

INNODATA INC  
Form S-3  
October 20, 2015

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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**FORM S-3**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

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**INNODATA INC.**

(Exact name of registrant as specified in its charter)

**Delaware**                                 **13-3475943**  
(State or other jurisdiction of   (I.R.S. Employer identification number)  
incorporation or organization)

**Three University Plaza**

**Hackensack, New Jersey 07601**

**(201) 371-8000**

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

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**Amy R. Agress**

**Vice President, General Counsel and Secretary**

**Innodata Inc.**

**Three University Plaza**

**Hackensack, New Jersey 07601**

**(201) 371-8000**

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

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Copy to:

**Oscar D. Folger**

**Folger & Folger**

**151 W. 46th Street, 4th floor**

**New York, NY 10036-8512**

**(212) 697-7300**

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**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

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

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

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

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

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

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

Large accelerated filer

Accelerated filer

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

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities To Be Registered</b> <sup>(1);(2)</sup>	<b>Amount to be Registered/Proposed Maximum Aggregate Offering Price per Unit/Proposed Maximum Aggregate Offering Price</b> (1)	<b>Amount of Registration Fee</b> <sup>(3);(4)</sup>
Common Stock, par value \$0.01 per share		
Preferred Stock		
Debt Securities		
Warrants		
Units		
<b>Total</b>	<b>\$ 70,000,000</b>	<b>\$ 7,049</b>

(1) The proposed maximum offering price per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities hereunder and is not specified as to each class of

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securities to be registered hereunder pursuant to General Instruction II (D) to Form S-3 under the Securities Act of 1933, as amended.

(2) Includes an indeterminate number of securities that may be issued in primary offerings or upon exercise, conversion or exchange of any securities registered hereunder that provide for exercise, conversion or exchange, which together shall have an aggregate initial offering price not to exceed \$70,000,000. Any securities registered hereunder may be sold separately or as units with the other securities registered hereunder.

(3) The registration fee has been calculated in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

(4) Pursuant to Rule 457(p) under the Securities Act of 1933, as amended, unused filing fees of \$8,022 have already been paid with respect to unsold securities that were previously registered pursuant to a Registration Statement on Form S-3 (No. 333-182114) filed by Innodata Inc. on June 14, 2012, and have been carried forward and offset against the registration fee of \$7,049 due from the registrant for this registration statement.

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

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

**Subject to completion, dated October 20, 2015**

**PROSPECTUS**

**INNODATA INC.**

**\$70,000,000**

**Common Stock**

**Preferred Stock**

**Debt Securities**

**Warrants**

**Units**

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We may from time to time offer and sell any combination of common stock, preferred stock, debt securities and warrants described in this prospectus, either individually or in units, in one or more offerings. The aggregate initial offering price of all securities sold under this prospectus will not exceed \$70,000,000. The preferred stock, debt securities and warrants may be convertible into or exercisable for our common or preferred stock.

This prospectus provides a general description of the securities we may offer. The specific terms of any securities to be offered will be described in a supplement to this prospectus that contains specific information about the offering and the terms of the securities.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continued or delayed basis.

Our common stock is traded on The Nasdaq Stock Market under the symbol "INOD."

**Investing in the securities involves risks. See "Risk Factors" on page 4 of this prospectus as well as references to risk factors in any one or more prospectus supplements. Before buying the securities, you should read and consider the risk factors included in our periodic reports and in other information that we file with the Securities and Exchange Commission and that are incorporated by reference in this prospectus.**

This prospectus may not be used to offer or sell any of our securities unless accompanied by a prospectus supplement.

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**Neither the Securities and Exchange Commission nor any state securities commission 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.**

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The date of this prospectus is \_\_\_\_\_, 2015

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the “SEC”) using a “shelf” registration process. Under this shelf registration process, we may offer and sell from time to time shares of our common stock, shares of our preferred stock, debt securities, warrants, units, or any combination thereof, in one or more offerings in amounts, at prices and on terms that we determine at the time of the offering, with an aggregate initial offering price of up to \$70,000,000. This prospectus provides you with a general description of the securities. Each time we offer the securities, we will provide a prospectus supplement that describes the terms of the offering. The prospectus supplement also may add, update or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and the applicable prospectus supplement, you should rely on the information in the prospectus supplement.

