

NANOMETRICS INC
Form 10-Q
October 31, 2014

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

FORM 10-Q

(Mark One)

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended September 27, 2014

OR

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____
Commission file number 0-13470

NANOMETRICS INCORPORATED
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)
1550 Buckeye Drive, Milpitas, CA
(Address of principal executive offices)
Registrant's telephone number, including area code: (408) 545-6000

94-2276314
(I. R. S. Employer
Identification No.)
95035
(Zip Code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or such shorter period that the registrant was required to submit and post such file) Yes No

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 the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

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

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

As of October 24, 2014, there were 24,158,015 shares of common stock, \$0.001 par value, issued and outstanding.

Table of Contents

NANOMETRICS INCORPORATED
 INDEX TO QUARTERLY REPORT ON FORM 10-Q
 FOR QUARTER ENDED SEPTEMBER 27, 2014

	Page
<u>PART I. FINANCIAL INFORMATION</u>	<u>3</u>
Item 1. <u>Financial Statements</u>	<u>3</u>
Condensed Consolidated Balance Sheets as of September 27, 2014 and December 28, 2013 (Unaudited)	<u>3</u>
<u>Condensed Consolidated Statements of Operations for the Three and Nine Month Periods Ended</u> September 27, 2014 and September 28, 2013 (Unaudited)	<u>4</u>
<u>Condensed Consolidated Statements of Comprehensive Income (Loss)</u> for the Three and Nine Month Periods Ended September 27, 2014 and September 28, 2013 (Unaudited)	<u>5</u>
<u>Condensed Consolidated Statements of Cash Flows</u> for the Nine Month Periods Ended September 27, 2014 and September 28, 2013 (Unaudited)	<u>6</u>
<u>Notes to Condensed Consolidated Financial Statements</u> (Unaudited)	<u>7</u>
Item 2. <u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>21</u>
Item 3. <u>Quantitative and Qualitative Disclosures About Market Risk</u>	<u>29</u>
Item 4. <u>Controls and Procedures</u>	<u>29</u>
<u>PART II. OTHER INFORMATION</u>	<u>31</u>
Item 1A. <u>Risk Factors</u>	<u>31</u>
Item 6. <u>Exhibits</u>	<u>31</u>
<u>Signatures</u>	<u>33</u>

PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

NANOMETRICS INCORPORATED
CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except share and per share amounts)

(Unaudited)

	September 27, 2014	December 28, 2013
ASSETS		
Current assets:		
Cash and cash equivalents	\$35,625	\$44,765
Marketable securities	48,748	48,097
Accounts receivable, net of allowances of \$253 and \$293, respectively	26,061	31,436
Inventories	35,762	34,520
Inventories-delivered systems	501	6,901
Prepaid expenses and other	9,356	10,519
Deferred income tax assets	2,922	14,516
Total current assets	158,975	190,754
Property, plant and equipment, net	50,736	47,439
Goodwill	11,039	11,743
Intangible assets, net	5,255	7,864
Deferred income tax assets	362	4,338
Other assets	593	696
Total assets	\$226,960	\$262,834
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$5,948	\$10,604
Accrued payroll and related expenses	8,395	7,853
Deferred revenue	5,944	21,749
Other current liabilities	7,834	7,993
Income taxes payable	639	758
Total current liabilities	28,760	48,957
Deferred revenue	3,253	3,718
Income taxes payable	635	1,171
Deferred tax liability	2,701	—
Other long-term liabilities	1,673	1,615
Total liabilities	37,022	55,461
Commitments and contingencies (Note 17)		
Stockholders' equity:		
Preferred stock, \$0.001 par value; 3,000,000 shares authorized; no shares issued or outstanding	—	—
Common stock, \$0.001 par value, 47,000,000 shares authorized; 24,156,554 shares and 23,537,275 shares, respectively, issued and outstanding	24	24
Additional paid-in capital	255,036	244,733
Accumulated deficit	(64,475)	(37,996)
Accumulated other comprehensive income (loss)	(647)	612
Total stockholders' equity	189,938	207,373

Total liabilities and stockholders' equity	\$226,960	\$262,834
See Notes to Condensed Consolidated Financial Statements		

3

NANOMETRICS INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share amounts)

(Unaudited)

	Three Months Ended		Nine Months Ended	
	September 27, 2014	September 28, 2013	September 27, 2014	September 28, 2013
Net revenues:				
Products	\$ 19,487	\$ 30,164	\$ 101,991	\$ 69,776
Service	7,646	8,880	24,747	28,372
Total net revenues	27,133	39,044	126,738	98,148
Costs of net revenues:				
Cost of products	10,737	18,116	52,165	40,908
Cost of service	4,292	4,469	14,061	14,510
Amortization of intangible assets	688	658	2,039	1,963
Total costs of net revenues	15,717	23,243	68,265	57,381
Gross profit	11,416	15,801	58,473	40,767
Operating expenses:				
Research and development	8,037	8,926	25,724	24,695
Selling	6,389	6,758	20,443	20,303
General and administrative	5,781	5,424	18,120	16,442
Amortization of intangible assets	103	195	318	588
Restructuring charge	1,715	1,740	1,715	1,740
Total operating expenses	22,025	23,043	66,320	63,768
Loss from operations	(10,609	) (7,242	) (7,847	) (23,001
Other income (expense):				
Interest income	13	7	37	51
Interest expense	(90	) (118	) (286	) (549
Other income (expense), net	(57	) (334	) 111	(930
Total other expense, net	(134	) (445	) (138	) (1,428
Loss before income taxes	(10,743	) (7,687	) (7,985	) (24,429
Provision for (benefit from) income taxes	17,919	(3,133	) 18,494	(9,727
Net loss	\$(28,662	) \$(4,554	) \$(26,479	) \$(14,702
Net loss per share:				
Basic	\$(1.19	) \$(0.20	) \$(1.11	) \$(0.63
Diluted	\$(1.19	) \$(0.20	) \$(1.11	) \$(0.63
Weighted shares used in per share calculation:				
Basic	24,132	23,261	23,928	23,247
Diluted	24,132	23,261	23,928	23,247

See Notes to Condensed Consolidated Financial Statements

NANOMETRICS INCORPORATED
 CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(In thousands)

(Unaudited)

	Three Months Ended		Nine Months Ended	
	September 27, 2014	September 28, 2013	September 27, 2014	September 28, 2013
Net loss	\$(28,662)	\$(4,554)	\$(26,479)	\$(14,702)
Other comprehensive income (loss):				
Change in foreign currency translation adjustment	(1,637)	1,142	(1,252)	(837)
Net change on unrealized gains on available-for-sale investments	(15)	20	(7)	17
Other comprehensive income (loss)	(1,652)	1,162	(1,259)	(820)
Comprehensive loss	\$(30,314)	\$(3,392)	\$(27,738)	\$(15,522)

See Notes to Condensed Consolidated Financial Statements

NANOMETRICS INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(Unaudited)

	Nine Months Ended	
	September 27, 2014	September 28, 2013
Cash flows from operating activities:		
Net loss	\$(26,479	) \$(14,702
Reconciliation of net loss to net cash used in operating activities:		
Depreciation and amortization	8,660	6,536
Stock-based compensation	5,115	5,912
Excess tax benefit from equity awards	—	467
Loss on disposal of fixed assets	80	173
Provision for doubtful accounts receivable	11	—
Inventory write-down	1,109	6,307
Deferred income taxes	20,776	(9,659
Changes in fair value of contingent consideration	118	1,045
Changes in assets and liabilities:		
Accounts receivable	4,871	(1,818
Inventories	(7,998	) (7,173
Inventories-delivered systems	6,400	(300
Prepaid expenses and other	1,751	820
Accounts payable, accrued and other liabilities	(4,535	) 6,798
Deferred revenue	(16,270	) 2,044
Income taxes payable	(3,158	) (363
Net cash used in operating activities	(9,549	) (3,913
Cash flows from investing activities:		
Maturities of marketable securities	25,570	38,030
Purchases of marketable securities	(26,810	) (40,797
Purchases of property, plant and equipment	(2,800	) (3,516
Net cash used in investing activities	(4,040	) (6,283
Cash flows from financing activities:		
Payments to Zygo Corporation related to acquisition	(470	) (735
Repayments of debt obligations	—	(5,224
Proceeds from sale of shares under employee stock option and purchase plans	5,852	3,192
Excess tax benefit from equity awards	—	(467
Taxes paid on net issuance of stock awards	(664	) (86
Repurchases of common stock	—	(5,000
Net cash provided by (used in) financing activities	4,718	(8,320
Effect of exchange rate changes on cash and cash equivalents	(269	) (566
Net decrease in cash and cash equivalents	(9,140	) (19,082
Cash and cash equivalents, beginning of period	44,765	62,915
Cash and cash equivalents, end of period	\$35,625	\$43,833
Supplemental disclosure of non-cash investing activities:		
Transfer of inventory to property, plant and equipment, net	\$4,627	\$3,106
See Notes to Condensed Consolidated Financial Statements		

NANOMETRICS INCORPORATED
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

Note 1. Nature of Business and Basis of Presentation

Description of Business – Nanometrics Incorporated (“Nanometrics” or the “Company”) and its wholly-owned subsidiaries, design, manufacture, market, sell and support thin film, optical critical dimension and overlay dimension metrology and inspection systems used primarily in the manufacturing of semiconductors, solar photovoltaics (“solar PV”) and high-brightness LEDs (“HB-LED”), as well as by customers in the silicon wafer and data storage industries. Nanometrics' metrology systems precisely measure a wide range of film types deposited on substrates during manufacturing to control manufacturing processes and increase production yields in the fabrication of integrated circuits. The thin film metrology systems use a broad spectrum of wavelengths, high-sensitivity optics, proprietary software, and patented technology to measure the thickness and uniformity of films deposited on silicon and other substrates as well as their chemical composition. The Company’s optical critical dimension technology is a patented critical dimension measurement technology that is used to precisely determine the dimensions on the semiconductor wafer that directly control the resulting performance of the integrated circuit devices. The overlay metrology systems are used to measure the overlay accuracy of successive layers of semiconductor patterns on wafers in the photolithography process. Nanometrics' inspection systems are used to find defects on patterned and unpatterned wafers at nearly every stage of the semiconductor production flow. The corporate headquarters of Nanometrics is located in Milpitas, California.

Basis of Presentation – The accompanying condensed consolidated financial statements ("financial statements") have been prepared on a consistent basis with the audited consolidated financial statements as of December 28, 2013, and include all normal recurring adjustments necessary to fairly present the information set forth therein. All significant intercompany accounts and transactions have been eliminated in consolidation. The financial statements have been prepared in accordance with the regulations of the United States Securities and Exchange Commission (“SEC”) for interim periods in accordance with S-X Article 10, and, therefore, omit certain information and footnote disclosure necessary to present the statements in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). The operating results for interim periods are not necessarily indicative of the operating results that may be expected for the entire year. These financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the fiscal year ended December 28, 2013, which were included in the Company’s Annual Report on Form 10-K filed with the SEC on March 7, 2014.

Fiscal Period – The Company uses a 52/53 week fiscal year ending on the last Saturday of the calendar year. All references to the quarter refer to Nanometrics' fiscal quarter. The fiscal quarters presented herein include 13 weeks.

Reclassification – Certain prior year amounts have been reclassified to conform to the current year presentation.

Use of Estimates – The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ materially from those estimates. Estimates are used for, but not limited to, revenue recognition, the provision for doubtful accounts, the provision for excess, obsolete, or slow moving inventories, valuation of intangible and long-lived assets, warranty accruals, income taxes, valuation of stock-based compensation and contingencies.

Revenue Recognition – The Company derives revenue from the sale of process control metrology systems (“product revenue”) as well as spare part sales, billable service, service contracts and upgrades (together “service revenue”). Upgrades are a group of parts and/or software that change the existing configuration of a product and are included in

service revenue. They are distinguished from product revenue, which consists of complete, advanced process control metrology and inspection systems (the “system(s)”). Nanometrics' systems consist of hardware and software components that function together to deliver the essential functionality of the system. Arrangements for sales of systems often include defined customer-specified acceptance criteria.

In summary, the Company recognizes revenue when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the seller's price is fixed or determinable, and collectability is reasonably assured.

NANOMETRICS INCORPORATED
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

For product sales to existing customers, revenue recognition occurs at the time title and risk of loss transfer to the customer, which usually occurs upon shipment from the Company's manufacturing location, if it can be reliably demonstrated that the product has successfully met the defined customer specified acceptance criteria and all other recognition criteria has been met. For initial sales where the product has not previously met the defined customer specified acceptance criteria, product revenues are recognized upon the earlier of receipt of written customer acceptance or expiration of the contractual acceptance period. In Japan, where contractual terms with the customer specify risk of loss and title transfers upon customer acceptance, revenue is recognized upon receipt of written customer acceptance, provided that all other recognition criteria have been met.

The Company warrants its products against defects in manufacturing. Upon recognition of product revenue, a liability is recorded for anticipated warranty costs. On occasion, customers request a warranty period longer than the Company's standard warranty. In those instances where extended warranty services are separately quoted to the customer, the associated revenue is deferred and recognized as service revenue ratably over the term of the contract. The portion of service contracts and extended warranty services agreements that are uncompleted at the end of any reporting period are included in deferred revenue.

As part of its customer services, the Company sells software that is considered to be an upgrade to a customer's existing systems. These standalone software upgrades are not essential to the tangible product's functionality and are accounted for under software revenue recognition rules which require vendor specific objective evidence ("VSOE") of fair value to allocate revenue in a multiple element arrangement. Revenue from upgrades is recognized when the upgrades are delivered to the customer, provided that all other recognition criteria have been met.

Revenue related to spare parts is recognized upon shipment. Revenue related to billable services is recognized as the services are performed. Service contracts may be purchased by the customer during or after the warranty period and revenue is recognized ratably over the service contract period.

Frequently, the Company delivers products and various services in a single transaction. The Company's deliverables consist of tools, installation, upgrades, billable services, spare parts, and service contracts. The Company's typical multi-element arrangements include a sale of one or multiple tools that include installation and standard warranty. Other arrangements consist of a sale of tools bundled with service elements or delivery of different types of services. The Company's tools, upgrades, and spare parts are generally delivered to customers within a period of up to six months from order date. Installation is usually performed soon after delivery of the tool. The portion of revenue associated with installation is deferred based on relative selling price and that revenue is recognized upon completion of the installation. Billable services are billed on a time and materials basis and performed as requested by customers. Under service contract arrangements, services are provided as needed over the fixed arrangement term. The Company does not grant its customers a general right of return or any refund terms and imposes a penalty on orders canceled prior to the scheduled shipment date.

The Company regularly evaluates its revenue arrangements to identify deliverables and to determine whether these deliverables are separable into multiple units of accounting. In accordance with revenue recognition guidance, the Company allocates the arrangement consideration among the deliverables based on relative selling prices. The Company has established VSOE for some of its products and services when a substantial majority of selling prices falls within a narrow range when sold separately. For deliverables with no established VSOE, the Company uses best estimate of selling price to determine standalone selling price for such deliverable. The Company does not use third party evidence to determine standalone selling price since this information is not widely available in the market as the

Company's products contain a significant element of proprietary technology and the solutions offered differ substantially from competitors. The Company has established a process for developing estimated selling prices, which incorporates historical selling prices, the effect of market conditions, gross margin objectives, pricing practices, as well as entity-specific factors. The Company monitors and evaluates estimated selling price on a regular basis to ensure that changes in circumstances are accounted for in a timely manner.

When certain elements in multiple-element arrangements are not delivered or accepted at the end of a reporting period, the relative selling prices of undelivered elements are deferred until these elements are delivered and/or accepted. If deliverables cannot be accounted for as separate units of accounting, the entire arrangement is accounted for as a single unit of accounting and revenue is deferred until all elements are delivered and all revenue recognition requirements are met.

