

ERESEARCHTECHNOLOGY INC /DE/

Form S-3

November 10, 2010

**Table of Contents**

**As filed with the Securities and Exchange Commission on November 10, 2010**

**Registration No. 333-**

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

**Form S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**ERESEARCHTECHNOLOGY, INC.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of incorporation or  
organization)*

**22-3264604**

*(I.R.S. Employer Identification Number)*

**1818 Market Street  
Philadelphia, PA 19103  
(215) 972-0420**

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

**Keith D. Schneck  
Executive Vice President and  
Chief Financial Officer  
eResearchTechnology, Inc.  
1818 Market Street  
Philadelphia, PA 19103  
(215) 972-0420**

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

***With a copy to:***

**Thomas G. Spencer, Esq.  
Duane Morris LLP  
30 South 17th Street  
Philadelphia, PA 19103-4196  
(215) 979-1218**

**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.

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

**CALCULATION OF REGISTRATION FEE**

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Unit (2)</b>	<b>Proposed Maximum Aggregate Offering Price(3)</b>	<b>Amount of Registration Fee(4)</b>
Debt securities (5)				
Common stock, par value \$0.01 per share				
Preferred stock, par value \$10.00 per share				
Depository Shares (6)				
Warrants				
Units (7)				
<b>TOTAL:</b>	<b>\$150,000,000</b>		<b>\$150,000,000</b>	<b>\$10,695</b>

- (1) Includes such indeterminate number of the securities of each identified class that eResearchTechnology, Inc. may sell pursuant to this registration statement, which may not exceed the maximum aggregate offering price of \$150,000,000. The securities registered hereunder also include such indeterminate number of shares of common stock or preferred stock, warrants or units that may be issued upon conversion, exchange or exercise of any of the securities being registered hereby.
- (2) Omitted pursuant to General Instruction II.D of Form S-3. The proposed maximum offering price per unit of each class of security will be determined from time to time by eResearchTechnology, Inc. in connection with, and at the time of, the issuance of the securities registered hereunder.
- (3) In no event will the aggregate initial offering price of the securities issued under this registration statement exceed the amount registered above or the equivalent thereof in one or more foreign currencies or currency units.
- (4) Calculated pursuant to Rule 457(o).
- (5) The debt securities may be senior, senior subordinated or subordinated and may be secured or unsecured.

- (6) Each depositary share will be issued under a deposit agreement, will represent an interest in a fractional share or multiple shares of preferred stock and will be evidenced by a depositary receipt.
- (7) Each unit will be issued under a unit agreement or indenture and will represent an interest in a combination of any two or more of the securities being registered hereby.

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

---

**Table of Contents**

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

**SUBJECT TO COMPLETION, DATED NOVEMBER 10, 2010**

PROSPECTUS

**eResearchTechnology, Inc.  
\$150,000,000  
Debt Securities  
Common Stock  
Preferred Stock  
Depository Shares  
Warrants  
Units**

We may offer from time to time to sell debt securities, common stock, preferred stock, depository shares, warrants and units that include any of these securities. The debt securities may be senior, senior subordinated or subordinated and may be secured or unsecured. We may also issue any of the common stock, preferred stock, warrants or units upon the conversion, exchange or exercise of any of the securities listed above. The aggregate initial offering price of the securities that we offer will not exceed \$150,000,000.

Shares of our common stock are traded on The Nasdaq Global Select Market under the symbol ERES.

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

This prospectus describes some of the general terms that may apply to these securities. We will offer the securities in amounts, at prices and on terms determined in part by market conditions at the time of the offering. The specific terms of any securities to be offered will be described in a supplement to this prospectus.