Before making an investment decision, you should read carefully both this prospectus and any prospectus supplement together with the documents incorporated by reference into this prospectus as described below under the heading “Incorporation by Reference.” The registration statement that contains this prospectus, including the exhibits to the registration statement and the information incorporated by reference, provides additional information about us and our securities. The registration statement can be read at the SEC web site ([www.sec.gov](http://www.sec.gov)) or at the SEC public reference room as discussed below under the heading “Where You Can Find More Information.”



You should rely only on the information that we have provided or incorporated by reference in this prospectus and any applicable prospectus supplement that we may authorize to be provided to you. We have not authorized anyone to provide you with information in addition to or different from that contained in this prospectus and any applicable prospectus supplement. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus and any applicable prospectus supplement that we may authorize to be provided to you. You must not rely on any unauthorized information or representation. If anyone provides you with different or inconsistent information, you should not rely on it. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. We will not make an offer to sell our securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus or any accompanying prospectus supplement, as well as information we have previously filed with the Securities and Exchange Commission and incorporated herein by reference, is accurate as of the date on the front of those documents only. Our business, financial condition, results of operations and prospects may have changed since those dates. **This prospectus may not be used to consummate a sale of our securities unless it is accompanied by a prospectus supplement.**

Unless otherwise mentioned or unless the context requires otherwise, all references in this prospectus to “the Company,” “Innodata,” “we,” “us,” “our,” or similar references mean Innodata Inc., a Delaware corporation and its subsidiaries.

## **THE COMPANY**

Innodata is a global digital services and solutions company. Our technology and services power leading information products and online retail destinations around the world. Our solutions help prestigious enterprises harness the power of digital data to re-imagine how they operate and drive performance. We serve publishers, media and information companies, digital retailers, banks, insurance companies, government agencies and many other industries. We take a “technology-first” approach, applying advanced technologies in innovative ways. Founded in 1988, we comprise a team of 5,000 diverse people in eight countries who are dedicated to delivering services and solutions that help the world make better decisions.

The Company operates in three reporting segments: Content Services (CS), Innodata Advanced Data Solutions (IADS) and Media Intelligence Solutions (MIS).

Our CS segment provides solutions to digital retailers, information services companies, publishers and enterprises that have one or more of the following broad business requirements: development of digital content (including e-books); development of new digital information products; and operational support of existing digital information products and systems. By blending consulting, technology and operations sourcing, along with deep domain expertise, we provide measurable outcomes for publishing companies, information services companies and enterprises through business transformation, accelerating innovation and efficient operations.

Our IADS segment operates through our Synodex and docGenix subsidiaries. The main focus of the Synodex business is the extraction and classification of data from unstructured medical records in an innovative way to provide improved data service capabilities for insurance underwriting, insurance claims, medical records management and clinical trial support services. The main focus of the docGenix business is the extraction of data from unstructured legal documents in order to improve an organizations ability to analyze documentation and feed actionable data to downstream applications.

Our MIS segment operates through our MediaMiser and Bulldog Reporter subsidiaries. MediaMiser provides media monitoring and analysis software and professional services. Bulldog Reporter supplies media intelligence news and analysis to public relations and corporate communications professionals with the mission of helping these

practitioners achieve competitive performance.

For a description of our business, financial condition, results of operations and other important information regarding Innodata, we refer you to our filings with the SEC that are incorporated by reference in this prospectus. For instructions on how to find copies of these documents, see the section under the heading “Where You Can Find More Information.” More information about us is also available through our website at [www.innodata.com](http://www.innodata.com). The information on our website is not incorporated by reference into this prospectus or any accompanying prospectus supplement.

Our principal executive offices are located at Three University Plaza, Hackensack, New Jersey 07601. Our telephone number is (201) 371-8000.

## FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference contain “forward-looking statements” of Innodata within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. These risks and uncertainties and other factors relate to, among other things:

- that contracts may be terminated by clients;

- projected or committed volumes of work may not materialize;

- our Innodata Advanced Data Solutions (“IADS”) segment is a venture formed in 2011 with minimal revenue to date, that has incurred losses since inception and has recorded impairment charges for all of its fixed assets;

- we currently intend to continue to invest in IADS;

- the primarily at-will nature of contracts with our Content Services clients and the ability of these clients to reduce, delay or cancel projects;

- continuing Content Services segment revenue concentration in a limited number of clients;

- continuing Content Services segment reliance on project-based work;

- inability to replace projects that are completed, canceled or reduced;

- difficulty in integrating and deriving synergies from acquisitions, joint venture and strategic investments;

potential undiscovered liabilities of companies that we may acquire;

depressed market conditions;

changes in external market factors;

the ability and willingness of our clients and prospective clients to execute business plans which give rise to requirements for our services;

changes in our business or growth strategy;

the emergence of new or growing competitors; and

various other competitive and technological factors;

Words such as “project,” “estimate”, “head start,” “believe,” “expect,” “should,” “anticipate,” “indicate,” “point to,” “forecast,” “likely” and other similar expressions identify forward-looking statements.

Further, any forward-looking statement made by us herein and in the documents incorporated by reference herein, or elsewhere, speaks only as of the date on which we make it. We undertake no obligation to update any forward-looking statements herein or therein after the date hereof or thereof, except as required by federal securities laws.

## **RISK FACTORS**

An investment in our securities involves a high degree of risk. You should carefully consider the risks described under “Risk Factors” in our most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, and all of the other information contained in this prospectus and incorporated by reference into this prospectus, including our financial statements and related notes, before investing in our securities. If any of the possible events described in those sections actually occur, our business, business prospects, cash flow, results of operations or financial condition could be harmed. In this case, the trading price of our common stock or the value of our securities could decrease, and you might lose all or part of your investment in our securities. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our operations and results.

## **USE OF PROCEEDS**

Unless otherwise indicated in the applicable prospectus supplement, we will use the net proceeds from the sale of the securities offered by us for general corporate purposes, including, among other things, working capital, new product development initiatives and/or capital expenditures, which may include expansion of our facilities. We may also use such proceeds to fund acquisitions, technologies or product lines that complement our current business. However, we do not have agreements or commitments for any specific acquisitions at this time.

The amount and timing of our use of proceeds will depend on several factors, including the extent and timing of cash collections of revenue and the amount of net cash used by our operations. Pending their uses, we plan to invest the net proceeds of this offering in short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government.

## **RATIO OF EARNINGS TO FIXED CHARGES**

For the five fiscal years ended December 31, 2014, we had no fixed charges and no shares of preferred stock for which we are required to make dividend payments. Accordingly, we have no ratio of earnings to fixed charges, and no ratio of earnings to combined fixed charges and preferred stock dividends, to illustrate for this period.

## **DESCRIPTION OF CAPITAL STOCK**

*The following summary of the terms of our capital stock does not purport to be complete and is subject to, and qualified in its entirety by, our Restated Certificate of Incorporation, as amended (the “Certificate of Incorporation”), and our Amended and Restated Bylaws (“Bylaws”), copies of which are filed as exhibits to our SEC reports previously filed by us. See “Where You Can Find More Information.”*

*Certain provisions of our Certificate of Incorporation, Stockholder Rights Plan and Bylaws may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock or the value of our securities.*

## **General**

Our authorized capital stock consists of (i) 75,000,000 shares of common stock, par value \$0.01 per share; (ii) 100,000 shares of Series C participating preferred stock, par value \$0.01 per share (“Series C Preferred Stock”); and (iii) 4,900,000 shares of preferred stock. Our board of directors authorized our Series C Preferred Stock in connection with the adoption of the Stockholder Rights Plan described below. We redeemed all shares of our Series A preferred stock and Series B preferred stock in December 1996.

As of September 30, 2015, there were outstanding 25,484,271 shares of common stock and options to purchase 3,390,146 additional shares of common stock. No shares of preferred stock were outstanding on that date.

