

BRUSH ENGINEERED MATERIALS INC
Form S-3
August 11, 2009

As filed with the Securities and Exchange Commission on August 11, 2009
Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BRUSH ENGINEERED MATERIALS INC.
(Exact Name of Registrant as Specified in Its Charter)

Ohio
(State or Other Jurisdiction of Incorporation or
Organization)

34-1919973
(I.R.S. Employer Identification Number)

**6070 Parkland Blvd.
Mayfield Heights, Ohio 44124
(216) 486-4200**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive
Offices)

**Michael C. Hasychak
Vice President, Treasurer and Secretary
6070 Parkland Blvd.
Mayfield Heights, Ohio 44124
(216) 486-4200**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copies To:
**Michael J. Solecki
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
Phone: (216) 586-3939
Fax: (216) 579-0212**

Approximate date of commencement of proposed sale to the public: From time to time after this Registration
Statement becomes effective.

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

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

reinvestment plans, please check the following box.

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

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 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 Smaller reporting company
 (Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit (1) (2)	Proposed Maximum Aggregate Offering Price (1) (3)	Amount of Registration Fee(1)
Common Shares, no par value (4)(10)				
Preferred Shares, no par value (5)(10)				
Depository Shares (6)(10)				
Warrants (7)(10)				
Subscription Rights (8)(10)				
Debt Securities (9)(10)				
Total	\$ 150,000,000	100%	\$ 150,000,000(11)	\$ 8,370

(1) Not specified as to each class of securities to be registered pursuant to General Instruction II.D. to Form S-3.

(2) The proposed maximum offering price

per unit will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder.

- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o).
- (4) Subject to note (11) below, there is being registered an indeterminate number of common shares. Each common share includes a right (Right) to purchase one one-hundredth of a share of Series A Junior Participating Preferred Stock, no par value, on the terms and subject to the conditions set forth in the Rights Agreement, dated as of May 10, 2000 (the Rights Agreement), as amended by the First Amendment to Rights Agreement, dated as of

December 7,
2004, and the
Second
Amendment to
Rights
Agreement,
dated as of
July 31, 2008,
by and between
the registrant
and Wells Fargo
Bank, N.A., as
rights agent.
The terms of the
Rights are
described in the
Rights
Agreement,
filed as Exhibit
4(a) to the
registrant's
Registration
Statement on
Form 8-A filed
with the
Securities and
Exchange
Commission
(the SEC) on
May 16, 2000,
as amended by
the First
Amendment to
Rights
Agreement,
filed as
Exhibit 4.1 to
the registrant's
Registration
Statement on
Form 8-A /A,
filed with the
SEC on
December 13,
2004, and the
Second
Amendment to
Right
Agreement,
filed as
Exhibit 4.1 to

the registrant's
Registration
Statement on
Form 8-A/A
filed with the
SEC on July 31,
2008.

(5) Subject to note
(11) below,
there is being
registered an
indeterminate
number of
preferred shares.

(6) Subject to note
(11) below,
there is being
registered an
indeterminate
number of
depository
shares to be
evidenced by
depository
receipts issued
pursuant to a
deposit
agreement. If
the registrant
elects to offer to
the public
fractional
interests in
preferred shares,
then depository
receipts will be
distributed to
those persons
purchasing the
fractional
interests and the
shares will be
issued to the
depository under
the deposit
agreement.

(7) Subject to note
(11) below,

there is being registered hereunder an indeterminate amount and number of warrants. The warrants may represent the right to purchase common shares, preferred shares or debt securities.

(8) Subject to note (11) below, there is being registered an indeterminate number of subscription rights that may represent a right to purchase common shares, preferred shares or debt securities.

(9) Subject to note (11) below, there is being registered an indeterminate principal amount of debt securities.

(10) Subject to note (11) below, this registration statement also covers an indeterminate amount of securities as may be issued in exchange for, or upon conversion

or exercise of,
as the case may
be, the preferred
shares,
depository
shares, warrants
or subscription
rights registered
hereunder. Any
securities
registered
hereunder may
be sold
separately or as
units with other
securities
registered
hereunder. No
separate
consideration
will be received
for any
securities
registered
hereunder that
are issued in
exchange for, or
upon conversion
of, as the case
may be, the
preferred shares,
depository
shares, warrants
or subscription
rights.