**You should refer to the risk factors that may be included in a prospectus supplement and in our periodic reports and other information we file with the Securities and Exchange Commission and carefully consider that information before investing in our securities.**

**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 \_\_\_\_\_, 20\_\_.

TABLE OF CONTENTS

	<b>Page</b>
<b><u>About This Prospectus</u></b>	3
<b><u>Where You Can Find More Information</u></b>	3
<b><u>Incorporation By Reference</u></b>	3
<b><u>Forward-Looking Statements</u></b>	4
<b><u>Risk Factors</u></b>	4
<b><u>Description Of Debt Securities</u></b>	5
<b><u>Description Of Capital Stock</u></b>	10
<b><u>Description Of Depositary Shares</u></b>	13
<b><u>Description Of Warrants</u></b>	13
<b><u>Description Of Units</u></b>	14
<b><u>Ratio Of Earnings To Fixed Charges</u></b>	14
<b><u>Use Of Proceeds</u></b>	14
<b><u>Plan Of Distribution</u></b>	15
<b><u>Certain Legal Matters</u></b>	16
<b><u>Experts</u></b>	16
<u>EX-4.1</u>	
<u>EX-5.1</u>	
<u>EX-12.1</u>	
<u>EX-23.1</u>	
<u>EX-23.2</u>	

The registration statement containing this prospectus, including the exhibits to the registration statement, provides additional information about us and the securities offered under this prospectus. The registration statement, including the exhibits and the documents incorporated herein by reference, can be read on the SEC website or at the SEC offices mentioned under the heading **Where You Can Find More Information**.

**Table of Contents**

**ABOUT THIS PROSPECTUS**

We may from time to time sell the securities in one or more offerings. This prospectus provides you with a general description of the securities. Each time we offer the securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also supplement, modify or supersede other information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the information incorporated by reference as described below under the heading Incorporation by Reference.

You should rely only on the information provided in this prospectus and in any prospectus supplement, including the information incorporated by reference. We have not authorized anyone to provide you with different information. We are not offering the securities in any state where the offer is not permitted. You should not assume that the information in this prospectus, or any supplement to this prospectus, is accurate at any date other than the date indicated on the cover page of these documents.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission, or SEC. Our SEC filings are available to the public from the SEC's website at [www.sec.gov](http://www.sec.gov) or from our website at [www.ert.com](http://www.ert.com). You may also read and copy any document we file at the SEC's public reference room in Washington, D.C., located at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Information about us is also available at our website at [www.ert.com](http://www.ert.com). However, the information on our website is not part of this prospectus.

**INCORPORATION BY REFERENCE**

The SEC allows us to incorporate by reference in this prospectus the information in the documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus. Any information that is part of this prospectus or any prospectus supplement that speaks as of a later date than any other information that is part of this prospectus or any prospectus supplement updates or supersedes such other information. We incorporate by reference in this prospectus the documents listed below and any documents or portions thereof that we file with the SEC after the date of this prospectus under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, or Exchange Act, until we sell, or otherwise terminate the offering of, all of the securities that may be offered by this prospectus. We do not, however, incorporate by reference in this prospectus any documents or portions thereof, or any other information, that we furnish or are deemed to furnish, and not file, with the SEC in accordance with the SEC rules.

Our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, filed on March 3, 2010;

Our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2010, June 30, 2010 and September 30, 2010, filed on May 7, 2010, August 9, 2010 and November 9, 2010;

Our Current Reports on Form 8-K filed on February 25, 2010, March 1, 2010, March 19, 2010, April 29, 2010, April 30, 2010, June 3, 2010 (as amended on August 5, 2010), August 9, 2010, September 16, 2010 and November 4, 2010; and

The description of our common stock, par value \$0.01 per share, as set forth under the caption "Description of Capital Stock" presented on page 45 in the prospectus portion of our Registration Statement on Form S-1 (SEC File No. 333-17001), filed with the SEC on January 31, 1997 and our prospectus dated February 3, 1997, filed with the Commission on February 4, 1997.