## Description of our Common Stock

### **General**

Holders of common stock are entitled to one vote per share for each share held of record on all matters submitted to a vote of stockholders, including the election of directors, and do not have cumulative voting rights. Pursuant to our Bylaws, a majority of the shares entitled to vote thereat constitute a quorum at a meeting of stockholders for the transaction of any business. The holders of common stock are entitled to receive equally on a per share basis such lawful dividends as may be declared by our board of directors. In the event of a liquidation, dissolution or winding up of our business, after payments to creditors and the holders of any senior securities, the holders of common stock will be entitled to receive pro rata all of our remaining assets available for distribution to our stockholders. The common stock has no preemptive, redemption, conversion or subscription rights. All outstanding shares of common stock are fully paid and non-assessable. The shares of common stock to be issued by us in any offering, when issued in consideration of payment, will be fully paid and non-assessable.

## Stockholder Rights Plan



On December 27, 2012, our Board of Directors declared a dividend of one preferred share purchase right (each, a “Right,” and collectively, the “Rights”) for each outstanding share of the Company’s common stock on January 14, 2013. The description and terms of the Rights are set forth in a Rights Agreement between the Company and American Stock Transfer & Trust Co., as rights agent, dated as of December 27, 2012 (the “Rights Agreement”). Each Right entitles its holder to purchase, under certain conditions, one one-thousandth of a share of Series C Participating Preferred Stock (“Preferred Stock”). Each one one-thousandth of a share of Preferred Stock has substantially the same rights as one share of the Company’s common stock. Subject to the terms and conditions of the Rights Agreement, Rights become exercisable ten days after the public announcement that a “Person” has become an “Acquiring Person” (as each such term is defined in the Rights Agreement) by obtaining beneficial ownership of 20% or more of the Company’s outstanding common stock, or, if earlier, ten business days (or a later date determined by the Board of Directors before any Person becomes an Acquiring Person) after a Person begins a tender or exchange offer which, if completed, would result in that Person becoming an Acquiring Person. Any Rights held by an Acquiring Person are void and may not be exercised.

If a Person becomes an Acquiring Person, all holders of Rights, except the Acquiring Person, may purchase at the Right's then-current exercise price, the Company's common stock having a market value equal to twice the exercise price. Moreover, at any time after a Person becomes an Acquiring Person (unless such Person acquires 50 percent or more of the common stock of the Company then outstanding, as more fully described in the Rights Agreement), the Board of Directors may exchange one share of the Company's common stock for each outstanding Right (other than rights owned by such Person, which would have become void). In addition, if the Company is acquired in a merger or other business combination transaction after a Person becomes an Acquiring Person, all holders of Rights, except the Acquiring Person, may purchase at the Right's then-current exercise price, a number of the acquiring Company's common stock having a market value of twice the exercise price. If the Company receives a "qualifying offer" (which includes certain all-cash fully financed tender offers or exchange offers for all of the Company's outstanding common stock), under certain circumstances, holders of 10 percent of the Company's outstanding common stock (excluding stock held by the offeror and its affiliates and associates) may direct the Board of Directors to call a special meeting of stockholders to consider a resolution exempting such "qualifying offer" from the Rights Agreement. The Rights themselves have no voting power. The Board of Directors may redeem the Rights at an initial redemption price of \$0.001 per Right under certain circumstances set forth in the Rights Agreement.

The Rights Agreement was approved by the Company's stockholders at the 2013 annual meeting. The Rights will expire on January 13, 2016 unless earlier redeemed or exchanged.

The Rights Agreement and related documents are attached as exhibit 4.1 to the Form 8-K that we filed with SEC on January 2, 2013. The foregoing brief description is qualified in its entirety by reference to the Rights Agreement and related documents.

### **Delaware Anti-Takeover Law**

We are subject to Section 203 of the Delaware General Corporation Law. Section 203 generally prohibits a public Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered

in a tender or exchange offer; or

on or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 generally defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;

- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;

- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; and

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

### **Special Meetings of Stockholders; Notice Requirements**

Our Bylaws provide that the Chairman of our board of directors, a majority of our board of directors and our Chief Executive Officer each have the power able to call a special meeting of stockholders, and that stockholders do not have the power to call a special meeting of stockholders. Our Bylaws also provide that stockholders may propose nominees for election of directors, or propose other actions at annual or special meetings of stockholders, only if the stockholders give to us advance notice in the manner provided in the Bylaws. These notice procedures may prevent a contest for the election of directors or the consideration of stockholder proposals. This could deter a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposals, without regard to whether consideration of such nominees or proposals might be harmful or beneficial to us and our stockholders.

