HOME BANCSHARES INC
Form S-4
May 19, 2014
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As filed with the Securities and Exchange Commission on May 19**, 2014**

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-4

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

HOME BANCSHARES, INC.

(Exact name of registrant as specified in its charter)

Arkansas	**6022**	**71-0682831**
(State or other jurisdiction of incorporation or organization)	**(Primary standard industrial classification code number)**	**(IRS Employer Identification Number)**

719 Harkrider Street, Suite 100, Conway, Arkansas 72032

(501) 328-4770

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

C. Douglas Buford, Jr.

Mitchell, Williams, Selig, Gates &

Woodyard, P.L.L.C.

425 W. Capitol Ave., Ste. 1800

Little Rock, Arkansas 72201

Telephone: (501) 688-8866

John P. Jack Greeley

Smith Mackinnon, PA

255 South Orange Ave., Ste. 800

Orlando, Florida 32801

Telephone: (407) 843-7300

Approximate date of commencement of proposed sale of securities to the public:

As soon as practicable after this Registration Statement becomes effective and upon completion of the merger described in the enclosed document.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. ¨

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

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

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

Large accelerated	x	Accelerated filer	¨

Non-accelerated filer ¨ Smaller reporting company ¨

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Security	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee[3]
Common Stock, par value $0.01 per share	1,443,967(1)	N/A	$29,360,573(2)	$3,782(2)
Total				

(1) Represents the maximum number of shares of common stock of Home BancShares, Inc. (HBI) that may be issued to holders of shares of common stock of Florida Traditions Bank (FTB) in the merger based on the Merger Consideration (as such term is defined in the Agreement and Plan of Merger dated as of April 25, 2014, among HBI, Centennial Bank, and FTB (the Merger Agreement)) and assuming that the HBI Average Closing Price (as such term is defined in the Merger Agreement) is $29.75, the lowest price permitted in the Merger Agreement without HBI having the right to terminate the Merger Agreement.

(2) Estimated solely for the purpose of calculating the registration fee required by Section 6(b) of the Securities Act and calculated pursuant to Rule 457(f) under the Securities Act. The proposed maximum aggregate offering price of HBI s common stock was calculated based upon the book value of the FTB shares of common stock (the securities to be canceled in the merger) and is equal to the product of (i) $11.47, calculated according to Rule 457(f)(2) of the Securities Act, multiplied by (ii) 2,559,771, the maximum number of FTB shares of common stock that may be canceled and exchanged for HBI common stock in the merger.

(3) Determined in accordance with Section 6(b) of the Securities Act at a rate equal to $128.80 per $1,000,000 of the proposed maximum aggregate offering price.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE SECURITIES AND EXCHANGE COMMISSION ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

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Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold prior to the time the registration statement becomes effective. This document shall not constitute an offer to sell nor shall there be any sale of these securities in any jurisdiction in which such offer or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

PRELIMINARY SUBJECT TO COMPLETION DATED MAY 19, 2014

MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT

Home BancShares, Inc. (which we refer to as HBI) and Florida Traditions Bank (which we refer to as FTB) have entered into an Agreement and Plan of Merger dated April 25, 2014 (which we refer to sometimes as the Merger Agreement), providing for the combination of FTB with and into Centennial Bank, an Arkansas state bank and subsidiary of HBI, with Centennial Bank remaining as the surviving entity (which transaction we refer to as the merger). Before we complete the merger, the shareholders of FTB must approve the Merger Agreement. A special meeting of FTB shareholders will be held on [ ], 2014 for that purpose.

Under the terms of the Merger Agreement, the aggregate merger consideration payable by HBI to FTB shareholders will consist of shares of HBI common stock with a total value of approximately $42,961,382. Based on 2,559,771 outstanding shares of FTB common stock, which was the number outstanding on the day the Merger Agreement was signed, FTB shareholders will receive, in exchange for each share of FTB common stock, HBI common stock valued at approximately $16.7833. The number of shares of HBI common stock issuable for each share of FTB common stock will not be determined until the effective time of the merger, and will be based on the volume-weighted average closing price of HBI common stock on The NASDAQ Global Select Market reporting system for the 20 trading days immediately prior to the date the merger closes, as set forth in more detail in the Merger Agreement and described in this proxy statement/prospectus. We expect the merger to be a tax-free transaction for FTB shareholders, to the extent they receive HBI common stock for their shares of FTB common stock.

The market price of HBI common stock will fluctuate before the merger. You should obtain a current stock price quotation for HBI common stock. HBI common stock is traded on The NASDAQ Global Select Market under the symbol HOMB.

If the 20-day average closing price of the HBI common stock as of the closing date of the merger is equal to or greater than $40.25 (subject to adjustment in the event of a stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares or similar transaction), the number of shares of HBI common stock to be issued to FTB shareholders in connection with the merger will be 1,067,424 shares. In addition, if the 20-day average closing price of the HBI common stock as of the closing date of the merger is less than $29.75 (subject to adjustment in the event of a stock dividend, reclassification, recapitalization, split-up, combination, exchange of shares or similar transaction), then HBI has the option to terminate the Merger Agreement.

FTB s board of directors has unanimously determined that the combination of FTB and Centennial Bank is in the best interests of FTB shareholders based upon its analysis, investigation and deliberation, and FTB s board of directors unanimously recommends that the FTB shareholders vote **FOR** the approval of the Merger Agreement and **FOR** the approval of the other FTB proposal described in this proxy statement/prospectus.

You should read this entire proxy statement/prospectus, including the appendices and the documents incorporated by reference into the document, carefully because it contains important information about the merger and the related transactions. In particular, you should read carefully the information under the section entitled Risk Factors beginning on page 11.

The shares of HBI common stock to be issued to FTB shareholders in the merger are not deposits or savings accounts or other obligations of any bank or savings association, and are not insured by the Federal Deposit Insurance Corporation or any other governmental agency.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved the merger described in this proxy statement/prospectus or the HBI common stock to be issued in the merger, or passed upon the adequacy or accuracy of this proxy statement/prospectus. Any representation to the contrary is a criminal offense.

This proxy statement/prospectus is dated [ ], 2014.

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FLORIDA TRADITIONS BANK

14033 8th St.

Dade City, Florida 33525

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

TO BE HELD ON [ ], 2014

NOTICE IS HEREBY GIVEN that a special meeting of shareholders of Florida Traditions Bank (FTB) will be held at FTB s principal executive offices located at 14033 8th St., Dade City, Florida 33525, at [ ] Eastern Time, on [ ], 2014, for the following purposes:

1. To approve the Agreement and Plan of Merger (the Merger Agreement) dated as of April 25, 2014, by and among Home BancShares, Inc., Centennial Bank and FTB (the Merger Proposal).

2. To approve one or more adjournments of the FTB special meeting, if necessary or appropriate, including adjournments to permit further solicitation of proxies in favor of the Merger Proposal (the Adjournment Proposal).

FTB will transact no other business at the special meeting, except for business properly brought before the special meeting or any adjournment or postponement of such meeting.

The Merger Proposal is described in more detail in the attached proxy statement/prospectus, which you should read carefully in its entirety before you vote. A copy of the Merger Agreement is attached as **Appendix A** to the proxy statement/prospectus.

FTB s board of directors has set [ ], 2014, as the record date for the FTB special meeting. All holders of record of FTB common stock at the close of business on the record date will be notified of the special meeting. Only holders of record of FTB common stock at the close of business on [ ], 2014, will be entitled to vote at the FTB special meeting and any adjournments or postponements thereof. Any shareholder entitled to attend and vote at the FTB special meeting is entitled to appoint a proxy to attend and vote on such shareholder s behalf. Such proxy need not be a holder of FTB common stock.

Holders of FTB common stock are entitled to assert dissenters rights pursuant to Florida Statues Annotated § 658.44 in connection with the approval of the Merger Agreement. The dissenters law provides that, if the merger consummated, a dissenting shareholder will be entitled to payment in cash of the value of only those shares held by

the shareholder (i) which at the special meeting are voted against approval of the Merger Agreement, or (ii) with respect to which the shareholder has given written notice to the President and Chief Executive Officer of FTB, at or prior to the special meeting, that such shareholder dissents from the Merger Agreement, and which shares are not voted for approval of the Merger Agreement.

Your vote is very important. To ensure your representation at the FTB special meeting, please complete and return the enclosed proxy card. Please vote promptly whether or not you expect to attend the FTB special meeting. Submitting a proxy now will not prevent you from being able to vote in person at the FTB special meeting.

FTB s board of directors has unanimously adopted and approved the Merger Agreement and the transactions contemplated thereby and recommends that you vote **FOR** the Merger Proposal and **FOR** the Adjournment Proposal.

By Order of the Board of Directors

/s/ James S. Stalnaker, Jr.

Chief Executive Officer

[ ], 2014

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WHERE YOU CAN FIND MORE INFORMATION

HBI files annual, quarterly and special reports, proxy statements and other business and financial information with the Securities and Exchange Commission (the SEC). You may read and copy any materials that HBI files with the SEC at the SEC s Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549, at prescribed rates. Please call the SEC at (800) SEC-0330 ((800) 732-0330) for further information on the public reference room. In addition, HBI files reports and other business and financial information with the SEC electronically, and the SEC maintains a website located at *www.sec.gov* containing this information. You will also be able to obtain these documents, free of charge, from HBI by accessing HBI s website at *www.homebancshares.com* under the heading Investor Relations. Copies can also be obtained, free of charge, by directing a written request to Home BancShares, Inc., Attention: Corporate Secretary, 719 Harkrider Street, Suite 100, Conway, Arkansas 72032.

