

ITT Inc.
Form S-3ASR
September 18, 2018

As filed with the Securities and Exchange Commission on September 18, 2018
Registration No. 333-[]

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933
ITT INC.
(Exact name of registrant as specified in its charter)

Indiana 81-1197930
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification Number)

1133 Westchester Avenue,
White Plains, New York 10604
(914) 641-2000
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Mary Elizabeth Gustafsson
Senior Vice President, General Counsel and Chief Compliance Officer
ITT Inc.
1133 Westchester Avenue
White Plains, New York 10604
(914) 641-2000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

With a copy to:
David B. H. Martin
Matthew C. Franker
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20001
(202) 662-6000

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

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

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

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

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

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

PROSPECTUS
ITT INC.

Common Stock
Preferred Stock
Debt Securities
Depositary Shares
Warrants
Subscription Rights
Purchase Contracts
Purchase Units
Units

This prospectus relates to common stock, preferred stock, debt securities, depositary shares, warrants to purchase common stock, preferred stock or debt securities, subscription rights, purchase contracts, purchase units or units that we may offer and sell from time to time, together or separately. The securities may be offered in one or more series and in an amount or number, at prices and on other terms and conditions to be determined at the time of sale and described in a supplement to this prospectus.

We may offer and sell these securities to or through one or more underwriters, dealers or agents, or directly to purchasers, on a continuous or delayed basis, in the same offering or in separate offerings. If any underwriters or agents are involved in the sale of any of these securities, the applicable prospectus supplement will provide their names and any applicable fees, commissions or discounts.

We will provide the specific terms of the securities and the manner in which they may be offered and sold in one or more supplements to this prospectus. This prospectus may not be used to offer and sell the securities unless accompanied by a prospectus supplement. In addition to providing information regarding the terms of the securities being offered and the manner of offering, each prospectus supplement may add, update or change information contained in this prospectus. Before you invest in any offering of our securities, you should carefully read this prospectus and the applicable prospectus supplement, as well as the documents incorporated by reference in this prospectus and in the applicable prospectus supplement.

Our common stock is listed on the New York Stock Exchange under the trading symbol "ITT."

Investing in these securities involves certain risks. See the information included and incorporated by reference in this prospectus and the applicable prospectus supplement for a discussion of the factors you should carefully consider before deciding to purchase these securities, including the information under "Risk Factors" in our most recent Annual Report on Form 10-K (as it may be updated in our most recent Quarterly Report on Form 10-Q) filed with the Securities and Exchange Commission.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is September 18, 2018.

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This prospectus is a part of a registration statement we filed with the Securities and Exchange Commission. We have not authorized anyone to provide you with any information other than that contained or incorporated by reference in this prospectus, in the applicable prospectus supplement or in any related free writing prospectus prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are not offering to sell these securities in any jurisdiction where the offer or sale of these securities is not permitted. You should not assume that the information contained or incorporated by reference in this prospectus or in the applicable prospectus supplement or any related free writing prospectus is accurate as of any date other than the respective date on the front of that document, regardless of the time of delivery of the document or any sale of the securities. Our business, financial condition, results of operations and prospects may have changed since that date.

ABOUT THIS PROSPECTUS

This prospectus is part of an automatic shelf registration statement that we filed with the Securities and Exchange Commission (the “SEC”) as a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act of 1933, as amended (the “Securities Act”). Under this shelf registration process, we may, from time to time, in one or more offerings, sell under this prospectus an unlimited amount of our common stock, preferred stock, debt securities, depositary shares, warrants to purchase common stock, preferred stock or debt securities, subscription rights, purchase contracts, purchase units or units (collectively, the “securities”). Except as otherwise identified, references in this prospectus to the “Company,” “ITT,” “we,” “us” and “our” refer to ITT Inc. and its subsidiaries and, in some circumstances, our predecessor, ITT Corporation.