**Table of Contents**

You may obtain, free of charge, a copy of any of these documents (other than exhibits to these documents unless the exhibits specifically are incorporated by reference into these documents or referred to in this prospectus) by writing or calling us at the following address and telephone number:

Keith D. Schneck  
Executive Vice President and  
Chief Financial Officer  
eResearchTechnology, Inc.  
1818 Market Street  
Philadelphia, PA 19103  
(215) 972-0420

**FORWARD-LOOKING STATEMENTS**

This prospectus contains or incorporates by reference forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 regarding our business, financial condition, results of operations and prospects. Words such as expects, anticipates, intends, plans, believes, seeks, estimates, may, will, should, predicts, outlook, potential and similar expressions or words are intended to identify forward-looking statements herein. However, these are not the exclusive means of identifying forward-looking statements herein. Although forward-looking statements contained in this prospectus reflect our good faith judgment, such statements can only be based on facts and factors currently known to us. Consequently, forward-looking statements are inherently subject to risks and uncertainties and actual outcomes may differ materially from the results and outcomes discussed in the forward-looking statements. Important factors that could cause actual results to differ materially from the forward-looking statements include, but are not limited to:

- unfavorable economic conditions;
- our ability to obtain new contracts and accurately estimate net revenues due to variability in size, scope and duration of projects and internal issues of the sponsoring client;
- our ability to successfully integrate acquisitions;
- competitive factors in the market for centralized cardiac safety and respiratory services;
- changes in the pharmaceutical, biotechnology and medical device industries to which we sell our solutions;
- technological development; and
- changes in market demand.

You should not place undue reliance on forward-looking statements, which speak only as of the date of this prospectus. We undertake no obligation to update publicly any forward-looking statements in order to reflect any event or circumstance occurring after the date of this prospectus or currently unknown facts or conditions or the occurrence of unanticipated events.

This list of factors is not exhaustive, and new factors may emerge or changes to these factors, which would have an impact on our business, may occur. Additional information regarding these and other factors may be contained in our filings with the SEC, especially on Forms 10-K, 10-Q and 8-K. All such factors are difficult to predict, contain material uncertainties that may affect actual results and may be beyond our control.

**RISK FACTORS**

An investment in our securities involves a high degree of risk. Before making an investment decision, you should carefully read and consider the risk factors incorporated by reference in this prospectus, as well as those contained in the applicable prospectus supplement, as the same may be updated from time to time by our future filings with the SEC under the Exchange Act. You should also refer to other information contained in or incorporated by reference in this prospectus and any applicable prospectus supplement, including our consolidated financial statements and the related notes incorporated by reference herein. Additional risks and uncertainties not presently known to us at this time or that we currently deem immaterial may also materially and adversely affect our business and operations.



**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

**General**

The debt securities that we may offer by this prospectus consist of notes, debentures or other evidences of our indebtedness, which we refer to collectively as 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 be issued under an indenture between us and a trustee that will be named in the applicable prospectus supplement, 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 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):

- the title of the debt securities
- the extent, if any, to which the debt securities are subordinated in right of payment to our other indebtedness;
- any provisions relating to any security provided for the debt securities;
- any limit on the aggregate principal amount of the debt securities;
- any guarantees applicable to the debt securities, and any subordination provisions or other limitations applicable to any such guarantees;
- the persons to whom any interest on the debt securities will be payable, if other than the registered holders thereof on the regular record date therefor;
- the date or dates on which the principal of the debt securities will be payable;
- the rate or rates at which the debt securities will bear interest, if any, and the date or dates from which interest will accrue;
- the dates on which interest will be payable and the regular record dates for interest payment dates;
- the place or places where the principal of and any premium, make-whole amount and interest on the debt securities will be payable;
- the period or periods, if any, within which, and the price or prices at which, the debt securities may be redeemed, in whole or in part, at our option;
- our obligation, if any, to redeem or purchase the debt securities pursuant to sinking fund or similar provisions or at the option of a holder and the terms and conditions of any such redemption or purchase;
- the denominations in which the debt securities will be issuable, if other than denominations of \$1,000 and any integral multiple thereof;
- the currency, currencies or currency units, if other than currency of the United States of America, in which payment of the principal of and any premium, make-whole amount or interest on the debt securities will be payable, and the terms and conditions of any elections that may be made available with respect thereto;
- any index or formula used to determine the amount of payments of principal of and any premium, make-whole amount or interest on the debt securities;
- whether the debt securities are to be issued in whole or in part in the form of one or more global securities and, if so, the identity of the depository, if any, for the global securities;
- the terms and conditions, if any, pursuant to which the debt securities are convertible into or exchangeable for our common stock or other securities of us or any other person;