HBI has filed a registration statement on Form S-4 to register with the SEC up to 1,443,967 shares of HBI common stock (the number of shares has been calculated based on an average closing price of HBI common stock of $29.75 which is the lowest stock price listed on the chart on page 6). This proxy statement/prospectus is a part of that registration statement. As permitted by SEC rules, this proxy statement/prospectus does not contain all of the information included in the registration statement or in the exhibits or schedules to the registration statement. You may read and copy the registration statement, including any amendments, schedules and exhibits at the addresses set forth below. Statements contained in this proxy statement/prospectus as to the contents of any contract or other documents referred to in this proxy statement/prospectus are not necessarily complete. In each case, you should refer to the copy of the applicable contract or other document filed as an exhibit to the registration statement. This proxy statement/prospectus incorporates important business and financial information about HBI and FTB that is not included in or delivered with this proxy statement/prospectus, including incorporating by reference documents that HBI has previously filed with the SEC. These documents contain important information about HBI and its financial condition. See Documents Incorporated by Reference on page 93. These documents are available without charge to you upon written or oral request to HBI s principal executive offices. The address and telephone number of such principal executive office is listed below:

Home BancShares, Inc.

719 Harkrider Street, Suite 100

Conway, Arkansas 72032

Attention: Corporate Secretary

(501) 328-4770

To obtain timely delivery of these documents, you must request the information no later than [ ], 2014, in order to receive them before FTB s special meeting of shareholders.

HBI common stock is traded on The NASDAQ Global Select Market under the symbol HOMB.

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QUESTIONS AND ANSWERS

The following questions and answers briefly address some commonly asked questions about the merger and the shareholder special meeting of FTB shareholders. They may not include all the information that is important to the shareholders of FTB. Shareholders of FTB should each read this entire proxy statement/prospectus carefully, including the appendices and other documents referred to in this proxy statement/prospectus.

Q: Why am I receiving these materials?

A: FTB is sending these materials to its shareholders to help them decide how to vote their shares of FTB common stock with respect to the proposed merger and the other matters to be considered at the FTB special meeting described below.

The merger cannot be completed unless FTB shareholders approve the Merger Agreement. FTB is holding a special meeting of shareholders to vote on the Merger Agreement as described in FTB Special Meeting of Shareholders. Information about the special meeting and the merger is contained in this proxy statement/prospectus.

This proxy statement/prospectus constitutes a prospectus of HBI and a proxy statement of FTB. It is a prospectus because HBI will issue shares of its common stock in exchange for shares of FTB common stock in the merger. It is a proxy statement because the board of directors of FTB is soliciting proxies from FTB s shareholders.

Q: What will FTB shareholders receive in the merger?

A: Under the terms of the Merger Agreement, FTB shareholders will receive their pro rata share of the total consideration, which consists of shares of HBI common stock that, valued at the volume-weighted average closing price of HBI common stock on The NASDAQ Global Select Market reporting system for the 20 trading days immediately prior to the date the merger closes, will have a total value of $42,961,382.

Q: What will an FTB shareholder receive for each share of FTB common stock?

A: Based on 2,559,771 outstanding shares of FTB common stock (the number outstanding on the day the Merger Agreement was signed), each share of FTB common stock will be exchanged in the merger for HBI common stock with a total value of approximately $16.7833. The number of shares of HBI common stock issuable for each share of FTB common stock will not be determined until the effective time of the merger, and will be based on the volume-weighted average closing price of HBI common stock on The NASDAQ Global Select Market reporting system for the 20 trading days immediately prior to the date the merger closes, as set forth in more detail in the Merger Agreement and described in this proxy statement/prospectus. See The Merger Terms of the Merger beginning on page 33 for a more detailed discussion of the per-share merger consideration.

Q: How are outstanding FTB stock options addressed in the Merger Agreement?

A: At or prior to the closing of the merger, each outstanding and unexercised FTB stock option will be terminated by FTB and shall entitle the holder to a cash payment at the effective time of the merger equal to the difference between the option exercise price and the equivalent dollar value of the merger consideration.

Q: When do HBI and FTB expect to complete the merger?

A: HBI and FTB expect to complete the merger after all conditions to the merger in the Merger Agreement are satisfied or waived, including after shareholder approval is received at the special meeting of FTB shareholders and all required regulatory approvals are received. HBI and FTB currently expect to complete the merger in the third quarter of 2014. It is possible, however, that as a result of factors outside of either company s control, the merger may be completed at a later time, or may not be completed at all.

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Q: How will the merger consideration received by FTB shareholders affect HBI shareholders?

A: As a result of HBI s issuance of new shares to FTB shareholders, current HBI shareholders will experience dilution in terms of percentage of ownership. Following the closing of the merger, current HBI shareholders will own approximately 98.01% of the outstanding common stock of HBI, and current FTB shareholders will own approximately 1.99% of the outstanding common stock of HBI. These percentages are based upon an HBI common stock price of $32.43 and will increase or decrease based on the HBI common stock price as described in more detail in the chart on page 6.

Q: What am I being asked to vote on?

A: FTB shareholders are being asked to vote on the following proposals:
1. To approve the Merger Agreement (referred to as the Merger Proposal); and

2. To approve one or more adjournments of the FTB special meeting, if necessary or appropriate, including adjournments to solicit additional proxies in favor of the Merger Proposal (referred to as the Adjournment Proposal).

Q: How does the board of directors of FTB recommend that I vote?

A: FTB s board of directors unanimously recommends that FTB shareholders vote **FOR** the FTB proposals described in this proxy statement/prospectus.
For a discussion of interests of FTB s directors and officers in the merger that may be different from, or in addition to, the interests of FTB shareholders generally, see The Merger Interests of FTB Directors and Officers in the Merger and Golden Parachute Compensation, beginning on page 54.

Q: What do I need to do now?

A: After carefully reading and considering the information contained in this proxy statement/prospectus, FTB shareholders should complete, sign and date the enclosed proxy card and return it in the enclosed envelope as soon as possible so that their shares will be represented at FTB s special meeting.
Please follow the instructions set forth on the proxy card or on the voting instruction form provided by the record holder if your shares are held in the name of your broker or other nominee.

Q: How do I cast my vote?

A:

If you are a shareholder of record of FTB as of the record date for the FTB special meeting, you may vote by signing and dating the enclosed proxy card and returning it in the postage-paid envelope provided. You may also cast your vote in person at FTB s special meeting.

Q: When and where is the FTB special meeting?

A: The special meeting of FTB shareholders will be held at FTB s principal executive offices located at 14033 8 Street, Dade City, Florida, at [ ] Eastern Time, on [ ], 2014. All shareholders of FTB as of the record date, or their duly appointed proxies, may attend the FTB special meeting.

Q: If my FTB shares are held in street name by a broker or other nominee, will my broker or nominee vote my shares for me?

A: If your FTB shares are held in street name in a stock brokerage account or by a bank or other nominee, you must provide the record holder of your shares with instructions on how to vote your shares. Please follow the voting instructions provided by your bank or broker. Please note that you may not vote shares held in street name by returning a proxy card directly to FTB or by voting in person at the special meeting unless you provide a legal proxy, which you must obtain from your bank or broker.

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Brokers or other nominees who hold shares in street name for a beneficial owner typically have the authority to vote in their discretion on routine proposals when they have not received instructions from beneficial owners. However, brokers or other nominees are not allowed to exercise their voting discretion on matters that are determined to be non-routine without specific instructions from the beneficial owner. Broker non-votes are shares held by a broker or other nominee that are represented at the FTB special meeting but with respect to which the broker or other nominee is not instructed by the beneficial owner of such shares to vote on the particular proposal and the broker or other nominee does not have discretionary voting power on such proposal. If you are an FTB shareholder and you do not instruct your broker or other nominee on how to vote your shares, your broker or other nominee may not vote your shares on the Merger Proposal or the Adjournment Proposal, which broker non-votes will have the effect of a vote AGAINST the Merger Proposal, but will have no effect on the Adjournment Proposal.

Q: What vote is required to approve each proposal to be considered at the FTB special meeting?

A: Approval of the Merger Proposal requires the affirmative vote of the holders of at least a majority of the outstanding shares of FTB common stock. Approval of the Adjournment Proposal requires the affirmative vote of at least a majority of the shares of FTB voting on such proposal, provided that a quorum is present at the FTB special meeting. Abstentions and broker non-votes are not considered votes cast, but are included in determining whether there is a quorum present.

FTB s directors and certain officers entered into voting agreements with HBI pursuant to which they agreed to vote 896,169 total shares in favor of the merger. These shares represent approximately 35.01% of the FTB common stock entitled to vote at the FTB special meeting.

Q: What if I abstain from voting or do not vote?

A: For the purposes of the FTB special meeting, an abstention, which occurs when an FTB shareholder attends the FTB special meeting, either in person or by proxy, but abstains from voting, will have the effect of a vote AGAINST the Merger Proposal, but will have no effect on the Adjournment Proposal.

Q: May I change my vote or revoke my proxy after I have delivered my proxy or voting instruction card?

A: Yes. You may change your vote at any time before your proxy is voted at the special meeting:

by sending written notice of revocation to the corporate secretary of FTB;

by sending a completed proxy card bearing a later date than your original proxy card; or

by attending the special meeting and voting in person if you so request and if your shares are registered in your name rather than in the name of a broker, bank or other nominee; however, your attendance alone will not revoke any proxy.

If you choose either of the first two methods, you must take the described action (and, in the case of the second method, your proxy card must be received) no later than five (5) days prior to the special meeting.

If your shares are held in an account at a broker or other nominee, you should contact your broker or other nominee to change your vote.

Q: What happens if I sell my FTB shares after the record date but before the special meeting?

A: The record date for the FTB special meeting is earlier than both the date of such meeting and the date that the merger is expected to be completed. If you transfer your FTB common stock after the record date but before the date of the special meeting, you will retain your right to vote at the special meeting (provided that such shares remain outstanding on the date of the special meeting), but you will not have the right to receive any merger consideration for the transferred FTB shares. You will only be entitled to receive the merger consideration for FTB shares that you own at the effective time of the merger.

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Q: What do I do if I receive more than one proxy statement/prospectus or set of voting instructions?

A: If you hold shares directly as a record holder and also in street name or otherwise through a nominee, you may receive more than one proxy statement/prospectus and/or set of voting instructions relating to the special meeting. These should each be voted or returned separately to ensure that all of your shares are voted.

Q: What are the federal income tax consequences of the merger?