- (11) In no event will
the aggregate
initial offering
price of all
securities issued
from time to
time pursuant to
the prospectus
contained in this
registration
statement
exceed
\$150,000,000 or
the equivalent
thereof in one or

more foreign currencies or foreign currency units. Such amount represents the offering price of any common shares, preferred shares and depositary shares, the principal amount of any debt securities issued at their stated principal amount, the issue price rather than the principal amount of any debt securities issued at an original issue discount, the issue price of any warrants, the exercise price of any securities issuable upon the exercise of warrants and the issue price of any securities issuable upon the exercise of subscription rights. The aggregate principal amount of debt securities may be increased if any debt securities are issued at an original issue discount by an amount such

that the offering price to be received by the registrant shall be equal to the above amount to be registered.

Any offering of securities denominated other than in United States dollars will be treated as the equivalent of United States dollars based on the exchange rate applicable to the purchase of such securities at the time of initial offering. The securities registered hereunder may be sold separately or as units with other securities registered hereunder.

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

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

Subject To Completion, Dated August 11, 2009

PROSPECTUS

\$150,000,000

Common Shares

Preferred Shares

Depository Shares

Warrants

Subscription Rights

Debt Securities

We may offer and sell from time to time our common shares, preferred shares, depository shares, warrants, subscription rights and debt securities. We may sell any combination of these securities in one or more offerings with an aggregate initial offering price of \$150,000,000 or the equivalent amount in other currencies or currency units.

We will provide the specific terms of the securities to be offered in one or more supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in our securities. This prospectus may not be used to offer and sell our securities unless accompanied by a prospectus supplement describing the method and terms of the offering of those offered securities.

We may sell the securities directly or to or through underwriters or dealers, and also to other purchasers or through agents. The names of any underwriters or agents that are included in a sale of securities to you, and any applicable commissions or discounts, will be stated in an accompanying prospectus supplement. In addition, the underwriters, if any, may over-allot a portion of the securities.

Investing in any of our securities involves risk. Please read carefully the section entitled Risk Factors beginning on page 4 of this prospectus.

Our common shares are listed on the New York Stock Exchange under the symbol BW. The closing price of our common shares on the New York Stock Exchange on August 10, 2009 was \$22.76. None of the other securities that we may offer under this prospectus are currently publicly traded.

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 _____, 2009

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC using a shelf registration process. Under this shelf process, we may from time to time sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$150,000,000 or the equivalent amount in other currencies or currency units.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. For a more complete understanding of the offering of the securities, you should refer to the registration statement, including its exhibits. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information under the heading **Where You Can Find More Information** and **Information We Incorporate By Reference**.

You should rely only on the information contained or incorporated by reference in this prospectus and in any prospectus supplement or in any free writing prospectus that we may provide you. We have not authorized anyone to provide you with different information. You should not assume that the information contained in this prospectus, any prospectus supplement, any document incorporated by reference or any free writing prospectus is accurate as of any date, other than the date mentioned on the cover page of these documents. We are not making offers to sell the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

References in this prospectus to the terms **we**, **us** or **the Company** or other similar terms mean Brush Engineered Materials Inc. and its consolidated subsidiaries, unless we state otherwise or the context indicates otherwise.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational reporting requirements of the Securities Exchange Act of 1934. We file reports, proxy statements and other information with the SEC. Our SEC filings are available over the Internet at the SEC's web site at <http://www.sec.gov>. You may read and copy any reports, statements and other information filed by us at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call 1-800-SEC-0330 for further information on the Public Reference Room. You may also inspect our SEC reports and other information at the New York Stock Exchange, 20 Broad Street, New York, New York 10005, or at our web site at <http://www.beminc.com>. We do not intend for information contained on or accessible through our web site to be part of this prospectus, other than the documents that we file with the SEC that are integrated by reference into this prospectus.

INFORMATION WE INCORPORATE BY REFERENCE

The SEC allows us to incorporate by reference the information we file with them, which means:

incorporated documents are considered part of the prospectus;

we can disclose important information to you by referring you to those documents; and

information that we file with the SEC after the date of this prospectus will automatically update and supersede the information contained in this prospectus and incorporated filings.

We incorporate by reference the documents listed below that we filed with the SEC under the Exchange Act:

- our Annual Report on Form 10-K for the year ended December 31, 2008;

- our Quarterly Reports on Form 10-Q for the quarters ended April 3, 2009 and July 3, 2009;

- our Current Reports on Form 8-K filed on February 3, 2009 and February 6, 2009;

- the description of our capital stock contained in the registration statement on Form 8-A filed with the SEC on May 16, 2000, and all amendments and reports filed for the purpose of updating that description; and

the description of the Series A Junior Participating Preferred Stock purchase rights under the Rights Agreement filed as Exhibit 4(a) to the registration statement on Form 8-A filed on May 16, 2000, as amended by the registration statement on Form 8-A/A filed on December 13, 2004 and the registration statement on Form 8-A/A filed July 31, 2008, and any subsequently filed amendments and reports updating such description.