NANOMETRICS INCORPORATED
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

Note 2. Recent Accounting Pronouncements

In July 2013, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2013-11, Income Taxes (Topic 740): Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists (a consensus of the FASB Emerging Issues Task Force) ("ASU 2013-11"), which provides that a liability related to an unrecognized tax benefit would be offset against a deferred tax asset for a net operating loss carryforward, a similar tax loss or a tax credit carryforward if such settlement is required or expected in the event the uncertain tax position is disallowed. In situations in which a net operating loss carryforward, a similar tax loss or a tax credit carryforward is not available at the reporting date under the tax law of the jurisdiction or the tax law of the jurisdiction does not require, and the entity does not intend to use, the deferred tax asset for such purpose, the unrecognized tax benefit will be presented in the financial statements as a liability and will not be combined with deferred tax assets. The amendments should be applied prospectively to all unrecognized tax benefits that exist at the effective date. Retrospective application is permitted. ASU 2013-11 is effective for fiscal years and interim periods beginning after December 15, 2013. The Company adopted this standard during the three months ended March 29, 2014, resulting in a one-time tax benefit of \$0.3 million, a reduction in deferred tax assets of \$0.3 million, and a reduction in long-term income taxes payable of \$0.6 million.

In May 2014, the FASB issued Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers ("ASU 2014-09"), which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The standard will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. The new standard is effective for the Company on January 1, 2017. Early application is not permitted. The standard permits the use of either the retrospective or cumulative effect transition method. The Company is evaluating the effect that ASU 2014-09 will have on its consolidated financial statements and related disclosures. The Company has not yet selected a transition method nor has it determined the effect of the standard on its ongoing financial reporting.

Note 3. Fair Value Measurements and Disclosures

Fair value is defined as the price that would be received upon the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The standard assumes that the transaction to sell the asset or transfer the liability occurs in the principal or most advantageous market for the asset or liability, and establishes that the fair value of an asset or liability shall be determined based on the assumptions that market participants would use in pricing the asset or liability.

The Company determines the fair values of its financial instruments based on the fair value hierarchy established in ASC 820, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The classification of a financial asset or liability within the hierarchy is based upon the lowest level input that is significant to the fair value measurement. The fair value hierarchy prioritizes the inputs into the following three levels that may be used to measure fair value:

Level 1 — Quoted prices in active markets for identical assets or liabilities.

Level 2 — Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument.

Level 3 — Unobservable inputs that are supported by little or no market activity and are significant to the fair value of the assets or liabilities. Such unobservable inputs include an estimated discount rate used in the Company's discounted present value analysis of future cash flows, which reflects the Company's estimate of debt with similar terms in the current credit markets. As there is currently minimal activity in such markets, the actual rate could be materially different.

NANOMETRICS INCORPORATED
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

The following tables present the Company's assets and liabilities measured at estimated fair value on a recurring basis, excluding accrued interest components, categorized in accordance with the fair value hierarchy (in thousands), as of the following dates:

	September 27, 2014				December 28, 2013			
	Fair Value Measurements Using Input Types				Fair Value Measurements Using Input Types			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets:								
Cash equivalents:								
Money market funds	\$549	\$—	\$—	\$549	\$876	\$—	\$—	\$876
Commercial paper	—	650	—	650	—	750	—	750
Total cash equivalents	549	650	—	1,199	876	750	—	1,626
Marketable securities:								
U.S. Treasury, U.S. Government and U.S. Government agency debt securities	2,498	18,687	—	21,185	5,036	11,980	—	17,016
Commercial paper, municipal securities and corporate debt securities	—	27,563	—	27,563	—	31,081	—	31,081
Total marketable securities	2,498	46,250	—	48,748	5,036	43,061	—	48,097
Total ⁽¹⁾	\$3,047	\$46,900	\$—	\$49,947	\$5,912	\$43,811	\$—	\$49,723
Liabilities:								
Contingent consideration payable	\$—	\$—	\$2,431	\$2,431	\$—	\$—	\$2,783	\$2,783

⁽¹⁾ Excludes cash of \$34.4 million and \$43.1 million held in operating accounts as of September 27, 2014 and December 28, 2013, respectively.

The fair values of the marketable securities that are classified as Level 1 in the table above were derived from quoted market prices for identical assets or liabilities that the Company has the ability to access. The fair value of marketable securities that are classified as Level 2 in the table above were derived from: non-binding market consensus prices that were corroborated by observable market data, quoted market prices for similar instruments, or pricing models, such as discounted cash flow techniques, with all significant inputs derived from or corroborated by observable market data. There were no transfers of instruments between Level 1, Level 2 and Level 3 during the financial periods presented. Changes in Level 3 liabilities (in thousands)

provided further, however, that the amount of any Net Available Cash that continues to be segregated for investment and that is not actually reinvested within twenty-four months from the date of the receipt of such Net Available Cash shall also constitute "Excess Proceeds." Any Net Available Cash from an Asset Sale consisting of all of the Capital Stock of Canyon Fuel Company, LLC or Mountain Coal Company, L.L.C. not applied in accordance with the preceding paragraph within 365 days from the date of the receipt of such Net Available Cash shall be segregated from the general funds of Arch Coal and invested in cash or Cash Equivalents pending application in accordance with the preceding paragraph. Subject to the foregoing, Arch Coal or such Restricted Subsidiary may apply the Net Available Cash to temporarily reduce Debt outstanding under a revolving credit facility or otherwise invest such Net Available Cash in any manner not

Edgar Filing: NANOMETRICS INC - Form 10-Q

prohibited by the Indenture pending the final application of the Net Available Cash pursuant to this covenant.

When the aggregate amount of Excess Proceeds exceeds \$50.0 million (or earlier at Arch Coal's option, in which case Excess Proceeds shall be deemed to include any Net Available Cash Arch Coal elects to include in such repurchase offer), Arch Coal will be required to make an offer to repurchase (the "Prepayment Offer") the Notes, which offer shall be in the amount of the Allocable Excess Proceeds (rounded to the nearest \$1,000), on a *pro rata* basis according to principal amount, at a

Table of Contents

purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to the repurchase date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), in accordance with the procedures (including prorating in the event of oversubscription) set forth in the Indenture. To the extent that any portion of the amount of Net Available Cash remains after compliance with the preceding sentence and *provided* that all Holders of Notes have been given the opportunity to tender their Notes for repurchase in accordance with the Indenture, Arch Coal or such Restricted Subsidiary may use such remaining amount for any purpose not prohibited by the Indenture, and the amount of Excess Proceeds will be reset to zero.

The term "Allocable Excess Proceeds" shall mean the product of:

(a) the Excess Proceeds and (b) a fraction,

(1) the numerator of which is the aggregate principal amount of the Notes outstanding on the date of the Prepayment Offer, and

(2) the denominator of which is the sum of the aggregate principal amount of the Notes outstanding on the date of the Prepayment Offer and the aggregate principal amount of other Debt of Arch Coal outstanding on the date of the Prepayment Offer that is *pari passu* in right of payment with the Notes and subject to terms and conditions in respect of Asset Sales similar in all material respects to this covenant and requiring Arch Coal to make an offer to repurchase such Debt at substantially the same time as the Prepayment Offer.

Within five business days after Arch Coal is obligated to make a Prepayment Offer as described in the preceding paragraph, Arch Coal shall send or arrange to be sent a written notice, by first-class mail, to the Holders of Notes, accompanied by such information regarding Arch Coal and its Subsidiaries as Arch Coal in good faith believes will enable such Holders to make an informed decision with respect to such Prepayment Offer. Such notice shall state, among other things, the purchase price and the repurchase date, which shall be, subject to any contrary requirements of applicable law, a business day no earlier than 30 days nor later than 60 days from the date such notice is mailed.

Arch Coal will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations conflict with provisions of this covenant, Arch Coal will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this covenant by virtue thereof.

Limitation on Restrictions on Distributions from Restricted Subsidiaries. Arch Coal shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist any consensual restriction on the right of any Restricted Subsidiary to:

(a) pay dividends, in cash or otherwise, or make any other distributions on or in respect of its Capital Stock, or pay any Debt or other obligation owed, to Arch Coal or any other Restricted Subsidiary;

(b) make any loans or advances to Arch Coal or any other Restricted Subsidiary; or

(c) transfer any of its Property to Arch Coal or any other Restricted Subsidiary.

Table of Contents

The foregoing limitations will not apply:

(1) with respect to clauses (a), (b) and (c), to restrictions:

(A) in effect on the Issue Date (including, without limitation, restrictions pursuant to the Arch Coal Senior Notes and each of the Arch Coal Senior Notes Indentures, the Amended and Restated Credit Agreement, the Notes and the Indenture);

(B) relating to any agreement or other instrument of a Restricted Subsidiary of Arch Coal and existing at the time it became a Restricted Subsidiary if such restriction was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by Arch Coal;

(C) that result from any amendment, restatement, renewal, replacement or refinancing of an agreement referred to in clause (1) (A) or (B) above or in clause (2) (A) or (B) below, *provided* such restrictions are not materially more restrictive, taken as a whole, than those under the agreement being amended, restated, renewed, refinanced or replaced;

(D) existing under, or by reason of or with respect to applicable law, rule, regulation or order of any governmental authority;

(E) on cash or other deposits or net worth imposed by customers or required by insurance surety or bonding companies, in each case, under contracts entered into in the ordinary course of business;

(F) relating to Debt of a Receivables Subsidiary or other contractual requirements of a Receivables Subsidiary in connection with a Receivables Facility; *provided* that such restrictions only apply to such Receivables Subsidiary or the receivables which are subject to the Receivables Facility;

(G) with respect to any Person or the Property of a Person acquired by Arch Coal or any of its Restricted Subsidiaries existing at the time of such acquisition and not incurred in connection with or in anticipation of such acquisition, which restriction is not applicable to any Person or the Property of any Person, other than the Person, or the Property of the Person, so acquired and any amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings thereof, *provided* that the restrictions in any such amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, than those in effect on the date of the acquisition;

(H) contained in customary provisions in asset sale agreements limiting the transfer of such Property or distributions or loans from the Property to be sold pending the closing of such sale;

(I) contained in customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements that restrict the transfer of ownership interest in, or assets of, such partnership, limited liability company, joint venture or similar Person; and

(J) contained in agreements or instruments governing the Debt of a Restricted Subsidiary; *provided* that such restrictions contained in any agreement or instrument will not materially affect Arch Coal's ability to make anticipated principal or interest payments on the Notes (as determined in good faith by the Board of Directors or the senior management of Arch Coal); and

Table of Contents

(2) with respect to clause (c) only, to restrictions:

(A) relating to Debt that is permitted to be Incurred and secured without also securing the Notes pursuant to the covenants described under " Limitation on Debt" and " Limitation on Liens" that limit the right of the debtor to dispose of the Property securing such Debt;

(B) resulting from customary provisions restricting subletting, assignment or transfer of any property or asset that is subject to a lease, license, sub-license or similar contract or customary provisions in other agreements that restrict assignment or transfer of such agreements or rights thereunder; or

(C) customary restrictions contained in asset sale agreements limiting the transfer of such Property pending the closing of such sale.

Limitation on Transactions with Affiliates. Arch Coal shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, enter into or suffer to exist any transaction or series of transactions (including the purchase, sale, transfer, assignment, lease, conveyance or exchange of any Property or the rendering of any service) with, or for the benefit of, any Affiliate of Arch Coal (an "Affiliate Transaction") involving consideration in excess of \$15.0 million, unless:

(a) the terms of such Affiliate Transaction are not materially less favorable to Arch Coal or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of Arch Coal;

(b) if such Affiliate Transaction involves aggregate payments or value in excess of \$50.0 million, the Board of Directors approves such Affiliate Transaction and, in its good faith judgment, believes that such Affiliate Transaction complies with clauses (a) of this paragraph as evidenced by a Board Resolution promptly delivered to the Trustee; and

(c) if such Affiliate Transaction involves aggregate payments or value in excess of \$250.0 million, Arch Coal obtains a written opinion from an Independent Financial Advisor to the effect that the consideration to be paid or received in connection with such Affiliate Transaction is fair, from a financial point of view, to Arch Coal or such Restricted Subsidiary or that such Affiliate Transaction is not materially less favorable to Arch Coal or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable arm's length transaction with a Person that is not an Affiliate of Arch Coal.

Notwithstanding the foregoing limitation, Arch Coal or any Restricted Subsidiary may enter into or suffer to exist the following:

(a) any transaction or series of transactions between Arch Coal and one or more Restricted Subsidiaries, or among Restricted Subsidiaries;

(b) any Restricted Payment permitted to be made pursuant to the covenant described under " Limitation on Restricted Payments" or Permitted Investments (other than pursuant to clause (b) or (c) of such definition);

(c) any reasonable and customary employment, consulting, service or termination agreement, or indemnification agreement, entered into by Arch Coal or any of its Restricted Subsidiaries with officers, directors, employees and consultants of Arch Coal or any of its Restricted Subsidiaries and the payment of fees or compensation (including amounts paid pursuant to employment and related agreements and employee benefit plans) for the personal services of current or former officers, directors, employees and consultants of Arch Coal or any of its Restricted Subsidiaries (including amounts paid pursuant to employee benefit plans, employee stock option, stock awards or similar plans);

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

(d) loans and advances to employees made in the ordinary course of business permitted by law and consistent with the past practices of Arch Coal or such Restricted Subsidiary;

(e) indemnities of officers, directors and employees of the Company or any Restricted Subsidiary consistent with applicable charter, bylaw or statutory provisions;

(f) agreements in effect on the Issue Date and any modifications, extensions or renewals thereto that are not materially less favorable taken as a whole to Arch Coal or any Restricted Subsidiary than such agreements as in effect on the Issue Date;

(g) pledges of Capital Stock of Unrestricted Subsidiaries for the benefit of lenders to such Unrestricted Subsidiaries;

(h) any transaction with a Receivables Subsidiary as part of a Receivables Facility and otherwise in compliance with the Indenture that are fair to Arch Coal or its Restricted Subsidiaries or not less favorable to Arch Coal or its Restricted Subsidiaries than those that might be obtained at the time with Persons that are not Affiliates of Arch Coal (as determined in good faith by the Board of Directors); and

(i) transactions with Unrestricted Subsidiaries, customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or lessors or lessees of property, in each case in the ordinary course of business (including, without limitation, pursuant to joint venture agreements) and otherwise in compliance with the terms of the Indenture which are, in the aggregate (taking into account all the costs and benefits associated with such transactions), materially no less favorable taken as a whole to Arch Coal or its Restricted Subsidiaries than those that would have been obtained in a comparable transaction by Arch Coal or such Restricted Subsidiary with an unrelated Person, as determined in good faith by Arch Coal.

Designation of Restricted and Unrestricted Subsidiaries. The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation (which would constitute an Investment in such Subsidiary) would not result in a breach of the covenant described under " Limitation on Restricted Payments" or otherwise cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by Arch Coal and its Restricted Subsidiaries in the Subsidiary properly designated will be deemed to be an Investment made as of the time of the designation as set forth under the definition of "Investment" and will reduce the amount available for Restricted Payments under the " Limitation on Restricted Payments" covenant or Permitted Investments, as determined by Arch Coal. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

The Board of Directors may also designate any Subsidiary of Arch Coal to be an Unrestricted Subsidiary if:

(a) the Subsidiary to be so designated does not own any Capital Stock or Debt of, or own or hold any Lien on any Property of, Arch Coal or any other Restricted Subsidiary and is not required to be a Guarantor pursuant to the Indenture; and

(b) either:

(1) the Subsidiary to be so designated has total assets of \$1.0 million or less; or

(2) such designation is effective immediately upon such entity becoming a Subsidiary of Arch Coal.