A: The merger is expected to be a tax-free transaction for FTB shareholders, to the extent they receive HBI common stock for their shares of FTB common stock. The obligation of HBI and FTB to complete the merger is conditioned upon the receipt of a legal opinion to the effect that the merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the Internal Revenue Code).

For a more detailed discussion of the material United States federal income tax consequences of the transaction, see Material United States Federal Income Tax Consequences of the Merger beginning on page 66.

The consequences of the merger to any particular shareholder will depend on that shareholder s particular facts and circumstances. Accordingly, you are urged to consult your tax advisor to determine your tax consequences from the merger.

Q: Do I have appraisal or dissenters rights?

A: FTB shareholders are entitled to dissenters rights under Florida Statutes Annotated § 658.44, a copy of which is attached as **Appendix F** to this proxy statement/prospectus. If you wish to assert dissenters rights, you (i) must vote against the approval of the Merger Proposal or (ii) must deliver to FTB, at or prior to the FTB special meeting, written notice of your intent to demand payment for your shares if the merger is consummated and you must not vote for approval of the Merger Proposal. The procedure for dissenting is described in more detail in The Merger section under the heading Dissenters Rights beginning on page 35.

HBI shareholders are not entitled to any dissenters rights.

Q: Should I send in my stock certificates now?

A: No. Please do not send your stock certificates with your proxy card. If you are a holder of FTB common stock, you will receive written instructions from Computershare Trust Company, N.A., after the merger is completed on how to exchange your stock certificates for HBI common stock.

Q: Whom should I contact if I have any questions about the proxy materials or the special meeting?

A: If you have any questions about the merger or any of the proposals to be considered at the special meeting, need assistance in submitting your proxy or voting your shares or need additional copies of this proxy statement/prospectus or the enclosed proxy card, you should contact either HBI or FTB as follows:

Home BancShares, Inc. P.O. Box 966 Conway, Arkansas 72032 Attn: Investor Relations Officer Telephone: (501) 328-4770	Florida Traditions Bank 14033 8th Street Dade City, Florida 33525 Attn: President and Chief Executive Officer Telephone: (352) 523-1800

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SUMMARY

This summary highlights selected information from this proxy statement/prospectus. It may not contain all of the information that is important to you. We urge you to carefully read the entire document and the other documents to which we refer you in order to fully understand the merger and the related transactions. See Where You Can Find More Information included elsewhere in this proxy statement/prospectus. Each item in this summary refers to the page of this proxy statement/prospectus on which that subject is discussed in more detail.

The Companies (pages 77 and 82)

HBI

HBI is a Conway, Arkansas headquartered bank holding company registered under the federal Bank Holding Company Act of 1956. HBI is primarily engaged in providing a broad range of commercial and retail banking and related financial services to businesses, real estate developers and investors, individuals and municipalities through its wholly owned community bank subsidiary, Centennial Bank. Centennial Bank has locations in Arkansas, Florida and South Alabama.

HBI s total assets, total deposits, total revenue and net income for each of the past three years are as follows:

	As of or for the Years Ended December 31,		
	2013	2012	2011
	(In thousands)		
Total assets	$ 6,811,861	$ 4,242,130	$ 3,604,117
Total deposits	5,393,046	3,483,452	2,858,031
Total revenue (interest income plus non-interest income)	257,491	225,104	213,115
Net income available to all stockholders	66,520	63,022	54,741

HBI s common stock is traded on The NASDAQ Global Select Market under the symbol HOMB.

HBI s principal executive office is located at 719 Harkrider, Suite 100, Conway, Arkansas, and its telephone number is (501) 328-4770. HBI s internet address is *www.homebancshares.com*. Additional information about HBI is included under Certain Information Concerning HBI and Where You Can Find More Information included elsewhere in this proxy statement/prospectus.

FTB

FTB is a Florida-chartered non-member state bank which commenced operations in 2007. FTB is a full service commercial bank, providing a wide range of business and consumer financial services to its target marketplace, which is comprised primarily of Hernando, Hillsborough, Osceola, Pasco and Polk Counties, Florida. At March 31, 2014, FTB had total assets of approximately $312.0 million, total loans of approximately $248.9 million, total deposits of approximately $277.7 million, and total shareholders equity of approximately $29.4 million.

FTB s common stock is not listed on any exchange or quoted on any automated services, and there is no established trading market for shares of FTB common stock.

FTB s principal office is located at 14033 8th Street, Dade City, Florida 33525 and its telephone number at that location is (352) 523-1800. FTB s internet address is *www.fltraditionsbank.com*. Additional information about FTB is included under Certain Information Concerning FTB included elsewhere in this proxy statement/prospectus.

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The Merger (page 33)

The Merger Agreement provides that, subject to its terms and conditions and in accordance with Arkansas law, FTB will merge with and into Centennial Bank, with Centennial Bank being the surviving corporation in the merger. This transaction is referred to in this proxy statement/prospectus as the merger.

Under the terms of the Merger Agreement, each FTB shareholder will receive a pro rata share of the total merger consideration, which consists of shares of HBI common stock with a total value of $42,961,382, based on the volume-weighted average closing price of HBI common stock for the 20 trading days immediately before the merger closes (the HBI Average Closing Price). Based on 2,559,771 outstanding shares of FTB common stock, which was the number outstanding on the day the Merger Agreement was signed, FTB shareholders will receive in exchange for each share of FTB common stock merger consideration valued at approximately $16.7833.

The number of shares of HBI common stock comprising the merger consideration will vary based on the HBI Average Closing Price. The following table illustrates, for a range of potentially applicable HBI Average Closing Prices, the number of shares of HBI common stock that would be exchanged for each share of FTB common stock, assuming that 2,559,771 shares of FTB common stock are outstanding immediately before the merger. The actual consideration will be based on the actual HBI Average Closing Price, which will be computed at the time of the merger; the HBI Average Closing Prices shown on this table are for illustration only. Cash will be paid in lieu of issuing fractional shares of HBI common stock.

	Per-Share Merger Consideration*
If the applicable HBI Average Closing Price is:	**Each share of FTB common stock will exchange for the following fractional share of HBI common stock:**
$29.75**	0.5641
$30.00	0.5594
$31.00	0.5414
$32.00	0.5245
$32.43**	0.5175
$33.00	0.5086
$34.00	0.4936
$35.00	0.4795
$36.00	0.4662
$37.00	0.4536
$38.00	0.4417
$39.00	0.4303
$40.00	0.4196
$40.25**	0.4170

* The computations in this table assume that 2,559,771 shares of FTB common stock will be outstanding immediately before the merger. The Per-Share Merger Consideration will be based on the actual HBI Average Closing Price, which will be computed at the time of the merger; the HBI Average Closing Prices shown on this table are for illustration only. Cash will be paid in lieu of issuing fractional shares of HBI common stock. Assuming the HBI Average Closing Price is $32.43, an FTB shareholder holding 100 shares of FTB common

stock will receive 51 shares of HBI common stock and $24.32 in cash in lieu of the resulting fractional share.

** On April 25, 2014, the date the Merger Agreement was signed, the closing price of a share of HBI common stock was $32.43. The Merger Agreement provides that if the HBI Average Closing Price is equal to or greater than $40.25, then the HBI Average Closing Price will be $40.25. Additionally, if the HBI Average Closing Price is below $29.75 on the closing date, then HBI has the right to terminate the Merger Agreement.

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Based on the assumption that 1,324,681 shares of HBI common stock will be issued to FTB shareholders (based on a $32.43 HBI Average Closing Price and no cash in lieu of fractional shares paid), FTB shareholders would own approximately 1.99% of HBI s common stock after the merger is completed, excluding any shares of HBI common stock they may already own.

Recommendation of FTB s Board of Directors (page 38)

FTB s board of directors recommends that holders of FTB common stock vote **FOR** the Merger Proposal, and **FOR** the Adjournment Proposal.

For further discussion of FTB s reasons for the merger and the recommendations of FTB s board of directors, see The Merger Background of the Merger and The Merger Recommendation of FTB s Board of Directors and Reasons for the Merger.

Opinion of HBI s Financial Advisor (page 48)

On April 17, 2014, Wunderlich Securities, Inc. (Wunderlich), HBI s financial advisor in connection with the merger, provided the HBI board of directors with a preliminary overview of its analyses performed as of the date of the meeting and advised the board that its analyses were as of such date and based upon and subject to various qualifications and assumptions described in the meeting. Wunderlich delivered its opinion to the board on April 28, 2014 that, as of such date and subject to and based on the qualifications and assumptions set forth in its written opinion, the aggregate consideration to be paid by HBI pursuant to the Merger Agreement was fair to HBI from a financial point of view.

The full text of Wunderlich s opinion, dated April 28, 2014, is attached as **Appendix B** to this proxy statement/prospectus. You should read the opinion in its entirety for a discussion of, among other things, the assumptions made, procedures followed, matters considered and any limitations on the review undertaken by Wunderlich in rendering its opinion.

Wunderlich s opinion is addressed to HBI s board of directors and addresses only the fairness of the aggregate consideration to be paid by HBI from a financial point of view and does not address the merits of the underlying decision by HBI to enter into the Merger Agreement, the merits of the merger as compared to other alternatives potentially available to HBI or the relative effects of any alternative transaction in which HBI might engage. Wunderlich has been paid a customary investment banking fee for its services in connection with delivery of its opinion, and will be reimbursed by HBI for certain of its expenses.

Opinion of FTB s Financial Advisor (page 40)

On April 25, 2014, Monroe Financial Partners, Inc. (Monroe), FTB s financial advisor in connection with the merger, provided the FTB board of directors with an overview of its analyses performed as of the date of the meeting and advised the board that its analyses were as of such date and based upon and subject to various qualifications and assumptions described in the meeting. Monroe delivered its opinion to the board on April 25, 2014 that, as of such date and subject to and based upon the qualifications and assumptions set forth in its written opinion, the merger consideration was fair, from a financial point of view, to the shareholders of FTB.

The full text of Monroe s opinion, dated April 25, 2014, is attached as **Appendix C** to this proxy statement/prospectus. You should read the opinion in its entirety for a discussion of, among other things, the assumptions made, procedures followed, matters considered and any limitations on the review undertaken by Monroe in rendering its opinion.