We also incorporate by reference each of the documents that we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (1) after the date of the initial filing of the registration statement of which this prospectus forms a part, prior to the effectiveness of the registration statement, and (2) after the date of this prospectus until the offering of the securities terminates. We will not, however, incorporate by reference in this prospectus any documents or portions thereof that are not deemed filed with the SEC, including any information furnished pursuant to Item 2.02 or Item 7.01 of our current reports on Form 8-K after the date of this prospectus unless, and except to the extent, specified in such current reports.

We will provide you with a copy of any of these filings (other than an exhibit to these filings, unless the exhibit is specifically incorporated by reference into the filing requested) at no cost, if you submit a request to us by writing or telephoning us at the following address and telephone number:

Brush Engineered Materials Inc.
6070 Parkland Blvd.
Mayfield Heights, Ohio 44124
Telephone Number: (216) 486-4200
Attn: Secretary

Any statement contained or incorporated by reference in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein, or in any subsequently filed document which also is incorporated herein by reference, modifies or supersedes such earlier statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. Any statement made in this prospectus concerning the contents of any contract, agreement or other document is only a summary of the actual contract, agreement or other document. If we have filed or incorporated by reference any contract, agreement or other document as an exhibit to the registration statement, you should read the exhibit for a more complete understanding of the document or matter involved. Each statement regarding a contract, agreement or other document is qualified by reference to the actual document.

THE COMPANY

Brush Engineered Materials Inc., through its wholly owned subsidiaries, is a manufacturer of high performance advanced enabling engineered materials serving the global telecommunications and computer, data storage, aerospace and defense, automotive electronics, industrial components (including oil and gas, heavy equipment and plastic mold tooling), appliance and medical markets.

Our businesses are organized under four reportable segments: Advanced Material Technologies and Services (AMTS); Specialty Engineered Alloys (SEA); Beryllium and Beryllium Composites; and Engineered Material Systems. AMTS consists of Williams Advanced Materials Inc. (WAM) and Zentrix Technologies, Inc. SEA consists of Alloy Products, which includes bulk and strip form products, and beryllium hydroxide produced by Brush Resources Inc. (BRI). The Beryllium and Beryllium Composites segment consists of Beryllium Products and Brush Ceramic Products Inc. while the Engineered Material Systems segment consists of Technical Materials, Inc. (TMI).

Our parent company, Brush Engineered Materials Inc., and other corporate expenses, as well as the operating results from BEM Services, Inc., a wholly owned subsidiary, are not part of any reportable segment and remain in All Other .

Advanced Material Technologies and Services

AMTS manufactures and fabricates precious, non-precious and specialty metal products for the data storage, medical and the wireless, photonics, semiconductor and hybrid segments of the microelectronics market. AMTS also has refining capabilities for the reclaim of precious and non-precious metals from internally or customer-generated scrap. In addition, AMTS provides chamber services for its customers to reclaim precious metals and refurbish reusable components used in its customers' vapor deposition systems. AMTS' major product lines include vapor deposition targets, clad and precious metals preforms, high temperature braze materials, ultra fine wire, sealing lids, optics, performance coatings, specialty inorganic materials and microelectronic packages. In February 2008, AMTS purchased the assets of Techni-Met, Inc. based in Windsor, Connecticut, which supplies a wide range of high end applications for advanced technology industries, including supporting downstream customers in developing more accurate diagnostic devices for diabetes management.

Specialty Engineered Alloys

SEA manufactures beryllium-containing and other high performance-based materials including copper-nickel-tin alloys that are metallurgically tailored to meet specific customer performance requirements. These products exhibit high electrical and thermal conductivities, high strength and hardness, good formability, lubricity, and excellent resistance to corrosion, wear and fatigue. These alloys, sold in strip and bulk form, are ideal choices for demanding applications in the telecommunications and computer, aerospace, industrial components (including oil and gas, heavy equipment and plastic mold tooling), appliance and medical markets. SEA, through BRI, manages our mine and milling operations. The milling operations produce beryllium hydroxide from mined bertrandite ore and purchased beryl ore. The beryllium hydroxide is used primarily as a raw material input by certain businesses within our company.