**Table of Contents**

any events of default with respect to the debt securities, in addition to or in lieu of those set forth in the indenture, and the remedies therefor;  
the principal amount (or any portion of the principal amount) of the debt securities which will be payable upon any declaration of acceleration of the maturity of the debt securities pursuant to an event of default; and  
the applicability to the debt securities of the provisions described in Defeasance below.

We may issue debt securities at a discount from their stated principal amount. Federal income tax considerations and other special considerations applicable to any debt security issued with original issue discount (an original issue discount security ) may be described in an applicable prospectus supplement.

If the purchase price of any series of the debt securities is payable in a foreign currency or currency unit or if the principal of or any premium, make-whole amount or interest on any series of the debt securities is payable in a foreign currency or currency unit, the restrictions, elections, general tax considerations, specific terms and other information with respect to the debt securities and the applicable foreign currency or currency unit will be set forth in an applicable prospectus supplement.

Unless otherwise indicated in an applicable prospectus supplement:  
the debt securities will be issued only in fully registered form (without coupons) in denominations of \$1,000 or integral multiples thereof; and  
payment of principal, premium and make-whole amount, if any, and interest on the debt securities will be payable, and the exchange, conversion and transfer of debt securities will be registrable, at our office or agency maintained for those purposes and at any other office or agency maintained for those purposes. No service charge will be made for any registration of transfer or exchange of the debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge imposed in connection therewith.

**Global Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depository or its nominee identified in an applicable prospectus supplement. Unless and until it is exchanged in whole or in part for debt securities in registered form, a global security may not be registered for transfer or exchange except:

- by the depository to a nominee of the depository;
- by a nominee of the depository to the depository or another nominee of the depository;
- by the depository or any nominee of the depository to a successor depository or a nominee of the successor depository; or
- in any other circumstances described in an applicable prospectus supplement.

The specific terms of the depository arrangement with respect to any debt securities to be represented by a global security will be described in an applicable prospectus supplement. We expect that the following provisions will apply to depository arrangements.

Unless otherwise specified in an applicable prospectus supplement, any global security that represents debt securities will be registered in the name of the depository or its nominee. Upon the deposit of a global security with or on behalf of the depository for the global security, the depository will credit, on its book-entry registration and transfer system, the respective principal amounts of the debt securities represented by the global security to the accounts of institutions that are participants in such system. The accounts to be credited will be designated by the underwriters or agents of the debt securities or by us, if the debt securities are offered and sold directly by us.

Ownership of beneficial interests in debt securities represented by a global security will be limited to participants in the book-entry registration and transfer system of the applicable depository or persons that may hold interests through those participants. Ownership of those beneficial interests by participants will be shown on, and the transfer of ownership will be effected only through, records maintained by the depository or its nominee for such global security. Ownership of such beneficial interests by persons that hold through such participants will be shown on, and the transfer of such ownership will be effected only through, records maintained by the participants. The laws of some jurisdictions require that specified purchasers of securities take physical delivery of their securities in definitive form. These laws may impair your ability to transfer beneficial interests in a global security.