Monroe s opinion is addressed to FTB s board of directors and addresses only the fairness of the merger consideration to be received by FTB shareholders from a financial point of view and does not address the merits

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of the underlying decision by FTB to enter into the Merger Agreement, the merits to the merger as compared to other alternatives potentially available to FTB or the relative effects of any alternative transaction in which FTB might engage. Monroe will be paid a fee for its services in connection with the delivery of its opinion, and will be reimbursed by FTB for certain of its expenses.

Interests of FTB Directors and Officers in the Merger (page 54)

Certain of FTB s directors and officers have interests in the merger as individuals in addition to, or different from, their interests as shareholders of FTB, including, but not limited to, (i) cash payments in connection with the termination of their stock options; (ii) cash payments in connection with the termination of FTB s supplemental executive retirement plan; (iii) potential payments under their employment agreements; and (iv) continuation of indemnification after the merger.

HBI has agreed to indemnify present and former directors and officers of FTB and its subsidiaries against certain costs, damages or liabilities incurred in connection with claims, investigations and other actions arising out of or pertaining to matters existing or occurring at or prior to the effective time of the merger, and to provide them with director s and officer s liability insurance coverage for a period of six years following the merger.

Dissenters Rights (page 35)

FTB shareholders are entitled to dissenters rights under Florida Statutes Annotated § 658.44, a copy of which is attached as **Appendix F** to this proxy statement/prospectus. Those rights, if properly exercised, will allow a shareholder who does not wish to accept the consideration provided for by the Merger Agreement instead to obtain payment in cash of the fair value of the shareholder s shares of FTB common stock. If you wish to assert dissenters rights, you (i) must vote against the approval of the Merger Proposal or (ii) must deliver to FTB, at or prior to the FTB special meeting, written notice of your intent to demand payment for your shares if the proposed merger is consummated and you must not vote for approval of the Merger Proposal. The procedure for dissenting is described in more detail in The Merger section under the heading Dissenters Rights.

HBI shareholders are not entitled to any dissenters rights.

Regulatory Matters (page 36)

Each of HBI and FTB has agreed to use its reasonable best efforts to obtain all regulatory approvals required to complete the merger and the other transactions contemplated by the Merger Agreement. These approvals include approval from the Federal Reserve Board, the FDIC, the Arkansas State Bank Department and the Florida Office of Financial Regulation, among others. HBI and FTB have filed, or are in the process of filing, applications and notifications to obtain these regulatory approvals. There can be no assurances that such approvals will be received on a timely basis, or as to the ability of HBI and FTB to obtain the approvals on satisfactory terms or the absence of litigation challenging such approvals. See The Merger Regulatory Approvals.

Conditions to Completion of the Merger (page 63)

Currently, HBI and FTB expect to complete the merger in the third quarter of 2014. As more fully described in this proxy statement/prospectus and in the Merger Agreement, the completion of the merger depends on a number of conditions being satisfied or, where legally permissible, waived. We cannot provide assurance as to when or if all of the conditions to the merger can or will be satisfied or waived by the appropriate party.

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Termination of the Merger Agreement (page 64)

The Merger Agreement can be terminated at any time prior to completion of the merger by mutual consent, or by either party in the following circumstances:

- a governmental entity that must grant a required regulatory approval has denied approval and such denial has become final and non-appealable, or an injunction or legal prohibition against the transaction becomes final and non-appealable;
- the merger has not been consummated by December 31, 2014, or under certain circumstances, January 31, 2015 (unless the failure of the closing to occur by such date is due to the failure of the party seeking to terminate the Merger Agreement to perform or observe its covenants and agreements);
- the other party breaches any of its covenants or agreements or representations or warranties under the Merger Agreement in a manner that would cause the closing conditions not to be satisfied and which is not cured within 30 days following written notice to the party committing the breach, or the breach, by its nature, cannot be cured within such time (provided that the terminating party is not then in material breach of any representation, warranty, covenant, or other agreement contained in the Merger Agreement); or
- FTB s shareholders fail to approve the Merger Proposal, provided that the failure to obtain such shareholder approval was not caused by the terminating party s material breach of any of its obligations under the Merger Agreement.

Additionally, the Merger Agreement may be terminated by (i) FTB in order to enter into an agreement providing for a Superior Proposal (as defined in the Merger Agreement), upon payment to HBI of a termination fee $2,000,000, or (ii) HBI, if the holders of 5% or more of the outstanding shares of FTB common stock provide notice of dissent and do not vote in favor of the merger, or (iii) HBI, if the HBI Average Closing Price as of the closing date is below $29.75.

Expenses and Termination Fees (pages 64 and 65)

Except for the registration fee and other fees paid to the SEC in connection with the merger, which will be paid by HBI, and any termination fees, all fees and expenses incurred in connection with the merger (including the costs and expense of printing and mailing this proxy statement/prospectus) will be paid by the party incurring such fees or expenses.

FTB is required to pay HBI a termination fee of $2,000,000 if the Merger Agreement is terminated by FTB in order to enter into an agreement providing for a Superior Proposal (as defined in the Merger Agreement) or by HBI because (i) FTB violated the no solicitation provision of the Merger Agreement, (ii) the board of directors of FTB failed to recommend the merger; (iii) the FTB board of directors has recommended, proposed, or publicly announced its intention to recommend or propose to engage in a transaction resulting in a Superior Proposal; or (iv) FTB has failed to call, give notice of, convene and hold the FTB shareholder meeting in accordance with the Merger Agreement.

Matters to Be Considered at the Special Meeting (page 78)

FTB shareholders will be asked to vote on the following proposals:

to approve the Merger Agreement (the Merger Proposal); and

to approve one or more adjournments of the FTB special meeting, if necessary or appropriate, including adjournments to permit further solicitation of proxies in favor of the Merger Proposal (the Adjournment Proposal).

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Approval of the Merger Proposal is required for the completion of the merger. FTB s board of directors recommends that FTB shareholders vote **FOR** the proposals set forth above. For further discussion of the FTB special meeting, see FTB Special Meeting of Shareholders.

Approval of the Merger Proposal requires the affirmative vote of at least a majority of the outstanding shares of FTB. Certain directors and officers have entered into voting agreements pursuant to which they have agreed to vote 896,169 shares in favor of the merger. These shares represent approximately 35.01% of the FTB common stock entitled to vote at the FTB special meeting.

Rights of FTB Shareholders Will Change as a Result of the Merger (page 71)

The rights of FTB shareholders are governed by Florida law and by its articles of incorporation and bylaws. Upon the completion of the merger, FTB shareholders will no longer have any direct interest in FTB. Those FTB shareholders receiving shares of HBI common stock as merger consideration will only participate in the combined company s future earnings and potential growth through their ownership of HBI common stock. All of the other incidents of direct stock ownership in FTB will be extinguished upon completion of the merger. The rights of former FTB shareholders that become HBI shareholders will be governed by Arkansas law and HBI s articles of incorporation and bylaws. Therefore, FTB shareholders that receive HBI common stock in the merger will have different rights once they become HBI shareholders. See Comparison of Rights of Holders of HBI and FTB Common Stock.

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RISK FACTORS

In addition to the other information contained in or incorporated by reference into this proxy statement/prospectus, including HBI s Annual Report on Form 10-K for the fiscal year ended December 31, 2013, and the matters addressed under the caption Cautionary Note Regarding Forward-Looking Statements, FTB shareholders should consider the matters described below carefully in determining whether to vote to approve the Merger Agreement and the transactions contemplated by the Merger Agreement.

Risk Factors Relating to the Merger

Because the market price of HBI common stock may fluctuate, you cannot be sure of the value of each share of HBI common stock that you will receive.

Upon completion of the merger, each share of FTB common stock (other than certain shares owned by FTB) will be converted into the right to receive merger consideration consisting of shares of HBI common stock, pursuant to the terms of the Merger Agreement. The value of each share of HBI common stock to be received by FTB shareholders will be based on the volume-weighted average price of HBI common stock during the 20 trading day period before the effective time of the merger. This average price may vary from the closing price of HBI common stock on the date that the merger was announced, on the date that this proxy statement/prospectus was mailed to FTB shareholders, on the date of the special meeting of the FTB shareholders, and on the date the merger is completed. Stock price changes may result from a variety of factors, including general market and economic conditions, changes in our respective businesses, operations and prospects, and regulatory considerations, among other things. Many of these factors are beyond the control of HBI and FTB. FTB shareholders should obtain current market quotations for shares of HBI common stock before voting their shares at the FTB special meeting.

HBI may fail to realize all of the anticipated benefits of the merger.

The success of the merger will depend, in part, on HBI s ability to successfully combine the HBI and FTB organizations. If HBI is not able to achieve this objective, the anticipated benefits of the merger may not be realized fully or at all or may take longer than expected to be realized.

Centennial Bank and FTB have operated and, until the completion of the merger, will continue to operate, independently. It is possible that the integration process or other factors could result in the loss or departure of key employees, the disruption of the ongoing business of FTB or inconsisp;

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

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or

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

A Delaware corporation may opt out of this provision with an express provision in its original certificate of incorporation or an express provision in its amended and restated certificate of incorporation or bylaws resulting from a stockholders amendment approved by at least a majority of the outstanding voting shares. However, Mitek has not

opted out of this provision. Section 203 could prohibit or delay mergers or other takeover or change-in-control attempts and, accordingly, may discourage attempts to acquire Mitek.

Size of the Board and Vacancies

Our second amended and restated bylaws provide that the number of directors shall be not less than three (3) nor more than nine (9). Within the limits specified in our second amended and restated bylaws, the exact

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number of directors is determined by resolution of the board of directors. Our board of directors has the right to fill any vacancies resulting from death, resignation, disqualification or removal, as well as any newly created directorships arising from an increase in the size of the board; *provided*, *however*, that if at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board of directors (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of then outstanding shares having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships or to replace the directors chosen by the directors then in office.