Unless so designated as an Unrestricted Subsidiary, any Person that becomes a Subsidiary of Arch Coal will be classified as a Restricted Subsidiary; *provided, however*, that such Subsidiary shall not be designated a Restricted Subsidiary and shall be automatically classified as an Unrestricted Subsidiary if

Table of Contents

either of the requirements set forth in clauses (x) and (y) of the second immediately following paragraph will not be satisfied after giving *pro forma* effect to such classification or if such Person is a Subsidiary of an Unrestricted Subsidiary.

In addition, neither Arch Coal nor any of its Restricted Subsidiaries shall at any time be directly or indirectly liable for any Debt that provides that the holder thereof may (with the passage of time or notice or both) declare a default thereon or cause the payment thereof to be accelerated or payable prior to its Stated Maturity upon the occurrence of a default with respect to any Debt, Lien or other obligation of any Unrestricted Subsidiary (including any right to take enforcement action against such Unrestricted Subsidiary) except for a pledge of the Capital Stock of any Unrestricted Subsidiary for the benefit of such holders.

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary if, immediately after giving *pro forma* effect to such designation,

(x) Arch Coal could Incur at least \$1.00 of additional Debt pursuant to clause (1) of the first paragraph of the covenant described under " Limitation on Debt," and

(y) no Default or Event of Default shall have occurred and be continuing or would result therefrom.

Any such designation or redesignation by the Board of Directors will be evidenced by filing with the Trustee a Board Resolution giving effect to such designation or redesignation and an Officers' Certificate that:

(a) certifies that such designation or redesignation complies with the foregoing provisions; and

(b) gives the effective date of such designation or redesignation,

such filing with the Trustee to occur within 45 days after the end of the fiscal quarter of Arch Coal in which such designation or redesignation is made (or, in the case of a designation or redesignation made during the last fiscal quarter of Arch Coal's fiscal year, within 90 days after the end of such fiscal year).

Guarantees by Restricted Subsidiaries. Arch Coal shall not permit any Restricted Subsidiary that is not a Guarantor, directly or indirectly, to Guarantee or secure the payment of any other Debt of Arch Coal or any of its Restricted Subsidiaries under the Amended and Restated Credit Agreement or any capital markets Debt unless such Restricted Subsidiary executes and delivers a supplemental indenture to the Indenture within 15 days providing for a Note Guarantee of the payment of the Notes by such Restricted Subsidiary; *provided* that this paragraph shall not be applicable to:

(i) any Guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary;

(ii) any Guarantee arising under or in connection with performance bonds, indemnity bonds, surety bonds or letters of credit or bankers' acceptances or coal sales contracts; or

(iii) Permitted Liens.

If the Guaranteed Debt is a Subordinated Obligation, the Guarantee of such Guaranteed Debt must be subordinated in right of payment to the Note Guarantee to at least the extent that the Guaranteed Debt is subordinated to the Notes or the applicable Note Guarantee.

Merger, Consolidation and Sale of Property

Edgar Filing: NANOMETRICS INC - Form 10-Q

Arch Coal shall not merge, consolidate or amalgamate with or into any other Person (other than a merger of a Restricted Subsidiary of Arch Coal into Arch Coal) or sell, transfer, assign, lease, convey

Table of Contents

or otherwise dispose of all or substantially all its Property in any one transaction or series of transactions unless:

(a) Arch Coal is the Surviving Person or the Surviving Person (if other than Arch Coal) formed by such merger, consolidation or amalgamation or to which such sale, transfer, assignment, lease, conveyance or disposition is made shall be a corporation, partnership or limited liability company organized and existing under the laws of the United States of America, any state thereof or the District of Columbia; *provided* that at any time the Surviving Person is a partnership or a limited liability company, there shall be a co-issuer of the Notes that is a corporation that also satisfies the requirements of this covenant;

(b) the Surviving Person (if other than Arch Coal) expressly assumes, by supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such Surviving Person, the due and punctual performance and observance of all the obligations of the Indenture and the Notes;

(c) immediately after giving effect to such transaction or series of transactions on a *pro forma* basis (and treating, for purposes of this clause (c) and clause (d) below, any Debt that becomes, or is anticipated to become, an obligation of the Surviving Person or any Restricted Subsidiary as a result of such transaction or series of transactions as having been Incurred by the Surviving Person or such Restricted Subsidiary at the time of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing;

(d) immediately after giving effect to such transaction or series of transactions on a *pro forma* basis, (1) at least \$1.00 of additional Debt would be able to be Incurred under clause (1) of the first paragraph of the covenant described under " Certain Covenants Limitation on Debt" or (2) the Consolidated Interest Coverage Ratio of Arch Coal and its Restricted Subsidiaries would be equal to or greater than immediately prior to such transaction;" and

(e) Arch Coal shall deliver, or cause to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers' Certificate and an Opinion of Counsel, each stating that such transaction or series of transactions and the supplemental indenture, if any, in respect thereto comply with this covenant and that all conditions precedent herein provided for relating to such transaction or series of transactions have been satisfied.

Clause (d) above of this paragraph shall not apply to (1) any merger, consolidation or sale, assignment, transfer, conveyance or other disposition of assets between or among Arch Coal and any of its Restricted Subsidiaries or (2) a merger of Arch Coal with an Affiliate solely for the purpose of reincorporating Arch Coal in another jurisdiction.

Arch Coal shall not permit any Guarantor to consolidate with or merge with or into any Person or sell, assign, transfer, convey or otherwise dispose of, all or substantially all of its assets, in one or more related transactions, to any Person unless Arch Coal has delivered to the Trustee an Officers' Certificate and Opinion of Counsel stating that the transaction complies with the following conditions and each of the following conditions is satisfied:

(a) the other Person is Arch Coal or any Restricted Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction; or

(b) (1) either (x) the Guarantor shall be the Surviving Person or (y) the entity formed by such consolidation or into which the Guarantor is merged, expressly assumes, by a Guarantee or a supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such surviving Person the due and punctual performance and observance of all the obligations of such Guarantor under the Note Guarantee; and

Table of Contents

(2) the Surviving Person, if other than the Guarantor, is a corporation or limited liability company organized under the laws of the United States, any state thereof or the District of Columbia and immediately after giving effect to the transaction and any related Incurrence of Debt of, no Default or Event of Default shall have occurred and be continuing; or

(c) the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the assets of the Guarantor (in each case other than to another Guarantor) and at the time of such transaction after giving *pro forma* effect thereto, the provisions of clause (c) of the first paragraph of this covenant would be satisfied, the transaction is otherwise permitted by the Indenture.

The Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of Arch Coal under the Indenture (or of the Guarantor under the Note Guarantee, as the case may be), but Arch Coal, in the case of:

(a) a sale, transfer, assignment, conveyance or other disposition (unless such sale, transfer, assignment, conveyance or other disposition is of all the assets of Arch Coal as an entirety or virtually as an entirety); or

(b) a lease, shall not be released from any of the obligations or covenants under the Indenture.

Payments for Consents

Arch Coal will not, and will not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid or is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

SEC Reports

Notwithstanding that Arch Coal may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, Arch Coal shall file with the Commission and, if not filed electronically with the Commission, will provide to the Trustee (within 15 days after it would have been required to file with the Commission) such quarterly and annual information that would be required to be contained in a filing with the Commission on Forms 10-K and 10-Q, as if Arch Coal were required to file such forms; *provided, however,* that Arch Coal shall not be so obligated to file such information, documents and reports with the Commission if the Commission does not permit such filings; *provided further, however,* that Arch Coal will be required to provide to the Trustee any such quarterly and annual information, documents or reports that are not so filed.

In addition, Arch Coal and the Guarantors agree that, for so long as any Notes remain outstanding, if at any time they are not required to file with the Commission the reports required by the preceding paragraph, they will furnish to Holders of the Notes and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Events of Default

Events of Default in respect of the Notes include:

(1) failure to make the payment of any interest (including any Special Interest) on the Notes when the same becomes due and payable, and such failure continues for a period of 30 days;

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

(2) failure to make the payment of any principal of, or premium, if any, on, the Notes when the same becomes due and payable at its Stated Maturity, upon acceleration, optional redemption, required repurchase or otherwise;

(3) failure to comply with the covenant described under " Repurchase at the Option of Holders Upon a Change of Control," " Certain Covenants Limitation on Asset Sales" and Merger, Consolidation and Sale of Property;"

(4) failure to comply with the covenant described under " SEC Reports" for 120 days after written notice is given to Arch Coal as provided below;

(5) failure to comply with any other covenant or agreement in the Notes, the Indenture or the Note Guarantees (other than a failure that is the subject of the foregoing clause (1), (2), (3) or (4)), and such failure continues for 60 days after written notice is given to Arch Coal as provided below;

(6) a default under any Debt by Arch Coal or any Restricted Subsidiary that results in acceleration of the maturity of such Debt, or failure to pay any such Debt at maturity, in an aggregate amount greater than \$100.0 million or its foreign currency equivalent at the time (the "cross acceleration provisions");

(7) any final judgment or judgments for the payment of money in an aggregate amount in excess of \$100.0 million (or its foreign currency equivalent at the time), to the extent such judgments are not paid or covered by insurance provided by a reputable carrier that shall be rendered against Arch Coal or any Restricted Subsidiary and that shall not be waived, satisfied, stayed or discharged for any period of 60 consecutive days after the date on which the right to appeal has expired (the "judgment default provisions");

(8) certain events involving bankruptcy, insolvency or reorganization of Arch Coal, any Guarantor or any other Significant Subsidiary (the "bankruptcy provisions"); and

(9) any Note Guarantee shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason (other than in accordance with the provisions of the Indenture) to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligations under any Note Guarantee.

A Default under clauses (3) or (4) is not an Event of Default until the Trustee or the Holders of not less than 25% in aggregate principal amount of the Notes then outstanding notify Arch Coal of the Default and Arch Coal does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default."

Arch Coal shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers' Certificate of any event that with the giving of notice or the lapse of time or both would become an Event of Default, its status and what action is being taken or proposed to be taken with respect thereto.

If an Event of Default with respect to the Notes (other than an Event of Default resulting from the bankruptcy provisions) shall have occurred and be continuing, the Trustee or the registered Holders of not less than 25% in aggregate principal amount of the Notes then outstanding may declare to be immediately due and payable the principal amount of all the Notes then outstanding, plus accrued but unpaid interest to the date of acceleration. In case an Event of Default under the bankruptcy provisions shall occur, such amount with respect to all the Notes shall be due and payable immediately without any declaration or other act on the part of the Trustee or the Holders of the Notes. After any such acceleration, but before a judgment or decree based on acceleration is obtained by the Trustee, the registered Holders of at least a majority in aggregate principal amount of the Notes then outstanding may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal, premium or interest, have been cured or waived as provided in the Indenture.

Table of Contents

In the event of a declaration of acceleration of the Notes because an Event of Default described in clause (6) under the first paragraph above has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the default or failure to make payment triggering such Event of Default pursuant to clause (6) shall be remedied or cured by Arch Coal or a Restricted Subsidiary or waived by the holders of the relevant Debt within 20 days after the declaration of acceleration of the Notes with respect thereto and if (i) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

Subject to the provisions of the Indenture relating to the duties of the Trustee, in case an Event of Default shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the Holders of the Notes, unless such Holders shall have offered to the Trustee reasonable indemnity. Subject to such provisions for the indemnification of the Trustee, the Holders of at least a majority in aggregate principal amount of the Notes then outstanding will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes.

No Holder of Notes will have any right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any remedy thereunder, unless:

- (a) such Holder has previously given to the Trustee written notice of a continuing Event of Default;
- (b) the registered Holders of at least 25% in aggregate principal amount of the Notes then outstanding have made a written request and offered reasonable indemnity to the Trustee to institute such proceeding as Trustee; and
- (c) the Trustee shall not have received from the registered Holders of at least a majority in aggregate principal amount of the Notes then outstanding a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days.

However, such limitations do not apply to a suit instituted by a Holder of any Note for enforcement of payment of the principal of, and premium, if any, or interest on, such Note on or after the respective due dates expressed in such Note.

Amendments and Waivers

Subject to certain exceptions, Arch Coal and the Trustee with the consent of the registered Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a tender offer or exchange offer for the Notes) may amend the Indenture and the Notes or the Note Guarantees and the registered Holders of at least a majority in aggregate principal amount of the Notes outstanding may waive any past default or compliance with any provisions of the Indenture, the Notes or the Note Guarantees (except a default in the payment of principal, premium or interest and certain covenants and provisions of the Indenture which cannot be amended without the consent of each Holder of an outstanding Note). However, without the consent of each Holder of an outstanding Note, no amendment may, among other things,

- (1) reduce the amount of Notes whose Holders must consent to an amendment or waiver;
- (2) reduce the rate of, or extend the time for payment of, interest on any Note;
- (3) reduce the principal of, or extend the Stated Maturity of, any Note;
- (4) make any Note payable in money other than that stated in the Note;

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

(5) impair the right of any Holder of the Notes to receive payment of principal of, premium, if any, and interest, on, such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(6) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed (other than any notice provisions), as described under " Optional Redemption;"

(7) reduce the premium payable upon a Change of Control or, at any time after a Change of Control has occurred, change the time at which the Change of Control Offer relating thereto must be made or at which the Notes must be repurchased pursuant to such Change of Control Offer;

(8) at any time after Arch Coal is obligated to make a Prepayment Offer with the Excess Proceeds from Asset Sales, change the time at which such Prepayment Offer must be made or at which the Notes must be repurchased pursuant thereto;

(9) modify or change any provision of the Indenture affecting the ranking of the Notes or the Note Guarantees in a manner adverse to the Holders of the Notes; or

(10) release any Guarantor from any of its obligations under its Note Guarantee or the Indenture other than in accordance with the provisions of the Indenture, or amend or modify any provision relating to such release.

The Indenture and the Notes may be amended by Arch and the Trustee without the consent of any Holder of the Notes to:

(a) cure any ambiguity, omission, defect or inconsistency in any manner that is not adverse in any material respect to any Holder of the Notes;

(b) provide for the assumption by a Surviving Person of the obligations of Arch Coal under the Indenture;

(c) provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163 (f) (2) (B) of the Code);

(d) add Note Guarantees with respect to the Notes or confirm and evidence the release, termination or discharge of any security or Note Guarantee when such release, termination or discharge is permitted by the Indenture;

(e) secure the Notes, add to the covenants of Arch Coal and the Restricted Subsidiaries for the benefit of the Holders of the Notes or surrender any right or power conferred upon Arch Coal;

(f) make any change that does not adversely affect the rights of any Holder of the Notes;

(g) comply with any requirement of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;

(h) provide for the issuance of Additional Notes in accordance with the Indenture;

(i) to evidence and provide for the acceptance of appointment by a successor Trustee;

(j) to conform the text of the Indenture or the Notes to any provision of this "Description of Notes" to the extent that such provision in this "Description of Notes" was intended to be a recitation of a provision of the Indenture or the Notes; or

Table of Contents

(k) to make any amendment to the provisions of the Indenture relating to the transfer and legending of the Notes as permitted by the Indenture, including, without limitation to facilitate the issuance and administration of the Notes; *provided, however*, that (i) compliance with the Indenture as so amended would not result in the Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer the Notes.

The consent of the Holders of the Notes is not necessary to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment. After an amendment becomes effective, Arch Coal is required to mail, or arrange to be mailed, to each registered Holder of the Notes at such Holder's address appearing in the Security Register a notice briefly describing such amendment. However, the failure to give such notice to all Holders of the Notes, or any defect therein, will not impair or affect the validity of the amendment.