### **Directors' Liability; Indemnification of Directors and Officers**

The Company is a Delaware corporation. Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of such corporation, by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise, if such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. Section 145 of the DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any indemnified person against any liability asserted against him or her and incurred by him or her in any indemnified capacity, or arising out of his or her status as such, regardless of whether the corporation would otherwise have the power to indemnify him or her under the DGCL.

Our Certificate of Incorporation provides that we will indemnify our directors and officers, and the directors and officers of our subsidiaries, to the maximum extent permitted by law. Our Certificate of Incorporation also provides that a director, or former director, shall not be liable to us or to any of our stockholders for monetary damages for

breach of fiduciary duty as a director, it being provided that such indemnity provision does not eliminate or limit the liability of a director: (i) for any breach of the director's duty of loyalty to us or to our stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the General Corporation Law of the State of Delaware, pertaining to the liability of directors for unlawful payment of dividends or unlawful stock purchase or redemption; or (iv) for any transaction from which the director derived an improper personal benefit. Our Bylaws provide that we shall indemnify our directors and officers to the fullest extent permitted by law, or as otherwise set forth in an indemnification agreement entered into between us and an officer or director. Furthermore, we have entered into agreements with our directors in which we agreed to indemnify the director to the maximum extent permitted by law. We also maintain directors' and officers' liability insurance.

## **Stock Transfer Agent**

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

## **Description of Preferred Stock**

Our Certificate of Incorporation provides that our board of directors is authorized from time to time to issue up to an aggregate of 4,900,000 shares of preferred stock in one or more series. Our board of directors is also authorized, subject to the limitations prescribed by Delaware law, to establish the number of shares to be included in each series and to fix the designations, preferences, rights and any qualifications, limitations or restrictions of the shares of any series, including the dividend rights, dividend rates, conversion rights, voting rights, redemption terms and prices and liquidation preferences of shares constituting any series, as shall be determined by our board of directors in a resolution providing for the issuance of such preferred stock. As a result, the issuance of such preferred stock may adversely affect the voting or other rights of holders of common stock. No shares of preferred stock were outstanding as of October 20, 2015. The issuance of preferred stock or of rights to purchase preferred stock could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, a controlling interest in our Company.

We will describe the specific terms of a particular series of preferred stock in the prospectus supplement relating to that series. The description of preferred stock above and the description of the terms of a particular series of preferred stock in the prospectus supplement are not complete. You should refer to the applicable certificate of designation for complete information. The prospectus supplement will also contain a description of U.S. federal income tax consequences relating to the preferred stock.

## **DESCRIPTION OF DEBT SECURITIES**

The following is a summary of the general terms of the debt securities. We will file a prospectus supplement or term sheet that will contain additional terms when we issue debt securities. The terms presented here, together with the terms in a related prospectus supplement or term sheet, will be a description of the material terms of the debt securities. You should also read the indenture under which the debt securities are to be issued and the form of debt securities. Such indenture may be supplemented from time to time. We have filed a form of indenture governing different types of debt securities with the Securities and Exchange Commission as an exhibit to the registration statement of which this prospectus is a part. All capitalized terms have the meanings specified in the indenture.

We may issue, from time to time, debt securities, in one or more series. The debt securities we offer will be issued under an indenture between us and the trustee named in the indenture. These debt securities that we may issue include senior debt securities, senior subordinated debt securities, subordinated debt securities, convertible debt securities and exchangeable debt securities. The following is a summary of certain provisions of the form of the indenture filed as an exhibit to the registration statement of which this prospectus is a part. For each series of debt securities, the applicable prospectus supplement or term sheet for the series may change and supplement the summary below.