**Table of Contents**

So long as the depository for a global security, or its nominee, is the registered owner of the global security, the depository or the nominee, as the case may be, will be considered the sole owner or holder of the debt securities represented by the global security for all purposes under the indenture. Unless otherwise specified in an applicable prospectus supplement, owners of beneficial interests in the global security will not be entitled to have any of the debt securities represented by the global security registered in their names, will not receive or be entitled to receive physical delivery of any such debt securities in certificated form, and will not be considered the owners or holders of the debt securities for any purpose under the indenture. Accordingly, each person owning a beneficial interest in debt securities represented by a global security must rely on the procedures of the applicable depository and, if the person is not a participant in the book-entry registration and transfer system of the applicable depository, on the procedures of the participant through which the person owns its interest, to exercise any rights of an owner or holder of debt securities under the indenture.

We understand that, under existing industry practices, if an owner of a beneficial interest in debt securities represented by a global security desires to give any notice or take any action that an owner or holder of debt securities is entitled to give or take under the indenture:

- the applicable depository would authorize its participants to give the notice or take the action; and
- the participants would authorize persons owning the beneficial interests through the participants to give the notice or take the action or would otherwise act upon the instructions of the persons owning the beneficial interests.

Principal of and any premium, make-whole amount and interest on debt securities represented by a global security will be payable in the manner described in an applicable prospectus supplement. Payment of principal of, and any premium, make-whole amount or interest on, debt securities represented by a global security will be made to the applicable depository or its nominee, as the case may be, as the registered owner or the holder of the global security. None of us, the trustee, any paying agent or the registrar for debt securities represented by a global security will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in those debt securities or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

**Events of Default**

The indenture with respect to debt securities of any series will contain events of default to be specified in the applicable prospectus supplement, including, without limitation:

- (1) default in the payment of any interest on any debt security of that series when due, which default continues for 30 days;
- (2) default in the payment when due of the principal of or premium or make-whole amount, if any, on any debt security of that series when due;
- (3) default in the deposit of any sinking fund payment when due;
- (4) default in the performance, or breach, of our covenants or agreements in the indenture with respect to the debt securities of such series, subject to any applicable notice and cure provisions; and
- (5) specified events of bankruptcy, insolvency or reorganization involving us or certain of our subsidiaries.

Additional or different events of default applicable to a series of debt securities may be described in a prospectus supplement. An event of default of one series of debt securities is not necessarily an event of default for any other series of debt securities.

Pursuant to the Trust Indenture Act, the trustee is required, within 90 calendar days after the occurrence of a default in respect of any series of debt securities, to give to the holders of the debt securities of that series notice of all uncured defaults known to it, except that:

- in the case of a default in the performance of any covenant of the character contemplated in clause (4) above, no notice will be given until at least 30 calendar days after the occurrence of the default; and
- other than in the case of a default of the character contemplated in clause (1), (2), or (3) above, the trustee may withhold notice if and so long as it in good faith determines that the withholding of notice is in the interests of the holders of the debt securities of that series.

**Table of Contents**

If an event of default described in clause (5) above occurs, the principal of, premium and make-whole amount, if any, and accrued interest on the debt securities of that series will become immediately due and payable without any declaration or other act on the part of the trustee or any holder of the debt securities of that series. If any other event of default with respect to debt securities of any series occurs and is continuing, either the trustee or the holders of at least 25% in principal amount of the debt securities of that series may declare the principal amount of all debt securities of that series to be due and payable immediately. However, at any time after a declaration of acceleration with respect to debt securities of any series has been made, but before a judgment or decree based on such acceleration has been obtained, the holders of a majority in principal amount of the debt securities of that series may, under specified circumstances, rescind and annul such acceleration. See **Modification and Waiver** below.

Subject to the duty of the trustee to act with the required standard of care during an event of default, the trustee will have no obligation to exercise any of its rights or powers under the indenture at the request or direction of the holders of debt securities, unless holders of debt securities shall have furnished to the trustee reasonable security or indemnity. Subject to the provisions of the indenture, including those requiring security or indemnification of the trustee, the holders of a majority in principal amount of the debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power conferred on the trustee, with respect to the debt securities of that series.