Defeasance

Arch Coal at any time may terminate all of its obligations under the Notes and the Indenture and all obligations of the Guarantors may be discharged with respect to their Note Guarantees ("legal defeasance"), except for certain obligations, including those respecting the defeasance trust and obligations to register the transfer or exchange of the Notes, to replace mutilated, destroyed, lost or stolen Notes and to maintain a registrar and paying agent in respect of the Notes. Arch Coal at any time may terminate:

(1) its obligations under the covenants described under " Repurchase at the Option of Holders Upon a Change of Control," " Certain Covenants" and " Reports" (and thereafter any omission to comply with these covenants will not constitute a Default or Event of Default with respect to the Notes);

(2) the operation of the cross acceleration provisions, the judgment default provisions and the bankruptcy provisions with respect to Significant Subsidiaries described under " Events of Default" above; and

(3) the limitations contained in clause (d) under the first paragraph of " Merger, Consolidation and Sale of Property" above ("covenant defeasance").

Arch Coal may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If Arch Coal exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect thereto. If Arch Coal exercises its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in clause (4) (with respect to the covenants described under " Certain Covenants" or " Reports"), (5), (6) or (7) (with respect only to Significant Subsidiaries) under " Events of Default" above or because of the failure to comply with clause (d) under the first paragraph of " Merger, Consolidation and Sale of Property" above.

The legal defeasance option or the covenant defeasance option may be exercised only if:

(a) Arch Coal irrevocably deposits in trust with the Trustee money or U.S. Government Obligations, or a combination thereof, for the payment of principal of, premium, if any, and interest on the Notes to maturity or redemption, as the case may be;

(b) Arch Coal delivers to the Trustee a certificate from a nationally recognized firm of independent certified public accountants expressing their opinion that the payments of principal, premium, if any, and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such

Table of Contents

times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all the Notes to be defeased to maturity or redemption, as the case may be;

(c) 91 days pass after the deposit is made, and during the 91-day period, no Default described in clause (7) under " Events of Default" occurs with respect to Arch Coal or any other Person making such deposit which is continuing at the end of the period;

(d) no Default or Event of Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Debt and, in each case, the granting of Liens in connection therewith) has occurred and is continuing on the date of such deposit and after giving effect thereto;

(e) such deposit does not constitute a default under any other material agreement or instrument binding on Arch Coal or any of its Restricted Subsidiaries;

(f) in the case of the legal defeasance option, Arch Coal delivers to the Trustee an Opinion of Counsel stating that:

(1) Arch Coal has received from the Internal Revenue Service a ruling, or

(2) since the date of the Indenture there has been a change in the applicable U.S. federal income tax law, to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same time as would have been the case if such defeasance has not occurred;

(g) in the case of the covenant defeasance option, Arch Coal delivers to the Trustee an Opinion of Counsel to the effect that the Holders of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and

(h) Arch Coal delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes have been complied with as required by the Indenture.

Satisfaction and Discharge

The Indenture will be discharged and will cease to be of further effect as to all Notes issued thereunder, when:

(1) either:

(a) all Notes that have been authenticated (except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to Arch Coal) have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation are to be called for redemption within one year and an irrevocable notice of redemption with respect thereto has been deposited with the Trustee or will become due and payable within one year and Arch Coal or a Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire

Table of Contents

indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default will have occurred and be continuing on the date of such deposit or will occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which Arch Coal or any Guarantor is a party or by which Arch Coal or any Guarantor is bound;

(3) Arch Coal or any Guarantor has paid or caused to be paid all sums payable by it under the Indenture; and

(4) Arch Coal has delivered irrevocable instructions to the Trustee under the Indenture to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, Arch Coal must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

No Personal Liability of Directors, Officers, Employees and Stockholders

No director, officer, employee, incorporator, stockholder, member, manager or partner of Arch Coal or any Guarantor, as such, will have any liability for any obligations of Arch Coal or the Guarantors under the Notes, the Indenture, the Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Governing Law

The Indenture and the Notes are governed by the laws of the State of New York.

The Trustee

UMB Bank National Association is the Trustee under the Indenture.

Except during the continuance of an Event of Default, the Trustee will perform only such duties as are specifically set forth in the Indenture. During the existence of an Event of Default, the Trustee will exercise such of the rights and powers vested in it under the Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

Registration Rights

We are making the exchange offer to satisfy your registration rights, as a holder of the original notes. The following description is a summary of the material provisions of the Registration Rights Agreement. It does not restate that agreement in its entirety. We urge you to read the Registration Rights Agreement, which is an exhibit to the registration statement of which this prospectus forms a part, in its entirety because it, and not this description, defines your registration rights as a holder of the original notes.

Pursuant to the Registration Rights Agreement, we agreed, for the benefit of the holders of the original notes, at our cost, to file the registration statement of which this prospectus forms a part with the SEC and to consummate the exchange offer not later than 365 days from the date of the Registration Rights Agreement.

Table of Contents

We will file with the SEC a shelf registration statement to cover resales of the original notes by the holders of the original notes who satisfy certain conditions relating to the provision of information in connection with the shelf registration statement, if (i) due to any change in law or applicable interpretations thereof by the SEC's staff, we determine upon advice of our outside counsel that we are not permitted to effect the exchange offer as contemplated by the Registration Rights Agreement; (ii) for any other reason the exchange offer is not consummated within 365 days of the date of the Registration Rights Agreement; (iii) any initial purchaser of the original notes so requests with respect to original notes that are not eligible to be exchanged for exchange notes in the exchange offer and that are held by it following consummation of the exchange offer; (iv) any holder of original notes (other than an initial purchaser) is not eligible to participate in the exchange offer; or (v) in the case of any initial purchaser that participates in the exchange offer or acquires exchange notes pursuant to Section 2(f) of the Registration Rights Agreement, such initial purchaser does not receive freely tradeable exchange notes in exchange for original notes constituting any portion of an unsold allotment (it being understood that (x) the requirement that an initial purchaser deliver a prospectus containing the information required by Item 507 or 508 of Regulation S-K under the Securities Act in connection with sales of exchange notes acquired in exchange for such original notes will result in such exchange notes being not "freely tradeable"; and (y) the requirement that an exchanging dealer deliver a prospectus in connection with sales of exchange notes acquired in the exchange offer in exchange for original notes acquired as a result of market-making activities or other trading activities will not result in such exchange notes being not "freely tradeable"). Holders of original notes will be required to deliver certain information to be used in connection with the shelf registration statement and to provide comments on the shelf registration statement within the time periods set forth in the Registration Rights Agreement in order to have their original notes included in the shelf registration statement and benefit from the provisions regarding additional interest set forth below. By acquiring original notes, a holder is deemed to have agreed to indemnify us against certain losses arising out of information furnished by such holder in writing for inclusion in any shelf registration statement. Holders of original notes will also be required to suspend their use of the prospectus included in the shelf registration statement under certain circumstances upon receipt of written notice to that effect from us.

If (i) the exchange offer is not consummated 365 days from the date of the Registration Rights Agreement, or (ii) a shelf registration statement is required to be filed but has not been declared effective under the Securities Act within 365 days of the date of the Registration Rights Agreement, the interest rate borne by the original notes will be increased by one-quarter of one percent per annum for the first 90 days following such period. Such interest rate will increase by an additional one-quarter of one percent per annum with respect to each subsequent 90-day period thereafter up to a maximum aggregate increase of one percent per annum. Upon the consummation of the exchange offer or the effectiveness of the shelf registration statement, as applicable, the interest rate borne by the original notes will be reduced to the original interest rate. All accrued additional interest will be paid by us on the next scheduled interest payment date.

Certain Definitions

Set forth below is a summary of certain of the defined terms used in the Indenture. Reference is made to the Indenture for the full definition of all such terms as well as any other capitalized terms used herein for which no definition is provided. Unless the context otherwise requires, an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

"Additional Assets" means:

- (a) any Property (other than cash, Cash Equivalent and securities) to be owned by Arch Coal or any of its Restricted Subsidiaries and used in a Permitted Business; or

Table of Contents

(b) Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by Arch Coal or another Restricted Subsidiary from any Person other than Arch Coal or an Affiliate of Arch Coal; *provided, however*, that, in the case of clause (b), such Restricted Subsidiary is primarily engaged in a Permitted Business.

"*Affiliate*" of any specified Person means:

(a) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; or

(b) any other Person who is a director or officer of:

- (1) such specified Person;
- (2) any Subsidiary of such specified Person; or
- (3) any Person described in clause (a) above.

For the purposes of this definition, "control," when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Amended and Restated Credit Agreement*" means that certain Amended and Restated Revolving Credit Agreement, dated as of June 14, 2011, by and among Arch Coal, PNC Bank, National Association, as Administrative Agent and the other lenders named therein providing for up to \$2.0 billion of revolving credit borrowings, including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, and in each case as amended, restated, modified, renewed, refunded, replaced or refinanced from time to time, regardless of whether such amendment, restatement, modification, renewal, refunding, replacement or refinancing is with the same financial institutions or otherwise.

"*Applicable Premium*" means with respect to any Note on any redemption date, the greater of:

- (1) 1.0% of the principal amount of such Note on such redemption date; and
- (2) the excess, if any, of (i) the present value at such redemption date of (A) the redemption price of such Note at December 15, 2016 (each such redemption price being set forth in the applicable table appearing above under the caption " Optional Redemption"), plus (B) all required interest payments due on such Note through December 15, 2016 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over (ii) the principal amount of such Note.

"*Arch Coal 8³/₄% Senior Notes Indenture*" means the Indenture dated as of July 31, 2009 by and among Arch Coal, the subsidiary guarantors named therein and U.S. Bank National Association, as trustee, pursuant to which certain of the Arch Coal Senior Notes were issued, as amended or supplemented to the Issue Date.

"*Arch Coal 7¹/₄% Senior Notes Indenture*" means the Indenture dated as of August 9, 2010, as supplemented by a first supplemental indenture dated as of August 9, 2010 by and among Arch Coal, the subsidiary guarantors named therein and U.S. Bank National Association, as trustee, pursuant to which certain of the Arch Coal Senior Notes were issued, as amended or supplemented to the Issue Date.

"*Arch Coal 7.000% Senior Notes and 7.250% Senior Notes Indenture*" means the Indenture dated as of June 14, 2011 by and among Arch Coal, the subsidiary guarantors named therein and UMB Bank National Association, as trustee, pursuant to which certain of the Arch Coal Senior Notes were issued, as amended or

supplemented to the Issue Date.

Table of Contents

"Arch Coal Senior Notes" means (i) the \$600.0 million aggregate principal amount of 8³/₄% Senior Notes due 2016 issued by Arch Coal, (ii) the \$500.0 million aggregate principal amount of 7¹/₄% Senior Notes due 2020 issued by Arch Coal, (iii) the \$1,000.0 million aggregate principal amount of 7.000% Senior Notes due 2019 issued by Arch Coal and (iv) the \$1,000.0 million aggregate principal amount of 7.250% Senior Notes due 2021 issued by Arch Coal.

"Arch Coal Senior Notes Indentures" means the Arch Coal 7¹/₄% Senior Notes Indenture, the Arch Coal 8³/₄% Senior Notes Indenture and the Arch Coal 7.000% Senior Notes and 7.250% Senior Notes Indenture.

"Asset Sale" means any sale, lease, transfer, issuance or other disposition (or series of related sales, leases, transfers, issuances or dispositions) by Arch Coal or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a "disposition"), of

(a) any shares of Capital Stock of a Restricted Subsidiary (other than directors' qualifying shares); or

(b) any other Property of Arch Coal or any of its Restricted Subsidiaries outside of the ordinary course of business of Arch Coal or such Restricted Subsidiary, other than, in the case of clause (a) or (b) above,

(1) any disposition by a Restricted Subsidiary to Arch Coal or by Arch Coal or its Restricted Subsidiary to a Restricted Subsidiary;

(2) any disposition that constitutes a Permitted Investment or Restricted Payment permitted by the covenant described under " Certain Covenants Limitation on Restricted Payments;"

(3) any disposition effected in compliance with the first paragraph of the covenant described under " Merger, Consolidation and Sale of Property;"

(4) any disposition in a single transaction or a series of related transactions of assets for aggregate consideration of less than \$100.0 million;

(5) a disposition of Cash Equivalents;

(6) a disposition of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings;

(7) a disposition of any property or equipment that has become damaged, worn out or obsolete;

(8) any disposition of accounts receivable and related assets or an interest therein pursuant to a Receivables Facility;

(9) the creation or perfection of a Lien not prohibited by the Indenture (but not the sale or other disposition of any asset subject to such Lien);

(10) the surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind; and

(11) the sale or other disposition (whether or not in the ordinary course of business) of coal properties, *provided* at the time of such sale or other disposition such properties do not have associated with them any proved reserves.

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

"Average Life" means, as of any date of determination, with respect to any Debt or Preferred Stock, the quotient obtained by dividing:

- (a) the sum of the product of the numbers of years (rounded to the nearest one-twelfth of one year) from the date of determination to the dates of each successive scheduled principal payment of such Debt or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by
- (b) the sum of all such payments.

"Board of Directors" means the board of directors of Arch Coal.

"Capital Lease Obligations" means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of "Certain Covenants Limitation on Liens," a Capital Lease Obligation shall be deemed secured by a Lien on the Property being leased.

"Capital Stock" means, with respect to any Person, any shares or other equivalents (however designated) of any class of corporate stock or partnership or limited liability company interests or any other participations, rights, warrants, options or other interests in the nature of an equity interest in such Person, including Preferred Stock, but excluding any debt security convertible or exchangeable into such equity interest.

"Capital Stock Sale Proceeds" means the aggregate proceeds, including cash and the Fair Market Value of Property other than cash, received by Arch Coal from the issuance or sale (other than to a Subsidiary of Arch Coal or an employee stock ownership plan or trust established by Arch Coal or any such Subsidiary for the benefit of their employees) by Arch Coal of its Capital Stock (other than Disqualified Stock) or from a contribution to its common equity capital, in each case after the Issue Date, and net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance or sale or contribution, as the case may be, and net of taxes paid or payable as a result thereof.

"Cash Equivalents" means any of the following:

- (a) Investments in U.S. Government Obligations maturing within 365 days of the date of acquisition thereof;
- (b) Investments in time deposit accounts, certificates of deposit and money market deposits maturing within 365 days of the date of acquisition thereof issued by a bank or trust company organized under the laws of the United States of America or any state thereof having capital, surplus and undivided profits aggregating in excess of \$500.0 million and whose long-term debt is rated "A-3" or "A-" or higher according to Moody's or S&P (or such similar equivalent rating by at least one "nationally recognized statistical rating organization" (as defined in Section 3(a)(62) of the Exchange Act));
- (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) entered into with:
 - (1) a bank meeting the qualifications described in clause (b) above or
 - (2) any primary government securities dealer reporting to the Market Reports Division of the Federal Reserve Bank of New York;

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

(d) Investments in commercial paper, maturing not more than 365 days after the date of acquisition, issued by a corporation (other than an Affiliate of Arch Coal) organized and in existence under the laws of the United States of America with a rating at the time as of which any Investment therein is made of "P-2" (or higher) according to Moody's or "A-2" (or higher) according to S&P (or such similar equivalent rating by at least one "nationally recognized statistical rating organization" (as defined in Section 3(a)(62) of the Exchange Act));

(e) direct obligations (or certificates representing an ownership interest in such obligations) of any state of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of such state is pledged and which are not callable or redeemable at the issuer's option; *provided* that:

(1) the long-term debt of such state is rated "A-3" or "A-" or higher according to Moody's or S&P (or such similar equivalent rating by at least one "nationally recognized statistical rating organization" (as defined in Section 3(a)(62) of the Exchange Act)), and

(2) such obligations mature within 365 days of the date of acquisition thereof; and

(f) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (e) of this definition.