Beryllium and Beryllium Composites

Beryllium and Beryllium Composites manufactures products that include beryllium and AlBeMet®. Beryllium is a lightweight metal possessing unique mechanical and thermal properties. Its specific stiffness is much greater than other engineered structural materials such as aluminum, titanium and steel. Beryllium products are used in a variety of high performance applications in the defense, aerospace, industrial, scientific equipment, electronics (including acoustics), medical and optical scanning markets. Beryllium and Beryllium Composites also manufactures beryllia ceramics for electronic packaging and electro-optical applications including lasers. Electronic components utilizing beryllia are used in the telecommunications, medical, industrial and defense markets.

Engineered Material Systems

Engineered Material Systems manufactures clad inlay and overlay metals, precious and base metal electroplated systems, electron beam welded systems, contour profiled systems and solder-coated metals systems. These products are used in telecommunications and computer systems, data storage, automotive electronics, semi-conductors, energy, defense and medical applications.

Corporate Information

Brush Engineered Materials Inc. is an Ohio corporation. Our principal executive offices are located at 6070 Parkland Boulevard, Mayfield Heights, Ohio 44124. Our telephone number is (216) 486-4200. Our website is www.beminc.com. The information contained on or accessible through our website is not part of this prospectus, other than the documents that we file with the SEC that are incorporated by reference into this prospectus.

RISK FACTORS

Investing in our securities involves risk. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading **Risk Factors** in our most recent Annual Report on Form 10-K and in our most recent Quarterly Reports on Form 10-Q, which are incorporated herein by reference and may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations. If any of these risks actually occurs, our business, results of operations and financial condition could suffer. In that case, the trading price of our securities could decline, and you could lose all or part of your investment.

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus includes, and any prospectus supplement may include, forward-looking statements. Our actual future performance may materially differ from that contemplated by the forward-looking statements as a result of a variety of factors. These factors include, without limitation:

the global and domestic economies, including the uncertainties related to the impact of the current global economic crisis;

the condition of the markets in which we serve, whether defined geographically or by segment, with the major market segments being telecommunications and computer, data storage, aerospace and defense, automotive electronics, industrial components, appliance and medical;

changes in product mix and the financial condition of customers;

our success in developing and introducing new products and new product ramp-up rates, especially for media applications in the data storage market;

our success in passing through the costs of raw materials to customers or otherwise mitigating fluctuating prices for those materials, including the impact of fluctuating prices on inventory values;

our success in integrating newly acquired businesses;

our success in implementing our strategic plans and the timely and successful completion of any capital projects;

the availability of adequate lines of credit and the associated interest rates and/or fees;

other financial factors, including cost and availability of raw materials (both base and precious metals), tax rates, exchange rates, metal financing fees, pension costs and required cash contributions and other employee benefit costs, energy costs, regulatory compliance costs, the cost and availability of insurance, and the impact

of our stock price on the cost of incentive plans;

the uncertainties related to the impact of war and terrorist activities;

changes in government regulatory requirements and the enactment of new legislation that impacts our obligations and operations;

the conclusion of pending litigation matters in accordance with our expectation that there will be no material adverse effects; and

the risk factors referred to elsewhere in this prospectus.

USE OF PROCEEDS

Unless we inform you otherwise in the applicable prospectus supplement, we expect to use the net proceeds from the sale of securities for general corporate purposes. These purposes may include, but are not limited to: reduction or refinancing of outstanding indebtedness or other corporate obligations;

additions to working capital;

capital expenditures; and

acquisitions.

Pending any specific application, we may initially invest funds in short-term marketable securities or apply them to the reduction of short-term indebtedness.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of consolidated earnings to fixed charges for the periods presented:

	Year ended December 31,				Six months ended
	2004	2005	2006	2007	July 3, 2009
	1.80x	1.81x	8.07x	27.12x	8.49x

Fixed charges are equal to interest expense (including amortization of deferred financing costs), plus the portion of rent expense estimated to represent interest.

Total earnings were insufficient to cover the fixed charges for the six months ended July 3, 2009 by \$14.3 million primarily due to operating losses. Accordingly, such ratio is not presented for such period.

DESCRIPTION OF CAPITAL STOCK

The following description is a general summary of the terms of the common shares and preferred shares that we may issue. The description below and in any prospectus supplement does not include all of the terms of the common shares and preferred shares and should be read together with our Amended and Restated Articles of Incorporation and Amended and Restated Code of Regulations, copies of which have been filed previously with the SEC. For more information on how you can obtain copies of our Amended and Restated Articles of Incorporation and Amended and Restated Code of Regulations, see [Where You Can Find More Information](#).

