

WMS INDUSTRIES INC /DE/

Form S-3

July 25, 2003

Table of Contents

As filed with the Securities and Exchange Commission on July 24, 2003

Registration No. 333-

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

FORM S-3

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

WMS INDUSTRIES INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

36-2814522
(I.R.S. Employer Identification No.)

800 South Northpoint Boulevard, Waukegan, Illinois 60085 (847) 785-3000
(Address, including zip code, and telephone number, including area code,
of Registrant's principal executive offices)

Kathleen J. McJohn, Esq.
Vice President, General Counsel and Secretary
WMS Industries Inc.
800 South Northpoint Boulevard, Waukegan, Illinois 60085 (847) 785-3000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Pamela E. Flaherty, Esq.
Shack Siegel Katz & Flaherty P.C.
530 Fifth Avenue
New York, New York 10036
(212) 782-0700

Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective as the selling securityholders shall determine.

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. []

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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 delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. []

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of Registration Fee
2.75% Convertible Subordinated Notes due July 15, 2010	\$ 115,000,000(1)	100%(2)	\$ 115,000,000	\$ 0(3)
Common stock, par value \$.50 (4)	5,813,952 shares (5)	n/a (6)	n/a (6)	\$ 0(6)

- (1) Represents the aggregate principal amount of the notes issued by the Registrant.
- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) of the Securities Act of 1933 and exclusive of accrued interest and distributions, if any.
- (3) The registration fee has been offset by \$9,304, under Rule 457(p), against fees previously paid with the Registrant's registration statement on Form S-3, File No. 333-83021, filed on July 16, 1999. A fee of \$17,724.17 was paid with that registration statement, which was withdrawn pursuant to Rule 477 on September 30, 1999. \$2,231.46 was offset against that amount from fees due for registration statement no. 333-101538, and \$331.20 was offset against that amount from fees due for registration statement no. 333-87676.
- (4) Also relates to stock purchase rights that are attached to all shares of common stock of the Registrant in accordance with the Rights Agreement between the Registrant and The Bank of New York, dated May 5, 1998. These rights are not exercisable until the occurrence of events specified in the Rights Agreement, are evidenced by the certificates for the common stock and are transferred along with and only with the common stock. The value attributable to these rights, if any, is reflected in the value of the common stock, and, accordingly, no separate fee is paid.
- (5) Represents shares being registered for resale by the holders of the notes, as follows: (i) 5,813,952 shares of common stock issuable upon the conversion of the notes held by the selling securityholders; and (ii) an indeterminable number of additional shares of common stock, pursuant to Rule 416 under the Securities Act of 1933, that may be issued to prevent dilution resulting from stock splits, stock dividends or similar transactions affecting the shares to be offered by the selling securityholders.
- (6) No filing fee is payable with respect to the common stock issuable upon conversion of the notes, under Rule 457(i), because no additional consideration will be received in connection with the conversion privilege.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

Subject to Completion, Dated July 24, 2003

The information in this prospectus is not complete and may be changed. The selling securityholders identified in this prospectus may not sell these securities until the registration statement filed with the Securities and Exchange Commission relating to these securities is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

WMS INDUSTRIES INC.

\$115,000,000

**2.75% Convertible Subordinated Notes due July 15, 2010
and the Common Stock, par value \$.50 per share, issuable upon conversion of the Notes**

We issued the notes offered by this prospectus in a private placement in June 2003. This prospectus will be used by selling securityholders to resell their notes and the common stock issuable upon conversion of their notes. We will not receive any proceeds from this offering. The selling securityholders, and the maximum amount of securities that they may offer, are identified on pages 33-35 of this prospectus. The selling securityholders may sell their securities at any time, but they are not required to sell.

You may convert the notes into shares of our common stock at any time before their maturity unless we have previously repurchased them. The notes will be due on July 15, 2010. The conversion rate is 50.5561 shares per each \$1,000 principal amount of notes, subject to readjustment in specified circumstances. This is equivalent to an initial conversion price of approximately \$19.78 per share.

We will pay interest on the notes on January 15 and July 15 of each year. The first interest payment will be made on January 15, 2004. The notes are subordinated in right of payment to all of our existing and future senior debt and are also effectively subordinated to all of the indebtedness and liabilities of our subsidiaries.

We will make additional payments of interest on the notes, referred to in this prospectus as dividend protection payments. The amount of the payments will be equal to the cash dividends that would have been payable to the holders of the notes if the holders had converted their notes into shares of our common stock on the record date for the dividend. However, no dividend protection payment will be made if the dividend that would otherwise trigger the payment causes an adjustment to the note conversion rate.

In the event of a change in control, as described in this prospectus, you may require us to repurchase any notes held by you.

The notes are not listed on any securities exchange or included in any automated quotation system. The notes are eligible for trading in The PORTAL Market of the National Association of Securities Dealers, Inc.

Our common stock is listed on the New York Stock Exchange under the symbol WMS. On July 21, 2003, the last reported sale price of our common stock on the NYSE was \$16.74 per share. The selling securityholders may offer notes or shares through public or private transactions, at prevailing market prices, or at privately negotiated prices. More detailed information about the distribution of the securities is found in the section of this prospectus entitled Plan of Distribution.

Investing in the notes or our common stock involves risks. See Risk Factors beginning on page 5.

None of the Securities and Exchange Commission, any state securities commission, any state gaming authority nor any other gaming authority has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 2003.

TABLE OF CONTENTS

Forward-Looking Statements

PROSPECTUS SUMMARY

RISK FACTORS

RATIO OF EARNINGS TO FIXED CHARGES

USE OF PROCEEDS

SELECTED CONSOLIDATED FINANCIAL DATA

DESCRIPTION OF THE NOTES

DESCRIPTION OF SHARE CAPITAL

SUMMARY OF UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

SELLING SECURITYHOLDERS

PLAN OF DISTRIBUTION

INTERESTS OF NAMED EXPERTS AND COUNSEL

WHERE YOU CAN FIND MORE INFORMATION

DOCUMENTS INCORPORATED BY REFERENCE

SIGNATURES

EXHIBIT INDEX

Opinion of Shack Siegel Katz & Flaherty P.C.

Computation of Ratio of Earnings to Fixed Charges

Consent of Ernst & Young LLP

Form T-1 Statement of Eligibility of Trustee

Table of Contents**Table of Contents**

	Page
Forward-Looking Statements	ii
Prospectus Summary	1
Risk Factors	5
Ratio of Earnings to Fixed Charges	11
Use of Proceeds	11
Selected Consolidated Financial Data	12
Description of the Notes	14
Description of Share Capital	26
Summary of United States Federal Income Tax Consequences	29
Selling Securityholders	33
Plan of Distribution	35
Interests of Named Experts and Counsel	36
Where You Can Find More Information	37
Documents Incorporated by Reference	37

As used in this prospectus, the terms we, us, our and WMS mean WMS Industries Inc., a Delaware corporation, and its subsidiaries, unless the context indicates a different meaning. The term common stock means our common stock, par value \$0.50 per share.

WMS Gaming(R), Puzzle Pays(TM) and Bluebird(TM) are trademarks of our subsidiary WMS Gaming Inc. Product names mentioned in this prospectus are either trademarks of WMS Gaming Inc. or its licensors. DCS Sound System(TM) is a trademark of our subsidiary Williams Electronics Games, Inc. MONOPOLY(R) is a trademark of Hasbro, Inc. PAC-MAN(R) is a trademark of Namco Ltd. HOLLYWOOD SQUARES(R) is a trademark of King World Productions, Inc. SURVIVOR(R) is a trademark of Survivor Productions LLC.

Forward-Looking Statements

This prospectus contains forward-looking statements within the meaning of the federal securities laws. These statements may be found throughout this prospectus, particularly under the headings Summary, Risk Factors, Use of Proceeds and Dividend Policy, among others, as well as in the information incorporated by reference in this prospectus. These statements describe our plans, strategies and goals and our beliefs concerning future business conditions and our business outlook based on currently available information. Forward-looking statements typically are identified by the use of terms such as may, will, should, expect, anticipate, seek, believe, estimate, intend and similar words, and forward-looking statements are expressed differently. You should consider carefully the statements under the heading Risk Factors and in the other sections of this prospectus, as well as in the information incorporated by reference, which describe our business and additional factors that could cause our actual results to differ from the expectations expressed in the forward-looking statements. We assume no obligation to update the forward-looking statements included in this prospectus.

Table of Contents

PROSPECTUS SUMMARY

This summary highlights selected information about us and the offering of securities by the selling securityholders, but it does not contain all of the information included or incorporated by reference in this prospectus. You should read the entire prospectus carefully for details about us and the offering, including the information under the heading Risk Factors. You should also obtain and read the documents that are incorporated by reference in this prospectus, because they contain more information about us. These documents are identified under the heading Documents Incorporated by Reference later in this prospectus.

Our Company

We design, manufacture and market innovative gaming machines and video lottery terminals. We seek to develop gaming machines that offer high entertainment value and generate greater revenues for casinos and other gaming machine operators than the gaming machines offered by our competitors. Our gaming machines feature advanced graphics, digital sound and engaging game themes, and most incorporate secondary bonus rounds. Some of our games use well-recognized brands such as *MONOPOLY*, *HOLLYWOOD SQUARES* and *PAC-MAN*. In designing our gaming machines, our approximately 320 designers, engineers, artists and development personnel build upon our more than 50 years of experience in designing and developing fun, humorous and exciting games. Our gaming machines are installed in all of the major regulated gaming jurisdictions in the United States, as well as in 59 international gaming jurisdictions. For the nine months ended March 31, 2003, we generated \$127.8 million in total revenue and a gross margin of 61.4%.

We market our gaming machines in two principal ways. First, we sell gaming machines and conversion kits to casinos and other licensed gaming machine operators. Second, we lease gaming machines to casinos and other licensed gaming machine operators for payments based upon (1) a percentage of the net win of the gaming machines, (2) fixed daily fees or (3) in the case of wide-area progressive games, a percentage of the amount wagered. In this prospectus, we refer to games leased under any of these arrangements as participation games .

Our portfolio of participation games includes games based upon the *MONOPOLY*, *Puzzle Pays*, *HOLLYWOOD SQUARES*, *PAC-MAN* and *SURVIVOR* brands. We have the ability to place these games on a participation basis because the popularity of our branded games generates substantially higher wagering and net win than traditional gaming machines. As evidence of the strong acceptance of our participation game portfolio:

we had an installed base of 5,300 participation gaming machines as of March 31, 2003;

our participation games generated average daily revenue to us of \$38.51 per gaming machine for the nine-month period ended March 31, 2003; and

our participation games generated an approximate 80% gross margin during the nine-month period ended March 31, 2003.