"*Change of Control*" means the occurrence of any of the following events:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 50% or more of the total voting power of the Voting Stock of Arch Coal (for purposes of this clause (a), such person or group shall be deemed to beneficially own any Voting Stock of a corporation held by any other corporation (the "parent corporation") so long as such person or group beneficially owns, directly or indirectly, in the aggregate at least a majority of the total voting power of the Voting Stock of such parent corporation); or

(b) the sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all the Property of Arch Coal and its Restricted Subsidiaries, considered as a whole (other than a disposition of such Property as an entirety or virtually as an entirety to a Wholly Owned Restricted Subsidiary of Arch Coal), shall have occurred; or

(c) the adoption of any plan of liquidation or dissolution of Arch Coal.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Commission*" means the U.S. Securities and Exchange Commission.

"*Commodity Price Protection Agreement*" means, in respect of a Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement.

"*Consolidated Current Liabilities*" means, as of any date of determination, the aggregate amount of liabilities of Arch Coal and its consolidated Restricted Subsidiaries which may properly be classified as current liabilities (including taxes accrued as estimated), after eliminating:

(a) all intercompany items between Arch Coal and any Restricted Subsidiary or between Restricted Subsidiaries; and

(b) all current maturities of long-term Debt.

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

"*Consolidated Interest Coverage Ratio*" of a Person means, as of any date of determination, the ratio of:

- (a) the aggregate amount of EBITDA of such Person for the most recent four consecutive fiscal quarters for which internal financial statements are available to
- (b) Consolidated Interest Expense of such Person for such four fiscal quarters;

provided, however, that:

(1) if

(A) since the beginning of such period such Person or any Restricted Subsidiary of such Person has Incurred any Debt that remains outstanding or Repaid any Debt or

(B) the transaction giving rise to the need to calculate the Consolidated Interest Coverage Ratio is an Incurrence or Repayment of Debt,

Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Incurrence or Repayment as if such Debt was Incurred or Repaid on the first day of such period, *provided* that, in the event of any such Repayment of Debt, EBITDA for such period shall be calculated as if such Person or such Restricted Subsidiary of such Person had not earned any interest income actually earned during such period in respect of the funds used to Repay such Debt, and

(2) if

(A) since the beginning of such period such Person or any Restricted Subsidiary of such Person shall have made any Asset Sale or an Investment (by merger or otherwise) in any Restricted Subsidiary of such Person (or any Person which becomes a Restricted Subsidiary of such Person) or an acquisition of Property which constitutes all or substantially all of an operating unit of a business;

(B) the transaction giving rise to the need to calculate the Consolidated Interest Coverage Ratio is such an Asset Sale, Investment or acquisition; or

(C) since the beginning of such period any other Person (that subsequently became a Restricted Subsidiary of such Person or was merged with or into such Person or any Restricted Subsidiary of such Person since the beginning of such period) shall have made such an Asset Sale, Investment or acquisition,

then EBITDA for such period shall be calculated after giving *pro forma* effect to such Asset Sale, Investment or acquisition as if such Asset Sale, Investment or acquisition had occurred on the first day of such period.

If any Debt bears a floating rate of interest and is being given *pro forma* effect, the interest expense on such Debt shall be calculated as if the base interest rate in effect for such floating rate of interest on the date of determination had been the applicable base interest rate for the entire period (taking into account any Interest Rate Agreement applicable to such Debt if such Interest Rate Agreement has a remaining term in excess of 12 months). In the event the Capital Stock of any Restricted Subsidiary of such Person is sold during the period, such Person shall be deemed, for purposes of clause (1) above, to have Repaid during such period the Debt of such Restricted Subsidiary to the extent such Person and its continuing Restricted Subsidiaries are no longer liable for such Debt after such sale.

"*Consolidated Interest Expense*" of a Person means, for any period, the total interest expense of such Person and its consolidated Restricted Subsidiaries, plus, to the extent not included in such total interest

expense, and to the extent Incurred by such Person or its Restricted Subsidiaries,

Table of Contents

- (a) interest expense attributable to Capital Lease Obligations;
- (b) amortization of debt discount and debt issuance cost, including commitment fees;
- (c) capitalized interest;
- (d) non-cash interest expense;
- (e) commissions, discounts and other fees and charges owed with respect to letters of credit and banker's acceptance financing;
- (f) net costs associated with Interest Rate Agreements (including amortization of fees);
- (g) Disqualified Stock Dividends;
- (h) Preferred Stock Dividends;
- (i) interest Incurred in connection with Investments in discontinued operations;
- (j) interest accruing on any Debt of any other Person to the extent such Debt is Guaranteed by such Person or any of its Restricted Subsidiaries; and
- (k) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person) in connection with Debt Incurred by such plan or trust.

"*Consolidated Net Income*" of a Person means, for any period, the net income (loss) of such Person and its consolidated Restricted Subsidiaries; *provided, however*, that there shall not be included in such Consolidated Net Income:

- (a) any net income (loss) of any other Person (other than such Person) if such other Person is not a Restricted Subsidiary, except that:
 - (1) (subject to the exclusion contained in clause (c) below, equity of such Person and its consolidated Restricted Subsidiaries in the net income of any such other Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash distributed by such other Person during such period to such Person or its Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (b) below) and
 - (2) the equity of such Person and its consolidated Restricted Subsidiaries in a net loss of any other Person for such period shall be included in determining such Consolidated Net Income to the extent such Person or any Restricted Subsidiary of such Person has actually contributed, lent or transferred cash to such other Person;
- (b) any net income (loss) of any Restricted Subsidiary if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions, directly or indirectly, to such Person, except that:
 - (1) subject to the exclusion contained in clause (c) below, the equity of such Person and its consolidated Restricted Subsidiaries in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash that is or could be dividended or distributed or otherwise paid (including through making loans and repaying Debt) by such Restricted Subsidiary during such period to such Person or another Restricted Subsidiary as a

Edgar Filing: NANOMETRICS INC - Form 10-Q

dividend or other distribution (subject, in the case of a dividend or other distribution to another Restricted Subsidiary, to the limitation contained in this clause); and

Table of Contents

(2) the equity of such Person and its consolidated Restricted Subsidiaries in a net loss of any such Restricted Subsidiary for such period shall be included in determining such Consolidated Net Income;

(c) any gain or loss realized upon the sale or other disposition of any Property of such Person or any of its consolidated Subsidiaries (including pursuant to any Sale and Leaseback Transaction) that is not sold or otherwise disposed of in the ordinary course of business;

(d) any extraordinary gain or loss;

(e) fees, expenses or charges related to the Transactions;

(f) the cumulative effect of a change in accounting principles; and

(g) any non-cash compensation expense realized for grants of performance shares, stock options or other rights to officers, directors and employees of such Person or any Restricted Subsidiary, *provided* that such shares, options or other rights can be redeemed at the option of the holder only for Capital Stock of such Person (other than Disqualified Stock). Notwithstanding the foregoing, for purposes of the covenant described under " Certain Covenants Limitation on Restricted Payments" only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of Property from Unrestricted Subsidiaries to such Person or a Restricted Subsidiary to the extent such dividends, repayments or transfers increase the amount of Restricted Payments permitted under such covenant pursuant to clause (c)(4) thereof.

"Consolidated Net Tangible Assets" means, as of any date of determination, the sum of the amounts that would appear on a consolidated balance sheet of Arch Coal and its consolidated Restricted Subsidiaries, less any amounts attributable to non-Wholly Owned Restricted Subsidiaries that are not consolidated with Arch Coal and plus the portion of the consolidated net tangible assets of a non-Wholly Owned Restricted Subsidiary that is not consolidated with Arch Coal equal to the percentage of its outstanding Capital Stock owned by Arch Coal and its Restricted Subsidiaries, as of the end of the most recent fiscal quarter for which internal financial statements are available as the total assets (determined on a pro forma basis to give effect to any acquisition or disposition of assets made after such balance sheet date and on or prior to such date of determination), and less accumulated depreciation and amortization, allowances for doubtful receivables, other applicable reserves and other properly deductible items) of Arch Coal and its Restricted Subsidiaries, after giving effect to purchase accounting and after deducting therefrom Consolidated Current Liabilities and, to the extent otherwise included, the amounts of (without duplication):

(a) the excess of cost over fair market value of assets or businesses acquired;

(b) any revaluation or other write-up in book value of assets subsequent to the last day of the fiscal quarter of Arch Coal immediately preceding the Issue Date as a result of a change in the method of valuation in accordance with GAAP; and

(c) unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses, organization or developmental expenses and other intangible items.

"Credit Facilities" means, one or more debt facilities (including, without limitation, the Amended and Restated Credit Agreement), or other financing arrangements (including, without limitation, commercial paper facilities or indentures, in each case with banks, investment banks, insurance companies, mutual funds, other institutional lenders, a trustee or any of the foregoing) providing for revolving credit loans, term loans, notes, bonds, indentures, debentures, receivables financing (including through the sale of receivables to such lenders, other financiers or to special purpose entities formed to borrow from (or sell such receivables to) such lenders or other financiers against such receivables),

Table of Contents

letters of credit, bankers' acceptances, other borrowings or issuances of notes, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced (in each case, without limitation as to amount) in whole or in part from time to time and any agreements and related documents governing Debt or obligations incurred to Refinance amounts then outstanding or permitted to be outstanding.

"Currency Exchange Protection Agreement" means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement.

"Debt" means, with respect to any Person on any date of determination (without duplication):

(a) the principal of and premium (if any) in respect of:

(1) debt of such Person for money borrowed and

(2) debt evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable;

(b) all Capital Lease Obligations of such Person;

(c) all obligations of such Person representing the deferred purchase price of Property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding in-kind obligations of such Person relating to net coal balancing positions or bookouts and trade accounts payable, in either case arising in the ordinary course of business);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth business day following receipt by such Person of a demand for reimbursement following payment on the letter of credit);

(e) the amount of all obligations of such Person with respect to the Repayment of any Disqualified Stock or, with respect to any Subsidiary of such Person, any Preferred Stock (but excluding, in each case, any accrued dividends);

(f) all obligations of the type referred to in clauses (a) through (e) above of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(g) all obligations of the type referred to in clauses (a) through (f) above of other Persons secured by any Lien on any Property of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the Fair Market Value of such Property and the amount of the obligation so secured; and

(h) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Debt of any Person at any date shall be the outstanding balance, or the accreted value of such Debt in the case of Debt issued with original issue discount, at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date and provided that

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

any obligations under or in respect of operating leases shall be deemed not to constitute Debt. The amount of Debt represented by a Hedging Obligation shall be equal to:

- (1) zero if such Hedging Obligation has been Incurred pursuant to clause (e), (f) or (g) of the second paragraph of the covenant described under " Certain Covenants Limitation on Debt," or
- (2) the notional amount of such Hedging Obligation if not Incurred pursuant to such clauses.

"*Default*" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"*Disqualified Stock*" means any Capital Stock of a Person or any of its Restricted Subsidiaries that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, in either case at the option of the holder thereof) or otherwise:

- (a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;
- (b) is or may become redeemable or repurchaseable at the option of the holder thereof, in whole or in part; or
- (c) is convertible or exchangeable at the option of the holder thereof for Debt or Disqualified Stock,

on or prior to, in the case of clause (a), (b) or (c), the first anniversary of the Stated Maturity of the Notes. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require Arch Coal to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if (i) the "asset sale" or "change of control" provisions applicable to such Capital Stock are no more favorable to the holders of such Capital Stock than the provisions contained in " Certain Covenants Limitation on Asset Sales" and " Repurchase at the Option of Holders Upon Change of Control" covenants described herein and (ii) such Capital Stock specifically provides that such Person will not repurchase or redeem any such stock pursuant to such provision prior to Arch Coal's repurchase of such Notes as are required to be repurchased pursuant to " Certain Covenants Limitation on Asset Sales" and " Repurchase at the Option of Holders Upon a Change of Control."

"*Disqualified Stock Dividends*" of a Person means all dividends (other than dividends paid in Capital Stock (except Disqualified Stock) of Arch Coal) with respect to Disqualified Stock of such Person held by Persons other than a Wholly Owned Restricted Subsidiary of such Person. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory federal income tax rate (expressed as a decimal number between 1 and 0) then applicable to such Person.

"*EBITDA*" of a Person means, for any period, an amount equal to, for such Person and its consolidated Restricted Subsidiaries:

- (a) the sum of Consolidated Net Income for such period, plus the following to the extent reducing Consolidated Net Income for such period:
 - (1) the provision for taxes based on income or profits or utilized in computing net loss;
 - (2) Consolidated Interest Expense;
 - (3) depreciation and depletion;
 - (4) amortization of intangibles;

Edgar Filing: NANOMETRICS INC - Form 10-Q

(5) any other non-cash items (other than any such non-cash item to the extent that it represents an accrual of, or reserve for, cash expenditures in any future period);

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

(6) accruals of Postretirement Medical Liabilities, as defined by GAAP, net of cash payments for such Postretirement Medical Liabilities;

(7) accretion of asset retirement obligations in accordance with SFAS No. 143, Accounting for Asset Retirement Obligations, and any similar accounting in prior periods, net of cash payments for such asset retirement obligations;

(8) the amount of any unusual or non-recurring losses or charges (or minus any unusual or nonrecurring gains), including without limitation, restructuring charges such as retention, severance, systems establishment costs or excess pension, OPEB, black lung settlement, curtailment or other excess charges and fees, expenses or charges related to any offering of Capital Stock or Debt of such Person permitted to be Incurred;

(9) any net loss (or minus any net gain) attributable to the early extinguishment of Debt, including, without limitation, any premiums or similar charges related to any Debt Refinancing; and

(10) to the extent not included in (1) through (9) above, the portion of any of the items described in (1) through (9) above of a non-Wholly Owned Restricted Subsidiary that is not consolidated with such Person equal to the percentage of the outstanding common Capital Stock of the non-Wholly Owned Restricted Subsidiary owned by such Person and its Restricted Subsidiaries, minus

(b) all non-cash items increasing Consolidated Net Income for such period (other than any such non-cash item to the extent that it will result in the receipt of cash payments in any future period).

Notwithstanding the foregoing clause (a), the provision for taxes and the depreciation, amortization and non-cash items of a Restricted Subsidiary shall be added to Consolidated Net Income to compute EBITDA only to the extent (and in the same proportion) that the net income of such Restricted Subsidiary was included in calculating Consolidated Net Income and only if a corresponding amount would be permitted at the date of determination to be dividended or distributed or otherwise paid (including through making loans and repaying debt) to such Person by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its shareholders or members.

"Equity Offering" means a public or private offering of common Capital Stock (other than Disqualified Stock) of Arch Coal (other than pursuant to a registration statement on Form S-8 or otherwise relating to equity securities issuable under any employee benefit plan of Arch Coal).

"Event of Default" has the meaning set forth under " Events of Default."

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Fair Market Value" means, with respect to any Property, the price that could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided,

(a) if such Property has a Fair Market Value equal to or less than \$100.0 million, by Arch Coal's principal financial officer; or

(b) if such Property has a Fair Market Value in excess of \$100.0 million, by at least a majority of the disinterested members of the Board of Directors and evidenced by a Board Resolution, dated within 30 days of the relevant transaction, delivered to the Trustee.

Table of Contents

"*Foreign Subsidiary*" means any Subsidiary of Arch Coal that is not organized under the laws of the United States of America or any state thereof or the District of Columbia.

"*GAAP*" means United States generally accepted accounting principles as in effect on the Issue Date, including those set forth in:

- (a) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and the Public Company Accounting Oversight Board;
- (b) the statements and pronouncements of the Financial Accounting Standards Board;
- (c) such other statements by such other entity as approved by a significant segment of the accounting profession; and
- (d) the rules and regulations of the Commission governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the Commission;

provided that GAAP shall not give effect to FASB No. APB 14-1.

"*Guarantee*" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or
- (b) entered into for the purpose of assuring in any other manner the obligee against loss in respect thereof (in whole or in part);

provided, however, that the term "Guarantee" shall not include:

- (1) endorsements for collection or deposit in the ordinary course of business; or
- (2) a contractual commitment by one Person to invest in another Person for so long as such Investment is reasonably expected to constitute a Permitted Investment under clause (a), (b) or (c) of the definition of "Permitted Investment."