Our authorized capital stock consists of 65,000,000 shares of stock, including:

60,000,000 common shares, no par value; and

5,000,000 preferred shares, no par value.

Common Shares

Each outstanding common share is entitled to one vote on all matters submitted to a vote of shareholders. Pursuant to Ohio law, holders of our common shares have the right to cumulative voting. Our articles of incorporation provide for our board to be divided into three classes of directors, as nearly equal in number as possible, serving staggered terms. Approximately one-third of our board will be elected by the shareholders each year.

Subject to any superior rights of any holders of preferred shares, each outstanding common share will be entitled to such dividends as may be declared from time to time by our board of directors out of legally available funds. We have no current intention to declare dividends on our common shares in the near term. Our current policy is to retain all funds and earnings for use in the operation and expansion of our business. Additionally, the amount of dividends that we may pay is restricted by the terms of our credit facilities. In the event of our liquidation, dissolution or winding up, holders of our common shares will be entitled to their proportionate share of any assets remaining after payment of liabilities and any amounts due to the holders of preferred shares. Holders of our common shares have no preemptive rights and no right to convert or exchange their common shares into any other securities. No redemption or sinking fund provisions apply to our common shares.

Shareholder Rights Plan

Under the terms of our rights agreement, one preferred share purchase right is associated with each of our outstanding common shares. Until the occurrence of specified events described in the rights agreement, the preferred share purchase rights are not exercisable, are evidenced by the certificates for our common shares and may be transferred only with our common shares. The preferred share purchase rights will expire on May 16, 2010.

Each preferred share purchase right entitles the registered holder to purchase from us one one-hundredth of a share of Series A Junior Participating Preferred Stock, without par value, at a price of \$110.00 per one one-hundredth of a preferred share, subject to adjustment. The rights agreement also provides, subject to specified exceptions and limitations, that common shares issued or delivered from our treasury after the record date will be entitled to and accompanied by preferred share purchase rights. The preferred share purchase rights are in all respects subject to and governed by the provisions of the rights agreement.

Preferred Shares

Our board of directors is authorized, without shareholder approval, to issue up to 5,000,000 preferred shares in one or more series and to fix the rights, preferences, privileges and restrictions granted to or imposed upon the preferred shares, including voting rights, dividend rights, conversion rights, terms of redemption, liquidation preference, sinking fund terms and the number of shares constituting any series or the designation of a series. Our board of directors can, without shareholder approval, issue preferred shares with voting and conversion rights that could adversely affect the voting power of the holders of common shares. Any preferred shares issued would also rank senior to our common shares as to rights up on liquidation, winding-up or dissolution. The issuance of

convertible preferred shares could have the effect of delaying, deferring or preventing a change in control of our company. We have no present plan to issue any preferred shares.

Control Share Acquisitions

Section 1701.831 of the Ohio Revised Code provides that certain notice and informational filings and special shareholder meeting and voting procedures must be followed prior to consummation of a proposed control share acquisition. The Ohio Revised Code defines a control share acquisition as any acquisition of an issuer's shares which would entitle the acquirer, immediately after that acquisition, directly or indirectly, to exercise or direct the exercise of voting power of the issuer in the election of directors within any one of the following ranges of that voting power:

one-fifth or more but less than one-third of that voting power;

one-third or more but less than a majority of that voting power; or

a majority or more of that voting power.

Assuming compliance with the notice and information filings prescribed by the statute, the proposed control share acquisition may be made only if, at a special meeting of shareholders, the acquisition is approved by at least a majority of the voting power of the issuer represented at the meeting and at least a majority of the voting power remaining after excluding the combined voting power of the interested shares. Interested shares are the shares held by the intended acquirer and the employee-directors and officers of the issuer, as well as certain shares that were acquired after the date of the first public disclosure of the acquisition but before the record date for the meeting of shareholders and shares that were transferred, together with the voting power thereof, after the record date for the meeting of shareholders.

Business Combinations with Certain Persons

We are subject to Chapter 1704 of the Ohio Revised Code, which prohibits certain business combinations and transactions between an issuing public corporation and an Ohio law interested shareholder for at least three years after the Ohio law interested shareholder attains 10% ownership, unless the board of directors of the issuing public corporation approves the transaction before the Ohio law interested shareholder attains 10% ownership. An issuing public corporation is an Ohio corporation with 50 or more shareholders that has its principal place of business, principal executive offices, or substantial assets within the State of Ohio, and as to which no close corporation agreement exists. An Ohio law interested shareholder is a beneficial owner of 10% or more of the shares of a corporation. Examples of transactions regulated by Chapter 1704 include the disposition of assets, mergers and consolidations, voluntary dissolutions and the transfer of shares.