The products that we offer for sale currently consist of multi-coin, multi-line video gaming machines and some mechanical reel-spinning slot machines. We are one of the original developers of multi-coin, multi-line video gaming machines in the U.S. market. Our video gaming machines include engaging themes, advanced graphics and our digital compression *DCS Sound System* sound effects and music. Most of our gaming machines also incorporate secondary bonus rounds, and some have the ability to accept wagers of up to 200 coins per play.

WMS is a Delaware corporation formed in November 1974. Our principal executive office is located at 800 South Northpoint Boulevard, Waukegan, Illinois 60085. Our telephone number is (847) 785-3000. Our Internet website can be found at www.wmsgaming.com. The contents of our website are not a part of this prospectus.

Business Strategy

Our business strategy is to increase market penetration in major regulated gaming jurisdictions worldwide by developing entertaining products and providing outstanding service. This strategy includes the following elements:

Stabilizing Our Existing Operating System and Revitalizing Our Technology Foundation: In January 2002, in order to correct anomalies in the operating system software of our video gaming machines, we embarked on a technology improvement plan designed to stabilize our existing operating system and position us for future growth. We rewrote critical operating code segments of our existing operating system software to address these anomalies and

Table of Contents

received regulatory approvals for the upgraded versions of the software. In addition, we are in the final stages of obtaining regulatory approvals for a software upgrade to our existing operating system to support new regulatory requirements for ticket printer technologies. We plan to introduce our next generation video gaming platform by the end of 2003. The new platform will contain features and functionality currently demanded by our customers that our existing video gaming platform lacks. We have submitted our initial version of this new video gaming platform to regulators and anticipate receiving our first regulatory approvals in the fall of 2003. We continue to work to incorporate new technologies into our software and platforms in anticipation of evolving customer preferences and future regulatory requirements.

Leveraging Our Product Development Expertise to Introduce Innovative New Games: We have more than 50 years of experience developing fun, humorous and exciting games. Over the past two years, we have enhanced our game development efforts by adding key management, design personnel and software engineers to our product development group. We have organized our game development team into a studio format to help promote innovation while maintaining a focused development approach in an effort to maximize the stability and entertainment value of our products. We believe that our proven game development capabilities, combined with the additional functionalities and enhanced features of our new gaming platforms, will enable us to increase our market share.

Introducing Our New Bluebird Gaming Cabinets: We expect to introduce our new *Bluebird* gaming cabinets beginning in the fall of 2003. *Bluebird* cabinets incorporate features such as ergonomically engineered button panels, 19-inch digital, high-resolution flat screen monitors, proprietary stereo sound and simultaneous coin-in/coin-out and cashless capabilities. At the most recent American Gaming Summit in January 2003, industry experts selected the *Bluebird* gaming cabinet as one of the top three most innovative new gaming products for 2002.

Expanding Our Range of Product Offerings: We expect to expand our product lines to be able to fully serve casino operators gaming machine requirements. Our existing products focus primarily on the multi-coin, multi-line video-based market segment. Subject to regulatory approval over the next twelve months, we plan to introduce new products to address the following market segments:

Mechanical Reel-Spinning Gaming Machines We have submitted the initial version of our new mechanical reel-spinning gaming platform in the new *Bluebird* cabinets to regulators and anticipate introducing our first new games on this new platform in the spring of 2004. We believe the mechanical reel-spinning gaming machine market is an attractive opportunity, as it represents a significant portion of the global installed base of gaming machines.

Video Poker Games We plan to introduce proprietary video poker games on our new video gaming platform in the new *Bluebird* cabinets beginning in the spring of 2004.

Wide-Area Progressive Gaming Machine Systems Wide-area progressive systems are inter-casino systems that electronically link gaming machines located in various casinos to a central computer, which controls a progressive jackpot that increases with every wager placed on the linked gaming machines. Nevada regulators approved us as an operator of an inter-casino linked system in Nevada in April 2003. We expect to introduce a proprietary wide-area progressive product to our customers in late spring 2004, which we believe will enhance the profitability of our participation games.

Maximizing the Potential of Our Participation Games and Exclusive Licenses of Well-Known Themes: As the exclusive licensee of the *MONOPOLY* brand for use with gaming machines, we converted a popular trademark into a successful line of superior-earning gaming machines. We have also licensed additional brands and now have five series of participation game themes with an aggregate installed base of 5,300 gaming machines as of March 31, 2003. The name recognition and creative game design of our branded products have allowed us to lease them to casino operators on a participation basis, generating a high-margin recurring revenue stream for us. We continue to pursue new licensed brands and additional themes based on the guidance of focus group testing of casino patrons.

Continuing Our Expansion into International Markets: We are authorized to conduct business in 59 international gaming jurisdictions. Revenues from our international customers increased by 38.2% to \$30.7 million for the nine months ended March 31, 2003 from \$22.2 million for the nine months ended March 31, 2002. We anticipate continued growth in international markets as we introduce additional game titles.

Table of Contents

The Offering

Securities Offered	The selling securityholders may offer up to \$115,000,000 aggregate principal amount of 2.75% Convertible Subordinated Notes due July 15, 2010 and shares of our common stock issuable upon conversion of the notes.
Interest	We will pay interest on the notes semi-annually on January 15 and July 15 of each year, commencing on January 15, 2004.
Dividend Protection	We will make dividend protection payments as additional interest on the notes in an amount equal to any per share cash dividends on our common stock that would have been payable to the holders of the notes if the holders had converted their notes into shares of our common stock at the conversion rate in effect on the record date for the dividend. Holders of the notes will not be entitled to any dividend protection payment if the dividend that would otherwise trigger the payment causes an adjustment to the conversion rate.
Conversion	The notes are convertible at the option of the holder into our common stock at a conversion rate of 50.5561 shares of common stock per \$1,000 principal amount of the notes, which is equivalent to a conversion price of approximately \$19.78 per share. The conversion rate is subject to adjustment. You may convert your notes at any time on or before the close of business on the maturity date unless we have previously repurchased them.
Subordination	The notes are unsecured and subordinated to our present and future Senior Debt, as that term is described in this prospectus. The notes are also effectively subordinated in right of payment to all indebtedness and other liabilities of our subsidiaries. As of March 31, 2003, we had no Senior Debt outstanding and our subsidiaries had accounts payable and other accrued liabilities of \$23.6 million. The Indenture under which the notes have been issued does not restrict us or our subsidiaries from incurring indebtedness, including Senior Debt.
Global Note; Book Entry System	The notes are issued in fully registered form, without interest coupons, in minimum denominations of \$1,000. They are evidenced by one or more global notes deposited with the trustee for the notes, as custodian for The Depository Trust Company (DTC). Beneficial interest in the global notes are shown on, and transfers of those beneficial interests can only be made through, records maintained by DTC and its participants.
Repurchase at Option of Holders Upon a Change in Control	Upon a Change in Control, as that term is described in this prospectus, you will have the right, subject to specified conditions and restrictions, to require us to repurchase your notes, in whole or in part, at 100% of their principal amount, plus accrued interest to their repurchase date. The repurchase price is payable in cash or, at our option, in shares of common stock. However, we or the successor entity in the Change in Control transaction, may pay the repurchase price in common stock only if the conditions provided in the Indenture designed to ensure that such shares will be freely transferable are satisfied. If the repurchase price is paid in shares of common stock, the common stock will be valued at 95% of the average of the high and low sales prices of our common stock on The New York Stock Exchange for each of the five trading days ending with the third trading day prior to the repurchase date. A Change in Control could be an event of default under any Senior Debt. In those circumstances, the subordination provisions of the Indenture would likely prevent us from repurchasing the notes until the Senior Debt, if any, is paid in full.

Table of Contents

Use of Proceeds We will not receive any proceeds from the sale by any selling securityholder of the notes or the shares of common stock offered by this prospectus.

Events of Default The following will be events of default under the Indenture for the notes:

we fail to pay the principal of any note when due, whether or not the payment is prohibited by the Indenture's subordination provisions;

we fail to pay any interest on the notes when due and that default continues for 30 days, whether or not the payment is prohibited by the Indenture's subordination provisions;

we fail to give the notice that we are required to give if there is a Change in Control, whether or not the notice is prohibited by the Indenture's subordination provisions;

we fail to perform or observe any other term contained in the notes or the Indenture, and that failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes;

we fail to pay by the end of any applicable grace period or after the maturity of any indebtedness for money borrowed by us or any of our significant subsidiaries in excess of \$5 million if the indebtedness is not discharged, or, if such indebtedness has been accelerated, such acceleration is not annulled, within 30 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of the outstanding notes;

we fail to deliver shares of common stock, together with cash instead of fractional shares, when those shares are required to be delivered upon conversion of a note, and such failure continues for 10 days after such delivery date; and

events of bankruptcy, insolvency or reorganization that are specified in the Indenture occur regarding us and our significant subsidiaries.

Trading The notes are eligible for trading in The PORTAL Market of the National Association of Securities Dealers, Inc. We cannot predict whether an active trading market for the notes will develop or, if such market develops, how liquid it will be.

Listing Our common stock is listed on the NYSE under the symbol WMS

Risk Factors You should read Risk Factors below before you invest, so that you understand the risks associated with an investment in the notes or our common stock.

Table of Contents

RISK FACTORS

You should carefully consider all of the information contained or incorporated by reference in this prospectus, including the following risk factors, before deciding to invest in our notes or common stock. These risks could materially and adversely affect our business, financial condition and results of operations, which in turn could adversely affect the price of the notes and our common stock.

Risks Related to Our Business

Some of the risks and uncertainties that may cause our operating results to vary from anticipated results or that may adversely affect our operating results or financial condition are as follows:

Software anomalies and fraudulent manipulation of our gaming machines and software could cost us money, burden our engineering and marketing resources, involve us in litigation and adversely affect our gaming licenses.