The term "Guarantee" used as a verb has a corresponding meaning.

"*Guarantors*" means each of the Restricted Subsidiaries of Arch Coal that execute a Note Guarantee on the Issue Date and any other Restricted Subsidiary of Arch Coal that executes a Note Guarantee in accordance with the provisions of the Indenture.

"*Hedging Obligation*" of any Person means any obligation of such Person pursuant to any Interest Rate Agreement, Currency Exchange Protection Agreement, Commodity Price Protection Agreement or any other similar agreement or arrangement.

"*Holder*" means a Person in whose name a Note is registered in the Security Register.

"*Incur*" means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by merger, conversion, exchange or otherwise), extend, assume, Guarantee or become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or

Edgar Filing: NANOMETRICS INC - Form 10-Q

obligation on the balance sheet of such Person (and "Incurrence" and "Incurred" shall have meanings correlative to the foregoing); *provided, however*, that any Debt or other obligations of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation,

Table of Contents

acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary; and *provided further, however*, that solely for purposes of determining compliance with " Certain Covenants Limitation on Debt," amortization of debt discount shall not be deemed to be the Incurrence of Debt, *provided* that in the case of Debt sold at a discount, the amount of such Debt Incurred shall at all times be the aggregate principal amount at Stated Maturity.

"Independent Financial Advisor" means an accounting, appraisal, engineering or banking firm of national standing, *provided* that such firm or appraiser is not an Affiliate of Arch Coal.

"Interest Rate Agreement" means, for any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement.

"Investment" by any Person means any direct or indirect loan, advance or other extension of credit or capital contribution (by means of transfers of cash or other Property to others or payments for Property or services for the account or use of others, or otherwise) to, or Incurrence of a Guarantee of any obligation of, or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Debt issued by, any other Person. For purposes of the covenants described under " Certain Covenants Limitation on Restricted Payments" and " Designation of Restricted and Unrestricted Subsidiaries" and the definition of "Restricted Payment," the term "Investment" shall include the portion (proportionate to Arch Coal's or a Restricted Subsidiary's equity interest in such Subsidiary) of the Fair Market Value of the net assets of any Subsidiary of Arch Coal at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, Arch Coal shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary of an amount (if positive) equal to:

(a) Arch Coal's "Investment" in such Subsidiary at the time of such redesignation, less

(b) the portion (proportionate to Arch Coal's or a Restricted Subsidiary's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation.

If Arch Coal or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of any Restricted Subsidiary, or any Restricted Subsidiary issues any Capital Stock, in either case, such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of Arch Coal, Arch Coal shall be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Capital Stock of and all other Investments in such Restricted Subsidiary retained.

In determining the amount of any Investment made by transfer of any Property other than cash, such Property shall be valued at its Fair Market Value at the time of such Investment.

"Investment Grade Rating" means, a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P.

"Issue Date" means November 21, 2012.

"Lien" means, with respect to any Property of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any Capital Lease Obligation, conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing or any Sale and Leaseback Transaction).

"Moody's" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

Table of Contents

"*Net Available Cash*" from any Asset Sale means cash payments received therefrom (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Debt or other obligations relating to the Property that is the subject of such Asset Sale or received in any other non-cash form), in each case net of:

- (a) all legal, title and recording tax expenses, accounting, investment banking fees and brokerage and sales commissions and other fees and expenses incurred, and all Federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Sale;
- (b) all payments made on or in respect of any Debt that is secured by any Property subject to such Asset Sale, in accordance with the terms of any Lien upon such Property, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale, or by applicable law, be repaid out of the proceeds from such Asset Sale;
- (c) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Sale; and
- (d) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the Property disposed of in such Asset Sale and retained by Arch Coal or any Restricted Subsidiary after such Asset Sale.

"*Note Guarantees*" means a Guarantee by a Guarantor of all of Arch Coal's obligations with respect to the Notes.

"*Officer*" means the Chief Executive Officer, the President, the Chief Financial Officer or any Executive Vice President or Senior Vice President of Arch Coal.

"*Officers' Certificate*" means a certificate signed by two Officers, at least one of whom shall be the principal executive officer or principal financial officer, and delivered to the Trustee.

"*Opinion of Counsel*" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to Arch Coal or the Trustee.

"*Permitted Business*" means the business conducted by Arch Coal on the Issue Date, any business that is related, ancillary or complementary or a reasonable extension to the businesses of Arch Coal and its Restricted Subsidiaries on the Issue Date and any business of a nature that is or shall have become (i) related to the extraction, processing, storage, distribution or use of fuels or minerals, including, without limitation, coal gasification, coal liquefaction, natural gas, liquefied natural gas, coalbed or coal mine methane gas and bitumen from tar sands, as well as the production of electricity or other sources of power, such as coal-or natural gas-fueled power generation facilities, wind, solar or hydroelectric power generation facilities or similar activities or (ii) customary in the coal production industry.

"*Permitted Investment*" means any Investment by Arch Coal or any Restricted Subsidiary in:

- (a) Arch Coal or any Restricted Subsidiary;
- (b) any Person that will, upon the making of such Investment, become a Restricted Subsidiary;
- (c) any Person if as a result of such Investment such Person is merged or consolidated with or into, or transfers or conveys all or substantially all its Property to, Arch Coal or its Restricted Subsidiary, *provided* that such Person's primary business is a Permitted Business;
- (d) Cash Equivalents;

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

(e) receivables owing to Arch Coal or its Restricted Subsidiary, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided, however*, that such trade terms may include such concessionary trade terms as Arch Coal or such Restricted Subsidiary deems reasonable under the circumstances;

(f) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(g) loans and advances to employees made in the ordinary course of business permitted by law of Arch Coal or such Restricted Subsidiary, as the case may be; *provided* that such loans and advances do not exceed \$5.0 million in the aggregate at any one time outstanding;

(h) stock, obligations or other securities received in settlement of debts created in the ordinary course of business and owing to Arch Coal or a Restricted Subsidiary or in satisfaction of judgments;

(i) any Person to the extent such Investment represents the non-cash portion of the consideration received in connection with an Asset Sale consummated in compliance with the covenant described under " Certain Covenants Limitation on Asset Sales" or any non-cash consideration received in connection with a disposition of Property excluded from the definition of Asset Sale;

(j) Investments in an aggregate amount, together with all other Investments made pursuant to this clause (j), not to exceed 5.0% of Consolidated Net Tangible Assets (with the Fair Market Value being measured at the time made and without giving effect to subsequent changes in value and net of, with respect to the Investment in any particular Person made pursuant to this clause, the cash return thereon received after the Issue Date as a result of any sale for cash, repayment, return, redemption, liquidating distribution or other cash realization (not included in Consolidated Net Income) not to exceed the amount of such Investments in such Person made after the Issue Date in reliance on this clause);

(k) other Investments made for Fair Market Value that do not exceed \$500.0 million in the aggregate outstanding at any one time (with the Fair Market Value being measured at the time made and without giving effect to subsequent changes in value);

(l) Hedging Obligations that constitute Permitted Debt;

(m) Investments in connection with a Receivables Facility;

(n) Investments in Permitted Joint Ventures in an aggregate amount, together with all other Investments made pursuant to this clause (n) not to exceed the greater of (x) \$750.0 million and (y) 7.5% of Consolidated Net Tangible Assets (with the Fair Market Value being measured at the time made and without giving effect to subsequent changes in value and net of, with respect to the Investment in any particular Person made pursuant to this clause, the cash return thereon received after the Issue Date as a result of any sale for cash, repayment, return, redemption, liquidating distribution or other cash realization (not included in Consolidated Net Income) not to exceed the amount of such Investments in such Person made after the Issue Date in reliance on this clause); and

(o) Investments in Permitted Joint Ventures and other entities (whether or not a Subsidiary) that are not domiciled or incorporated in the United States, taken together with all other Investments made pursuant to this clause (o) that are at the time outstanding, not to exceed the greater of (x) \$500.0 million and (y) 5.0% of Consolidated Net Tangible Assets (with the Fair Market Value being measured at the time made and without giving effect to subsequent changes in value and net of, with respect to the Investment in any particular Person made pursuant to this

Table of Contents

clause, the cash return thereon received after the Issue Date as a result of any sale for cash, repayment, return, redemption, liquidating distribution or other cash realization (not included in Consolidated Net Income) not to exceed the amount of such Investments in such Person made after the Issue Date in reliance on this clause).

"*Permitted Joint Ventures*" means any agreement, contract or other arrangement between Arch Coal or any Restricted Subsidiary and any Person engaged principally in a Permitted Business that permits one party to share risks or costs, comply with regulatory requirements or satisfy other business objectives customarily achieved through the conduct of such Permitted Business jointly with third parties.

"*Permitted Liens*" means:

(a) Liens to secure Debt under Credit Facilities (including Guarantees thereof) in an aggregate amount at any one time outstanding not to exceed the amount of Debt permitted to be Incurred under clause (a) of the second paragraph of the covenant described under " Certain Covenants Limitation on Debt";

(b) Liens to secure Debt permitted to be Incurred under clause (c) of the second paragraph of the covenant described under " Certain Covenants Limitation on Debt" and other purchase money Liens to finance Property of Arch Coal or any of its Restricted Subsidiaries; *provided* that any such Lien may not extend to any Property of Arch Coal or any Restricted Subsidiary, other than the Property acquired, constructed or leased and any improvements or accessions to such Property (including, in the case of the acquisition of Capital Stock of a Person that becomes a Restricted Subsidiary, Liens on the Property of the Person whose Capital Stock was acquired);

(c) Liens for taxes, assessments or governmental charges or levies on the Property of Arch Coal or any Restricted Subsidiary if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings promptly instituted and diligently concluded, *provided* that any reserve or other appropriate provision that shall be required in conformity with GAAP shall have been made therefor;

(d) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens and other similar Liens, on the Property of Arch Coal or any Restricted Subsidiary arising in the ordinary course of business and securing payment of obligations that are not more than 60 days past due or are being contested in good faith and by appropriate proceedings;

(e) Liens on the Property of Arch Coal or any Restricted Subsidiary Incurred in the ordinary course of business to secure performance of obligations with respect to statutory or regulatory requirements, performance or return-of-money bonds, surety bonds or other obligations of a like nature and Incurred in a manner consistent with industry practice, in each case which are not Incurred in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of Property and which do not in the aggregate impair in any material respect the use of Property in the operation of the business of Arch Coal and the Restricted Subsidiaries taken as a whole;

(f) Liens on Property at the time Arch Coal or any Restricted Subsidiary acquired such Property, including any acquisition by means of a merger or consolidation with or into Arch Coal or any Restricted Subsidiary; *provided, however*, that any such Lien may not extend to any other Property of Arch Coal or any Restricted Subsidiary; *provided further, however*, that such Liens shall not have been Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Property was acquired by Arch Coal or any Restricted Subsidiary;

Table of Contents

(g) Liens on the Property of a Person at the time such Person becomes a Restricted Subsidiary; *provided, however*, that any such Lien may not extend to any other Property of Arch Coal or any other Restricted Subsidiary that is not a direct Subsidiary of such Person; *provided further, however*, that any such Lien was not Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Person became a Restricted Subsidiary;

(h) pledges or deposits by Arch Coal or any Restricted Subsidiary under workers' compensation laws, unemployment insurance laws, old-age pensions or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Debt) or leases to which Arch Coal or any Restricted Subsidiary is party, or deposits to secure public or statutory obligations of Arch Coal, or deposits for the payment of rent, in each case Incurred in the ordinary course of business;

(i) utility easements, building restrictions and such other encumbrances or charges against real Property as are of a nature generally existing with respect to properties of a similar character;

(j) Liens existing on the Issue Date not otherwise described in clauses (a) through (i) above or (k) through (u) below;

(k) Liens on the Property of Arch Coal or any Restricted Subsidiary to secure any Refinancing, in whole or in part, of any Debt secured by Liens referred to in clause (b), (f), (g) or (j) above; *provided, however*, that any such Lien shall be limited to all or part of the same Property that secured the original Lien (together with improvements and accessions to such Property), and the aggregate principal amount of Debt that is secured by such Lien shall not be increased to an amount greater than the sum of:

(1) the outstanding principal amount, or, if greater, the committed amount, of the Debt secured by Liens described under clause (b), (f), (g) or (j) above, as the case may be, at the time the original Lien became a Permitted Lien under the Indenture, and

(2) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, incurred by Arch Coal or such Restricted Subsidiary in connection with such Refinancing;

(l) Liens on Property used to defease or to satisfy and discharge Debt; *provided* that (a) the Incurrence of such Debt was not prohibited by the Indenture and (b) such defeasance or satisfaction and discharge is not prohibited by the Indenture;

(m) Liens in favor of Arch Coal or any Restricted Subsidiary;

(n) judgment Liens not giving rise to an Event of Default, that are being contested in good faith by appropriate legal proceedings and for which adequate reserves have been made;

(o) Liens on accounts receivable and related assets in connection with a Receivables Facility;

(p) rights of banks to set off deposits against debts owed to said bank;

(q) contract mining agreements and leases or subleases granted to others that do not materially interfere with the ordinary conduct of business of Arch Coal or any of its Restricted Subsidiaries;

(r) Liens on Capital Stock of an Unrestricted Subsidiary that secure Debt or other obligations of such Unrestricted Subsidiary;

Edgar Filing: NANOMETRICS INC - Form 10-Q

- (s) Liens on the assets of Foreign Subsidiaries securing Debt of Foreign Subsidiaries;

- (t) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

Table of Contents

(u) Liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other assets relating to such letters of credit and products and proceeds thereof; and

(v) Liens not otherwise permitted by clauses (a) through (u) above securing Debt or other obligations in an aggregate principal amount not to exceed 10.0% of Consolidated Net Tangible Assets at the time such Debt is Incurred.

"Permitted Refinancing Debt" means any Debt that Refinances any other Debt, including any successive Refinancings, so long as:

(a) such Debt is in an aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) not in excess of the sum of:

(1) the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding of the Debt being Refinanced and all accrued and unpaid interest thereon, and

(2) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, related to such Refinancing;

(b) the Average Life of such Debt is equal to or greater than the Average Life of the Debt being Refinanced; and

(c) the new Debt shall not be senior in right of payment to the Debt that is being Refinanced; *provided, however*, that Permitted Refinancing Debt shall not include:

(x) Debt of a Subsidiary of Arch Coal that is not a Guarantor that Refinances Debt of Arch Coal or a Guarantor, or

(y) Debt of Arch Coal or a Restricted Subsidiary that Refinances Debt of an Unrestricted Subsidiary.

"Person" means any individual, corporation, company (including any limited liability company), association, partnership, joint venture, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Preferred Stock" means any Capital Stock of a Person, however designated, which entitles the holder thereof to a preference with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of any other class of Capital Stock issued by such Person.

"Preferred Stock Dividends" of a Person means all dividends with respect to Preferred Stock of Restricted Subsidiaries of such Person (other than dividends paid in Capital Stock (except Disqualified Stock) of Arch Coal) held by Persons other than such Person or a Wholly Owned Restricted Subsidiary of such Person. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory federal income rate (expressed as a decimal number between 1 and 0) then applicable to the issuer of such Preferred Stock.

"pro forma" means, with respect to any calculation made or required to be made pursuant to the terms hereof, a calculation, as interpreted in good faith by Arch Coal's principal financial officer or principal accounting officer, or otherwise a calculation made in good faith by the Board of Directors after consultation with the independent certified public accountants of Arch Coal, as the case may be.

"Property" means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities of, any other Person. For purposes of any calculation required pursuant to the Indenture, the value

of any Property shall be its Fair Market Value.