Subsequent to the three-year period, a transaction subject to Chapter 1704 may take place provided that certain conditions are satisfied, including:

prior to the interested shareholder's share acquisition date, the board of directors approved the purchase of shares by the interested shareholder;

the transaction is approved by the holders of shares with at least 66^{2/3}% of the voting power of the corporation (or a different proportion set forth in the articles of incorporation), including at least a majority of the outstanding shares after excluding shares controlled by the Ohio law interested shareholder; or

the business combination results in shareholders, other than the Ohio law interested shareholder, receiving a fair price plus interest for their shares.

Chapter 1704 is applicable to all corporations formed under Ohio law.

Transfer Agent and Registrar

Wells Fargo Bank, N.A. serves as the transfer agent and registrar for our common shares. We will select the transfer agent and registrar for a series of preferred shares, and each one will be described in the applicable prospectus supplement.

DESCRIPTION OF DEPOSITARY SHARES

We may offer depositary shares representing fractional shares of our preferred shares of any series. The following description sets forth certain general terms and provisions of the depositary shares that we may offer pursuant to this prospectus. The particular terms of the depositary shares, including the fraction of a preferred share that such depositary share will represent, and the extent, if any, to which the general terms and provisions may apply to the depositary shares so offered will be described in the applicable prospectus supplement.

The preferred shares represented by depositary shares will be deposited under a depositary agreement between us and a bank or trust company that meets certain requirements and is selected by us, which we refer to as the Bank Depository. Each owner of a depositary share will be entitled to all the rights and preferences of the preferred shares represented by the depositary share. The depositary shares will be evidenced by depositary receipts issued pursuant to the depositary agreement. Depositary receipts will be distributed to those persons purchasing the fractional preferred shares in accordance with the terms of the offering. The deposit agreement will also contain provisions relating to the manner in which any subscription or similar rights we offer to holders of the preferred shares will be made available to the holders of depositary shares.

The following description is a general summary of some common provisions of a depositary agreement and the related depositary receipts. The description below and in any prospectus supplement does not include all of the terms of the depositary agreement and the related depositary receipts. Copies of the forms of depositary agreement and the depositary receipts relating to any particular issue of depositary shares will be filed with the SEC each time we issue depositary shares, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the depositary agreement and the related depositary receipts, see [Where You Can Find More Information](#).

Dividends and Other Distributions

If we pay a cash distribution or dividend on a series of preferred shares represented by depositary shares, the Bank Depository will distribute these dividends to the record holders of these depositary shares. If the distributions are in property other than cash, the Bank Depository will distribute the property to the record holders of the depositary shares. However, if the Bank Depository determines that it is not feasible to make the distribution of property, the Bank Depository may, with our approval, sell this property and distribute the net proceeds from this sale to the record holders of the depositary shares.

Redemption of Depositary Shares

If we redeem a series of preferred shares represented by depositary shares, the Bank Depository will redeem the depositary shares from the proceeds received by the Bank Depository in connection with the redemption. The redemption price per depositary share will equal the applicable fraction of the redemption price per share of the preferred shares. If fewer than all the depositary shares are redeemed, the depositary shares to be redeemed will be selected by lot or pro rata as the Bank Depository may determine.

Voting the Preferred Shares

Upon receipt of notice of any meeting at which the holders of the preferred shares represented by depositary shares are entitled to vote, the Bank Depository will mail the notice to the record holders of the depositary shares relating to these preferred shares. Each record holder of these depositary shares on the record date (which will be the same date as the record date for the preferred shares) may instruct the Bank Depository as to how to vote the preferred shares represented by this holder's depositary shares. The Bank Depository will endeavor, insofar as practicable, to vote the amount of the preferred shares represented by such depositary shares in accordance with these instructions, and we will take all action which the Bank Depository deems necessary in order to enable the Bank Depository to do so. The Bank Depository will abstain from voting shares of the preferred shares to the extent it does not receive specific instructions from the holders of depositary shares representing these preferred shares.

Amendment and Termination of the Depositary Agreement

The form of depositary receipt evidencing the depositary shares and any provision of the depositary agreement may be amended by agreement between the Bank Depositary and us. However, any amendment that materially and adversely alters the rights of the holders of depositary shares will not be effective unless this amendment has been approved by the holders of at least a majority of the depositary shares then outstanding. The depositary agreement may be terminated by the Bank Depositary or us only if:

all outstanding depositary shares have been redeemed; or

there has been a final distribution in respect of the preferred shares in connection with any liquidation, dissolution or winding up of the Company and this distribution has been distributed to the holders of depositary receipts.