Our success may depend on our ability to avoid, detect, replicate and correct software and hardware anomalies and fraudulent manipulation of our gaming machines and associated software. Our gaming machines and software have experienced anomalies and fraudulent manipulation in the past. Gaming machines which are susceptible to such anomalies and manipulation may be replaced by the casinos if they do not perform according to expectations or may be shut down by regulators. In the event of such issues with our gaming machines and software, substantial engineering and marketing resources may be diverted from other projects to correct these issues, which may delay our other projects. In addition, regulators may not approve new games, which may substantially reduce our revenues. Our games are generally subject to rigorous testing, both internally and by various gaming jurisdictions. We cannot assure you that we will be able to build and maintain software-based gaming devices that are free from such anomalies or manipulations and satisfy these tests. Our gaming machines have in the past and could in the future be susceptible to software anomalies and manipulation after the gaming software has been widely distributed.

We have entered into several agreements to license intellectual property related to alternative solutions to address software anomalies as part of our technology improvement plan that, as of March 31, 2003, had a total potential commitment of \$9.5 million. If we determine that we may not realize the value of any of the commitments, we would record an immediate charge against earnings up to the full amount of these commitments in the period in which such determination is made.

In addition, the occurrence of anomalies in, or fraudulent manipulation of, our machines and gaming software may give rise to claims for lost revenues and related litigation, and may subject us to investigation or other action by gaming regulatory authorities including suspension or revocation of a gaming license. We cannot assure you that, in the event that anomalies or manipulations occur in our gaming machines and software, any gaming authorities will not subject us to disciplinary action.

Regulators may not approve our new gaming platforms, cabinet designs and related hardware.

We expect to introduce new gaming platforms, consisting of a computer circuit board and operating system software, for both video and mechanical reel-spinning games, and new cabinet designs beginning in the fall of 2003. If regulators do not approve the new gaming platforms, cabinet designs and related hardware, we will not be able to sell these products, which would significantly limit our future growth and profitability.

Our gaming machine business is heavily regulated, and we must obtain and maintain gaming licenses and regulatory approvals to operate our business.

The manufacture and distribution of gaming machines is subject to extensive federal, state, local and foreign regulations and taxes, and the governments of the various gaming jurisdictions amend these regulations from time to time. Virtually all of these jurisdictions require licenses, permits, documentation of qualification, including evidence of financial stability, and other forms of approval for manufacturers and distributors of gaming machines and for their officers, directors, major securityholders and key personnel. The gaming authorities in some jurisdictions may investigate any individual who has a material relationship with us and any securityholder to determine whether the individual or securityholder is acceptable to those gaming authorities. Any securityholder investigated by the gaming authorities must pay the costs of the investigation. Each of our games and gaming machine hardware and software must

Table of Contents

be approved in each jurisdiction in which it is placed, and we cannot assure you that a particular game or hardware or software will be approved in any jurisdiction. Licenses, approvals or findings of suitability may be revoked, suspended or conditioned. The revocation or denial of a license in a particular jurisdiction could adversely affect our ability to obtain or maintain licenses in other jurisdictions.

If we fail to seek or do not receive a necessary registration, license, approval or finding of suitability, we may be prohibited from selling our gaming machines for use in the jurisdiction or may be required to sell them through other licensed entities at a reduced profit to us. Some jurisdictions require gaming manufacturers to obtain government approval before engaging in some transactions, such as business combinations. Obtaining licenses and approvals can be time consuming and costly. We cannot assure you that we will be able to obtain all necessary registrations, licenses, permits, approvals or findings of suitability in a timely manner, or at all.

Similarly, we cannot assure you that our current registrations, licenses, approvals or findings of suitability will not be revoked, suspended or conditioned.

Our profitability depends heavily on recurring revenue from participation games.

Approximately \$70.7 million, or 55.3%, of our gaming revenues in the nine months ended March 31, 2003, and \$99.1 million, or 56.7%, of our gaming revenues in fiscal 2002, were derived from participation games. In addition, for the nine months ended March 31, 2003, our gross margin on participation games was 79.9% while our gross margin on product sales was 38.5%. For fiscal 2002, our gross margin on participation games was 84.8%, while our gross margin on product sales was 33.8%. Therefore, our level of revenue from participation games has a significant effect on our profitability. Participation games are replaced by casino operators if the gaming machines do not meet and sustain revenue and net win expectations. Therefore, these gaming machines are particularly susceptible to pressure from competitors, declining popularity and changes in economic conditions and are at risk of replacement by the casinos, ending the recurring revenues from these machines. We cannot assure you that our gaming machines will continue to meet the casinos' revenue requirements.

We depend on introducing new games and gaming machines that achieve and maintain market acceptance.

Our success depends on developing and successfully marketing new games and gaming machines with strong and sustained player appeal. A new game or gaming machine will be accepted by casino operators only if we can show that it is likely to produce more revenues to the operator than competitors' products. Gaming machines can be installed in casinos on a trial basis, and only after a successful trial period are the machines purchased by the casinos. If a new product does not achieve significant market acceptance, we may not recover our development and promotion costs. We cannot assure you that the new products that we introduce will achieve any significant degree of market acceptance or that the acceptance will be sustained for any meaningful period. We cannot assure you that we will be able to maintain our current schedule of planned introductions.

The gaming industry is sensitive to declines in the public acceptance of gaming.

The gaming industry can be affected by public opinion of gaming. In the event that there is a decline in public acceptance of gaming, either through unfavorable legislation affecting the introduction of gaming into emerging markets, or through legislative and regulatory changes, including tax increases, in existing gaming markets, our ability to continue to sell and lease our games in those markets and jurisdictions may be adversely affected. We cannot assure you that public opinion will continue to support legalized gaming.

We depend on the rapid development of new technologies.

The gaming machine business is characterized by the rapid development of new technologies and the continuous introduction of new products using new technologies. We must continually adapt our products to incorporate state-of-the-art technology. We cannot assure you that we will be able to develop products using these emerging technologies.

Patent infringement claims could limit or affect our ability to market some of our current or new gaming machines.

Our competitors have been granted patents covering numerous gaming machine features and bonusing techniques. If our products use processes or other subject matter that is claimed under these existing patents, or if other companies obtain patents claiming subject matter that we use, those companies may bring infringement actions against us. We might then be forced to discontinue the affected products or be required to obtain licenses from the company.

Table of Contents

holding the patent, if it is willing to give us a license, to develop, manufacture or market our products. We also might then be limited in our ability to market new products.

Our revenues depend in part upon our ability to obtain and retain licenses to use intellectual properties and licensors' approvals of new products on a timely basis.

Some of our most popular gaming machines are based on trademarks and other intellectual properties licensed from third parties. Our future success may depend upon our ability to obtain and retain licenses for additional popular intellectual properties. There is competition for these licenses, and we cannot assure you that we will be successful in acquiring or retaining additional intellectual property rights with significant commercial value on acceptable terms. These intellectual properties are licensed for a fixed term and generally provide for minimum guaranteed royalties. We cannot assure you that we will be able to renew the intellectual properties that we currently license. We cannot assure you that we will be able to create games using the intellectual properties that will generate enough revenues for us to cover the minimum guaranteed royalties and other fixed costs. In the event that we cannot renew our existing licenses, we may be required to discontinue the participation games bearing the licensed marks.

Our intellectual property licenses generally require that we submit new products developed under these licenses to the licensor prior to release for approval at their sole discretion. Rejection or delay in approval of a product by a licensor could have a material adverse effect on our business, operating results and financial condition.

We rely on our intellectual property and proprietary rights.

Our success may depend in part on our ability to obtain trademark protection for the names or symbols under which we market our products and to obtain copyright protection and patent protection of our proprietary software and other game innovations. We cannot assure you that we will be able to build and maintain goodwill in our trademarks or obtain trademark or patent protection, that any trademark, copyright or issued patent will provide competitive advantages for us or that our intellectual properties will not be successfully challenged or circumvented by competitors.

We also rely on trade secrets and proprietary know-how. We enter into confidentiality agreements with our employees regarding our trade secrets and proprietary information, but we cannot assure you that the obligation to maintain the confidentiality of our trade secrets or proprietary information will be honored. Despite various confidentiality agreements and other trade secret protections, our trade secrets and proprietary know-how could become known to, or independently developed by, competitors.

The gaming machine market is intensely competitive, and some of our competitors have advantages over us.

The gaming machine business is intensely competitive. Some of our competitors are large companies with greater financial, marketing and product development resources than ours. In addition, new competitors may enter our key markets. Obtaining space and favorable placement on casino gaming floors is a competitive factor in our industry. Competitors with a larger installed base of gaming machines than ours have an advantage in retaining the most space and best positions in casinos. These competitors may also have the advantage of being able to convert their installed machines to newer models in order to maintain their share of casino floor space. In addition, some of our competitors have developed and sell or otherwise provide to customers wide-area progressive systems or centralized player tracking and accounting systems which allow operators to accumulate accounting and performance data about the operation of gaming devices. We do not currently offer a proprietary wide-area progressive system or a centralized player tracking and accounting system; however, under an agreement with IGT we offer our *SURVIVOR* participation game on IGT's wide-area progressive system.

We face risks associated with doing business in international markets.

We seek to grow through increasing our presence in international markets. Potential political and economic instability in international markets may adversely affect our ability to enter into or continue to do business in these markets. Unstable governments and changes in current legislation may affect the gaming market with respect to gaming regulation, taxation, and the legality of gaming in some markets. In addition, fluctuations in foreign exchange rates, tariffs and other barriers may further impede our success in international markets. We cannot assure you that international markets will remain politically and economically stable enough to continue as a potential source of revenues and profit to us.

Table of Contents

Implementation of our computer system procedures and controls may not be successful.

We are implementing the first phase of our new enterprise resource planning (ERP) solution for our computer system procedures and controls, which we will use to operate our business. Any failures, difficulties or significant delays in implementing our new information systems could result in material adverse consequences to our business, including disruption of operations, loss of information and unanticipated increases in costs.

We may have conflicts of interest with Midway Games Inc.

Seven of our directors, including Louis J. Nicastro, our Chairman of the Board, are directors of Midway Games Inc., our former subsidiary. Neil D. Nicastro, one of our directors and a consultant to WMS, is also the Chairman of the Board of Midway. Neil D. Nicastro is the son of Louis J. Nicastro. In addition, there are several contractual arrangements in effect between Midway and WMS.

Sumner Redstone owns or controls 27.0% of our common stock, and Phyllis Redstone owns or controls 8.3% of our common stock, and either or both of them may dispose of all or a portion of their stock at any time.

