

GAP INC
Form S-3ASR
April 07, 2011
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As filed with the Securities and Exchange Commission on April 7, 2011

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

The Gap, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Two Folsom Street

San Francisco, California 94105

Delaware

(650) 952-4400

94-1697231

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(State of Incorporation)

(Address, Including Zip Code, and Telephone Number,
Including Area Code, of Registrant's Principal Executive
Offices)

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

Copy to:

Michelle Banks, Esq

Brett Cooper, Esq.

Executive Vice President and General Counsel

Orrick, Herrington & Sutcliffe LLP

The Gap, Inc.

The Orrick Building

Two Folsom Street

405 Howard Street

San Francisco, California 94105

San Francisco, California 94105

(650) 952-4400

(415) 773-5700

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

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

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

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

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

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

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

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

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company (as defined in Exchange Act Rule 12b-2).

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐
(Do not check if a smaller reporting company)

Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

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Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed	Proposed	Amount of Registration Fee (2)
		Maximum Offering Price per Unit (1)	Maximum Aggregate Offering Price (1)	
Debt Securities				
Common Stock				
Preferred Stock				
Depository Shares				
Warrants to Purchase Common Stock, Preferred Stock or Debt Securities				
Securities Purchase Contracts				
Securities Purchase Units				

- (1) An indeterminate amount or number of Debt Securities, Common Stock, Preferred Stock, Depository Shares, Warrants, Securities Purchase Contracts and Securities Purchase Units is being registered and may from time to time be issued at indeterminate prices.
- (2) In accordance with Rule 456(b) and Rule 457(r) under the Securities Act, the registrant is deferring payment of all of the registration fee.

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PROSPECTUS

**Debt Securities, Common Stock, Preferred Stock,
Depositary Shares, Warrants to Purchase Debt Securities,
Common Stock and Preferred Stock,
Securities Purchase Contracts and Securities Purchase Units**

The Gap, Inc. may offer and sell an indeterminate amount of securities from time to time in one or more offerings. This prospectus provides you with a general description of the securities that we may offer.

Each time we sell securities, we will provide a supplement to this prospectus that contains specific information about the offering and the terms of the securities. The supplement may also add, update or change information contained in this prospectus. You should carefully read this prospectus and the accompanying prospectus supplement before you invest in any of our securities.

See Risk Factors on page 2 for information on certain risks related to the purchase of our securities.

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

Prospectus dated April 7, 2011

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THE COMPANY

General

The Gap, Inc. (the Company, we, us and our) was incorporated in the State of California in July 1969 and was reincorporated under the laws of the State of Delaware in May 1988.

We are a global specialty retailer offering apparel, accessories, and personal care products for men, women, children, and babies under the Gap, Old Navy, Banana Republic, Piperlime, and Athleta brands. Most of the products sold under our brand names are designed by us and manufactured by independent sources. We also sell products that are designed and manufactured by branded third parties. We have Company-operated stores in the United States, Canada, the United Kingdom, France, Ireland, Japan, and beginning in November 2010, China and Italy. We also have franchise agreements with unaffiliated franchisees to operate Gap and Banana Republic stores in many other countries around the world. Under these agreements, third parties operate or will operate stores that sell apparel and related products under our brand names.

We design most of our products, which are manufactured by independent sources, and sell them under our brands:

Gap. Gap products are sold in three channels: full price retail stores, online, and outlet. Founded in 1969, Gap stores offer an extensive selection of classically styled, high quality, casual apparel at moderate price points. Products range from wardrobe basics such as denim, khakis, and T-shirts to fashion apparel, accessories, and personal care products for men and women. In 1986, we entered the children's apparel market with the introduction of GapKids, and in 1989, we established babyGap. These stores offer casual apparel and accessories in the tradition of Gap style and quality for children ages newborn through pre-teen. We also offer maternity apparel. In 1998, we launched GapBody, offering women's underwear, sleepwear, loungewear, and sports and active apparel. We operate Gap Outlet stores, which carry similar categories of products at lower price points. In 1997, we introduced Gap Online, an online store found at gap.com. Gap Online offers products comparable to those carried in Gap, GapKids, babyGap, and GapBody stores, as well as extended sizes not found in stores. Beginning in 2010, customers in Canada can shop online at gapcanada.ca, customers in the United Kingdom and select European countries can shop online at gap.eu, customers in China can shop online at gap.cn, and customers in select international countries can shop online at gap.com.