This prospectus provides you with a general description of the securities we may offer. Each time we use this prospectus to offer any of the securities, we will prepare a prospectus supplement that will contain certain specific information about the terms of that offering, including a description of the specific amounts, prices and other terms and conditions of the securities being offered, and the plan of distribution for the securities. The applicable prospectus supplement may also add, update or change information contained in this prospectus. Therefore, if there is any inconsistency between the information in this prospectus and the prospectus supplement, you should rely on the information in the prospectus supplement.

To understand the terms of our securities, you should carefully read this document and the applicable prospectus supplement together with the additional information described under the heading “Documents Incorporated by Reference” in this prospectus in their entirety. You should also read the documents we have referred you to under the heading “Where You Can Find More Information” for information on our Company, the risks we face and our financial statements.

As allowed by SEC rules, this prospectus does not contain all of the information included in the registration statement. The registration statement, of which this prospectus forms a part, and its exhibits contain additional information about us and the securities that we may offer under this prospectus. Statements contained in this prospectus about the provisions or contents of any agreement or other document are not necessarily complete, and in each instance reference is made to the copy of that agreement or other document filed as an exhibit to the registration statement, each such statement being qualified in all respects by that reference and the exhibits and schedules thereto. The registration statement and exhibits can be found as described under “Where You Can Find More Information.”

We may include agreements as exhibits to the registration statement of which this prospectus forms a part. In reviewing such agreements, please remember that they are included to provide you with information regarding their terms and are not intended to provide any other factual information about us or the other parties to the agreements. These agreements may contain representations and warranties by each of the parties to the applicable agreement that have been made solely for the benefit of the other parties to such agreement and:

• should not be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;

• may have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures would not necessarily be reflected in the agreement;

• may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors in our securities; and

• were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement, are subject to more recent developments, and therefore may no longer be accurate.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC pursuant to the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Our SEC filings are available to the public over the Internet at the SEC's website at www.sec.gov. You also may read and copy any document we file with the SEC at its public reference room at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of our SEC filings at prescribed rates by writing to the public reference room of the SEC at this address. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room.

We make available free of charge at www.itt.com/investors copies of materials we file with, or furnish to, the SEC. We use the Investor Relations page of our website at www.itt.com/investors to disclose important information to the public. Information contained on our website, or that can be accessed through our website, does not constitute a part of this prospectus. We have included our website address only as an inactive textual reference and do not intend it to be an active link to our website.

DOCUMENTS INCORPORATED BY REFERENCE

The SEC allows us to “incorporate by reference” into this prospectus the information that we file with the SEC. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information.

We incorporate by reference the following documents (other than any portions of any such documents that are deemed to be furnished, rather than filed, in accordance with SEC rules) that we previously filed with the SEC (File No. 001-05672):

our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, which was filed with the SEC on February 16, 2018;

our Quarterly Reports on Form 10-Q for the quarter ended March 31, 2018, which was filed with the SEC on May 4, 2018, and for the quarter ended June 30, 2018, which was filed with the SEC on August 3, 2018; and

our Current Reports on Form 8-K filed with the SEC on May 25, 2018 and August 6, 2018.

We also incorporate by reference all future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than any portions of any such documents that are furnished, rather than filed, in accordance with SEC rules) on or after the date of the registration statement to which this prospectus relates and, in the case of any particular offering of securities, until such offering of securities is completed. Our future filings with the SEC will automatically update and supersede any inconsistent information in this prospectus and in the information that is incorporated by reference herein, and such outdated or inconsistent information will no longer be regarded as part of this prospectus.

If you make a written or oral request for copies of any of the documents incorporated by reference, we will send you the copies you requested at no charge. However, we will not send exhibits to such documents unless such exhibits are specifically incorporated by reference in such documents. You should direct requests for such copies to:

ITT Inc.
1133 Westchester Avenue
White Plains, New York 10604
Attention: Corporate Secretary
Telephone: (914) 641-2000

FORWARD-LOOKING AND CAUTIONARY STATEMENTS

This prospectus, any applicable prospectus supplement and the documents incorporated by reference in this prospectus or any prospectus supplement contain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are not historical facts, but rather are based on our current expectations, estimates, assumptions and projections about our business and future financial results and the industries in which we operate, and other legal, regulatory and economic developments. We use words such as “anticipate,” “estimate,” “expect,” “project,” “intend,” “plan,” “believe,” “target,” “future,” “may,” “will,” “could,” “should,” “guidance” and other similar expressions to identify such forward-looking statements. Where in any forward-looking statement we express an expectation or belief as to future results or events, such expectation or belief is based on current plans and expectations of our management, expressed in good faith and believed to have a reasonable basis. However, there can be no assurance that the expectation or belief will result or will be achieved or accomplished.