Sumner Redstone beneficially owns 8,056,000 shares, or 27.0%, of our common stock, as reported in Amendment No. 32 to Schedule 13D, filed by Mr. Redstone with the SEC on May 21, 2003. As a result of the settlement of divorce, Mr. Redstone's former wife, Phyllis Redstone, beneficially owns 2,581,400 shares or 8.3% of our common stock, as reported in Amendment No. 1 to Schedule 13D filed by Ms. Redstone with the SEC on April 4, 2003. Either Mr. or Ms. Redstone could sell any or all of these shares at any time on the open market or to a person who wishes to acquire control of WMS. We cannot assure you that any such person would agree with our strategy and business goals described in this prospectus. As Ms. Redstone's holdings exceed 5% of our outstanding shares, she is required to apply to many gaming authorities for a finding of suitability as a stockholder of WMS. We cannot assure you that she will be approved by each of the regulators in these jurisdictions. If she is not approved, she may be required to sell her shares. The sale by Mr. or Ms. Redstone of a large number of shares could have an adverse effect on the market price of our common stock.

The use of our rights plan or blank check preferred stock would inhibit the acquisition of WMS or have a dilutive effect on our stock.

Rights plan. Under our rights plan, each share of our common stock has an accompanying right to purchase convertible preferred stock that permits each holder to purchase shares of our common stock at half price. The rights become exercisable if any person or entity acquires beneficial ownership of 15% or more of our common stock without approval of our board of directors. We can redeem the rights at \$.01 per right, subject to specified conditions, at any time. The rights expire in April 2007. Our board of directors could use this agreement as an anti-takeover device to discourage, delay or prevent a change in control of WMS. The use of our rights plan may dilute our common stock.

Blank check preferred stock. Our certificate of incorporation authorizes the issuance of five million shares of preferred stock with designations, rights and preferences that may be determined from time to time by the board of directors. Accordingly, our board has broad power, without stockholder approval, to issue preferred stock with dividend, liquidation, conversion, voting or other rights that could adversely affect the voting power or other rights of the holders of our common stock. Our board of directors could use preferred stock to discourage, delay or prevent a change in control. Our board has no current plans, agreements or commitments to issue any shares of preferred stock. The existence of the blank check preferred stock, however, could adversely affect the market price of our common stock.

The substantial number of shares of common stock available for sale in the future could have an adverse effect on the market price of our common stock.

We have 100 million authorized shares of common stock. As of July 21, 2003, 32.4 million shares were issued, including 3.0 million shares held in treasury. On that date, we also had outstanding options to purchase an aggregate of 4.1 million shares of our common stock issuable at an average exercise price of \$14.64 per share. If all of our issued and outstanding stock options were exercised as of that date, 33.4 million shares of our common stock would be outstanding. If the holders of the notes converted all of the notes, 5.8 million shares of our common stock would be issued at the conversion price in effect as of the date of this prospectus. If all of the notes were converted to common stock and all of the outstanding options were exercised, 61.8 million shares would still be available for issuance. Our board of directors has broad discretion to issue authorized but unissued shares, including discretion to issue shares in compensatory and acquisition transactions. In addition, if we seek financing through the sale of our

Table of Contents

securities, our then current stockholders may suffer dilution in their percentage ownership of our common stock. The future issuance, or even the potential issuance, of shares at a price below the then current market price may have a depressive effect on the future market price of our common stock.

Risks Related to the Notes

The notes are subordinated.

The notes are unsecured and subordinated in right of payment to all of our existing and future senior indebtedness, which includes all indebtedness not expressly subordinated to the notes. In the event of our bankruptcy, liquidation or reorganization or upon acceleration of the notes due to an event of default under the Indenture governing the notes and in other circumstances described in the Indenture, our assets will be available to pay obligations on the notes only after all senior indebtedness has been paid. As a result, there may not be sufficient assets remaining to pay amounts due on any or all of the outstanding notes. The notes also are effectively subordinated to the liabilities, including trade payables, of all of our subsidiaries. We may incur additional debt, including Senior Debt. If we or our subsidiaries were to incur additional debt or liabilities, our ability to pay our obligations on the notes could be adversely affected. As of March 31, 2003, we had no Senior Debt outstanding and our subsidiaries had accounts payable and other accrued liabilities of \$23.6 million.

We may be unable to repurchase the notes upon a Change in Control.

Upon a Change in Control, as described under Description of the Notes Repurchase at Option of Holders upon a Change in Control, you and the other holders may require us to repurchase all or a portion of your notes. In addition to the repurchasing the notes, some of the events constituting a Change in Control could cause an event of default or be prohibited or limited by the terms of our credit facility or any other agreements that we may enter into relating to our indebtedness. As a result, any repurchase of the notes in cash could be prohibited until such indebtedness is paid in full. Further, we may not have the financial resources, or may be unable to arrange financing, to pay the repurchase price for all the notes that holders seeking to exercise their repurchase right deliver to us. Our failure to repurchase tendered notes would constitute an event of default under the Indenture, which might constitute a default under the terms of our other indebtedness. In these circumstances, or if a Change in Control would constitute an event of default under our Senior Debt, the subordination provisions of the Indenture would restrict our ability to make payments to the holders of the notes. Our obligation to offer to repurchase the notes upon a Change in Control would not necessarily afford you protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction.

There may be no liquid market for the notes.

Although the notes are eligible for trading in the PORTAL Market, there is no public market for the notes. We cannot assure you as to:

the liquidity of the trading market for the notes;

your ability to sell your notes; or

the price at which you would be able to sell your notes.

If a public market for the notes develops, the notes may trade at prices that may be higher or lower than the principal amount or purchase price, depending on many factors, including prevailing interest rates, the market for similar notes, and our financial performance. We do not intend to apply for the listing of the notes on any securities exchange or for inclusion of the notes in the automated quotation system of the National Association of Securities Dealers, Inc.

Our share price may be volatile, which might adversely affect the trading price of the notes.

Fluctuations in the market price of our common stock affect the trading price of the notes. In addition, if you convert any notes, the value of the common stock you receive may fluctuate. The market price of our common stock has fluctuated in the past. For example, the sales price of our common stock during the last three years has ranged from a low of \$9.28 at July 23, 2002 to a high of \$32.64 at June 13, 2001, and the closing price of our common stock was

Table of Contents

\$16.74 at July 21, 2003, as reported on the NYSE. The market price of our common stock will continue to be subject to fluctuations in response to a variety of factors, including the risk factors discussed above and the following:

- future announcements concerning our business or that of our competitors or customers;
- the introduction of new products or changes in product pricing policies by us or our competitors;
- litigation regarding proprietary rights or other matters;
- changes in analysts' earnings estimates;
- developments in the financial markets;
- quarterly fluctuations in operating results; and
- general conditions in the gaming industry.

We may not be able to refinance the notes if required or if we so desire.

We may need or desire to refinance all or a portion of the notes at maturity. We cannot assure you that we will be able to refinance the notes on commercially reasonable terms, if at all. If we are not able to refinance the notes on terms favorable to us, we may not have sufficient funds to pay the principal amount in cash when due.

We conduct our business through our subsidiaries, and we may not have access to the cash that is needed to make payment on the notes.

We conduct our business through our subsidiaries. We are dependent upon the cash generated by our subsidiaries to make payments of principal and interest on the notes. The notes are effectively subordinated in right of payment to all of the liabilities and obligations of our subsidiaries. None of our subsidiaries is obligated to make funds available to us for payment on the notes. Accordingly, our ability to make payments on the notes is dependent on the distribution of earnings from our subsidiaries. Regulatory or other restrictions on our subsidiaries' ability to pay dividends or to make other cash payments to us may adversely affect our ability to pay principal and interest on our indebtedness, including the notes.

Our subsidiaries may incur additional indebtedness that may severely restrict or prohibit the making of distributions, the payment of dividends or the making of loans by our subsidiaries to us. We cannot assure you that the agreements governing the current and future indebtedness of our subsidiaries will permit our subsidiaries to provide us with sufficient dividends, distributions or loans to fund payments on the notes when due.

Our debt service obligations may adversely affect our cash flow.

While the notes are outstanding, we have debt service obligations on the notes of up to \$3.2 million per year in interest payments. If we issue other debt securities in the future, our debt service obligations will increase. If we are unable to generate sufficient cash to meet these obligations and must instead use our existing cash or investments, we may have to reduce, curtail or terminate other activities of our business.

We intend to fulfill our debt service obligations from cash generated by our operations and from our existing cash and investments. If necessary, among other alternatives, we may add lines of credit to finance capital expenditures and obtain other long-term debt, lines of credit and mortgage financing.

Our indebtedness could have significant negative consequences to you. For example, it could:

- increase our vulnerability to general adverse economic and industry conditions;
- limit our ability to obtain additional financing;
- require the dedication of a substantial portion of any cash flow from operations to the payment of principal of, and interest on, our indebtedness, thereby reducing the availability of such cash flow to fund our operations, working capital, capital expenditures and other general corporate purposes;

Table of Contents

limit our flexibility in planning for, or reacting to, changes in our business and our industry; and place us at a competitive disadvantage relative to our competitors with less debt.

RATIO OF EARNINGS TO FIXED CHARGES

The following table displays our ratio of earnings to fixed charges for the periods indicated:

	1998	1999	Fiscal Year Ended		2002	Nine Months Ended March 31, 2003
			2000	2001		
Ratio of Earnings to Fixed Charges (1)	(2)	24.2x	165.6x	89.2x	28.2x	(2)

- (1) The ratio of earnings to fixed charges is computed by dividing income from continuing operations before income taxes plus fixed charges by fixed charges, which consist of the interest component of rent expense.
- (2) Our pre-tax income was inadequate to cover fixed charges for the year ended June 30, 1998 by approximately \$67.4 million and for the nine months ended March 31, 2003 by approximately \$6.7 million.

USE OF PROCEEDS

We will not receive any proceeds from the sale by any selling securityholder of the notes or the shares of common stock issuable upon conversion of the notes.

Table of Contents**SELECTED CONSOLIDATED FINANCIAL DATA**

Our selected consolidated financial data presented below for and as of the end of each of the five years ended June 30, 2002 are derived from our Consolidated Financial Statements, which have been audited by Ernst & Young LLP, independent auditors. The Statement of Operations Data for the nine months ended March 31, 2002 and 2003 and the Balance Sheet Data at March 31, 2003 have been derived from the unaudited condensed consolidated financial statements which are incorporated by reference in this prospectus and include all adjustments, consisting of normal recurring accruals, that we consider necessary for a fair presentation of our consolidated financial position and results of operations for such periods. You should read the following information in conjunction with the consolidated financial statements and notes thereto, and Management's Discussion and Analysis of Financial Condition and Results of Operations incorporated by reference in this prospectus.