### **General Terms of the Indenture**

The indenture does not limit the amount of debt securities that we may issue. It provides that we may issue debt securities up to the principal amount that we may authorize. Except for the limitations on consolidation, merger and sale of all or substantially all of our assets contained in the indenture, the terms of the indenture do not contain any covenants or other provisions designed to give holders of any debt securities protection against changes in our operations, financial condition or transactions involving us. For each series of debt securities, any restrictive covenants for those debt securities will be described in the applicable prospectus supplement or term sheet for those debt securities.

We may issue the debt securities issued under the indenture as “discount securities,” which means they may be sold at a discount below their stated principal amount. These debt securities, as well as other debt securities that are not issued at a discount, may, for United States federal income tax purposes, be treated as if they were issued with “original issue discount,” or OID, because of interest payment and other characteristics. Special United States federal income tax considerations applicable to debt securities issued with original issue discount will be described in more detail in any applicable prospectus supplement or term sheet.

You should refer to the prospectus supplement or term sheet relating to a particular series of debt securities for a description of the following terms of the debt securities offered by that prospectus supplement or term sheet and by this prospectus:

- the title and authorized denominations of those debt securities;

- the aggregate principal amount of the debt securities and any limit on the aggregate principal amount of that series of debt securities;

- the date or dates on which principal and premium, if any, of the debt securities of that series are payable;

- the interest rate or rates, and the dates from which interest, if any, on the debt securities of that series will accrue, and the dates when interest is payable or the method by which such dates are to be determined;

- the right, if any, to extend the interest payment periods and the duration of the extensions;

- if the amount of payments of principal or interest is to be determined by reference to an index or formula, or based on a coin or currency other than that in which the debt securities are stated to be payable, the manner in which these amounts are determined and the calculation agent, if any, with respect thereto;

- the place or places where and the manner in which principal of, premium, if any, and interest, if any, on the debt securities of that series will be payable and the place or places where those debt securities may be presented for transfer and, if applicable, conversion or exchange;

- the period or periods within which, the price or prices at which, the currency or currencies in which, and other terms and conditions upon which those debt securities may be redeemed, in whole or in part, at our option or the option of a holder of those securities, if we or a holder is to have that option;



our obligation or right, if any, to redeem, repay or purchase those debt securities pursuant to any sinking fund or analogous provision or at the option of a holder of those securities, and the terms and conditions upon which the debt securities will be redeemed, repaid or purchased, in whole or in part, pursuant to that obligation;

the terms, if any, on which the debt securities of that series will be subordinate in right and priority of payment to our other debt;

if other than the entire principal amount of the debt securities when issued, the portion of the principal amount payable upon acceleration of maturity as a result of a default on our obligations or how this portion will be determined;

whether those debt securities will be issued in fully registered form without coupons or in a form registered as to principal only with coupons or in bearer form with coupons;

whether any securities of that series are to be issued in whole or in part in the form of one or more global securities and the depositary for those global securities;

if other than United States dollars, the currency or currencies in which payment of principal of or any premium or interest on those debt securities will be payable;

if the principal of or any premium or interest on the debt securities of that series is to be payable, or is to be payable at our election or the election of a holder of those securities, in securities or other property, the type and amount of those securities or other property, or the manner of determining that amount, and the period or periods within which, and the terms and conditions upon which, any such election may be made;

· any provisions granting special rights to the holders of debt securities upon the occurrence of specified events;

the events of default and covenants relating to the debt securities that are in addition to, modify or delete those described in this prospectus;

· conversion or exchange provisions, if any, including conversion or exchange prices or rates and adjustments thereto;

whether and upon what terms the debt securities may be defeased, if different from the provisions set forth in the indenture;

· the nature and terms of any security for any secured debt securities;

· the terms applicable to any debt securities issued at a discount from their stated principal amount; and

· any other specific terms of any debt securities.

The applicable prospectus supplement or term sheet will present any material United States federal income tax considerations for holders of any debt securities and the securities exchange or quotation system on which any debt securities are to be listed or quoted.

## Conversion or Exchange Rights

Debt securities may be convertible into or exchangeable for shares of our equity securities or other securities. The terms and conditions of conversion or exchange will be stated in the applicable prospectus supplement or term sheet. The terms will include, among others, the following:

- the conversion or exchange ratio (or the calculation method);
- the conversion or exchange period (or how the period will be determined);
- provisions regarding our ability or the ability of any holder to convert or exchange the debt securities;
- events requiring adjustment to the conversion or exchange ratio; and

· provisions affecting conversion or exchange in the event of our redemption of the debt securities.