Table of Contents

"Purchase Money Debt" means Debt:

(a) consisting of the deferred purchase price of Property, conditional sale obligations, obligations under any title retention agreement, other purchase money obligations and obligations in respect of industrial revenue bonds, in each case where the maturity of such Debt does not exceed the anticipated useful life of the Property being financed; and

(b) Incurred to finance the acquisition, construction or lease by Arch Coal or a Restricted Subsidiary of such Property, including additions and improvements thereto;

provided, however, that such Debt is Incurred within 365 days after the acquisition, construction or lease of such Property by Arch Coal or such Restricted Subsidiary.

"Rating Agencies" means Moody's and S&P or if Moody's and S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by Arch Coal which shall be substituted for Moody's or S&P or both, as the case may be.

"Receivables Facility" means one or more receivables financing facilities or arrangements, as amended or modified from time to time, pursuant to which Arch Coal or any Subsidiary sells (including a sale in exchange for a promissory note or Capital Stock of a Receivables Subsidiary) its accounts receivable to a Receivables Subsidiary or a Receivables Subsidiary sells accounts receivables to any other Person; *provided* such transaction is on market terms at the time Arch Coal or such Subsidiary enters into such transaction.

"Receivables Subsidiary" means a Subsidiary of Arch Coal which engages in no activities other than those reasonably related to or in connection with the entering into of receivables securitization transactions and which is designated by the Board of Directors (as provided below) as a Receivables Subsidiary and:

(1) no portion of the Debt or any other obligations (contingent or otherwise) of which:

(a) is guaranteed by Arch Coal or any Restricted Subsidiary (excluding Guarantees (other than the principal of, and interest on, Debt) pursuant to Standard Securitization Undertakings);

(b) is recourse to or obligates Arch Coal or any Restricted Subsidiary in any way other than pursuant to Standard Securitization Undertakings; or

(c) subjects any Property of Arch Coal or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(2) with which neither Arch Coal nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than on terms no less favorable to Arch Coal or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of Arch Coal, other than fees payable in the ordinary course of business in connection with servicing accounts receivable of such entity; and

(3) to which neither Arch Coal nor any Restricted Subsidiary has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results other than pursuant to Standard Securitization Undertakings.

Any designation of a Subsidiary as a Receivable Subsidiary shall be evidenced to the Trustee by filing with the Trustee a certified copy of the resolution of the Board of Directors giving effect to the designation and an Officers' Certificate certifying that the designation complied with the preceding conditions and was permitted by the Indenture.

Table of Contents

"*Refinance*" means, in respect of any Debt, to refinance, extend, renew, refund or Repay, or to issue other Debt, in exchange or replacement for, such Debt. "Refinanced" and "Refinancing" shall have correlative meanings.

"*Repay*" means, in respect of any Debt, to repay, prepay, repurchase, redeem, legally defease or otherwise retire such Debt. "Repayment" and "Repaid" shall have correlative meanings. For purposes of the covenant described under " Certain Covenants Limitation on Asset Sales" and the definition of "Consolidated Interest Coverage Ratio," Debt shall be considered to have been Repaid only to the extent the related loan commitment, if any, shall have been permanently reduced in connection therewith.

"*Restricted Payment*" means:

(a) any dividend or distribution (whether made in cash, securities or other Property) declared or paid, on or with respect to any shares of Capital Stock of Arch Coal or any Restricted Subsidiary (including any payment in connection with any merger or consolidation with or into Arch Coal or any Restricted Subsidiary), except for any dividend or distribution that is (i) made solely to Arch Coal or a Restricted Subsidiary (and, if such Restricted Subsidiary is not a Wholly Owned Restricted Subsidiary, to the other shareholders or members of such Restricted Subsidiary on a *pro rata* basis or on a basis that results in the receipt by Arch Coal or a Restricted Subsidiary of dividends or distributions equal to or greater in value than it would receive on a *pro rata* basis); or (ii) payable solely in shares of Capital Stock (other than Disqualified Stock) of Arch Coal;

(b) the purchase, repurchase, redemption, acquisition or retirement for value of any Capital Stock of Arch Coal (other than from Arch Coal or a Restricted Subsidiary);

(c) the purchase, repurchase, redemption, acquisition or retirement for value, prior to the date for any scheduled maturity, sinking fund or amortization or other installment payment, of any Subordinated Obligation (other than (i) Debt permitted under clause (d) of the second paragraph of the covenant described under " Certain Covenants Limitation on Debt" or (ii) the purchase, repurchase or other acquisition of any Subordinated Obligation purchased in anticipation of satisfying a scheduled maturity, sinking fund or amortization or other installment obligation, in each case due within one year of the date of acquisition); or

(d) any Investment (other than Permitted Investments) in any Person.

"*Restricted Subsidiary*" means any Subsidiary of Arch Coal other than an Unrestricted Subsidiary.

"*S&P*" means Standard & Poor's Ratings Services or any successor to the rating agency business thereof.

"*Sale and Leaseback Transaction*" means any direct or indirect arrangement relating to Property now owned or hereafter acquired whereby Arch Coal or a Restricted Subsidiary transfers such Property to another Person and Arch Coal or a Restricted Subsidiary leases it from such Person.

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Significant Subsidiary*" means any Subsidiary that would be a "significant subsidiary" of Arch Coal within the meaning of Rule 1-02 under Regulation S-X promulgated by the Commission.

"*Standard Securitization Undertakings*" means representations, warranties, covenants and indemnities entered into by Arch Coal or any Restricted Subsidiary that are reasonably customary in receivables financing facilities, including, without limitation, servicing of the obligations thereunder.

"*Stated Maturity*" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

"Subordinated Obligation" means any Debt of Arch Coal or a Guarantor (whether outstanding on the Issue Date or thereafter Incurred) that is subordinate or junior in right of payment to the Notes or the Note Guarantees pursuant to a written agreement to that effect.

"Subsidiary" means, in respect of any Person, any corporation, company (including any limited liability company), association, partnership, joint venture or other business entity of which at least a majority of the total voting power of the Voting Stock is at the time owned or controlled, directly or indirectly, by:

- (a) such Person;
- (b) such Person and one or more Subsidiaries of such Person; or
- (c) one or more Subsidiaries of such Person.

"Surviving Person" means the surviving Person formed by a merger, consolidation or amalgamation and, for purposes of the covenant described under " Merger, Consolidation and Sale of Property," a Person to whom all or substantially all of the Property of Arch Coal or a Guarantor is sold, transferred, assigned, leased, conveyed or otherwise disposed.

"Transactions" means collectively, the transactions contemplated by the issuance of the Notes and Arch Coal's exercise of its option to request increases in the aggregate lending commitments and corresponding incremental term loans under the Amended and Restated Credit Agreement.

"Treasury Rate" means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two business days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to December 15, 2016; *provided, however*, that if the period from the redemption date to December 15, 2016 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Unrestricted Subsidiary" means:

- (a) any Subsidiary of Arch Coal that is designated after the Issue Date as an Unrestricted Subsidiary as permitted or required pursuant to the covenant described under " Certain Covenants Designation of Restricted and Unrestricted Subsidiaries" and is not thereafter redesignated as a Restricted Subsidiary as permitted pursuant thereto;
- (b) any Subsidiary of an Unrestricted Subsidiary; and
- (c) as of the date of the Indenture, Jacobs Ranch Holdings I LLC, a Delaware limited liability company, Jacobs Ranch Holdings II LLC, a Delaware limited liability company, and Jacobs Ranch Coal LLC, a Delaware limited liability company.

After the termination of the covenants upon the Notes obtaining Investment Grade Ratings, all Unrestricted Subsidiaries shall be Restricted Subsidiaries.

"U.S. Government Obligations" means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

Table of Contents

"*Voting Stock*" of any Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"*Wholly Owned Restricted Subsidiary*" of a Person means, at any time, a Restricted Subsidiary all the Voting Stock of which (except directors' qualifying shares) is at such time owned, directly or indirectly, by such Person and its other Wholly Owned Subsidiaries.

Book-Entry, Delivery and Form

Except as set forth below, Notes will be issued in registered, global form in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

The Notes initially will be represented by one or more Notes in registered, global form without interest coupons (collectively, the "Global Notes"). The Global Notes will be deposited upon issuance with the Trustee as custodian for The Depository Trust Company ("DTC"), and registered in the name of DTC or its nominee, in each case for credit to an account of a direct or indirect participant in DTC as described below.

Except as set forth below, the Global Notes may be transferred, in whole and not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Notes may be exchanged for Notes in certificated form. See " Exchange of Global Notes for Certificated Notes."

In addition, transfers of beneficial interests in the Global Notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants (including, if applicable, those of Euroclear and Clearstream), which may change from time to time.

Depository Procedures

The following description of the operations and procedures of DTC, Euroclear and Clearstream are provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them. Arch Coal takes no responsibility for these operations and procedures and urges investors to contact the system or their participants directly to discuss these matters.

DTC will act as securities depository for the Notes. The Notes will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Note certificate will be issued for the Notes, in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC has advised us that DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of

Table of Contents

which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of Notes under the DTC system must be made by or through Direct Participants, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Notes are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Notes, except in the event that use of the book-entry system for the Notes is discontinued.

To facilitate subsequent transfers, all Notes deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Notes with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Notes; DTC's records reflect only the identity of the Direct Participants to whose accounts such Notes are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Notes may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Notes, such as redemptions, tenders, defaults, and proposed amendments to the Note documents. For example, Beneficial Owners of Notes may wish to ascertain that the nominee holding the Notes for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Notes are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Notes unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC would mail an Omnibus Proxy to us as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Notes are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Notes will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from us, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by

Table of Contents

standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the initial purchasers or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is our responsibility, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its Notes purchased or tendered, through its Participant, to the tender or remarketing agent, and shall effect delivery of such Notes by causing the Direct Participant to transfer the Participant's interest in the Notes, on DTC's records, to the tender or remarketing agent. The requirement for physical delivery of Notes in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Notes are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Notes to the tender or remarketing agent's DTC account.

DTC may discontinue providing its services as depository with respect to the Notes at any time by giving reasonable notice to us. Under such circumstances, in the event that a successor depository is not obtained, Note certificates are required to be printed and delivered.

We may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Note certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that we believe to be reliable, but we take no responsibility for the accuracy thereof.

Exchange of Global Notes for Certificated Notes

A Global Note is exchangeable for definitive Notes in registered certificated form ("Certificated Notes") if:

- (1) DTC (a) notifies Arch Coal that it is unwilling or unable to continue as depository for the Global Notes or (b) has ceased to be a clearing agency registered under the Exchange Act, and in each case Arch Coal fails to appoint a successor depository;
- (2) Arch Coal, at its option, notifies the Trustee in writing that it elects to cause the issuance of Certificated Notes (DTC has advised Arch Coal that, in such event, under current DTC practices, DTC would notify its participants of Arch Coal's request, but will only withdraw beneficial interests from a Global Note at the request of each DTC participant); or
- (3) there shall have occurred and be continuing a Default or Event of Default with respect to the Notes and DTC requests Certificated Notes.

In addition, beneficial interests in a Global Note may be exchanged for Certificated Notes upon prior written notice given to the Trustee by or on behalf of DTC in accordance with the Indenture. In all cases, Certificated Notes delivered in exchange for any Global Note or beneficial interests in Global Notes will be registered in the names, and issued in any approved denominations, requested by or on behalf of the depository (in accordance with its customary procedures).

Exchange of Certificated Notes for Global Notes

Certificated Notes may not be exchanged for beneficial interests in any Global Note unless the transferor first delivers to the Trustee a written certificate (in the form provided in the Indenture) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Notes.

Table of Contents

Same Day Settlement and Payment

Arch Coal will make payments in respect of the Notes represented by the Global Notes (including principal, premium, if any, and interest) by wire transfer of immediately available funds to the accounts specified by the Global Note Holder. Arch Coal will make all payments of principal, interest and premium, if any, with respect to Certificated Notes by wire transfer of immediately available funds to the accounts specified by the Holders thereof or, if no such account is specified, by mailing a check to each such Holder's registered address. The Notes represented by the Global Notes are expected to be eligible to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such Notes will, therefore, be required by DTC to be settled in immediately available funds. Arch Coal expects that secondary trading in any Certificated Notes will also be settled in immediately available funds.

Table of Contents

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following discussion is based upon the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), the applicable Treasury regulations promulgated and proposed thereunder, judicial authority and current administrative rulings and practice, all of which are subject to change, possibly with retroactive effect. The following general discussion summarizes certain material U.S. federal income tax aspects of the exchange of original notes for exchange notes pursuant to the exchange offer and ownership and disposition of the exchange notes that may be relevant to U.S. Holders (as defined below) and Non-U.S. Holders (as defined below). This discussion is a summary for general information only and does not consider all aspects of U.S. federal income taxation that may be relevant to participation in the exchange offer or ownership and disposition of the exchange notes by a prospective investor in light of his, her or its own personal circumstances. This discussion is limited to persons who are beneficial owners of the notes, who acquired the original notes upon their original issuance at their issue price, which was equal to the first price at which a substantial amount of the original notes was sold for money (not including sales to bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers), and who held the original notes and will hold the exchange notes as capital assets within the meaning of Section 1221 of the Code. This discussion does not purport to deal with all aspects of U.S. federal income taxation that might be relevant to particular holders in light of their personal investment circumstances or status, nor does it discuss the U.S. federal income tax consequences to certain types of holders subject to special treatment under the U.S. federal income tax laws (for example, financial institutions, insurance companies, dealers in securities or foreign currency, tax-exempt organizations, taxpayers holding the notes through a partnership or similar pass-through entity or as part of a "straddle," "hedge" or "conversion transaction," certain U.S. expatriates or other former long-term residents of the United States or U.S. Holders (as defined below) that have a "functional currency" other than the U.S. dollar). We treat the original notes and will treat the exchange notes as indebtedness for U.S. federal income tax purposes, and the balance of the discussion is based on the assumption that such treatment will be respected. We have not obtained a ruling from the Internal Revenue Service (the "IRS") regarding the tax treatment of the exchange offer or of the exchange notes.

If a partnership (including for this purpose an entity or arrangement treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of a note, the treatment of a partner in the partnership generally will depend upon the status of the partner and upon the activities of the partnership. Partnerships and partners in such partnerships should consult their tax advisors about the U.S. federal income tax consequences of the exchange offer and of owning and disposing of exchange notes.

This discussion of certain material U.S. federal income tax considerations is for general information only and is not tax advice. Prospective holders are urged to consult their own tax advisors regarding the U.S. federal, state, local, foreign and other tax considerations of the exchange offer and ownership and disposition of the exchange notes.

Treatment of the Exchange

The exchange of the original notes for the exchange notes in the exchange offer will not constitute an exchange for U.S. federal income tax purposes for holders because the exchange notes will not be considered to be a significant modification of the original notes. As a result, for U.S. federal income tax purposes (i) a holder will not recognize any income, gain or loss as a result of exchanging the original notes for the exchange notes, (ii) the holding period of the exchange notes will include the holding period of the original notes exchanged and (iii) the adjusted tax basis of the exchange notes will be the same as the adjusted tax basis of the original notes exchanged immediately before such exchange.

Table of Contents

Treatment of the Exchange Notes

In certain circumstances, we may be obligated to pay amounts in excess of stated interest or principal on the exchange notes. The obligation to pay these amounts may implicate provisions of the Treasury regulations relating to contingent payment debt instruments ("CPDIs"). One or more contingencies generally will not cause the exchange notes to be treated as CPDIs if, as of the issue date, each such contingency is considered remote or incidental or, in certain circumstances, it is significantly more likely that none of the contingencies will arise. We intend to take the position that the possibility, as of the date the exchange notes are issued, of the payment of such amounts does not result in the exchange notes being treated as CPDIs under the applicable Treasury regulations. Our determination is binding on you unless you disclose your contrary position to the IRS in the manner that is required by the applicable Treasury regulations. Our determination is not, however, binding on the IRS, which could challenge this position. If such challenge were successful, a U.S. Holder likely would be required to accrue income on the exchange notes in excess of stated interest, and would be required to treat as ordinary income rather than capital gain any income realized on the taxable disposition of an exchange note. The remainder of this discussion assumes that the exchange notes are not treated as CPDIs.