Forward-looking statements are uncertain and to some extent unpredictable, and involve known and unknown risks, uncertainties and other important factors that could cause actual results to differ materially from those expressed or implied in, or reasonably inferred from, such forward-looking statements. Factors that could cause results to differ materially from those anticipated include:

• general economic, political and social conditions in the countries in which we conduct our businesses;

• risks associated with international operations, including regional or country specific conditions;

• our exposure to pending and future asbestos claims and liabilities and limitations regarding the amount and sufficiency of future insurance recoveries;

• interest and foreign currency exchange rate fluctuations;

• our customers’ levels of capital investment and maintenance expenditures;

• changes in the price of oil and other commodities that affect demand for our products;

• competition and industry capacity and production rates;

• quality control problems with our manufacturing processes or finished goods;

• ineffective management of the distribution of our products and services;

• failure to retain key personnel and attract new qualified personnel;

• a material business interruption, particularly at a manufacturing facility;

• availability of adequate labor, commodities, supplies and raw materials;

• sales mix and pricing levels;

• risks associated with government contracting, including uncertainties regarding the government’s budgeting process and changes in levels of expenditures, regulatory requirements applicable to government contracting and the government’s ability to terminate contracts;

• expectations regarding the impact of acquisitions or divestitures on our business;

our ability to effect restructuring and cost reduction programs and realize savings from such actions;

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- changes in our effective tax rates resulting from changes in the realizability of our deferred tax assets, the geographic mix of earnings or tax examinations or disputes with tax authorities;
- potential future employee benefit plan contributions and other employment and pension matters;
- contingencies related to actual or alleged environmental contamination, claims and concerns;
- the outcome of litigation, investigations, claims and contract disputes;
- intellectual property matters;
- information technology and cybersecurity risks;
- the effect of changes in tax, trade, environmental and other laws and regulations in the United States and other countries in which we conduct our business; and
- changes in generally accepted accounting principles.

These and other risks and uncertainties are more fully discussed in the risk factors identified in “Item 1A. Risk Factors” in Part I of our Annual Report on Form 10-K for the fiscal year ended December 31, 2017 and our other filings with the SEC. All forward-looking statements included in this prospectus, any applicable prospectus supplement or in a document incorporated by reference in this prospectus or any prospectus supplement speak only as of the date of this prospectus, any applicable prospectus supplement or in a document incorporated by reference in this prospectus or any prospectus supplement, as the case may be. We undertake no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise. You should not place undue reliance on these forward-looking statements.

THE COMPANY

We are a diversified manufacturer of highly engineered critical components and customized technology solutions for the transportation, industrial and oil and gas markets. We manufacture components that are integral to the operation of systems and manufacturing processes in our key markets. Our products provide enabling functionality for applications where reliability and performance are critically important to our customers and the users of their products.

Our businesses share a common, repeatable operating model. Each business applies technology and engineering expertise to solve some of our customers' most pressing challenges. Our applied engineering aptitude enables a tight business fit with our customers given the critical nature of their applications. This in turn provides us with unique insight to our customers' requirements and enables us to develop solutions to assist our customers in achieving their business goals. Our technology and customer intimacy work in tandem to produce opportunities to capture long-lived original equipment manufacturer platforms and aftermarket opportunities.

Our product and service offerings are organized in three segments: Industrial Process, Motion Technologies, and Connect and Control Technologies.