Banana Republic. Banana Republic products are sold in three channels: full price retail stores, online, and outlet. Acquired in 1983 with two stores, Banana Republic offers sophisticated, fashionable collections of casual and tailored apparel, shoes, accessories, and personal care products for men and women at higher price points than Gap. We operate Banana Republic Factory Stores, which carry similar categories of products at lower price points. In 1999, we introduced Banana Republic Online, an online store found at bananarepublic.com, which offers products comparable to those carried in the store collections, as well as extended sizes not found in stores. Beginning in 2010, customers in Canada can shop online at bananarepublic.ca, customers in the United Kingdom and select European countries can shop online at bananarepublic.eu, and customers in select international countries can shop online at bananarepublic.com.

Old Navy. Old Navy products are sold in two channels: full price retail stores and online. We launched Old Navy in 1994 to address the market for value-priced family apparel. Old Navy offers broad selections of apparel, shoes, and accessories for adults, children, and babies, as well as other items, including a maternity line, consumables, and personal care products. In 2000, we established Old Navy Online, an online store found at oldnavy.com. Old Navy Online offers apparel and accessories comparable to those carried in the store collections, as well as a plus size line not found in stores. Beginning in 2010, customers in Canada can shop online at oldnavy.ca and customers in select international countries can shop online at oldnavy.com.

Piperlime. In 2006, we launched Piperlime, an online-only store found at piperlime.com. Piperlime offers customers an assortment of the leading brands in footwear, handbags, apparel, and jewelry for women and

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footwear for men and kids, as well as tips, trends, and advice from leading style authorities. Beginning in 2010, customers in select international countries can shop online at piperlime.com.

Athleta. Athleta products are sold in two channels: full price retail stores and online. Acquired in September 2008, Athleta offers customers high quality and performance-driven women's sports and active apparel and footwear that is stylish and functional for a variety of activities, including golf, running, skiing and snowboarding, tennis, and yoga. In May 2010, we opened a test store in Mill Valley, California, and in January 2011, we opened a flagship store in San Francisco, California. Customers can purchase Athleta product, as well as an assortment of products from leading brands in women's active-wear, online at athleta.com, through the catalog, or in our stores. Beginning in 2010, customers in select international countries can shop online at athleta.com.

As of January 29, 2011 we had 3,246 Company-operated and franchise store locations.

Our executive offices are located at Two Folsom Street, San Francisco, California 94105, and our telephone number is (650) 952-4400.

RISK FACTORS

Investing in our securities involves risk. Please see the risk factors described in our Annual Report on Form 10-K and other reports filed with the Securities and Exchange Commission (the "SEC"), which are incorporated by reference in this prospectus. Before making an investment decision, you should carefully consider these risks as well as other information contained or incorporated by reference in this prospectus or the applicable supplement to this prospectus. The risks and uncertainties described are not the only ones facing us. Additional risks and uncertainties not presently known to us, or that we currently deem immaterial, may also impair our business operations, financial results and the value of our securities.

FORWARD-LOOKING STATEMENTS

This prospectus, the documents incorporated by reference in this prospectus and any applicable prospectus supplement contain forward-looking statements within the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. All statements other than those that are purely historical are forward-looking statements. Words such as "expect," "anticipate," "believe," "estimate," "intend," "plan," "project" and similar expressions also identify forward-looking statements. Forward-looking statements include, but are not limited to, statements regarding the following:

our plans to expand internationally through a number of channels and brands, including additional Gap stores in Europe and China, expand Banana Republic stores in Europe, additional outlet stores in Canada, Europe, and Asia, online sales internationally, and additional franchising and similar arrangements;

future online revenue growth;

the impact that increases in commodity prices will have on our gross margins;

our plans to downsize, consolidate, reposition, or close some of our stores;

cash and cash flows being sufficient for the next 12 months and beyond;

the outcome of proceedings, lawsuits, disputes, and claims;

growing revenues;

maintaining a focus on cost management and return on invested capital;