	Fiscal Year Ended June 30,					Nine Months Ended March 31,	
	1998	1999	2000	2001	2002	2002	2003
(in thousands, except per share data and ratios)							
Statement of Operations Data:							
Revenues	\$ 57,281	\$ 126,524	\$ 217,629	\$ 263,772	\$ 174,694	\$ 131,483	\$ 127,817
Operating income (loss)	(71,250)	10,678	67,984	44,239	12,609	11,973	(8,041)
Income (loss) from continuing operations before income taxes	(66,840)	14,203	71,438	49,987	15,450	14,491	(6,217)
Provision (benefit) for income taxes	(22,891)	5,397	27,016	18,069	5,596	5,346	(3,092)
Income (loss) from continuing operations	(43,949)(1)	8,806(2)	44,422(3)	31,918(4)	9,854(5)	9,145(5)	(3,125)(6)
Discontinued operations, net of applicable income taxes:							
Pinball and cabinets segment	(5,103)	(4,332)	(13,539)	4,409			
Contract manufacturing segment	228	779	(1,077)				
Video games segment	26,746						
Net income (loss)	\$ (22,078)	\$ 5,253	\$ 29,806	\$ 36,327	\$ 9,854	\$ 9,145	\$ (3,125)
Basic earnings per share of common stock:							
Income (loss) from continuing operations	\$ (1.66)(1)	\$ 0.30(2)	\$ 1.45(3)	\$ 1.01(4)	\$ 0.31(5)	\$ 0.28(5)	\$ (0.10)(6)
Net income (loss)	\$ (0.84)	\$ 0.18	\$ 0.97	\$ 1.15	\$ 0.31	\$ 0.28	\$ (0.10)
Basic shares outstanding	26,446	29,308	30,615	31,557	32,054	32,133	30,584
Diluted earnings per share of common stock:							
Income (loss) from continuing operations	\$ (1.66)(1)	\$ 0.30(2)	\$ 1.42(3)	\$ 1.00(4)	\$ 0.30(5)	\$ 0.28(5)	\$ (0.10)(6)

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Net income (loss)	\$ (0.84)	\$ 0.18	\$ 0.95	\$ 1.13	\$ 0.30	\$ 0.28	\$ (0.10)
Diluted shares outstanding	26,446	29,511	31,322	32,050	32,542	32,849	30,584

	As of June 30,					As of March 31,	
	1998	1999	2000	2001	2002	2003	2003 As Adjusted (7)

	(in thousands)						
Balance Sheet Data:							
Cash and cash equivalents	\$ 36,943	\$ 58,669	\$ 19,869	\$ 14,963	\$ 32,671	\$ 12,997	\$ 123,848
Short-term investments	26,000		60,800	71,524	72,909	61,635	61,635
Working capital	99,132	117,369	146,321	173,083	171,048	133,072	243,923
Total assets	207,522	238,079	239,030	278,482	281,165	259,565	374,565
Long-term debt							115,000
Stockholders equity	155,291	172,079	205,420	256,386	259,528	235,950	235,950(8)

(1) Loss from continuing operations for fiscal 1998 includes an after-tax charge of \$39.9 million, \$1.51 per diluted share, from our 1998 spin-off of Midway Games Inc. related to the adjustment of compensatory stock options.

Table of Contents

- (2) Income from continuing operations for fiscal 1999 includes an after-tax charge of \$1.9 million, \$0.06 per diluted share, from our 1998 spin-off of Midway Games Inc. related to the adjustment of compensatory stock options.
- (3) Income from continuing operations for fiscal 2000 includes an after-tax reversal of an excess accrual of \$9.7 million, \$0.31 per diluted share, related to patent litigation, and an after-tax charge of \$1.2 million, \$0.04 per diluted share, from our 1998 spin-off of Midway Games Inc. related to the adjustment of compensatory stock options.
- (4) Income from continuing operations for fiscal 2001 includes an after-tax charge of \$13.0 million, \$0.40 per diluted share, related to an executive buyout agreement, and an after-tax charge of \$2.3 million, \$0.07 per diluted share, for the costs of relocating our manufacturing and executive offices to Waukegan, Illinois during the year.
- (5) Income from continuing operations for fiscal 2002 and the nine months ended March 31, 2002 includes an after-tax charge of \$0.8 million, \$0.03 per diluted share, for employee separation costs.
- (6) Loss from continuing operations for the nine months ended March 31, 2003 includes an after-tax charge of \$1.7 million, \$0.06 per diluted share, to write-off a technology license agreement obligation that we no longer intend to implement as an alternative operating system.
- (7) Reflects the receipt of the net proceeds from our issuance and sale of \$115.0 million of convertible subordinated notes in June 2003.
- (8) Does not include 627,300 shares of our common stock, which we purchased for \$9.7 million as of July 21, 2003 pursuant to our \$10 million share buyback program authorized in April 2003. This program was increased to \$25 million in conjunction with the offering of the notes.

-13-

Table of Contents

DESCRIPTION OF THE NOTES

Overview

The 2.75% Convertible Subordinated Notes due July 15, 2010 were issued under, and are governed by, the Indenture between us and BNY Midwest Trust Company, as trustee. The Indenture and the notes are governed by New York law. Because this section is a summary, it does not describe every aspect of the notes and the Indenture. Therefore, this summary is qualified by reference to all the provisions of the Indenture, including definitions of terms used in the Indenture. Wherever we refer to particular defined terms, those terms are incorporated herein by reference. In this section, references to WMS, we, our or us refer only to WMS Industries Inc. and not to any of our subsidiaries.

The notes are our general, unsecured obligations. The notes are subordinated in right of payment, which means that they will rank in right of payment behind other indebtedness of ours as described below. Except as set forth below, the notes are limited to \$115,000,000 aggregate principal amount. We will be required to repay the full principal amount of the notes on July 15, 2010 unless they are required to be repurchased on an earlier date.

The notes bear interest at the annual rate shown on the front cover of this prospectus from the date of issuance of the notes. We will pay interest twice a year, on each January 15 and July 15 (each of these dates is referred to as an interest payment date), beginning January 15, 2004 until the principal is paid or made available for payment or the notes have been converted. We will pay interest to the persons in whose name the note is registered at the close of business on the immediately preceding January 1 and July 1, as the case may be (each of these dates is referred to as a regular record date). Interest payable per \$1,000 principal amount of notes for the period from June 25, 2003 to January 15, 2004, will be \$15.28. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

You may convert the notes into shares of our common stock at any time before the close of business on July 15, 2010, unless the notes have been previously repurchased. The initial conversion rate is stated on the front cover of this prospectus. The conversion rate may be adjusted as described below. Holders of notes submitted for repurchase are entitled to convert the notes up to and including the business day immediately preceding the date fixed for repurchase.

No sinking fund is provided for the notes, which means that the Indenture does not require us to redeem or retire the notes periodically.

Form, Denomination, Transfer, Exchange and Book-Entry Procedures

The notes are issued:

only in fully registered form,

without interest coupons, and

in denominations of \$1,000 and integral multiples of \$1,000.

Principal of and interest on the notes will be payable, and the notes may be presented for registration or exchange, at the office or agency we maintain for such purpose in the Borough of Manhattan, City of New York. Until we designate otherwise, our office or agency will be the trustee's corporate trust office presently located in the Borough of Manhattan, City of New York.

The notes are evidenced by one or more global notes that have been deposited with the trustee as custodian for DTC and registered in the name of Cede & Co. (Cede), as nominee of DTC. The global note and any notes issued in exchange for the global note are subject to restrictions on transfer and will bear the legend regarding those restrictions substantially as set forth in Notice to Investors. Except as set forth below, record ownership of the global note may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee.

No global note will be registered in the name of any person, or exchanged for notes that are registered in the name of any person, other than DTC or its nominee, unless either of the following occurs:

Table of Contents

DTC has notified us that it is unwilling or unable to continue as depository for the global note or has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so, or

an event of default (as described under Events of Default below) with respect to the notes represented by the global note has occurred and is continuing.

In those circumstances, DTC will determine in whose names any notes issued in exchange for the global note will be registered.

As long as the notes are registered in the name of Cede as nominee for DTC, DTC or its nominee will be considered the sole owner and holder of the global note for all purposes, and as a result:

you cannot receive notes registered in your name if they are represented by the global notes

you cannot receive certificated (physical) notes in exchange for your beneficial interest in the global notes

you will not be considered to be the owner or holder of the global note or any note it represents for any purpose, and

all payments on the global note will be made to DTC or its nominee.

The laws of some jurisdictions require that some kinds of purchasers can only own securities in physical, certificated form. These laws may limit your ability to acquire an interest in the notes and to transfer or encumber your beneficial interests in the global note to these types of purchasers.

Only institutions, such as a securities broker or dealer, that have accounts with DTC or its nominee, called participants, and persons that may hold beneficial interests through participants can own a beneficial interest in the global note. The only place where the ownership of beneficial interests in the global note appears, and the only way the transfer of those interests can be made, is on the records kept by DTC (for its participants' interests) and the records kept by those participants (for interests participants hold on behalf of other persons).

Beneficial interests in a global note usually trade in DTC's same day funds settlement system, and settle in immediately available funds. We cannot assure you what effect the settlement in immediately available funds will have on trading activity in those beneficial interests.

We will make cash payments of interest on, and the repurchase price of, the global note, as well as any payment of dividend protection payments or damage payments, only to Cede, the nominee for DTC, as the registered owner of the global notes. We will make these payments by wire transfer of immediately available funds on each payment date.

We have been informed that, with respect to any cash payment of interest on, principal of, or the repurchase price of, the global note, as well as any payment of interest protection payments or damage payments, DTC's practice is to credit participants' accounts on the payment date with payments in amounts proportionate to their respective beneficial interests in the notes represented by the global note as shown on DTC's records, unless DTC has reason to believe that it will not receive payment on that payment date. Payments by participants to owners of beneficial interests in notes represented by the global notes held through participants are the responsibility of those participants, as is now the case with securities held for the accounts of customers registered in street name.

We also understand that neither DTC nor Cede will consent or vote with respect to the notes. We have been advised that under its usual procedures, DTC will mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede's consenting or voting rights to those participants to whose accounts the notes are credited on the record date identified in a listing attached to the omnibus proxy.