Amendment of Charter Provisions

The affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of our voting stock, voting together as a single class, is required to, among other things, amend, alter, change or repeal certain provisions of our restated certificate of incorporation; *provided*, *however*, that in addition to the foregoing vote, the affirmative vote of the holders of at least 66 2/3% of the shares of Class A Preferred Stock then outstanding is required to (i) alter or change the rights, preferences or privileges of the shares of such series of Class A Preferred Stock so as to affect adversely the shares; (ii) reduce the number of authorized shares of the preferred stock below the number of shares then outstanding or increase the number of shares of the Class A Preferred Stock; or (iii) create any new class or series of stock (A) having a preference over or being in parity with such series of Class A Preferred Stock with respect to dividends or upon liquidation or (B) having rights similar to any of the rights of such series of Class A Preferred Stock under Section 8 of the Certificate of Designation of Preferences of Preferred Stock. There are currently no shares of Class A Preferred Stock issued and outstanding.

Our second amended and restated bylaws may only be amended (or new bylaws adopted) by our board of directors or the affirmative vote of the holders of at least a majority of the voting power of all then outstanding shares of our voting stock.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare. Its address is 250 Royall Street, Canton, MA 02021 and its telephone number is (877) 290-2245. The transfer agent for any series of preferred stock that we may offer under this prospectus will be named and described in the prospectus supplement for that series.

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DESCRIPTION OF DEBT SECURITIES

We may issue debt securities, in one or more series, as either senior or subordinated debt or as senior or subordinated convertible debt. While the terms we have summarized below will apply generally to any debt securities that we may offer under this prospectus, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement. The terms of any debt securities offered under a prospectus supplement may differ from the terms described below. Unless the context requires otherwise, whenever we refer to the indentures, we also are referring to any supplemental indentures that specify the terms of a particular series of debt securities.

We will issue the senior debt securities under the senior indenture that we will enter into with the trustee named in the senior indenture. We will issue the subordinated debt securities under the subordinated indenture that we will enter into with the trustee named in the subordinated indenture. The indentures will be qualified under the Trust Indenture Act of 1939, as applicable (the Trust Indenture Act). We use the term debenture trustee to refer to either the trustee under the senior indenture or the trustee under the subordinated indenture, as applicable. We have filed forms of indentures as exhibits to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of the debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports that we file with the SEC.

The following summaries of material provisions of the senior debt securities, the subordinated debt securities and the indentures are subject to, and qualified in their entirety by reference to, all of the provisions of the indenture applicable to a particular series of debt securities. We urge you to read the applicable prospectus supplements and any related free writing prospectuses related to the debt securities that we may offer under this prospectus, as well as the complete indentures that contain the terms of the debt securities. Except as we may otherwise indicate, the terms of the senior indenture and the subordinated indenture are identical.

General

We will describe in the applicable prospectus supplement the terms of the series of debt securities being offered, including:

- the title;
- the principal amount being offered, and if a series, the total amount authorized and the total amount outstanding;
- any limit on the amount that may be issued;
- whether or not we will issue the series of debt securities in global form, the terms and who the depositary will be;

the maturity date;

whether and under what circumstances, if any, we will pay additional amounts on any debt securities held by a person who is not a U.S. person for tax purposes, and whether we can redeem the debt securities if we have to pay such additional amounts;

the annual interest rate, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;

whether or not the debt securities will be secured or unsecured, and the terms of any secured debt;

the terms of the subordination of any series of subordinated debt;

the place where payments will be payable;

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restrictions on transfer, sale or other assignment, if any;

our right, if any, to defer payment of interest and the maximum length of any such deferral period;

the date, if any, after which, and the price at which, we may, at our option, redeem the series of debt securities pursuant to any optional or provisional redemption provisions and the terms of those redemption provisions;

the date, if any, on which, and the price at which we are obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the holder s option to purchase, the series of debt securities and the currency or currency unit in which the debt securities are payable;

whether the indenture will restrict our ability and/or the ability of our subsidiaries to:

incur additional indebtedness;

issue additional securities;

create liens;

pay dividends and make distributions in respect of our capital stock and/or the capital stock of our subsidiaries;

redeem capital stock;

make investments or other restricted payments;

sell, transfer or otherwise dispose of assets;

enter into sale-leaseback transactions;

engage in transactions with stockholders and affiliates;

issue or sell stock of our subsidiaries; or

effect a consolidation or merger;

whether the indenture will require us to maintain any interest coverage, fixed charge, cash flow-based, asset-based or other financial ratios;

information describing any book-entry features;

provisions for a sinking fund purchase or other analogous fund, if any;

the applicability of the provisions in the indenture on discharge;

whether the debt securities are to be offered at a price such that they will be deemed to be offered at an original issue discount as defined in paragraph (a) of Section 1273 of the Internal Revenue Code;

the denominations in which we will issue the series of debt securities, if other than denominations of $1,000 and any integral multiple thereof;

the currency of payment of debt securities if other than U.S. dollars and the manner of determining the equivalent amount in U.S. dollars;

any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities, including any additional events of default or covenants provided with respect to the debt securities, and any terms that may be required by us or advisable under applicable laws or regulations; and

any other terms which shall not be inconsistent with the indentures.

The notes may be issued as original issue discount securities. An original issue discount security is a note, including any zero-coupon note, which:

is issued at a price lower than the amount payable upon its stated maturity; and

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provides that upon redemption or acceleration of the maturity, an amount less than the amount payable upon the stated maturity shall become due and payable.

U.S. federal income tax consequences applicable to notes sold at an original issue discount will be described in the applicable prospectus supplement. In addition, U.S. federal income tax or other consequences applicable to any notes which are denominated in a currency or currency unit other than U.S. dollars may be described in the applicable prospectus supplement.

Under the indentures, we will have the ability, in addition to the ability to issue notes with terms different from those of notes previously issued, without the consent of the holders, to reopen a previous issue of a series of notes and issue additional notes of that series, unless the reopening was restricted when the series was created, in an aggregate principal amount determined by us.

Conversion or Exchange Rights

We will set forth in the prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for our common stock or our other securities. We will include provisions as to whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of our common stock or our other securities that the holders of the series of debt securities receive would be subject to adjustment.

Consolidation, Merger or Sale

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the indentures will not contain any covenant that restricts our ability to merge or consolidate, or sell, convey, transfer or otherwise dispose of all or substantially all of our assets. However, any successor to or acquiror of such assets must assume all of our obligations under the indentures or the debt securities, as appropriate. If the debt securities are convertible into or exchangeable for our other securities or securities of other entities, the person with whom we consolidate or merge or to whom we sell all of our property must make provisions for the conversion of the debt securities into securities that the holders of the debt securities would have received if they had converted the debt securities before the consolidation, merger or sale.

Events of Default Under the Indentures

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the following are events of default under the indentures with respect to any series of debt securities that we may issue:

if we fail to pay interest when due and payable and our failure continues for 90 days and the time for payment has not been extended or deferred;

if we fail to pay the principal, premium or sinking fund payment, if any, when due and payable and the time for payment has not been extended or delayed;

if we fail to observe or perform any other covenant contained in the debt securities or the indentures, other than a covenant specifically relating to another series of debt securities, and our failure continues for 90 days

after we receive notice from the debenture trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of the applicable series;

if specified events of bankruptcy, insolvency or reorganization occur; and

any other event of default described in the applicable prospectus supplement.

If an event of default with respect to debt securities of any series occurs and is continuing, other than an event of default specified in the second to last bullet point above, the debenture trustee or the holders of at least

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25% in aggregate principal amount of the outstanding debt securities of that series, by notice to us in writing, and to the debenture trustee if notice is given by such holders, may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. If an event of default results from the occurrence of a specified event of bankruptcy, insolvency or reorganization, the principal amount of and accrued interest, if any, of each issue of debt securities then outstanding shall be due and payable without any notice or other action on the part of the debenture trustee or any holder.

The holders of a majority in principal amount of the outstanding debt securities of an affected series may waive any default or event of default with respect to the series and its consequences, except defaults or events of default regarding payment of principal, premium, if any, or interest, unless we have cured the default or event of default in accordance with the indenture. Any such waiver shall cure the default or event of default.

Subject to the terms of the applicable indenture, if an event of default under an indenture shall occur and be continuing, the debenture trustee will be under no obligation to exercise any of its rights or powers under such indenture at the request or direction of any of the holders of the applicable series of debt securities, unless such holders have offered the debenture trustee reasonable indemnity. The holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the debenture trustee, or exercising any trust or power conferred on the debenture trustee, with respect to the debt securities of that series, provided that:

- the direction so given by the holders is not in conflict with any law or the applicable indenture; and
- subject to its duties under the Trust Indenture Act, the debenture trustee need not take any action that might involve it in personal liability or might be unduly prejudicial to the holders not involved in the proceeding.

A holder of the debt securities of any series will have the right to institute a proceeding under an indenture or to appoint a receiver or trustee, or to seek other remedies only if:

- the holder has given written notice to the debenture trustee of a continuing event of default with respect to that series;
- the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request, and such holders have offered reasonable indemnity to the debenture trustee to institute the proceeding as trustee; and
- the debenture trustee does not institute the proceeding, and does not receive from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series other conflicting directions within 60 days after the notice, request and offer.

These limitations do not apply to a suit instituted by a holder of debt securities if we default in the payment of the principal, premium, if any, or accrued interest on, the debt securities.

We will periodically file statements with the debenture trustee regarding our compliance with specified covenants in the indentures.

Modification of Indenture; Waiver

We and the debenture trustee may change an indenture without the consent of any holders with respect to specific matters:

to fix any ambiguity, defect or inconsistency in the indenture;

to comply with the provisions described above under Description of Debt Securities Consolidation, Merger or Sale ;

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to comply with any requirements of the SEC in connection with the qualification of any indenture under the Trust Indenture Act;

to add to, delete from or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication and delivery of debt securities, as set forth in such indenture;

to provide for the issuance of and establish the form and terms and conditions of the debt securities of any series as provided under Description of Debt Securities General to establish the form of any certifications required to be furnished pursuant to the terms of an indenture or any series of debt securities, or to add to the rights of the holders of any series of debt securities;

to evidence and provide for the acceptance of appointment hereunder by a successor trustee;

to provide for uncertificated debt securities in addition to or in place of certificated debt securities and to make all appropriate changes for such purpose;

to add to our covenants such new covenants, restrictions, conditions or provisions for the protection of the holders, and to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default; or

to change anything that does not materially adversely affect the interests of any holder of debt securities of any series; provided that any amendment made solely to conform the provisions of the indenture to the corresponding description of the debt securities contained in the applicable prospectus or prospectus supplement shall be deemed not to adversely affect the interests of the holders of such debt securities.