Charges of Bank Depositary

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the Bank Depositary in connection with the initial deposit of the preferred shares and any redemption of the preferred shares. Holders of depositary receipts will pay other transfer and other taxes and governmental charges and any other charges, including a fee for the withdrawal of preferred shares upon surrender of depositary receipts, as are expressly provided in the depositary agreement to be for their accounts.

Withdrawal of Preferred Shares

Except as may be provided otherwise in the applicable prospectus supplement, upon surrender of depositary receipts at the principal office of the Bank Depositary, subject to the terms of the depositary agreement, the owner of the depositary shares may demand delivery of the number of whole preferred shares and all money and other property, if any, represented by those depositary shares. Fractional preferred shares will not be issued. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole preferred shares to be withdrawn, the Bank Depositary will deliver to this holder at the same time a new depositary receipt evidencing the excess number of depositary shares. Holders of preferred shares thus withdrawn may not thereafter deposit those shares under the depositary agreement or receive depositary receipts evidencing depositary shares therefor.

Miscellaneous

The Bank Depositary will forward to holders of depositary receipts all reports and communications from us that are delivered to the Bank Depositary and that we are required to furnish to the holders of preferred shares.

Neither the Bank Depositary nor we will be liable if we are prevented or delayed by law or any circumstance beyond our control in performing our obligations under the depositary agreement. The obligations of the Bank Depositary and us under the depositary agreement will be limited to performance in good faith of our duties thereunder, and we will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred shares unless satisfactory indemnity is furnished. We may rely upon written advice of counsel or accountants, or upon information provided by persons presenting preferred shares for deposit, holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

Resignation and Removal of Bank Depositary

The Bank Depositary may resign at any time by delivering to us notice of its election to do so, and we may at any time remove the Bank Depositary. Any such resignation or removal will take effect upon the appointment of a successor Bank Depositary and the successor's acceptance of this appointment. The successor Bank Depositary must be appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company meeting the requirements of the depositary agreement.

DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of common shares, preferred shares, depositary shares or debt securities. The following description sets forth certain general terms and provisions of the warrants that we may offer pursuant to this prospectus. The particular terms of the warrants and the extent, if any, to which the general terms and provisions may apply to the warrants so offered will be described in the applicable prospectus supplement.

Warrants may be issued independently or together with other securities and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants and will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

A copy of the forms of the warrant agreement and the warrant certificate relating to any particular issue of warrants will be filed with the SEC each time we issue warrants, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the warrant agreement and the related warrant certificate, see [Where You Can Find More Information](#).

Debt Warrants

The prospectus supplement relating to a particular issue of warrants to issue debt securities will describe the terms of those warrants, including the following:

the title of the warrants;

the offering price for the warrants, if any;

the aggregate number of the warrants;

the designation and terms of the debt securities purchasable upon exercise of the warrants;

if applicable, the designation and terms of the debt securities that the warrants are issued with and the number of warrants issued with each debt security;

if applicable, the date from and after which the warrants and any debt securities issued with them will be separately transferable;

the principal amount of debt securities that may be purchased upon exercise of a warrant and the price at which the debt securities may be purchased upon exercise;

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

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

whether the warrants represented by the warrant certificates or debt securities that may be issued upon exercise of the warrants will be issued in registered or bearer form;

information relating to book-entry procedures, if any;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

if applicable, a discussion of material United States federal income tax considerations;

anti-dilution provisions of the warrants, if any;

redemption or call provisions, if any, applicable to the warrants;

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants; and

any other information we think is important about the warrants.

Stock Warrants

The prospectus supplement relating to a particular issue of warrants to issue common shares, preferred shares or depositary shares will describe the terms of the common share warrants and preferred shares warrants, including the following:

the title of the warrants;

the offering price for the warrants, if any;

the aggregate number of the warrants;

the designation and terms of the common shares, preferred shares or depositary shares that may be purchased upon exercise of the warrants;

if applicable, the designation and terms of the securities that the warrants are issued with and the number of warrants issued with each security;

if applicable, the date from and after which the warrants and any securities issued with the warrants will be separately transferable;

the number of common shares, preferred shares or depositary shares that may be purchased upon exercise of a warrant and the price at which the shares may be purchased upon exercise;

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

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

if applicable, a discussion of material United States federal income tax considerations;

anti-dilution provisions of the warrants, if any;

redemption or call provisions, if any, applicable to the warrants;

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants; and

any other information we think is important about the warrants.