The ability of a person having a beneficial interest in the principal amount represented by the global note to pledge or otherwise encumber their interest in the note to persons or entities that do not participate in the DTC book entry system, or otherwise take actions in respect of that interest, may be adversely affected by the lack of a physical certificate evidencing its interest. This is because DTC can act only on behalf of participants, who in turn act on behalf of indirect participants.

Table of Contents

DTC has advised us that it will take any action permitted to be taken by a holder of notes (including the presentation of notes for exchange) only at the direction of one or more participants to whose account with DTC interests in the global note are credited. Further, DTC has advised us that it will take action only in respect of the portion of the principal amount of the notes represented by the global note as to which such participant has, or participants have, given DTC direction.

DTC has also advised us as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a clearing corporation within the meaning of the Uniform Commercial Code, as amended, and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes in accounts of its participants. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include other organizations. Some of these participants (or their representatives), together with other entities, own DTC. Indirect access to the DTC system is available to other entities such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with, a participant, either directly or indirectly.

DTC's policies and procedures, which may change periodically, will apply to payments, transfers, exchanges and other matters relating to beneficial interests in the global note. The trustee and we have no responsibility or liability for any aspect of DTC's or any participant's records relating to beneficial interests in the global note, including for payments made on the global note, and we and the trustee are not responsible for maintaining, supervising or reviewing any of those records.

Dividend Protection

We will make additional payments of interest, referred to in this prospectus as dividend protection payments, on the notes in an amount equal to any per share cash dividends on our common stock that would have been payable to the holders of the notes if such holders had converted their notes into shares of our common stock at the conversion rate in effect on the record date for such dividend. The record date and payment date for such dividend protection payment shall be the same as the corresponding record date and payment date of our common stock to which the payment relates. Holders of the notes will not be entitled to any dividend protection payment if the dividend that would otherwise trigger the payment causes an adjustment to the conversion rate. See **Conversion Rights**. We have never paid cash dividends on our common stock. We plan to retain any earnings to fund the operation of our business and we have no plan to pay cash dividends during the term of the notes.

Conversion Rights

You may, at your option, convert the principal amount of any note that is an integral multiple of \$1,000 into shares of our common stock at any time prior to the close of business on the maturity date, unless the note has been previously repurchased. Each share of common stock issuable upon conversion of a note is issued together with stock purchase rights described in this prospectus. See **Description of Share Capital Rights Agreement**. If the notes are subject to repurchase, you may convert your notes at any time before the close of business on the business day immediately preceding the date fixed for repurchase, unless we default in making the payment due upon repurchase. The initial conversion rate is equal to 50.5561 shares per \$1,000 principal amount of notes, which is equivalent to an initial conversion price of approximately \$19.78 per share. The conversion rate is subject to adjustment as described below.

The holder of a note can convert the note by delivering the note to the trustee's corporate trust office, accompanied by a signed and completed notice of conversion, a copy of which may be obtained from the trustee. In the case of a global note, we have been informed that DTC will effect the conversion upon notice from the holder of a beneficial interest in the global note in accordance with DTC's rules and procedures. The conversion date will be the date on which the note and the duly signed and completed notice of conversion are so delivered to the trustee. As promptly as practicable on or after the conversion date, we will issue and deliver to the trustee a certificate or certificates for the number of full shares of common stock issuable upon conversion, together with payment in lieu of any fractional shares, and the trustee shall deliver the certificate(s) to the conversion agent for delivery to the holder of the note being converted. The common stock issuable upon conversion of the notes will be fully paid and nonassessable.

If you surrender a note for conversion on a date that is not an interest payment date, you will not be entitled to receive any interest for the period from the preceding interest payment date to the date of conversion, except as

Table of Contents

described below. However, if you are a holder of a note on a regular record date, including a note that is subsequently surrendered for conversion after the regular record date, you will receive the interest payable on such note on the next interest payment date. To correct for this resulting overpayment of interest, we will require that any note surrendered for conversion during the period from the close of business on a regular record date to the opening of business on the next interest payment date be accompanied by payment of the interest payable on the interest payment date on the principal amount of notes being surrendered for conversion. However, you will not be required to make that payment if you are converting a note, or a portion of a note, that you are entitled to require us to repurchase from you, if your conversion right would terminate because of the repurchase between the regular record date and the close of business on the next interest payment date.

If, after the date of this prospectus, we distribute rights or warrants (other than those referred to in clause (2) below) pro rata to holders of our common stock, so long as any such rights or warrants have not expired or been redeemed by us, the holder of any note surrendered for conversion will be entitled to receive upon such conversion, in addition to the shares of common stock issuable upon such conversion (the Conversion Shares), a number of rights or warrants to be determined as follows:

if such conversion occurs on or prior to the date for the distribution to the holders of rights or warrants of separate certificates evidencing such rights or warrants, the Distribution Date, the same number of rights or warrants to which a holder of a number of shares of common stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of, and applicable to, the rights or warrants, and

if such conversion occurs after such Distribution Date, the same number of rights or warrants to which a holder of the number of shares of common stock into which such note was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date in accordance with the terms and provisions of, and applicable to, the rights or warrants.

No other payment or adjustment for interest, or for any dividends on our common stock, will be made upon conversion. If you receive common stock upon conversion of a note, you will not be entitled to receive any dividends payable to holders of common stock as of any record date before the close of business on the conversion date. We will not issue fractional shares upon conversion of notes. Instead, we will pay an amount in cash based on the closing sales price of our common stock on The New York Stock Exchange on the conversion date.

If you deliver a note for conversion, you will not be required to pay any taxes or duties in respect of the issuance or delivery of common stock on conversion. However, you will be required to pay any tax or duty that may be payable in respect of any transfer involved in the issuance or delivery of our common stock in a name other than yours. We will not issue or deliver certificates representing common stock unless the person requesting the issuance or delivery has paid to us the amount of any such tax or duty or has established to our satisfaction that no such tax or duty is payable.

The conversion rate is subject to adjustment if, among other things:

- (1) there is a dividend or other distribution payable in common stock on any class of our capital stock,
- (2) we issue to all holders of common stock rights, options or warrants entitling them to subscribe for or purchase common stock at less than the then current market price, calculated as described in the Indenture, of our common stock; however, if those rights, options or warrants are only exercisable upon the occurrence of specified triggering events, then the conversion rate will not be adjusted until the triggering events occur,
- (3) we subdivide, reclassify or combine our common stock,
- (4) we distribute to all holders of our common stock evidences of our indebtedness, shares of capital stock, cash or assets, including securities, but excluding:

those dividends, rights, options, warrants and distributions referred to in paragraphs (1) and (2) above

dividends and distributions paid in cash (except as set forth in paragraphs (5) and (6) below), and

distributions upon a merger or consolidation as discussed below,

Table of Contents

- (5) we make a distribution consisting exclusively of cash (excluding portions of distributions referred to in clause (4) above and cash distributed upon a merger or consolidation as discussed below) to all holders of our common stock if the aggregate amount of the distribution combined together with (A) other such all cash distributions made within the preceding 365-day period in respect of which no adjustment has been made and (B) any cash and the fair market value of other consideration payable in respect of any tender offer by us or any of our subsidiaries for our common stock concluded within the preceding 365-day period in respect of which no adjustment has been made, exceeds 10% of our market capitalization, being the product of the current market price per share of our common stock on the record date for such distribution and the number of shares of common stock then outstanding, or
- (6) a tender offer is successfully completed by us or any of our subsidiaries for our common stock that involves aggregate consideration that, together with (A) any cash and the fair market value of other consideration payable in a tender offer by us or any of our subsidiaries for our common stock concluded within the 365-day period preceding the completion of such tender offer in respect of which no adjustment has been made and (B) the aggregate amount of any such all cash distributions referred to in paragraph (5) above to all holders of common stock within the 365-day period preceding the expiration of such tender offer in respect of which no adjustments have been made, exceeds 10% of our market capitalization on the expiration of such tender offer.

We reserve the right to make such increases in the conversion rate in addition to those required by the provisions described above as we may consider to be advisable so that any event treated for United States federal income tax purposes as a dividend of stock or stock rights will not be taxable to the recipients. We will not be required to make any adjustment to the conversion rate until the cumulative required adjustments amount to 1.0% or more of the conversion rate. We will compute any adjustments to the conversion rate and give notice to the holders of the notes of any such adjustments.

If we merge with or into or consolidate with another person or sell or transfer all or substantially all of our assets, each note then outstanding will, without the consent of the holder of any note, become convertible only into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of our common stock into which the note was convertible immediately prior to the merger, consolidation, sale or transfer. This calculation will be made based on the assumption that the holder of our common stock failed to exercise any rights of election that the holder may have had to select a particular type of consideration. The adjustment will not be made for a merger that does not result in any reclassification, conversion, exchange or cancellation of our common stock.

We may, from time to time, increase the conversion rate by any amount for any period of at least 20 days if our board of directors has determined that such increase would be in our best interests. Any such determination will be conclusive. We will give holders of notes at least 15 days notice of this increase in the conversion rate. No such increase will be taken into account for purposes of determining whether the closing price of the common stock exceeds the conversion price by 105% in connection with an event which otherwise would be a Change in Control as discussed below.

If at any time we make a distribution of property to our stockholders that would be taxable to them as a dividend for United States federal income tax purposes (for example, distributions of evidences of indebtedness or assets by us, but generally not stock dividends on common stock or rights to subscribe for common stock) and, pursuant to the anti-dilution provisions of the Indenture, the number of shares into which notes are convertible is increased, that increase may be deemed for United States federal income tax purposes to be the payment of a taxable dividend to holders of notes. For more details, see Summary of United States Federal Income Tax Considerations.

Subordination

The payment of the principal and interest on the notes, including any dividend protection payments or Liquidated Damages (as defined in the Registration Rights Agreement), and any amounts payable upon the repurchase of the notes, is subordinated in right of payment to the extent set forth in the Indenture to the prior payment in full of all of our Senior Debt. The notes are also effectively subordinated in right of payment to any debt or other liabilities of our subsidiaries. On March 31, 2003 we had no outstanding Senior Debt and our subsidiaries had accounts payable and accrued liabilities of \$23.6 million.