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generating strong free cash flow and returning excess cash to shareholders;

investing in the future while delivering earnings per share growth;

the effective tax rate in fiscal 2011;

current cash balances and cash flows being adequate to support our business operations, including growth initiatives, planned capital expenditures, and dividend payments and share repurchases;

being able to supplement near-term liquidity with our existing credit facility;

capital expenditures in fiscal 2011;

the number of new store openings and store closings in fiscal 2011;

net square footage change in fiscal 2011;

our plan to increase our dividend in fiscal 2011;

future share repurchases;

the expected payments and the expected benefits, including cost savings, resulting from our services agreement with IBM;

the maximum potential amount of future lease payments;

the impact of losses due to indemnification obligations;

the maximum exposure for the reinsurance pool in future periods;

the estimates and assumptions we use in our accounting policies, including those used to calculate our lower of cost or market and inventory shortage adjustments, our impairment of long-lived assets, goodwill, and intangible assets, our insurance liabilities, our future sales returns, our breakage income, and our settlement of foreign and domestic tax audits;

the assumptions used to value share-based compensation expense;

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future lease payments and related net cash outlay;

our intent to use earnings in foreign operations for an indefinite period of time;

total gross unrecognized tax benefits; and

the impact of recent tax return and refund claim audits.

Because these forward-looking statements involve risks and uncertainties, there are important factors that could cause our actual results to differ materially from those in the forward-looking statements. These factors include, without limitation, the following:

the risk that the adoption of new accounting pronouncements will impact future results;

the risk that changes in general economic conditions or consumer spending patterns will have a negative impact on our financial performance or strategies;

the highly competitive nature of our business in the United States and internationally;

the risk that we will be unsuccessful in gauging fashion trends and changing consumer preferences;

the risk that our efforts to expand internationally may not be successful and could impair the value of our brands;

the continued adverse effect on our business and financial position arising from the March 2011 earthquake in Japan and related tsunami and disaster at certain nuclear power plants, including the effects of damages to our stores and reduced customer spending in Japan;

the risk that our franchisees will be unable to successfully open, operate, and grow the Company's franchised stores;

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the risk that we will be unsuccessful in identifying, negotiating, and securing new store locations and renewing or modifying leases for existing store locations effectively;

the risk that comparable sales and margins will experience fluctuations;

the risk that we will be unsuccessful in implementing our strategic, operating and people initiatives;

the risk that changes in our credit profile or deterioration in market conditions may limit our access to the capital markets;

the risk that trade matters, sourcing costs, events causing disruptions in product shipments from China and other foreign countries, or an inability to secure sufficient manufacturing capacity may disrupt our supply chain or operations, or impact our financial results;

the risk that updates or changes to our information technology (IT) systems may disrupt our operations;

the risk that our IT services agreement with IBM could cause disruptions in our operations and have an adverse effect on our financial results;

the risk that acts or omissions by our third-party vendors, including a failure to comply with our code of vendor conduct, could have a negative impact on our reputation or operations;

the risk that we do not repurchase some or all of the shares we anticipate purchasing pursuant to our repurchase program;

the risk that we will not be successful in defending various proceedings, lawsuits, disputes, claims, and audits, any of which could impact net sales, expenses, and/or planned strategies; and

the risk that changes in the regulatory or administrative landscape could adversely affect our financial condition and results of operations.

Additional information regarding factors that could cause results to differ can be found in our Annual Report on Form 10-K and our other filings with the SEC.

Future economic and industry trends that could potentially impact net sales and profitability are difficult to predict. These forward-looking statements are based on information as of the date specified in this prospectus, the documents incorporated by reference in this prospectus or the applicable prospectus supplement in which such statements are made and we assume no obligation to publicly update or revise our forward-looking statements even if experience or future changes make it clear that any projected results expressed or implied therein will not be realized.

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We will use the net proceeds from the sale of the securities as set forth in a prospectus supplement relating to such securities.

CERTAIN RATIOS

The following table sets forth our Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends for the periods indicated:

	January 29, 2011	January 30, 2010	Fiscal Year Ended January 31, 2009	February 2, 2008	February 3, 2007 (1)
Ratio of earnings to fixed charges	4.7x	4.4x	3.9x	3.6x	3.5x
Ratio of earnings to combined fixed charges and preferred stock dividends	4.7x	4.4x	3.9x	3.6x	3.5x

(1) The fiscal year ended February 3, 2007 included 53 weeks.