Exercise of Warrants

Each warrant will entitle the holder of the warrant to purchase at the exercise price set forth in the applicable prospectus supplement the number of common shares, preferred shares or depositary shares or the principal amount of debt securities being offered. Holders may exercise warrants at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants are void. Holders may exercise warrants as set forth in the prospectus supplement relating to the warrants being offered.

Until a holder exercises the warrants to purchase our common shares, preferred shares, depositary shares or debt securities, the holder will not have any rights as a holder of our common shares, preferred shares, depositary shares or debt securities, as the case may be, by virtue of ownership of warrants.

DESCRIPTION OF SUBSCRIPTION RIGHTS

We may issue to our shareholders subscription rights to purchase our common shares, preferred shares, depositary shares or debt securities. The following description sets forth certain general terms and provisions of the subscription rights that we may offer pursuant to this prospectus. The particular terms of the subscription rights and the extent, if any, to which the general terms and provisions may apply to the subscription rights so offered will be described in the applicable prospectus supplement.

Subscription rights may be issued independently or together with any other security offered by this prospectus and may or may not be transferable by the shareholder receiving the rights in the rights offering. In connection with any rights offering, we may enter into a standby underwriting agreement with one or more underwriters pursuant to which the underwriter will purchase any securities that remain unsubscribed for upon completion of the rights offering, or offer these securities to other parties who are not our shareholders. A copy of the form of subscription rights certificate will be filed with the SEC each time we issue subscription rights, and you should read that document for provisions that may be important to you. For more information on how you can obtain a copy of any subscription rights certificate, see [Where You Can Find More Information](#).

The applicable prospectus supplement relating to any subscription rights will describe the terms of the offered subscription rights, including, where applicable, the following:

the exercise price for the subscription rights;

the number of subscription rights issued to each shareholder;

the extent to which the subscription rights are transferable;

any other terms of the subscription rights, including terms, procedures and limitations relating to the exchange and exercise of the subscription rights;

the date on which the right to exercise the subscription rights will commence and the date on which the right will expire;

the extent to which the subscription rights include an over-subscription privilege with respect to unsubscribed securities; and

the material terms of any standby underwriting arrangement entered into by us in connection with the subscription rights offering.

DESCRIPTION OF DEBT SECURITIES

The following description sets forth general terms and provisions of the debt securities that we may issue, which may be issued as convertible or exchangeable debt securities. We will set forth the particular terms of the debt securities we offer in a prospectus supplement. The extent, if any, to which the following general provisions apply to particular debt securities will be described in the applicable prospectus supplement. The following description of general terms relating to the debt securities and the indenture under which the debt securities will be issued are summaries only and therefore are not complete. You should read the indenture and the prospectus supplement regarding any particular issuance of debt securities.

The debt securities will represent our unsecured general obligations, unless otherwise provided in the prospectus supplement. We currently conduct all of our operations through our subsidiaries. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due pursuant to the debt securities or to make any funds available therefor, whether by dividends, loans or other payments. The holders of debt securities (whether senior or subordinated debt securities) will be effectively subordinated to the creditors of our subsidiaries. This means that creditors of our subsidiaries will have a claim to the assets of our subsidiaries that is superior to the claim of our creditors, including holders of our debt securities.

The debt securities will be issued under an indenture between us and Wells Fargo Bank, N.A., as trustee, and may be supplemented or amended from time to time following its execution. The indenture, and any supplemental indentures thereto, will be subject to, and governed by, the Trust Indenture Act of 1939, as amended.

The form of indenture gives us broad authority to set the particular terms of each series of debt securities issued thereunder, including, without limitation, the right to modify certain of the terms contained in the indenture.

Except to the extent set forth in a prospectus supplement, the indenture does not contain any covenants or restrictions that afford holders of the debt securities special protection in the event of a change of control or highly leveraged transaction.

General

The indenture will not limit the aggregate principal amount of debt securities that may be issued under it and provides that debt securities may be issued in one or more series, in such form or forms, with such terms and up to the aggregate principal amount, that we may authorize from time to time. We will establish the terms of each series of debt securities, and such terms will be set forth or determined in the manner provided in one or more resolutions of the board of directors or by a supplemental indenture. The particular terms of the debt securities offered pursuant to any prospectus supplement will be described in the prospectus supplement. All debt securities of one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of any holder, for issuances of additional debt securities of that series.

The applicable prospectus supplement will describe the following terms of any series of debt securities that we may offer (to the extent applicable to the debt securities):