These terms may also include provisions under which the number or amount of other securities to be received by the holders of the debt securities upon conversion or exchange would be calculated according to the market price of the other securities as of a time stated in the prospectus supplement or term sheet.

### **Reopening of Issue**

We may, from time to time, reopen an issue of debt securities and issue additional debt securities with the same terms (including maturity date and interest rate) as debt securities issued on an earlier date. After such additional debt securities are issued, they will be fungible with the debt securities issued on the earlier date to the extent specified in the applicable prospectus supplement.

### **Consolidation, Merger or Sale**

We cannot consolidate with or merge with or into, convey, transfer or lease all or substantially all of our properties and assets to, any person, unless we are the continuing or successor company or unless the successor entity or person to which our properties and assets are transferred or leased is organized under the laws of the United States, any state of the United States or the District of Columbia and expressly assumes by a supplemental indenture the due and punctual payment of the principal of, any premium on and any interest on, all the outstanding debt securities and the performance of every covenant and obligation in the indenture to be performed by us. In addition, we cannot complete such a transaction unless immediately after giving effect to the transaction, no event of default under the indenture, and no event that, after notice or lapse of time or both, would become an event of default under the indenture, has occurred and is continuing. When the successor entity or person to whom our assets are transferred or leased has assumed our obligations under the debt securities and the indenture, we will be discharged from all our obligations under the debt securities and the indenture except in limited circumstances.

This covenant would not apply to any recapitalization transaction, a change of control affecting us or a highly leveraged transaction, unless the transaction or change of control were structured to include a merger or consolidation or transfer or lease of all or substantially all of our properties and assets.

### **Events of Default**

The indenture provides that the following will be “events of default” with respect to any series of debt securities:

failure to pay interest for 30 days after the date payment is due and payable; provided, however, that a valid extension of the interest payment period in accordance with the indenture will not constitute a failure to pay interest;

failure to pay principal or premium, if any, on any debt security when due, either at maturity, upon any redemption, by declaration or otherwise and, in the case of technical or administrative difficulties, only if such default persists for a period of more than three business days;

failure to perform other covenants contained in the indenture for the benefit of the debt securities for 75 days after notice is given by the holders of at least 25% in principal amount of the outstanding debt securities of that series or by the trustee as specified in the indenture;

certain events in bankruptcy, insolvency or reorganization relating to us; or

any other event of default provided in the applicable officer’s certificate, resolution of our board of directors or the supplemental indenture under which we issue a series of debt securities.

An event of default for a particular series of debt securities does not necessarily constitute an event of default for any other series of debt securities issued under the indenture. For each series of debt securities, any modifications to the above events of default will be described in the applicable prospectus supplement or term sheet for those debt securities.

The indenture provides that if an event of default occurs and is continuing with respect to any series of debt securities, either the trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series may declare the principal amount of all those debt securities (or, in the case of discount securities or indexed securities, that portion of the principal amount as may be specified in the terms of that series) to be due and payable immediately. If an event of default specified in the fourth bullet above occurs and is continuing, then the principal amount of all those debt securities (or, in the case of discount securities or indexed securities, that portion of the principal amount as may be specified in the terms of that series) will be due and payable immediately, without any declaration or other act on the part of the trustee or any holder. In certain cases, holders of a majority in principal amount of the outstanding debt securities of any series may, on behalf of holders of all those debt securities, rescind and annul a declaration of acceleration.

The indenture imposes limitations on suits brought by holders of debt securities against us. Except for actions to receive payment of principal, premium, if any, or interest, no holder of debt securities of any series may institute any action against us under the indenture unless:

- the holder has previously given to the trustee written notice of a default and continuance of such default;

the holders of at least 25% in principal amount of the outstanding debt securities of the affected series have requested that the trustee institute the action;

the requesting holders have offered the trustee indemnity for the reasonable costs, expenses and liabilities that may be incurred by bringing the action;

- the trustee has not instituted the action within 60 days of the request and offer of indemnity; and