Senior Debt means the principal and interest, including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding, on, and rent payable on or in connection with and all fees, costs, claims, expenses and

Table of Contents

other amounts payable in connection with, the following, whether absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of the Indenture or thereafter created, incurred or assumed:

all our indebtedness evidenced by a credit or loan agreement, note, bond, debenture or other similar instrument whether or not the recourse of the lender is to all of our assets or to only a portion

all of our indebtedness, obligations and other liabilities, contingent or otherwise, for borrowed money, including, without limitation, overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements and any loans or advances from banks, whether or not evidenced by notes or similar instruments, or bonds, debentures, notes or similar instruments, whether or not the recourse of the lender is to all of our assets or to only a portion thereof

all our obligations as lessee under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles

all our obligations under leases for facilities, equipment or other assets entered into for financing purposes, whether or not capitalized

all our obligations and other liabilities, contingent or otherwise, under any lease or related document, including a purchase agreement, in connection with the lease of real property or improvements, or any personal property included as part of any such lease, which provides that we are contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a residual value of leased property to the lessor and all of our obligations under such lease or related document to purchase or to cause a third party to purchase the leased property, whether or not such lease transaction is characterized as an operating lease or capitalized lease in accordance with generally accepted accounting principles

all our obligations under interest rate and currency swaps, caps, floors, collars, hedge agreements, forward contracts or similar agreements or arrangements

all our obligations with respect to letters of credit, bank guarantees, bankers' acceptances and similar facilities, including related reimbursement obligations

all our obligations issued or assumed as the deferred purchase price of property or services, but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business

all our obligations of the type referred to above of another person and all dividends of another person, the payment of which, in either case, we have assumed or guaranteed, or for which we are responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise, or which are secured by a lien on our property, and

renewals, extensions, modifications, replacements, restatements and refundings of, or any indebtedness or obligation issued in exchange for any indebtedness or obligation described in the bullets above.

Senior Debt will not include:

the notes

any liability for federal, state, local or other taxes owed or owing by us

any indebtedness or obligation if the terms of the indebtedness or obligation, or the terms of the instrument under which the indebtedness or obligation is issued, expressly provide that the indebtedness or obligation is not superior in right of payment to the notes

accounts payable or other accrued liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services, or

any indebtedness or obligation that we may owe to any of our direct or indirect subsidiaries.

Table of Contents

We will not make any payment on account of the notes if any of the following occurs:

we default in our obligations to pay principal, premium, interest or other amounts on or in connection with our Senior Debt, including a default under any redemption or repurchase obligation (a Payment Default), and the default continues beyond any grace period that we may have to make those payments, or

a default (other than a Payment Default) occurs and is continuing on any Designated Senior Debt that permits the holders of the Designated Senior Debt to accelerate its maturity and the trustee has received a payment blockage notice from us, the holder of such debt or such other person permitted to give such notice under the Indenture.

If payments of the notes have been blocked by a Payment Default, payments on the notes will resume (including missed payments, if any) when the Payment Default has been cured or waived. If payments on the notes have been blocked by a default other than a Payment Default, payments on the notes will resume (including missed payments, if any) on the earlier of (1) the date on which such default is cured or waived and (2) 179 days after the date on which the trustee receives the payment blockage notice if the maturity of the Designated Senior Debt has not been accelerated such that such debt is then presently payable, unless the Indenture otherwise prohibits payment at that time.

No default (other than a Payment Default) that existed on the day a payment blockage notice was delivered to the trustee can be used as the basis for any subsequent payment blockage notice unless that existing non-Payment Default has been cured for a period of at least 90 days. In addition, once a holder of Designated Senior Debt has blocked payment on the notes by giving a payment blockage notice, no new period of payment blockage can be commenced until both of the following are satisfied:

365 days have elapsed since the effectiveness of the immediately prior payment blockage notice, and

all scheduled payments of principal, any premium and interest (and Liquidated Damages, if any) on the notes that have come due have been paid in full in cash.

Designated Senior Debt means (i) any indebtedness outstanding under our existing credit facility and (ii) our obligations under any particular Senior Debt in which the instrument creating or evidencing the debt, or the assumption or guarantee of the debt, or related agreements or documents to which we are a party, expressly provides that the indebtedness will be Designated Senior Debt for purposes of the Indenture. That instrument, agreement or other document may place limitations and conditions on the right of that Senior Debt to exercise the rights of Designated Senior Debt.

In addition, upon any acceleration of the principal due on the notes as a result of an Event of Default or payment or distribution of our assets to creditors upon any dissolution, winding up, total or partial liquidation or reorganization, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other similar proceedings, all principal, premium, interest and other amounts due or to become due on or in connection with all Senior Debt must be paid in full in cash or cash equivalents before you will be entitled to receive any payment with respect to the notes (except that holders of notes may receive and retain payments or distributions in the form of junior securities). Due to the subordination provisions of the notes and the Indenture, in the event of insolvency, our creditors who are holders of Senior Debt may recover more, ratably, than you would, and this subordination may reduce or eliminate payments to you.

The term junior securities means (i) equity interests in us or (ii) our securities that are subordinated to all Senior Debt that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the notes are subordinated to Senior Debt under the Indenture.

The notes are effectively subordinated to all indebtedness and other liabilities of our subsidiaries, including trade payables and lease obligations. This occurs because any right we have to receive any assets of our subsidiaries upon their liquidation or reorganization, and the consequent right of the holders of the notes to participate in those assets, are effectively subordinated to the claims of that subsidiary's creditors, including trade creditors, except to the extent that we are recognized as a creditor of the subsidiary, in which case our claims would still be subordinate to any security interest in the subsidiary's assets and any indebtedness of the subsidiary senior to that which we hold, at least to the extent of the collateral for such indebtedness.

Table of Contents

The Indenture does not limit our ability to incur indebtedness, including Senior Debt, or the ability of any of our subsidiaries to incur indebtedness.

Repurchase at Option of Holders Upon a Change in Control

If a Change in Control occurs, you have the right, at your option, to require us to repurchase all of your notes, or any portion of the principal amount of your notes that is equal to \$1,000 or any greater integral multiple of \$1,000. The price we are required to pay is 100% of the principal amount of the notes to be repurchased, together with interest accrued to the repurchase date.

At our option, instead of paying the repurchase price in cash, we, or the successor entity in the Change in Control transaction, may pay the repurchase price in shares of our common stock, or in a combination of cash and our common stock, such common stock to be valued at 95% of the average of the high and low sales prices of our common stock on The New York Stock Exchange for each of the five consecutive trading days ending with the third trading day prior to the repurchase date. We may only pay the repurchase price in common stock if the conditions provided in the Indenture designed to ensure that such shares will be freely transferable are satisfied. Because the number of shares of common stock to be delivered to holders of notes in payment of the repurchase price (should we elect such payment option) is determined on the basis of the market price of our common stock after we have given notice of the occurrence of the Change in Control and prior to the repurchase date, the value of the common stock on the date of delivery thereof to such holders may be more or less than the repurchase price had we elected to pay such price in cash.

Within 30 days after the occurrence of a Change in Control, we will mail you notice of the Change in Control and of your repurchase right arising as a result of the Change in Control. We will also deliver a copy of this notice to the trustee. To exercise the repurchase right, you must deliver, on or before the 30th day (or such greater period as may be required by applicable law) after the date of our notice, irrevocable written notice to the trustee of your exercise of your repurchase right, together with the notes with respect to which that right is being exercised. We are required to make the repurchase on a date that is no later than 45 days after your notice to the trustee.

A Change in Control is deemed to have occurred at such time any of the following occurs:

- (1) any person, including any syndicate or group deemed to be a person under Section 13(d)(3) of the Exchange Act, (A) acquires beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of our capital stock entitling that person to exercise more than 50% of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors; however, any acquisition by us, any of our subsidiaries or any of our employee benefit plans, will not trigger this provision or (B) succeeds in having sufficient of its nominees (who are not supported by a majority of the then current board of directors) elected to the board of directors such that such nominees, when added to any existing directors remaining on the board of directors after such election who are affiliates of or acting in concert with such person, shall constitute a majority of the board of directors,
- (2) we consolidate with or merge with or into any other person or another person merges into us, except if the transaction satisfies any of the following:

the transaction is a merger (A) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of our capital stock and (B) pursuant to which holders of our common stock immediately prior to the transaction have, directly or indirectly, 50% or more of the total voting power of all shares of capital stock or other ownership interest in the continuing or surviving person entitled to vote generally in elections of directors of the continuing or surviving person immediately after the transaction, or

the transaction is a merger effected only to change our jurisdiction of incorporation and it results in a reclassification, conversion or exchange of outstanding shares of our common stock only into shares of common stock of us or another corporation, or

- (3) we convey, transfer, sell, lease or otherwise dispose of all or substantially all of our assets to another person.

However, a Change in Control is not deemed to have occurred if the average of the high and low sales price per share of our common stock for any five trading days within (1) the period of 10 consecutive trading days ending immediately after the later of the Change in Control and the public announcement of the Change in Control, in the case of a Change in Control under clause (1)(A) above relating to an acquisition of capital stock not involving a merger or

Table of Contents

consolidation covered by clause (2) above, or (2) the period of 10 consecutive trading days ending immediately before the Change in Control, in the case of a Change in Control under clause (1)(B), (2) or (3) above, in each case, equals or exceeds 105% of the conversion price of the notes in effect on each of those trading days.

For purposes of these provisions:

the conversion price is equal to \$1,000 divided by the conversion rate, and

whether a person is beneficial owner will be determined in accordance with Rule 13d-3 under the Exchange Act.

Any repurchase of notes arising as a result of the Change in Control will be made in compliance with all applicable laws, rules and regulations, including, if applicable, Regulation 14E under the Exchange Act and the rules thereunder and all other applicable federal and state securities laws. To the extent the provisions of any securities laws or regulations conflict with the provisions of this covenant, our compliance with such laws and regulations shall not be deemed to cause a breach of our obligations under the Indenture.

We may, to the extent permitted by applicable law, at any time purchase notes in the open market or by tender or by private agreement. Any note that we so purchase may, to the extent permitted by applicable law, be reissued or resold or may, at our option, be surrendered to the trustee for cancellation. Any notes surrendered may not be reissued or resold and will be canceled promptly.

The definition of Change in Control includes a phrase relating to the conveyance, transfer, sale, lease or disposition of all or subsequently all of our assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, your ability to require us to repurchase your notes as a result of conveyance, transfer, sale, lease or other disposition of less than all of our assets may be uncertain.

The foregoing provisions would not necessarily provide you with protection if we are involved in a highly leveraged or other transaction that may adversely affect you.