In addition, under the indentures, the rights of holders of a series of debt securities may be changed by us and the debenture trustee with the written consent of the holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series that is affected. However, unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, we and the debenture trustee may make the following changes only with the consent of each holder of any outstanding debt securities affected:

extending the fixed maturity of the series of debt securities;

reducing the principal amount, reducing the rate of or extending the time of payment of interest, or reducing any premium payable upon the redemption of any debt securities;

reducing the percentage of debt securities, the holders of which are required to consent to any amendment, supplement, modification or waiver of the applicable indenture or notes or for waiver of compliance with certain provisions of the applicable indenture or for waiver of certain defaults;

changing any of our obligations to pay additional amounts;

reducing the amount of principal of an original issue discount security or any other note payable upon acceleration of the maturity thereof;

changing currency in which any note or any premium or interest is payable;

impairing the right to enforce any payment on or with respect to any note;

adversely changing the right to convert or exchange, including decreasing the conversion rate or increasing the conversion price of, such note, if applicable;

in the case of the subordinated indenture, modifying the subordination provisions in a manner adverse to the holders of the subordinated notes;

if the notes are secured, changing the terms and conditions pursuant to which the notes are secured in a manner adverse to the holders of the secured notes;

reducing the requirements contained in the applicable indenture for quorum or voting;

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changing any of our obligations to maintain an office or agency in the places and for the purposes required by the indentures; or

modifying any of the above provisions set forth in this paragraph.

Discharge

Each indenture provides that we can elect to be discharged from our obligations with respect to one or more series of debt securities, except for specified obligations, including obligations to:

register the transfer or exchange of debt securities of the series;

replace stolen, lost or mutilated debt securities of the series;

maintain paying agencies;

hold monies for payment in trust;

recover excess money held by the debenture trustee;

compensate and indemnify the debenture trustee; and

appoint any successor trustee.

In order to exercise our rights to be discharged, we must deposit with the debenture trustee money or government obligations sufficient to pay all the principal of, the premium, if any, and interest on, the debt securities of the series on the dates payments are due.

Form, Exchange and Transfer

We will issue the debt securities of each series only in fully registered form without coupons and, unless we provide otherwise in the applicable prospectus supplement, in denominations of $1,000 and any integral multiple thereof. The indentures provide that we may issue debt securities of a series in temporary or permanent global form and as book-entry securities that will be deposited with, or on behalf of, The Depository Trust Company (DTC) or another depositary named by us and identified in a prospectus supplement with respect to that series. See Legal Ownership of Securities for a further description of the terms relating to any book-entry securities.

At the option of the holder, subject to the terms of the indentures and the limitations applicable to global securities described in the applicable prospectus supplement, the holder of the debt securities of any series can exchange the debt securities for other debt securities of the same series, in any authorized denomination and of like tenor and aggregate principal amount.

Subject to the terms of the indentures and the limitations applicable to global securities set forth in the applicable prospectus supplement, holders of the debt securities may present the debt securities for exchange or for registration of transfer, duly endorsed or with the form of transfer endorsed thereon duly executed if so required by us or the security registrar, at the office of the security registrar or at the office of any transfer agent designated by us for this purpose. Unless otherwise provided in the debt securities that the holder presents for transfer or exchange, we will impose no service charge for any registration of transfer or exchange, but we may require payment of any taxes or other governmental charges.

We will name in the applicable prospectus supplement the security registrar, and any transfer agent in addition to the security registrar, that we initially designate for any debt securities. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

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If we elect to redeem the debt securities of any series, we will not be required to:

- issue, register the transfer of, or exchange any debt securities of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any debt securities that may be selected for redemption and ending at the close of business on the day of the mailing; or

- register the transfer of or exchange any debt securities so selected for redemption, in whole or in part, except the unredeemed portion of any debt securities we are redeeming in part.

Information Concerning the Debenture Trustee

The debenture trustee, other than during the occurrence and continuance of an event of default under an indenture, undertakes to perform only those duties as are specifically set forth in the applicable indenture. Upon an event of default under an indenture, the debenture trustee must use the same degree of care as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, the debenture trustee is under no obligation to exercise any of the powers given to it by the indentures at the request of any holder of debt securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that it might incur.

Payment and Paying Agents

Unless we otherwise indicate in the applicable prospectus supplement, we will make payment of the interest on any debt securities on any interest payment date to the person in whose name the debt securities, or one or more predecessor securities, are registered at the close of business on the regular record date for the interest.

We will pay principal of, and any premium and interest on, the debt securities of a particular series at the office of the paying agents designated by us, except that unless we otherwise indicate in the applicable prospectus supplement, we will make interest payments by check that we will mail to the holder or by wire transfer to certain holders. Unless we otherwise indicate in the applicable prospectus supplement, we will designate the corporate trust office of the debenture trustee in the City of New York as our sole paying agent for payments with respect to debt securities of each series. We will name in the applicable prospectus supplement any other paying agents that we initially designate for the debt securities of a particular series. We will maintain a paying agent in each place of payment for the debt securities of a particular series.

All money we pay to a paying agent or the debenture trustee for the payment of the principal of, or any premium or interest on, any debt securities that remains unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to us, and the holder of the debt security thereafter may look only to us for payment thereof.

Governing Law

The indentures and the debt securities will be governed by and construed in accordance with the laws of the State of New York, except to the extent that the Trust Indenture Act is applicable.

Subordination of Subordinated Debt Securities

The subordinated debt securities will be unsecured and will be subordinate and junior in priority of payment to certain of our other indebtedness to the extent described in a prospectus supplement. The subordinated indenture does not limit the amount of subordinated debt securities that we may issue, nor does it limit us from issuing any other secured or unsecured debt.

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DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of common stock, preferred stock and/or debt securities in one or more series. We may issue warrants independently or together with common stock, preferred stock and/or debt securities, and the warrants may be attached to or separate from these securities. While the terms summarized below will apply generally to any warrants that we may offer, we will describe the particular terms of any series of warrants in more detail in the applicable prospectus supplement. The terms of any warrants offered under a prospectus supplement may differ from the terms described below.

We will file as exhibits to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of warrant agreement, including a form of warrant certificate, that describes the terms of the particular series of warrants we are offering before the issuance of the related series of warrants. The following summaries of material provisions of the warrants and the warrant agreements are subject to, and qualified in their entirety by reference to, all the provisions of the warrant agreement and warrant certificate applicable to the particular series of warrants that we may offer under this prospectus. We urge you to read the applicable prospectus supplements related to the particular series of warrants that we may offer under this prospectus, as well as any related free writing prospectuses, and the complete warrant agreements and warrant certificates that contain the terms of the warrants.

General

We will describe in the applicable prospectus supplement the terms of the series of warrants being offered, including:

- the offering price and aggregate number of warrants offered;
- the currency for which the warrants may be purchased;
- if applicable, the designation and terms of the securities with which the warrants are issued and the number of warrants issued with each such security or each principal amount of such security;
- if applicable, the date on and after which the warrants and the related securities will be separately transferable;
- in the case of warrants to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one warrant and the price at which, and currency in which, this principal amount of debt securities may be purchased upon such exercise;
- in the case of warrants to purchase common stock or preferred stock, the number of shares of common stock or preferred stock, as the case may be, purchasable upon the exercise of one warrant and the price at which these shares may be purchased upon such exercise;

the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreements and the warrants;

the terms of any rights to redeem or call the warrants;

any provisions for changes to or adjustments in the exercise price or number of securities issuable upon exercise of the warrants;

the dates on which the right to exercise the warrants will commence and expire;

the manner in which the warrant agreements and warrants may be modified;

a discussion of any material or special U.S. federal income tax consequences of holding or exercising the warrants;

the terms of the securities issuable upon exercise of the warrants; and

any other specific terms, preferences, rights or limitations of or restrictions on the warrants.

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Before exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including:

- in the case of warrants to purchase debt securities, the right to receive payments of principal of, or premium, if any, or interest on the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture; or

- in the case of warrants to purchase common stock or preferred stock, the right to receive dividends, if any, or payments upon our liquidation, dissolution or winding up or to exercise voting rights, if any.

Exercise of Warrants

Each warrant will entitle the holder to purchase the securities that we specify in the applicable prospectus supplement at the exercise price that we describe in the applicable prospectus supplement. Holders of the warrants may exercise the warrants at any time up to the specified time on the expiration date that we set forth in the applicable prospectus supplement. After the specified time on the expiration date, unexercised warrants will become void.

Holders of the warrants may exercise the warrants by delivering the warrant certificate representing the warrants to be exercised together with specified information, and paying the required amount to the warrant agent or the Company, as applicable, in immediately available funds, as provided in the applicable prospectus supplement. We will set forth on the reverse side of the warrant certificate and in the applicable prospectus supplement the information that the holder of the warrant will be required to deliver to the warrant agent upon exercise.

Upon receipt of the required payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will issue and deliver the securities purchasable upon such exercise. If fewer than all of the warrants represented by the warrant certificate are exercised, then we will issue a new warrant certificate for the remaining amount of warrants. If we so indicate in the applicable prospectus supplement, holders of the warrants may surrender securities as all or part of the exercise price for warrants.

Unless we provide otherwise in the applicable prospectus settlement, the warrants and warrant agreements will be governed by and construed in accordance with the laws of the State of New York.