Industrial Process, commonly referred to as IP, is an original equipment manufacturer and aftermarket parts and service provider offering an extensive portfolio of industrial pumps, valves, plant optimization systems, and related services. IP is aligned around three product categories – Industrial Products, Engineered Systems, and Aftermarket Solutions – serving an extensive base of customers from large multi-national companies and engineering, procurement and construction firms to regional distributors and end-user customers. IP has a global manufacturing footprint with significant operations located in the United States, South Korea, and Germany. IP's customers operate in global infrastructure and natural resource markets such as general industrial, oil and gas, chemical and petrochemical, pharmaceutical, mining, pulp and paper, food and beverage, and power generation.

Motion Technologies is a manufacturer of braking pads, shims, shock absorbers and damping and sealing technologies primarily for the transportation industry, including passenger cars, light- and heavy-duty commercial and military vehicles, buses, and rail.

Connect and Control Technologies commonly referred to as CCT, designs and manufactures a range of highly engineered connectors and critical energy absorption and flow control components for critical applications supporting various markets including aerospace and defense, general industrial, medical, and oil and gas. CCT's products are often part of long-lived platforms that provide for recurring aftermarket and replacement opportunities. CCT has organized its business around product offerings and end-user markets, with dedicated teams that specialize in solutions for their specific markets, providing focused customer support and expertise.

We are an Indiana corporation. Our principal executive offices are located at 1133 Westchester Avenue, White Plains, New York 10604. Our telephone number is (914) 641-2000 and our website is www.itt.com. The information contained in, or that can be accessed through, our website is not a part of, or incorporated by reference in, this prospectus or any prospectus supplement.

RISK FACTORS

Our business is subject to uncertainties and risks and, as a consequence, any investment in our securities involves risks. You should, in consultation with your own financial and legal advisors, carefully consider and evaluate all of the information included and incorporated by reference in this prospectus and the applicable prospectus supplement, including the risk factors incorporated by reference from our most recent Annual Report on Form 10-K, as updated by our Quarterly Reports on Form 10-Q and other SEC filings, before investing in our securities. Each of the risks described in these documents could materially and adversely affect our business,

financial condition, liquidity or results of operations and prospects, and could result in a partial or complete loss of your investment. Additional risks or uncertainties not presently known to us or that we currently consider immaterial may also negatively affect our business operations.

USE OF PROCEEDS

Unless otherwise indicated in the applicable prospectus supplement or other offering materials, we intend to use the net proceeds from the sale of the securities for general corporate purposes. General corporate purposes may include repayment of debt, additions to working capital, capital expenditures, investments in our subsidiaries, possible acquisitions and the repurchase, redemption or retirement of securities, including shares of our common stock. Pending such use, we may temporarily invest or apply the net proceeds from any offering to repay short-term or revolving debt.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our historical ratios of earnings to fixed charges for the periods indicated. This information should be read in conjunction with the consolidated financial statements and the accompanying notes incorporated by reference in this prospectus.

	Six Months	Year Ended December				
	Ended June 30,	31,				
	2018	2017	2016	2015	2014	2013
Ratio of earnings to fixed charges	50.4	40.2	35.9	55.6	45.4	24.1

For purposes of calculating the ratio of earnings to fixed charges, earnings consist of earnings from continuing operations before taxes, plus fixed charges. Fixed charges consist of (i) interest expense and amortization of debt discount or premium on all indebtedness and (ii) a reasonable approximation of interest factor deemed to be included in rental expense.

No shares of our preferred stock were outstanding during the periods presented above. Accordingly, the ratio of earnings to fixed charges and preferred dividends is not separately stated from the ratio of earnings to fixed charges for each such period.

DESCRIPTION OF CAPITAL STOCK

General

The following is a description of our capital stock. This description is not complete, and we qualify this description by referring to our Amended and Restated Articles of Incorporation, effective as of May 23, 2018 (the “Articles of Incorporation”), and our Amended and Restated By-laws, effective as of May 23, 2018 (the “By-laws”), both of which we incorporate by reference in this prospectus, and to the laws of the state of Indiana.