For purposes of computing the ratio of earnings to fixed charges and ratio of earnings to combined fixed charges and preferred stock dividends, earnings consist of earnings before income taxes plus fixed charges (less capitalized interest), and fixed charges consist of gross interest incurred, capitalized interest and the estimated interest portion of rent expense. As of the date of this prospectus, we do not have any shares of our preferred stock outstanding.

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DESCRIPTION OF THE SECURITIES

The following is a general description of the terms and provisions of the securities we may offer and sell by this prospectus. These summaries are not meant to be a complete description of each security. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each security. The accompanying prospectus supplement may add, update or change the terms and conditions of the securities as described in this prospectus.

DESCRIPTION OF THE DEBT SECURITIES

The debt securities are to be issued under an Indenture as amended or supplemented from time to time, (the Indenture) to be entered into between the Company and Wells Fargo Bank, National Association, as trustee (the Trustee), a copy of which is incorporated by reference as an exhibit to a Registration Statement on Form S-3 (the Registration Statement) that we filed with the SEC under the Securities Act of 1933, as amended (the Securities Act), of which this prospectus is a part. The statements herein relating to the debt securities and the following summaries of certain provisions of the Indenture do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all the provisions of the Indenture, including the definitions therein of certain terms, and the Trust Indenture Act of 1939, as amended (the Trust Indenture Act).

The following sets forth certain general terms and provisions of the debt securities offered hereby. The particular terms of the debt securities offered by any prospectus supplement and the extent, if any, to which such general terms and provisions may not apply to the debt securities so offered will be described in the prospectus supplement relating to such debt securities.

General

The Indenture will not limit the amount of debt securities that may be issued thereunder and debt securities may be issued thereunder from time to time in one or more series. The debt securities will be unsecured and unsubordinated obligations of the Company and will rank equally and ratably with other unsecured and unsubordinated obligations of the Company.

Unless otherwise indicated in the applicable prospectus supplement, principal of, premium, if any, and interest, if any, on the debt securities will be payable, and the transfer of debt securities will be registrable, at the office or agency to be maintained by the Company in Minneapolis, MN and at any other office or agency maintained by the Company for this purpose. The debt securities will be issued only in fully registered form without coupons and, unless otherwise indicated in the applicable prospectus supplement, in denominations of \$2,000 or integral multiples of \$1,000 in excess thereof. No service charge will be made for any registration of transfer or exchange of the debt securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge imposed in connection therewith.

The applicable prospectus supplement will describe the terms of the offered debt securities, including:

the title of the debt securities;

any limit on the aggregate principal amount of the debt securities;

the person or entity to whom any interest on the debt securities shall be payable, if other than the person or entity in whose name that security (or one or more predecessor securities) is registered at the close of business on the regular record date for such interest;

the date or dates on which the principal of and premium, if any, on the debt securities is payable or the method of determination thereof;

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the rate or rates at which the debt securities shall bear interest, if any, or the method of calculating the rate or rates of interest, the date or dates from which any interest shall accrue or the method by which the date or dates shall be determined, the interest payment dates on which any interest shall be payable and the regular record date for interest payable on any interest payment date;

the place or places where the principal of, premium, if any, and interest, if any, on the debt securities shall be payable;

the period or periods within which, the price or prices at which, the currency or currencies (including currency units) in which and the other terms and conditions upon which the debt securities may be redeemed, in whole or in part, at the option of the Company;

the obligation, if any, of the Company to redeem or purchase the debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder and the period or periods within which, the price or prices at which and the other terms and conditions upon which the debt securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

if other than denominations of \$2,000 and integral multiples of \$1,000 in excess thereof, the denominations in which the debt securities shall be issuable;

the currency, currencies or currency units in which payment of the principal of and any premium and interest on any debt securities shall be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America;

if the amount of payments of principal of or any premium or interest on any debt securities may be determined with reference to an index, formula or other method, the index, formula or other method by which these amounts shall be determined;

if the principal of or any premium or interest on any debt securities is to be payable, at the election of the Company or a holder, in one or more currencies or currency units other than that or those in which the debt securities are stated to be payable, the currency, currencies or currency units in which payment of the principal of and any premium and interest on the debt securities as to which such election is made shall be payable, and the periods within which and the other terms and conditions upon which such election is to be made;