U.S. Holders

The following discussion is limited to the U.S. federal income tax consequences to a beneficial owner of an exchange note that is for U.S. federal income tax purposes:

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

a corporation (or any entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia;

an estate whose income is subject to U.S. federal income taxation on a net income basis regardless of its source; or

a trust, if (i) a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) the trust has a valid election in place to be treated as a U.S. person for U.S. federal income tax purposes (each a "U.S. Holder").

Stated Interest and Original Issue Discount

The stated interest on the exchange notes will be treated as "qualified stated interest" and will be included in income by a U.S. Holder as paid or accrued in accordance with such holder's usual method of accounting for U.S. federal income tax purposes.

The stated redemption price at maturity of the exchange notes (which amount should be equal to the face amount of the notes) will exceed the issue price of the exchange notes (which will equal the initial price paid by the holders for the original notes) by more than a statutory de minimis amount. Accordingly, U.S. Holders of the exchange notes will be required to include such original issue discount ("OID") in ordinary income for U.S. federal income tax purposes as it accrues, regardless of whether the U.S. Holder uses the cash or accrual method of accounting. The OID will accrue daily in accordance with a constant yield method based on a compounding of interest. The OID allocable to any accrual period will equal the product of the adjusted issue price of the exchange notes as of the beginning of such period and the exchange notes' yield to maturity, less any qualified stated interest allocable to that accrual period. The "adjusted issue price" of the exchange notes as of the beginning of any accrual period will equal the issue price of the exchange notes increased by the amount of OID previously includible in gross income of any holder of the original notes or the exchange notes and

Table of Contents

decreased by the amount of any payment made on the original notes or the exchange notes other than payments of qualified stated interest. Because OID will accrue and be includible in income at least annually and no payments other than qualified stated interest are expected to be made on the exchange notes, the adjusted issue price of the exchange notes is expected to increase throughout their life. OID includible in income, therefore, is expected to increase during each accrual period. The tax rules that govern debt instruments that are issued with OID are complex and holders are urged to consult their tax advisor about the application of these rules to the holder.

Sale, Exchange, Retirement or Redemption of the Exchange Notes

Upon the taxable disposition of an exchange note by sale, exchange, retirement or redemption, a U.S. Holder generally will recognize gain or loss equal to the difference between the amount realized on the disposition, other than amounts attributable to accrued interest not yet taken into income which will be taxed as ordinary income, and the U.S. Holder's adjusted tax basis in the exchange note. A U.S. Holder's adjusted tax basis in an exchange note generally will equal the cost of the original note to such holder increased by any OID previously accrued by the U.S. Holder, less any principal payments or payments of accrued OID received by such holder.

Any gain generally will constitute capital gain and will be long-term capital gain if the U.S. Holder has held the exchange note, including the holding period of the original note exchanged for the exchange note, for longer than 12 months. Long-term capital gain, in the case of non-corporate taxpayers, is eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations.

Medicare Surtax

Certain U.S. Holders that are individuals, estates or trusts will be required to pay an additional 3.8% Medicare surtax on, among other things, interest income and capital gains from the sale or other disposition of a note. U.S. Holders should consult their tax advisors as to the application of this additional surtax to their investment in the exchange notes.

Information Reporting and Backup Withholding

Under the Code, U.S. Holders may be subject, under certain circumstances, to information reporting and "backup withholding" with respect to cash payments in respect of principal, interest, and the gross proceeds from dispositions of the exchange notes. Backup withholding applies only if the U.S. Holder (i) fails to furnish its social security or other taxpayer identification number ("TIN") within a reasonable time after a request therefor, (ii) furnishes an incorrect TIN, (iii) fails to report properly interest or dividends, or (iv) fails under certain circumstances to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Any amount withheld from a payment to a U.S. Holder under the backup withholding rules is allowable as a credit (and may entitle such holder to a refund) against such U.S. Holder's U.S. federal income tax liability, provided that the required information is furnished to the IRS in a timely manner. Certain persons are exempt from backup withholding, including corporations and financial institutions. U.S. Holders should consult their tax advisors as to their qualification for exemption from backup withholding and the procedure for obtaining such exemption.

Non-U.S. Holders

The following discussion is limited to the U.S. federal income tax consequences to a holder of an exchange note that is a beneficial owner of an exchange note and that is, for U.S. federal income tax purposes, an individual, corporation, estate or trust that is not a U.S. Holder (a "Non-U.S. Holder").

Edgar Filing: NANOMETRICS INC - Form 10-Q

Table of Contents

For purposes of the discussion below, interest, OID and gain on the sale, exchange, redemption or other disposition of the exchange notes will be considered to be "U.S. trade or business income" if such income or gain is:

effectively connected with the conduct of a U.S. trade or business; and

in the case of a treaty resident, attributable to a permanent establishment (or, in the case of certain treaties, a fixed base) in the United States.

Stated Interest and OID

Generally, stated interest and OID paid to a Non-U.S. Holder will not be subject to U.S. federal income or withholding tax if such stated interest and OID is not U.S. trade or business income and is "portfolio interest." Generally, stated interest and OID on the exchange notes will qualify as portfolio interest if the Non-U.S. Holder:

does not actually or constructively own 10% or more of the total combined voting power of all classes of our stock;

is not a controlled foreign corporation with respect to which we are a "related person" within the meaning of Section 864(d)(4) of the Code;

is not a bank receiving interest on the extension of credit made pursuant to a loan agreement made in the ordinary course of its trade or business; and

certifies, under penalties of perjury, that such holder is not a U.S. person and provides such holder's name and address (which certification may be made on IRS Form W-8BEN or other applicable form).

If interest and OID on the exchange notes do not qualify for the portfolio interest exception and are not U.S. trade or business income, payments of stated interest on the exchange notes will be subject to U.S. withholding tax at a rate of 30% of the stated interest paid (plus U.S. withholding tax at a rate of 30% on accrued and unpaid OID on which withholding tax has not yet been paid) unless a treaty applies to reduce or eliminate such withholding tax. U.S. trade or business income will be taxed at regular graduated U.S. tax rates rather than the 30% gross rate. In the case of a Non-U.S. Holder that is a corporation, such U.S. trade or business income also may be subject to the branch profits tax. To claim an exemption from withholding in the case of U.S. trade or business income, or to claim the benefits of a treaty, a Non-U.S. Holder must provide a properly executed IRS Form W-8ECI (in the case of U.S. trade or business income) or IRS Form W-8BEN (in the case of a treaty exemption), or any successor form, as applicable, prior to the payment of interest and OID. These forms must be periodically updated. A Non-U.S. Holder who is claiming the benefits of a treaty may be required, in certain instances, to obtain a TIN and to provide certain documentary evidence issued by foreign governmental authorities to prove residence in the foreign country. Also, special procedures are provided under applicable Treasury regulations for payments through qualified intermediaries.

Sale, Exchange or Redemption of the Notes

Subject to the discussion below concerning backup withholding, any gain realized by a Non-U.S. Holder on the sale, exchange or redemption of an exchange note generally will not be subject to U.S. federal income tax, unless:

Edgar Filing: NANOMETRICS INC - Form 10-Q

such gain is U.S. trade or business income; or

subject to certain exceptions, the Non-U.S. Holder is an individual who holds the exchange notes as a capital asset and is present in the United States for 183 days or more in the taxable year of

Table of Contents

the disposition, in which case a 30% tax will apply to the net gain on such sale, unless such tax is reduced or eliminated by treaty.

Upon a sale, exchange or redemption of an exchange note, accrued and unpaid stated interest and OID will be taxed as described above under the heading " Stated Interest and OID."

Information Reporting and Backup Withholding

Information returns will be filed with the IRS in connection with payments on the exchange notes. Unless the Non-U.S. Holder complies with certification procedures to establish that it is not a U.S. person, information returns may be filed with the IRS in connection with the proceeds from a sale or other disposition of the exchange notes and the Non-U.S. Holder may be subject to U.S. backup withholding on payments on the exchange notes or on the proceeds from a sale or other disposition of the exchange notes. The certification procedures required to claim the exemption from withholding tax on interest (including OID) described above will satisfy the certification requirements necessary to avoid the backup withholding tax as well. The amount of any backup withholding from a payment to a Non-U.S. Holder will be allowed as a credit against the Non-U.S. Holder's U.S. federal income tax liability and may entitle the Non-U.S. Holder to a refund, provided that the required information is timely furnished to the IRS.

Foreign Account Tax Compliance

The Foreign Account Tax Compliance Act provisions of the Hiring Incentives to Restore Employment Act ("FATCA"), when applicable, will impose a U.S. federal withholding tax of 30% on certain payments to foreign entities (including interest payments and gross proceeds from debt instruments, such as the exchange notes) that fail to comply with certain certification and information reporting requirements. FATCA as initially enacted generally applies to debt instruments issued after March 18, 2012. Under Treasury regulations and IRS Notice 2013-43, the grandfathering date has been extended, and FATCA generally will not apply to debt instruments that are outstanding on July 1, 2014 (unless such instruments are significantly modified after that date). Because the exchange notes will be outstanding before July 1, 2014, FATCA withholding will not apply to the notes unless the exchange notes are significantly modified after such date. Non-U.S. Holders are urged to consult their own tax advisor regarding the potential application of FATCA to the exchange notes.

THE PRECEDING DISCUSSION IS FOR GENERAL INFORMATION ONLY AND IS NOT TAX ADVICE. ACCORDINGLY, EACH INVESTOR SHOULD CONSULT HIS, HER OR ITS OWN TAX ADVISOR AS TO PARTICULAR TAX CONSEQUENCES TO IT OF PURCHASING, HOLDING AND DISPOSING OF EXCHANGE NOTES, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY PROPOSED CHANGES IN APPLICABLE LAW.

Table of Contents

PLAN OF DISTRIBUTION

Each broker-dealer that receives exchange notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such exchange notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of exchange notes received in exchange for original notes where such original notes were acquired as a result of market-making activities or other trading activities. We and the guarantors have agreed that, starting on the expiration date and ending on the close of business 180 days after the expiration date, we will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, until November 26, 2013, dealers effecting transactions in the exchange notes may be required to deliver a prospectus.

We and the guarantors will not receive any proceeds from any sale of exchange notes by brokers-dealers. Exchange notes received by broker-dealers for their own account pursuant to the exchange offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the exchange notes or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer and/or the purchasers of any such exchange notes. Any broker-dealer that resells exchange notes that were received by it for its own account pursuant to the exchange offer and any broker or dealer that participates in a distribution of such exchange notes may be deemed to be an "underwriter" within the meaning of the Securities Act and any profit of any such resale of exchange notes and any commissions or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that, by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

For a period of 180 days after the expiration date, we and the guarantors will promptly send additional copies of this prospectus and any amendment or supplement to this prospectus to any broker-dealer that requests such documents in the letter of transmittal. We and the guarantors have agreed to pay all expenses incidental to the exchange offer (including the expenses of one counsel for the holders of the original notes) other than commissions or concessions of any brokers or dealers and certain transfer taxes and will indemnify the holders of the original notes (including any broker-dealers) against certain liabilities, including liabilities under the Securities Act.

Under existing interpretations of the Securities Act by the SEC's staff contained in several no-action letters to third parties, and subject to the immediately following sentence, we and the guarantors believe that the exchange notes would generally be freely transferable by holders after the exchange offer without further registration under the Securities Act, subject to certain representations required to be made by each holder of exchange notes, as set forth below. However, any purchaser of exchange notes who is an "affiliate" (as defined in Rule 405 under the Securities Act) of ours and the guarantors or who intends to participate in the exchange offer for the purpose of distributing the exchange notes:

will not be able to rely on the applicable interpretation of the staff of the SEC;

will not be able to tender its original securities in the exchange offer; and

must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any sale or transfer of the exchange notes unless such sale or transfer is made pursuant to an exemption from such requirements.

We and the guarantors do not intend to seek our own interpretations regarding the exchange offer, and there can be no assurance that the SEC's staff would make a similar determination with respect to the

exchange notes as it has in other interpretation to other parties, although we and the guarantors have no reason to believe otherwise.

Table of Contents

LEGAL MATTERS

K&L Gates LLP, Pittsburgh, Pennsylvania, will pass upon the validity of the exchange notes and the guarantees by the guarantors. In rendering its opinion, K&L Gates LLP will rely upon the opinion of Jackson Kelly PLLC, Charleston, West Virginia, as to all matters governed by the laws of the Commonwealth of Kentucky, the Commonwealth of Virginia and the State of West Virginia.

EXPERTS

Coal Reserves

The information appearing in, and incorporated by reference in, this prospectus concerning our estimates of proven and probable coal reserves at December 31, 2012 were prepared by our engineers and geologists and reviewed by Weir International, Inc., an independent mining and geological consultant.

Independent Registered Public Accounting Firm

The consolidated financial statements of Arch Coal, Inc. appearing in Arch Coal, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2012 (including the schedule appearing therein) have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in its report thereon, included therein and incorporated herein by reference. Such consolidated financial statements and schedule are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC under the Exchange Act. You may inspect without charge any documents filed by us at the SEC's public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site, www.sec.gov, that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including Arch Coal, Inc. Our common stock is traded on the New York Stock Exchange. You may also inspect the information we file with the SEC at the New York Stock Exchange's offices at 20 Broad Street, New York, NY 10005. Information about us is also available at www.archcoal.com. The information on our Internet site is not a part of this prospectus.

We are "incorporating by reference" into this prospectus the information we file with the SEC. This means that we are disclosing important information to you by referring you to these documents filed with the SEC. The information incorporated by reference is considered part of this prospectus, and information filed with the SEC subsequent to this prospectus and prior to the termination of this exchange offer will automatically be deemed to update and supersede this information. We incorporate by reference into this prospectus the documents listed below and any filing that we will make with the SEC in the future under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, including such documents filed with the SEC by us after the date of this prospectus and prior to the time we complete the exchange offer (excluding any portions of such documents that have been "furnished" but not "filed" for purposes of the Exchange Act):

Our Annual Report on Form 10-K for the year ended December 31, 2012;

Our Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2013;

Edgar Filing: NANOMETRICS INC - Form 10-Q

Our Current Reports on Form 8-K dated February 26, April 30, July 2 and August 12, 19 and 27, 2013; and

Table of Contents

The portions of our Definitive Proxy Statement on Schedule 14A that are deemed "filed" with the SEC, as filed on March 12, 2013.

Any statement or information contained in those documents shall be deemed to be modified or superseded to the extent a statement or information included in this prospectus modifies or supersedes such statement or information. Any such statement or information so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. Any future filings made by us with the SEC (excluding those filings made under Items 2.02 or 7.01 of Form 8-K or other information "furnished" to the SEC) under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 after the date of this prospectus and prior to the termination of this offering will also be deemed to be incorporated by reference and to be part of this prospectus from their dates of filing. Other than as expressly stated in this paragraph, none of our reports, proxy statements and other information filed, or that we may file, with the SEC is incorporated by reference herein.

Table of Contents

Offer to Exchange

**Up to \$375,000,000 aggregate principal amount of
9.875% Senior Notes Due 2019 (CUSIP No. 039380AJ9)
which have been registered under the Securities Act of 1933, as
amended
for
Any and All of Our Outstanding 9.875% Senior Notes Due 2019
(CUSIP Nos. 039380AH3 and U0393CAD7)**

**The exchange offer will expire at 12:00 midnight, New York City
time,
at the end of October 9, 2013, unless earlier terminated or
extended.**

PROSPECTUS

August 27, 2013

DEALER PROSPECTUS DELIVERY OBLIGATION

Until November 26, 2013, all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotment of subscriptions.