Enforceability of Rights by Holders of Warrants

Each warrant agent, if any, will act solely as our agent under the applicable warrant agreement and will not assume any obligation or relationship of agency or trust with any holder of any warrant. A single bank or trust company may act as warrant agent for more than one issue of warrants. A warrant agent will have no duty or responsibility in case of any default by us under the applicable warrant agreement or warrant, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a warrant may, without the consent of the related warrant agent or the holder of any other warrant, enforce by appropriate legal action its right to exercise, and receive the securities purchasable upon exercise of, its warrants.

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DESCRIPTION OF UNITS

We may issue, in one more series, units consisting of common stock, preferred stock, debt securities and/or warrants for the purchase of common stock, preferred stock and/or debt securities in any combination. While the terms we have summarized below will apply generally to any units that we may offer under this prospectus, we will describe the particular terms of any series of units in more detail in the applicable prospectus supplement. The terms of any units offered under a prospectus supplement may differ from the terms described below.

We will file as exhibits to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of unit agreement, if any, that describes the terms of the series of units we are offering, and any supplemental agreements, before the issuance of the related series of units. The following summaries of material terms and provisions of the units are subject to, and qualified in their entirety by reference to, all the provisions of the unit agreement, if any, and any supplemental agreements applicable to a particular series of units, if any. We urge you to read the applicable prospectus supplements related to the particular series of units that we may offer under this prospectus, as well as any related free writing prospectuses and the complete unit agreement, if any, and any supplemental agreements that contain the terms of the units.

General

Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued, if any, may provide that the securities included in the unit may not be held or transferred separately, at any time or at any time before a specified date.

We will describe in the applicable prospectus supplement the terms of the series of units being offered, including:

- the designation and terms of the units and of the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;
- any provisions of the governing unit agreement that differ from those described below; and
- any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units.

The provisions described in this section, as well as those described under Description of Capital Stock, Description of Debt Securities and Description of Warrants will apply to each unit and to any common stock, preferred stock, debt security or warrant included in each unit, respectively.

Issuance in Series

We may issue units in such amounts and in such numerous distinct series as we determine.

Enforceability of Rights by Holders of Units

Each unit agent, if any, will act solely as our agent under the applicable unit agreement and will not assume any obligation or relationship of agency or trust with any holder of any unit. A single bank or trust company may act as unit agent for more than one series of units. A unit agent will have no duty or responsibility in case of any default by us under the applicable unit agreement, if any, or unit, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a unit may, without the consent of the related unit agent, if any, or the holder of any other unit, enforce by appropriate legal action its rights as a holder under any security included in the unit.

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Title

We, and any unit agent and any of their agents, may treat the registered holder of any unit certificate as an absolute owner of the units evidenced by that certificate for any purpose and as the person entitled to exercise the rights attaching to the units so requested, despite any notice to the contrary. See Legal Ownership of Securities below.

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LEGAL OWNERSHIP OF SECURITIES

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee, depositary or warrant agent maintain for this purpose as the holders of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly through others, own beneficial interests in securities that are not registered in their own names, as indirect holders of those securities. As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

Book-Entry Holders

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depositary on behalf of other financial institutions that participate in the depositary s book-entry system. These participating institutions, which are referred to as participants, in turn, hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Securities issued in global form will be registered in the name of the depositary or its participants. Consequently, for securities issued in global form, we will recognize only the depositary as the holder of the securities, and we will make all payments on the securities to the depositary. The depositary passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depositary and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a book-entry security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depositary s book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not legal holders, of the securities.

Street Name Holders

We may terminate a global security or issue securities in non-global form. In these cases, investors may choose to hold their securities in their own names or in street name. Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.

For securities held in street name, we will recognize only the intermediary banks, brokers and other financial institutions in whose names the securities are registered as the holders of those securities, and we will make all payments on those securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold securities in street name will be indirect holders, not holders, of those securities.

Legal Holders

Our obligations, as well as the obligations of any applicable trustee and of any third parties employed by us or a trustee, run only to the legal holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case whether an investor chooses to be an indirect holder of a security or has no choice because we are issuing the securities only in global form.

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For example, once we make a payment or give a notice to the legal holder, we have no further responsibility for the payment or notice even if that legal holder is required, under agreements with depositary participants or customers or by law, to pass it along to the indirect holders but does not do so. Similarly, we may want to obtain the approval of the legal holders to amend an indenture, to relieve us of the consequences of a default or of our obligation to comply with a particular provision of the indenture or for other purposes. In such an event, we would seek approval only from the legal holders, and not the indirect holders, of the securities. Whether and how the legal holders contact the indirect holders is up to the legal holders.

Special Considerations For Indirect Holders

If you hold securities through a bank, broker or other financial institution, either in book-entry form or in street name, you should check with your own institution to find out:

- how it handles securities payments and notices;
- whether it imposes fees or charges;
- how it would handle a request for the holders consent, if ever required;
- whether and how you can instruct it to send you securities registered in your own name so you can be a holder, if that is permitted in the future;
- how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and
- if the securities are in book-entry form, how the depositary s rules and procedures will affect these matters.

Global Securities

A global security is a security that represents one or any other number of individual securities held by a depositary. Generally, all securities represented by the same global securities will have the same terms.

Each security issued in book-entry form will be represented by a global security that we deposit with and register in the name of a financial institution or its nominee that we select. The financial institution that we select for this purpose is called the depositary. Unless we specify otherwise in the applicable prospectus supplement, DTC, New York, New York, will be the depositary for all securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depositary, its nominee or a successor depositary, unless special termination situations arise. We describe those situations below under Special Situations When a Global Security Will Be Terminated. As a result of these arrangements, the depositary, or its nominee, will be the sole registered owner and holder of all securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an

account with a broker, bank or other financial institution that in turn has an account with the depositary or with another institution that does. Thus, an investor whose security is represented by a global security will not be a legal holder of the security, but only an indirect holder of a beneficial interest in the global security.

If the prospectus supplement for a particular security indicates that the security will be issued in global form only, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system.

Special Considerations For Global Securities

The rights of an indirect holder relating to a global security will be governed by the account rules of the investor s financial institution and of the depositary, as well as general laws relating to securities transfers. We do not recognize an indirect holder as a legal holder of securities and instead deal only with the depositary that holds the global security.

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If securities are issued only in the form of a global security, an investor should be aware of the following:

- an investor cannot cause the securities to be registered in his or her name, and cannot obtain non-global certificates for his or her interest in the securities, except in the special situations we describe below;
- an investor will be an indirect holder and must look to his or her own bank or broker for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above;
- an investor may not be able to sell interests in the securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form;
- an investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective;
- the depositary s policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor s interest in a global security;
- we and any applicable trustee have no responsibility for any aspect of the depositary s actions or for its records of ownership interests in a global security, nor do we or any applicable trustee supervise the depositary in any way;
- the depositary may, and we understand that DTC will, require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds, and your broker or bank may require you to do so as well; and
- financial institutions that participate in the depositary s book-entry system, and through which an investor holds its interest in a global security, may also have their own policies affecting payments, notices and other matters relating to the securities.

There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

Special Situations When a Global Security Will Be Terminated

In a few special situations described below, the global security will terminate and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own banks or brokers to find out how to have their interests in securities transferred to their own name, so that they will be direct holders. We have described the rights of holders and street name investors above.

Unless we provide otherwise in the applicable prospectus supplement, the global security will terminate when the following special situations occur:

- if the depositary notifies us that it is unwilling, unable or no longer qualified to continue as depositary for that global security and we do not appoint another institution to act as depositary within 90 days;
- if we notify any applicable trustee that we wish to terminate that global security; or
- if an event of default has occurred with regard to securities represented by that global security and has not been cured or waived.

The prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the applicable prospectus supplement. When a global security terminates, the depositary, and not we or any applicable trustee, is responsible for deciding the names of the institutions that will be the initial direct holders.

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PLAN OF DISTRIBUTION

We may sell the securities affected by this prospectus from time to time pursuant to underwritten public offerings, negotiated transactions, block trades or a combination of these methods. We may sell such securities to or through underwriters or dealers, through agents or directly to one or more purchasers. We may distribute such securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.

Each time we offer and sell securities, we will provide a prospectus supplement that will describe the terms of the offering of the securities, including:

- the name or names of the underwriters, if any;
- the purchase price of the securities and the proceeds we will receive from the sale;
- any over-allotment options under which underwriters may purchase additional securities from us;
- any agency fees or underwriting discounts and other items constituting agents or underwriters compensation;
- any public offering price;
- any discounts or concessions allowed or reallowed or paid to dealers; and
- any securities exchange or market on which the securities may be listed.

Only underwriters named in the prospectus supplement applicable to such offering will be underwriters of the securities offered by such prospectus supplement.

If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the

time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We may offer the securities to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement, other than securities covered by any over-allotment option. Any public offering price and any discounts or concessions allowed or reallowed or paid to dealers may change from time to time. We may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement naming the underwriter the nature of any such relationship.

We may sell securities directly or through agents we designate from time to time. We will name any agent involved in the offering and sale of securities and we will describe any commissions we will pay the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, our agent will act on a best-efforts basis for the period of its appointment.

We may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we must pay for solicitation of these contracts in the prospectus supplement.

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We may provide agents and underwriters with indemnification against civil liabilities, including liabilities under the Securities Act, or contribution with respect to payments that the agents or underwriters may make with respect to these liabilities. Agents and underwriters may engage in transactions with, or perform services for, us in the ordinary course of business.

All securities we may offer, other than common stock, will be new issues of securities with no established trading market. Any underwriters may make a market in these securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot guarantee the liquidity of the trading markets for any securities.

Any underwriter may engage in over-allotment, stabilizing transactions, short-covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum price. Syndicate-covering or other short-covering transactions involve purchases of the securities, either through exercise of the over-allotment option or in the open market after the distribution is completed, to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a stabilizing or covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any such activities at any time.

Any underwriters that are qualified market makers on the Nasdaq Capital Market may engage in passive market making transactions in the common stock on the Nasdaq Capital Market in accordance with Regulation M under the Exchange Act, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the common stock. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker s bid, however, the passive market maker s bid must then be lowered when certain purchase limits are exceeded. Passive market making may stabilize the market price of the securities at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

In compliance with guidelines of the Financial Industry Regulatory Authority (FINRA), the maximum consideration or discount to be received by any FINRA member or independent broker dealer may not exceed 8% of the aggregate amount of the securities offered pursuant to this prospectus and any applicable prospectus supplement.

