction will be set forth in the prospectus supplement with respect to the securities being offered thereby.

If so indicated in the prospectus supplement, the Company will authorize agents, underwriters or dealers to solicit offers by certain specified institutions to purchase securities from the Company at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. Such contracts will be subject only to those conditions set forth in the prospectus supplement and the prospectus supplement will set forth the commission payable for the solicitation of such contracts.

In connection with the offering of the securities, underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. Specifically, the underwriters may overallocate in connection with the offerings of the securities, creating a syndicate short position. In addition, underwriters may bid for, and purchase, securities in the open market to cover syndicate shorts or to stabilize the price of the securities. Finally, the underwriting syndicate may reclaim selling concessions allowed for distributing the securities in the offering of the securities, if the syndicate repurchases previously distributed securities in syndicate covering transactions, syndicate transactions or otherwise. Any of these activities may stabilize or maintain the market prices of the securities above independent market levels. The underwriters are not required to engage in any of these activities, and may end any of them at any time.

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It has not been determined whether any securities will be listed on a securities exchange. Underwriters will not be obligated to make a market in any securities. The Company cannot predict the activity of trading in, or liquidity of, any securities.

Agents, underwriters and dealers may be entitled, under agreements entered into with the Company, to indemnification by the Company against certain civil liabilities, including liabilities under the Securities Act or to contribution with respect to payments which the agents, underwriters or dealers may be required to make in respect thereof. Agents, underwriters and dealers may be customers of, engage in transactions with, or perform services for the Company in the ordinary course of business.

**LEGAL MATTERS**

Certain legal matters in connection with the securities will be passed upon for the Company by Cahill Gordon & Reindel llp, New York, New York, and for the agents, underwriters and dealers by Davis Polk & Wardwell of New York, New York.

**EXPERTS**

The financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this Prospectus by reference to the Annual Report on Form 10-K for the year ended December 31, 2005 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and special reports, proxy statements and other information with the SEC and our common stock is listed on the New York Stock Exchange under the symbol PX. Our SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file at the SEC's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. You can call the SEC at 1-800-732-0330 for further information about the public reference rooms.

We have filed with the SEC a registration statement on Form S-3 under the Securities Act of 1933, as amended, with respect to the securities that may be offered. This prospectus, which forms a part of the registration statement, does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto, parts of which are omitted in accordance with the rules and regulations of the SEC. For more information about us and the securities, you should see the registration statement and its exhibits and schedules. Any statement made in this prospectus concerning the provisions of documents is a summary and you should refer to the copy of that document filed as an exhibit to the registration statement with the SEC.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC allows us to incorporate by reference the information we file with them, which means we are assumed to have disclosed important information to you when we refer you to documents that are on file with the SEC. The information we have incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future documents we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until the termination of the offering of the securities to which this prospectus relates.

Annual Report on Form 10-K for the fiscal year ended December 31, 2005.

Proxy Statement on Form 14A dated March 21, 2006.

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Quarterly Reports on Form 10-Q for the quarters ended March 31, 2006, June 30, 2006 and September 30, 2006.

Current Reports on Form 8-K filed on March 2, 2006, March 29, 2006, April 5, 2006, June 30, 2006, July 14, 2006, September 11, 2006, October 6, 2006 and November 3, 2006.

Our Registration Statement on Form 8-A dated June 27, 2002.

You may request a copy of any or all of the documents that we have incorporated by reference at no cost by writing to us at the following address:

Praxair, Inc.  
39 Old Ridgebury Road  
Danbury, Connecticut 06810-5113  
Attn: Assistant Corporate Secretary  
Telephone: (203) 837-2000.

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