Our ability to repurchase notes upon the occurrence of a Change in Control is subject to important limitations. Some of the events constituting a Change in Control in addition to the act of repurchasing the notes could cause an event of default or be prohibited or limited by the terms of our Senior Debt. As a result, any repurchase of the notes could, absent a waiver, be prohibited under the Indenture's subordination provisions until the Senior Debt is paid in full. Further, we may not have the financial resources, or be unable to arrange financing, to pay the repurchase price for all the notes that holders seeking to exercise their repurchase right deliver to us. If we were to fail to repurchase the notes when required following a Change in Control, an Event of Default would occur, whether or not such repurchase is permitted by the Indenture's subordination provisions. Any such default may, in turn, cause a default under our Senior Debt. For more details, see Subordination.

Mergers and Sales of Assets

Without the consent of the holders of the notes, we may not consolidate with or merge with or into any other person or convey, transfer, sell or lease our properties and assets substantially as an entirety to any person, and we may not permit any person to consolidate with or merge with or into us or convey, transfer, sell or lease such person's properties and assets substantially as an entirety to us, unless each of the following requirements is met:

the person formed by the consolidation or into or with which we merge or the person to which our properties and assets are conveyed, transferred, sold or leased, is a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States, any State or the District of Columbia and, if other than us, expressly assumes the due and punctual payment of the principal of, any premium, and interest (and Liquidated Damages, if any) on the notes and the performance of our other covenants under the Indenture;

immediately after giving effect to that transaction, no Event of Default, and no event that, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing, and other specific conditions are met; and

an officer's certificate and legal opinion relating to these conditions is delivered to the trustee.

Table of Contents

Upon any consolidation or merger or any transfer or lease of all or substantially all of our assets, the successor corporation formed by such consolidation or into which we are merged or to which such transfer or lease is made, shall succeed to, and be substituted for, and may exercise every right and power of, us under the Indenture with the same effect as if such successor corporation had been named in the Indenture as our company, and we shall be released from the obligations under the notes and the Indenture except in the case of a lease or with respect to any obligations that arise from, or are related to, such transaction.

Events of Default

The following are Events of Default under the Indenture:

we fail to pay principal of or any premium, if any, on any note when due, whether or not the payment is prohibited by the Indenture's subordination provisions;

we fail to pay any interest (including Liquidated Damages, if any) on any note when due and that default continues for 30 days, whether or not the payment is prohibited by the Indenture's subordination provisions;

we fail to give the notice that we are required to give if there is a Change in Control, whether or not the notice is prohibited by the Indenture's subordination provisions;

we fail to perform or observe any other term, covenant or agreement contained in the notes or the Indenture and that failure continues for 60 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of outstanding notes;

we fail to pay by the end of any applicable grace period or after maturity of the principal of any indebtedness for money borrowed by us or any of our significant subsidiaries, if any, in excess of \$5 million if the indebtedness is not discharged, or, if such indebtedness has been accelerated, such acceleration is not rescinded or annulled, within 30 days after written notice to us by the trustee or the holders of at least 25% in aggregate principal amount of the outstanding notes;

we fail to deliver shares of common stock, together with cash instead of fractional shares, when those shares of common stock or cash instead of fractional shares are required to be delivered upon conversion of a note, and such failure continues for 10 days after such delivery date; or

events of bankruptcy, insolvency or reorganization with respect to us and our significant subsidiaries specified in the Indenture.

Subject to the provisions of the Indenture relating to the trustee's duties, if an Event of Default exists, the trustee will not be obligated to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders, unless they have offered to the trustee reasonable indemnity. Subject to such trustee indemnification provisions, the holders of a majority in aggregate principal amount of the outstanding notes 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, provided that such direction does not conflict with any rule of law or with the Indenture, and the trustee may take any other action the trustee deems proper which is not inconsistent with such direction.

If an Event of Default, other than an Event of Default arising from events of bankruptcy, insolvency or reorganization, occurs and is continuing, either the trustee or the holders of at least 25% in principal amount of the outstanding notes may accelerate the maturity of all notes. After acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of outstanding notes may, under circumstances set forth in the Indenture, rescind the acceleration if all Events of Default, other than the non-payment of principal of the notes which have become due solely because of the acceleration, have been cured or waived as provided in the Indenture. If an Event of Default arising from events of bankruptcy, insolvency or reorganization occurs and is continuing, then the principal of, and accrued interest on, all of the notes will automatically become immediately due and payable without any declaration or other act on the part of the holders of the notes or the trustee.

You do not have any right to institute any proceeding relating to the Indenture, or to appoint a receiver or a trustee, or for any other remedy under the Indenture, unless:

Table of Contents

you have given the trustee written notice of a continuing Event of Default;

the registered holders of at least 25% of the aggregate principal amount of all outstanding notes have made a written request of the trustee to take action because of the default and have furnished reasonable indemnification to the trustee against the cost, liabilities and expenses of taking such action;

the trustee shall not have taken action for 60 days after receiving such notice and offer of indemnification; and

the trustee has not received any direction inconsistent with such written request from the holders of a majority of the aggregate principal amount of all outstanding notes during such 60-day period.

These limitations do not apply to a suit for the enforcement of payment of the principal of, or any premium or interest (and Liquidated Damages, if any) on, a note, or the repurchase price payable for a note on or after the due dates for such payments, or of the right to convert the note in accordance with the Indenture.

We will furnish to the trustee annually a statement as to our performance of our obligations under the Indenture and as to any default in performance.

Modification and Waiver

The Indenture contains provisions permitting us and the trustee to enter into a supplemental indenture for some limited purposes without the consent of the holders of the notes. With the consent of the holders of at least a majority in aggregate principal amount of the notes at the time outstanding, we and the trustee are permitted to amend or supplement the Indenture or any supplemental indenture or modify the rights of the holders, provided, that no such modification may, without the consent of each holder affected:

change the stated maturity of the principal or interest of any note;

reduce the principal amount, any premium or interest on any note;

amend or modify our obligation to make or consummate a repurchase offer upon a Change in Control in a manner adverse to the holders of the notes after our obligation to make a Change in Control repurchase offer arises;

change the place or currency of payment on any note;

impair the right to institute suit for the enforcement of any payment on or conversion of any note;

modify the subordination provisions in a manner that is adverse to the holder of any notes;

adversely affect the right of any holder of notes to convert its notes;

reduce the percentage in principal amount of the outstanding notes whose holders' consent is needed to modify, amend or waive any provision in the Indenture; or

modify the provisions dealing with modification and waiver of the Indenture, except to increase any required percentage or to provide that other provisions of the Indenture cannot be modified or waived without the consent of the holder of each outstanding note affected.

The holders of a majority in principal amount of the outstanding notes may waive our compliance with some restrictive provisions of the Indenture. The holders of a majority in principal amount of the outstanding notes may waive any past default, except a default in the payment of principal, any premium, interest (or Liquidated Damages, if any) or the repurchase price.

Registration Rights

The following summarizes some, but not all, of the registration rights provided in the registration rights agreement (the Registration Rights Agreement) between us and CIBC World Markets Corp., the initial purchaser of

Table of Contents

the notes. You should refer to the Registration Rights Agreement, a copy of which we will make available to beneficial holders of the notes upon request, for a full description of the registration rights that apply to the notes.

In the Registration Rights Agreement we agreed, for the benefit of the holders of the notes and the shares of common stock issuable upon conversion of the notes, but excluding securities that are eligible for disposition under Rule 144 of the Securities Act, that we will, at our expense:

file with the SEC, on or prior to 90 days following the date the notes are originally issued, a shelf registration statement covering resales of the Registrable Securities (as defined in the Registration Rights Agreement),

use our reasonable best efforts to cause the shelf registration statement to be declared effective under the Securities Act on or prior to 180 days following the date the notes are originally issued, subject to our right to postpone having the shelf registration statement declared effective for an additional 60 days in limited circumstances, and

use our reasonable best efforts to keep effective the shelf registration statement until, subject to exceptions set forth in the Registration Rights Agreement, the earlier of:

- (1) the date on which there are no outstanding Registrable Securities, or
- (2) the expiration of the holding period applicable to such Registrable Securities held by persons who are not affiliates of WMS under Rule 144(k) under the Securities Act or any successor previously subject to specific permitted exceptions.

We agreed to provide to each holder of Registrable Securities copies of the prospectus included in the shelf registration statement, notify each holder when the shelf registration statement has become effective and take other actions required to permit public resales of the Registrable Securities.

Upon written notice to all the holders of notes, we will be permitted to suspend the use of the prospectus that is part of the shelf registration statement in connection with sales of Registrable Securities during prescribed periods of time if we possess material non-public information, the disclosure of which would have a material adverse effect on us. The periods during which we can suspend the use of the prospectus may not exceed a total of 60 consecutive days. Upon receipt of such notice, the holders of notes will be required to cease disposing of securities under the prospectus and to keep the notice confidential.

Liquidated Damages will accrue on any of the notes that are transfer restricted securities under the Registration Rights Agreement if any of the following default events occurs:

on or prior to 90 days following the date the notes were originally issued, a shelf registration statement has not been filed with the SEC;

on or prior to 180 days following the date the notes were originally issued, the SEC does not declare the shelf registration statement effective; or

the shelf registration statement ceases to be effective, or we otherwise prevent or restrict holders of Registrable Securities from making sales under the shelf registration statement, for more than 60 consecutive days.

In these events, damages will accrue on the notes that are transfer restricted securities at an annual rate of 0.5% of the principal amount from the day following any of the above default events until the day on which the default is cured. These damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first interest payment date following the date on which the damages begin to accrue.

A holder who elects to sell any Registrable Securities pursuant to the shelf registration statement will be required to be named as a selling securityholder in the related prospectus, may be required to deliver a prospectus to purchasers, may be subject to civil liability under the securities laws in connection with those sales and will be bound by the provisions of the Registration Rights Agreement that apply to a holder making such an election, including indemnification provisions.

Table of Contents

No holder of Registrable Securities is entitled to be named as a selling securityholder in the shelf registration statement as of the date on which the Registration Statement becomes effective, and no holder of Registrable Securities is entitled to use the prospectus that is part of the shelf registration statement for offers and resales of Registrable Securities at any time, unless the holder has returned a completed and signed notice and questionnaire to us by the deadline for response set forth in the notice and questionnaire. Holders of Registrable Securities will, however, have at least 20 calendar days from the date on which the notice and questionnaire was first ma