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LEGAL MATTERS

The validity of the securities being offered by this prospectus will be passed upon by Paul Hastings LLP, San Diego, California. If the securities are being distributed in an underwritten offering, certain legal matters will be passed upon for the underwriters by counsel identified in the related prospectus supplement.

EXPERTS

The consolidated financial statements of Mitek Systems, Inc. as of September 30, 2016 and 2015 and for each of the three years in the period ended September 30, 2016, included in our Annual Report on Form 10-K filed on December 9, 2016, incorporated by reference in this prospectus and elsewhere in the registration statement have been so incorporated by reference in reliance upon the report of Mayer Hoffman McCann P.C., independent registered public accountants, upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

Available Information

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. The SEC maintains an internet website at *http://www.sec.gov* that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC, including Mitek Systems, Inc. You may also access our reports and proxy statements free of charge at our website, *http://www.miteksystems.com*.

This prospectus is part of a registration statement that we have filed with the SEC relating to the securities to be offered. This prospectus does not contain all of the information we have included in the registration statement and the accompanying exhibits and schedules in accordance with the rules and regulations of the SEC, and we refer you to the omitted information. The statements this prospectus makes pertaining to the content of any contract, agreement or other document that is an exhibit to the registration statement necessarily are summaries of their material provisions and do not describe all exceptions and qualifications contained in those contracts, agreements or documents. You should read those contracts, agreements or documents for information that may be important to you. The registration statement, exhibits and schedules are available at the SEC s Public Reference Room or through its internet website.

Incorporation by Reference

The rules of the SEC allow us to incorporate by reference in this prospectus the information in other documents that we file with it, which means that we can disclose important information to you by referring you to those documents that we have filed separately with the SEC. You should read the information incorporated by reference because it is an important part of this prospectus. We hereby incorporate by reference the following information or documents into this prospectus:

- our Annual Report on Form 10-K for the fiscal year ended September 30, 2016 filed with the SEC on December 9, 2016;

our Current Reports on Form 8-K filed with the SEC on November 21, 2016 and December 14, 2016; and

the description of our common stock, par value $0.001 per share, contained in the section entitled Description of Capital Stock in the prospectus included in our Registration Statement on Form SB-2 (File No. 333-07787), initially filed with the SEC on July 9, 1996, including any subsequent amendment or report filed for the purpose of amending such description.

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Any information in any of the foregoing documents will automatically be deemed to be modified or superseded to the extent that information in this prospectus or in a later filed document that is incorporated or deemed to be incorporated herein by reference modifies or replaces such information.

We also incorporate by reference any future filings (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) made with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, including any such documents filed after the date of the initial registration statement and prior to the effectiveness of the registration statement, until we file a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold. Information in such future filings updates and supplements the information provided in this prospectus. Any statements in any such future filings will automatically be deemed to modify and supersede any information in any document we previously filed with the SEC that is incorporated or deemed to be incorporated herein by reference to the extent that statements in the later filed document modify or replace such earlier statements.

Upon written or oral request, we will provide to you, without charge, a copy of any or all of the documents that are incorporated by reference into this prospectus but not delivered with the prospectus, including exhibits which are specifically incorporated by reference into such documents. Requests should be directed to: Mitek Systems, Inc., Attention: Investor Relations, 600 B Street, Suite 100, San Diego, CA 92101, telephone (619) 269-6800.

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PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the estimated costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the offering of the securities being registered. All the amounts shown are estimates, except for the SEC registration fee.

SEC Registration Fee	$ 11,590
Printing and Engraving Expenses	15,000
Legal Fees and Expenses	75,000
Accounting Fees and Expenses	20,000
Miscellaneous Expenses	5,000
Total	$ 126,590

Item 15. Indemnification of Directors Officers.

Our restated certificate of incorporation, as amended and corrected, eliminates the personal liability of our directors for monetary damages for breach of fiduciary duties as our director to the fullest extent permitted by paragraph (7) of subsection (b) of Section 102 of the DGCL, except (i) for any breach of the directors duty of loyalty to us or our stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful dividends or distributions or (iv) for any transaction from which the director derived an improper personal benefit.

Our second amended and restated bylaws permit us to indemnify our directors, officers, employees and agents to the fullest extent permitted by Section 145 of the DGCL. Section 145 of the DGCL provides that a director, officer, employee or agent of a corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that such person is or was a director, officer, employee or agent of the corporation shall be indemnified and held harmless by the corporation to the fullest extent authorized by the DGCL against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the conduct was unlawful. If it is determined that the conduct of such person meets these standards, such person may be indemnified for expenses incurred and amounts paid in connection with such proceeding if actually and reasonably incurred in connection therewith.

If such a proceeding is brought by or on behalf of the corporation (i.e., a derivative suit), such person may be indemnified against all expenses, liabilities and losses (including attorneys fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred by such person in connection with the

defense or settlement of such proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation. There can be no indemnification with respect to any matter as to which such person is adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

We may advance all expenses (including attorneys fees) actually and reasonably incurred by our officers or directors in defending a proceeding in advance of the final disposition of such proceeding upon receipt of an

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undertaking by or on behalf of such officer or director to repay all amounts so advanced if it is ultimately determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified by us.

The indemnification rights and advancement of expenses provided in Section 145 of the DGCL are not exclusive of additional rights to indemnification for breach of fiduciary duties to us or advancement of expenses to the extent any such additional rights are authorized in our restated certificate of incorporation, and are not exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

We have entered into a separate Indemnification Agreement (the Indemnification Agreement) with each of our directors and executive officers (each, an Indemnitee). Under the Indemnification Agreement, each Indemnitee is entitled to be indemnified against all expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of such Indemnitee in connection with any claims, proceedings or other actions brought against such Indemnitee as a result of the Indemnitee s service to us provided that the Indemnitee (i) acted in good faith; (ii) reasonably believed the action was in our best interest; and (iii) in criminal proceedings, reasonably believed his or her conduct was not unlawful. Additionally, the Indemnification Agreement entitles the Indemnitee to contribution of expenses from us in any proceeding in which we are jointly liable with such Indemnitee, but for which indemnification is not otherwise available.

The Indemnification Agreement also entitles each Indemnitee to advancement of expenses incurred by an Indemnitee in connection with any claim, proceeding or other action in advance of the final adjudication of any such claim, proceeding or other action, provided that the Indemnitee agrees to reimburse us for all such advances if it shall ultimately be determined that the Indemnitee is not entitled to indemnification.

The underwriting agreement that we might enter into (to be filed as Exhibit 1.1) will provide for indemnification by any underwriters of us, our directors, our officers who sign the registration statement and our controlling persons for certain liabilities, including certain liabilities arising under the Securities Act.

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Item 16. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference Form	Filing Date/ Period End Date	Exhibit	Filed-Furnished Herewith
1.1	Form of Underwriting Agreement#				
4.1	Restated Certificate of Incorporation	10-K	12/05/2014	3.1	
4.2	Second Amended and Restated Bylaws	8-K	11/10/2014	3.1	
4.3	Specimen Common Stock Certificate	S-3	11/14/2011	4.3	
4.4	Form of Senior Debt Indenture	S-3	12/20/2016	4.4	
4.5	Form of Subordinated Debt Indenture	S-3	12/20/2016	4.5	
4.6	Form of Senior Note#				
4.7	Form of Subordinated Note#				
4.8	Form of Specimen Preferred Stock Certificate#				
4.9	Form of Certificate of Designation#				
4.10	Form of Common Stock Warrant Agreement and Warrant Certificate#				
4.11	Form of Preferred Stock Warrant Agreement and Warrant Certificate#				
4.12	Form of Debt Securities Warrant Agreement and Warrant Certificate#				
4.13	Form of Unit Agreement#				
5.1	Opinion of Paul Hastings LLP				*
12.1	Statement Regarding Computation of Ratios	S-3	12/20/2016	12.1	
23.1	Consent of Paul Hastings LLP (included in Exhibit 5.1)				*
23.2	Consent of Independent Registered Public Accounting Firm, Mayer Hoffman McCann P.C.				*
24.1	Power of Attorney (included on signature page)	S-3	12/20/2016	24.1	
25.1	Statement of Eligibility of Trustee under the Senior Debt Indenture#				
25.2	Statement of Eligibility of Trustee under the Subordinated Debt Indenture#				

To be filed by amendment or by a report filed under the Securities Exchange Act of 1934, as amended, and incorporated herein by reference, if applicable.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, *however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 and Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided*, *however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell

the securities to the purchaser, if the securities are offered or sold to such

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purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant s annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(7) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(8) That, for purposes of determining any liability under the Securities Act of 1933:

(i) the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(ii) each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(9) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement on Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on January 3, 2017.

MITEK SYSTEMS, INC.

By: /s/ James B. DeBello
James B. DeBello

Chief Executive Officer, President and Chairman

(Principal Executive Officer)

By: /s/ Russell C. Clark
Russell C. Clark

Chief Financial Officer

(Principal Financial and Accounting Officer)

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Pursuant to the requirements of the Securities Act of 1933, as amended, this Pre-Effective Amendment No. 1 to the Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

NAME	TITLE	DATE
/s/ James B. DeBello **James B. DeBello**	Chief Executive Officer, President and Chairman (Principal Executive Officer)	January 3, 2017
/s/ Russell C. Clark **Russell C. Clark**	Chief Financial Officer (Principal Financial and Accounting Officer)	January 3, 2017
* **William K. Aulet**	Director	January 3, 2017
* **Vinton P. Cunningham**	Director	January 3, 2017
* **Kenneth D. Denman**	Director	January 3, 2017
* **James C. Hale**	Director	January 3, 2017
* **Bruce E. Hansen**	Director	January 3, 2017
* **Alex W. Hart**	Director	January 3, 2017

*By: /s/ James B. DeBello
James B. DeBello, Attorney-in-fact

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