As of the date hereof, our authorized capital stock consists of 300,000,000 shares, consisting of 250,000,000 shares of common stock, par value \$1.00 per share, and 50,000,000 shares of preferred stock, without par value. As of August 1, 2018, there were 87,563,027 shares of common stock outstanding and no shares of our preferred stock outstanding. We may issue, separately or together with, or upon conversion, exercise or exchange of other securities, shares of our common stock or preferred stock as set forth in the applicable prospectus supplement.

Common Stock

Dividend Rights. Under our Articles of Incorporation, holders of our common stock are entitled to receive any dividends our board of directors may declare on the common stock, subject to the prior rights of the preferred stock. The board of directors may declare dividends from funds legally available for this purpose.

Voting Rights. Our common stock has one vote per share. The holders of our common stock are entitled to vote on all matters to be voted on by holders of our common stock. Our Articles of Incorporation do not provide for cumulative voting. This could prevent directors from being elected by a relatively small group of shareholders.

Liquidation Rights. After provision for payment of creditors and after payment of any liquidation preferences to holders of the preferred stock, if we liquidate, dissolve or are wound up, whether voluntarily or not, the holders of our common stock will be entitled to receive on a pro rata basis all of our remaining assets.

Other Rights. Our common stock is not liable to further calls or assessment. The holders of our common stock are not currently entitled to subscribe for or purchase additional shares of our capital stock. Our common stock is not subject to redemption and does not have any conversion or sinking fund provisions.

Preferred Stock

Our board of directors has the authority, without further action by shareholders, to issue up to 50,000,000 shares of preferred stock in one or more series. The holders of our preferred stock do not have the right to vote, except as our board of directors establishes, or as provided in our Articles of Incorporation or as determined by Indiana law, in each case prior to the issuance of any shares of preferred stock.

The designations, preferences, rights and qualifications, limitations or restrictions of the preferred stock of each series will be fixed by Articles of Amendment to the Articles of Incorporation relating to that series and will be described in the applicable prospectus supplement. The board of directors has the authority to determine the terms of each series of preferred stock, within the limits of our Articles of Incorporation and Indiana law. These terms include the number of shares in a series, the consideration, dividend rights, liquidation preferences, terms of redemption (including sinking fund provisions), conversion rights, exchange rights, voting rights, if any, conditions or limitations on the creation of indebtedness or the issuance of additional shares of stock and the relative ranking of each class or series of preferred stock vis-à-vis any other class or series as to the payment of dividends, the distribution of assets and all other matters.

If we issue preferred stock, it may negatively affect the holders of our common stock. These possible negative effects include the following:

• diluting the voting power of shares of our common stock;

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- affecting the market price of our common stock;
- delaying or preventing a change in control;
- making removal of our present management more difficult; or
- restricting dividends and other distributions on our common stock.

Anti-Takeover Effects of Provisions of Our Articles of Incorporation and By-laws

Certain provisions of our Articles of Incorporation and By-laws may delay or make more difficult unsolicited acquisitions or changes of control of the Company. We believe that such provisions will enable us to develop our business in a manner that will foster our long-term growth without disruption caused by the threat of a takeover not deemed by our board of directors to be in the best interests of the Company and our shareholders. Such provisions could have the effect of discouraging third parties from making proposals involving an unsolicited acquisition or change of control of the Company, although a majority of our shareholders might consider such proposals, if made, desirable. Such provisions may also have the effect of making it more difficult for third parties to cause the replacement of our current management without the concurrence of our board of directors. These provisions include:

- the availability of capital stock for issuance from time to time at the discretion of our board of directors;
- the ability of our board of directors to increase the size of the board and to appoint directors to fill newly-created directorships; and
- requirements for advance notice for raising business or making nominations at shareholders' meetings.

Certain Provisions of the Indiana Business Corporation Law

As an Indiana corporation, we are governed by the Indiana Business Corporation Law (the "IBCL"). Under specified circumstances, the following provisions of the IBCL may delay, prevent or make more difficult certain unsolicited acquisitions or changes of control of the Company. These provisions also may have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions that shareholders may otherwise deem to be in their best interest.

Shareholders' Meetings. Under Chapter 29 of the IBCL, any action required or permitted to be taken by the holders of common stock may be effected only at an annual meeting or special meeting of such holders, and shareholders may act in lieu of such meetings only by unanimous written consent.