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

the applicability of the provisions described under **Defeasance of Offered Debt Securities or Certain Covenants in Certain Circumstances** ;

if the debt securities will be issuable only in the form of one or more global debt securities as described under **Global Securities** , the depositary or its nominee with respect to the debt securities and the circumstances under which the global debt security may be registered for transfer or exchange or authenticated and delivered in the name of a person or entity other than the depositary or its nominee; and

any other terms of the debt securities.

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Debt securities may be issued under the Indenture as original issue discount debt securities to be offered and sold at a substantial discount below their stated principal amount. Special federal income tax, accounting and other considerations applicable thereto will be described in the prospectus supplement relating thereto. Original issue discount debt security means any debt security which provides for an amount less than the principal amount to be due and payable upon a declaration of acceleration of maturity upon the occurrence and continuance of an Event of Default.

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

If any index is used to determine the amount of payments of principal of, premium, if any, or interest, if any, on any series of debt securities, material U.S. federal income tax, accounting and other considerations applicable thereto will be described in the applicable prospectus supplement.

Events of Default

Any one of the following events will constitute an Event of Default under the Indenture with respect to debt securities of any series:

- (a) failure to pay any interest on any debt security of that series when due, continued for 30 days;
- (b) failure to pay principal of or any premium on any debt security of that series when due;
- (c) failure to deposit any sinking fund payment, when due, in respect of any debt security of that series;
- (d) failure to perform, or breach of, any covenant or warranty of the Company in the Indenture with respect to debt securities of that series continued for 60 days after written notice as provided in the Indenture;
- (e) a default under any indebtedness for money borrowed by the Company or any Subsidiary of the Company if (A) the default either (1) results from the failure to pay the principal of any such indebtedness at its stated maturity or (2) relates to an obligation other than the obligation to pay the principal of such indebtedness at its stated maturity and results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, (B) the principal amount of such indebtedness, together with the principal amount of any other such indebtedness in default for failure to pay principal at stated maturity or the maturity of which has been so accelerated, aggregates \$50,000,000 or more at any one time outstanding and (C) such indebtedness is not discharged, or such acceleration is not rescinded or annulled, within 10 business days after written notice as provided in the Indenture;
- (f) certain events of bankruptcy, insolvency or reorganization of the Company; or
- (g) any other Event of Default provided with respect to debt securities of that series.

If an Event of Default (other than an Event of Default described in clause (f) of the preceding paragraph) with respect to the debt securities of any series at the time outstanding shall occur and be continuing, either the Trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series may accelerate the maturity of all debt securities of that series; provided, however, that after such acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of the outstanding debt securities of that series may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the non-payment of accelerated principal, have been cured or waived as provided in the Indenture. If an Event of Default described in clause (f) of the immediately preceding paragraph occurs, the outstanding debt securities will ipso facto become immediately due and payable without any declaration or other act on the part of the Trustee or any holder.

Reference is made to the applicable prospectus supplement relating to any series of debt securities that are original issue discount debt securities for the particular provisions relating to acceleration of the stated maturity

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of a portion of the principal amount of such series of original issue discount debt securities upon the occurrence of an Event of Default and the continuation thereof.

The Indenture will provide that the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders of debt securities, unless such holders shall have offered to the Trustee indemnity reasonably satisfactory to it. Subject to such provisions for the indemnification of the Trustee and to certain other conditions, the holders of a majority in aggregate principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the debt securities of that series.

No holder of debt securities of any series will have any right to institute any proceeding with respect to the Indenture or for any remedy thereunder, unless that holder shall have previously given to the Trustee written notice of a continuing Event of Default and unless the holders of at least 25% in principal amount of the outstanding debt securities of that series shall have made written request, and offered indemnity reasonably satisfactory, to the Trustee to institute such proceeding as trustee, and the Trustee shall not have received from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days. However, these limitations do not apply to a suit instituted by a holder of debt securities for enforcement of payment of the principal of and premium, if any, or interest, if any, on such debt securities on or after the respective due dates expressed in such debt securities.