Control Share Acquisitions. Under Chapter 42 of the IBCL, control shares acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation. Such a resolution must be approved by (a) each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that voting group, subject to certain shareholders being entitled to vote as a separate voting group, and (b) each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares. Unless otherwise provided in a corporation's articles of incorporation or by-laws before a control share acquisition has occurred, in the event control shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, all shareholders of the issuing public corporation have dissenters' rights to receive the fair value of their shares pursuant to Chapter 44 of the IBCL.

Under the IBCL, “control shares” mean shares acquired by a person that, when added to all other shares of the issuing public corporation owned by that person or in respect to which that person may exercise or direct the exercise of voting power, would otherwise entitle that person to exercise voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

• one-fifth or more but less than one-third;

• one-third or more but less than a majority; or

• a majority or more.

“Control share acquisition” means, subject to specified exceptions, the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares. For the purposes of determining whether an acquisition constitutes a control share acquisition, shares acquired within 90 days or under a plan to make a control share acquisition are considered to have been acquired in the same acquisition. “Issuing public corporation” means a corporation which has (a) 100 or more shareholders, (b) its principal place of business or its principal office in Indiana, or that owns or controls assets within Indiana having a fair market value of greater than \$1,000,000, and (c) either (i) more than 10% of its shareholders resident in Indiana, (ii) more than 10% of its shares owned of record or owned beneficially by Indiana residents, or (iii) 1,000 shareholders resident in Indiana. “Fair value” means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

Unless a corporation’s articles of incorporation or by-laws provide that Chapter 42 of the IBCL does not apply to control share acquisitions of shares of the corporation before the control share acquisition is made, control shares of an issuing public corporation acquired in a control share acquisition have only such voting rights as are conferred by Section 9 of Chapter 42 of the IBCL. Our Articles of Incorporation and our By-laws do not currently exclude us from Chapter 42 of the IBCL.

Certain Business Combinations. Chapter 43 of the IBCL restricts the ability of a resident domestic corporation to engage in any combinations with an interested shareholder of the resident domestic corporation for five years after the date the interested shareholder became such, unless the combination or the purchase of shares by the interested shareholder on the interested shareholder’s date of acquiring shares is approved by the board of directors of the resident domestic corporation before that date. If the combination was not previously approved, the interested shareholder may effect a combination after the five-year period only if that shareholder receives approval from a majority of the disinterested shareholders or the offer meets specified fair price criteria. For purposes of the above provisions, “resident domestic corporation” means an Indiana corporation that has 100 or more shareholders. “Interested shareholder” means any person, other than the resident domestic corporation or its subsidiaries, who is (a) the beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting shares of the resident domestic corporation or (b) an affiliate or associate of the resident domestic corporation, which at any time within the five-year period immediately before the date in question, was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding shares of the resident domestic corporation.

The definition of “beneficial owner” for purposes of Chapter 43 of the IBCL, means a person who, (a) individually or with or through any of its affiliates or associates beneficially owns the shares, directly or indirectly; (b) individually or with or through any of its affiliates or associates has the right to (i) acquire the shares at any time, under any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options or otherwise or (ii) vote the shares under any agreement, arrangement or understanding (excluding voting rights under revocable proxies made in accordance with federal law); (c) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of the shares with any other person that beneficially owns or whose affiliates or associates beneficially own the shares, directly or indirectly; or (d) holds any

derivative instrument that includes the opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of the subject shares.

The above provisions do not apply to corporations that elect not to be subject to Chapter 43 of the IBCL in an amendment to their articles of incorporation approved by a majority of the disinterested shareholders. That amendment, however, cannot become effective until 18 months after its passage and would apply only to share acquisitions occurring after its effective date. Our Articles of Incorporation do not exclude us from Chapter 43 of the IBCL.

Directors' Duties and Liability. Under Chapter 35 of the IBCL, directors are required to discharge their duties:

• in good faith;

• with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

• in a manner the directors reasonably believe to be in the best interests of the corporation.