The Company will be required to furnish to the Trustee annually a statement as to the performance by the Company of certain of its obligations under the Indenture and as to any default in such performance.

Modification and Waiver

Modifications and amendments of the Indenture may be made by the Company and the Trustee without the consent of the holders of any of the debt securities in order

to evidence the succession of another entity to the Company and the assumption of the covenants and obligations of the Company under the debt securities and the Indenture by such successor to the Company;

to add to the covenants of the Company for the benefit of the holders of all or any series of debt securities or to surrender any right or power conferred on the Company by the Indenture;

to add additional Events of Default with respect to any series of debt securities;

to add to or change any provisions to such extent as may be necessary to permit or facilitate the issuance of debt securities in bearer form or to facilitate the issuance of global debt securities;

to add to, change or eliminate any provision affecting only debt securities not yet issued;

to secure the debt securities;

to establish the form or terms of debt securities of any series;

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to evidence and provide for successor trustees or to add or change any provisions to such extent as may be necessary to provide for or facilitate the appointment of a separate trustee or trustees for specific series of debt securities;

to permit payment in respect of debt securities in bearer form in the United States to the extent allowed by law; or

to cure any ambiguity, to correct or supplement any mistaken or inconsistent provisions or to make any other provisions with respect to matters or questions arising under the Indenture, *provided* that any

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such action (other than in respect of a mistaken provision) does not adversely affect in any material respect the interests of any holder of debt securities of any series then outstanding.

Modifications and amendments of the Indenture also may be made by the Company and the Trustee with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding debt securities of each series issued under the Indenture and affected by the modification or amendments; *provided, however*, that no modification or amendment may, without the consent of the holders of all debt securities affected thereby,

change the stated maturity of the principal amount of, or any installment of principal of or interest, if any, on, any debt security;

reduce the principal amount of, or the premium, if any, or (except as otherwise provided in the applicable prospectus supplement) interest, if any, on any debt security (including in the case of an original issue discount debt security the amount payable upon acceleration of maturity);

change the place or currency of payment of principal of, premium, if any, or interest, if any, on any debt security;

impair the right to institute suit for the enforcement of any payment on any debt security on or after its stated maturity (or in the case of redemption, on or after the redemption date); or

reduce the percentage in principal amount of outstanding debt securities of any series, the consent of whose holders is required for modification or amendment of the Indenture or for waiver of compliance with certain provisions of the Indenture or for waiver of certain defaults.

The holders of at least a majority in aggregate principal amount of the outstanding debt securities of any series may, on behalf of all holders of debt securities of that series, waive compliance by the Company with certain restrictive provisions of the Indenture. The holders of not less than a majority in aggregate principal amount of the outstanding debt securities of any series may, on behalf of all holders of debt securities of that series, waive any past default under the Indenture, except a default in the payment of principal, premium or interest or in respect of a covenant or provision of the Indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security of such series affected thereby.

No Protection in the Event of a Change of Control

Unless otherwise set forth in the applicable prospectus supplement, the debt securities will not contain any provisions which may afford holders of the debt securities protection in the event of a change in control of the Company or in the event of a highly leveraged transaction (whether or not the transaction results in a change in control of the Company).

Certain Covenants

Unless otherwise set forth in the applicable prospectus supplement, and except as set forth below, the debt securities will not contain any restrictive covenants, including covenants restricting the Company or any of its subsidiaries from incurring, issuing, assuming or guaranteeing any indebtedness.

Limitation on Liens

We may not, and may not permit any North American Subsidiary to, create or suffer to exist any Lien upon any Principal Property, or upon shares of capital stock or evidences of Indebtedness issued by any North American Subsidiary and owned by us or any North American Subsidiary (whether such Principal Property, or shares or evidences of Indebtedness were owned as of the date of the Indenture or thereafter acquired) to secure any Indebtedness of ours or any North American Subsidiary, without making, or causing such North American Subsidiary to make, effective provision to secure all of the outstanding debt securities by such Lien, equally and

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ratably with a