No holder of a debt security of any series will have any right to institute any proceeding with respect to the indenture or for any remedy thereunder unless:

- the holder has previously given to the trustee written notice of a continuing event of default;
- the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the same series have requested the trustee to institute a proceeding in respect of the event of default;
- the holder or holders have furnished reasonable indemnity to the trustee to institute the proceeding as trustee;
- the trustee has not received from the holders of a majority in principal amount of the outstanding debt securities of the same series a direction inconsistent with the request; and
- the trustee has failed to institute the proceeding within 60 calendar days.

However, the limitations described above do not apply to a suit instituted by a holder of a debt security for enforcement of payment of the principal of and interest on such debt security on or after the applicable due dates for the payment of such principal and interest.

We will furnish to the trustee annually a statement as to our performance of our obligations under the indenture and as to any default in our performance.

**Modification and Waiver**

In general, unless we otherwise indicate in a prospectus supplement, we and the applicable trustee may make modifications and amendments of the indenture with the consent of the holders of not less than a majority in principal amount of the debt securities of each series affected thereby. However, no modification or amendment of the indenture may, without the consent of the holder of each debt security affected thereby:

- change the stated maturity of, or any installment of principal of, or interest on, any debt security;
- reduce the principal amount of, the rate of interest on, or the make-whole amount or premium, if any, payable upon the redemption of, any debt security;
- reduce the amount of principal of an original issue discount security payable upon acceleration of the maturity thereof;
- change the place or currency of payment of principal of, or make-whole amount or premium, if any, or interest on any debt security;
- impair the right to institute suit for the enforcement of any payment on or with respect to any debt security on or after the stated maturity or prepayment date thereof; or
- reduce the percentage in principal amount of debt securities of any series required for modification or amendment of the indenture or for waiver of compliance with certain provisions of the indenture or for waiver of certain defaults.

## **Table of Contents**

We may also make modifications and amendments to the indenture for the benefit of holders without their consent, for certain purposes including, but not limited to:

- providing for our successor to assume the covenants under the indenture;
- adding covenants or events of default;
- making certain changes to facilitate the issuance of the securities;
- securing the securities;
- providing for a successor trustee or additional trustees;
- curing any ambiguities or inconsistencies;
- providing for guaranties of, or additional obligors on, the securities;
- permitting or facilitating the defeasance and discharge of the securities; and
- other changes specified in the indenture.

The holders of at least a majority in principal amount of the debt securities of any series may, on behalf of the holders of all debt securities of that series, waive our compliance with specified covenants of the indenture. The holders of at least a majority in principal amount of the debt securities of any series may, on behalf of the holders of all debt securities of that series, waive any past default under the indenture with respect to that series, except:

- a default in the payment of the principal of, or premium or make-whole amount, if any, or interest on, any debt security of that series; or
- a default of a provision of the indenture that cannot be modified or amended without the consent of the holder of each debt security of that series.

## **Defeasance**

Unless otherwise specified in a prospectus supplement applicable to a particular series of debt securities and except as described below, upon compliance with the applicable requirements described below, we:

- (1) will be deemed to have been discharged from our obligations with respect to the debt securities of that series; or
- (2) will be released from our obligations to comply with certain covenants in the indenture with respect to the debt securities of that series, and the occurrence of an event described in any of clauses (3), (4) and (5) under **Events of Default** above will no longer be an Event of Default with respect to the debt securities of that series except to the limited extent described below.

Following any defeasance described in clause (1) or (2) above, we will continue to have specified obligations under the indenture, including obligations to register the transfer or exchange of debt securities of the applicable series; replace destroyed, stolen, lost or mutilated debt securities of the applicable series; maintain an office or agency in respect of the debt securities of the applicable series; and hold funds for payment to holders of debt securities of the applicable series in trust. In the case of any defeasance described in clause (2) above, any failure by us to comply with our continuing obligations may constitute an event of default with respect to the debt securities of the applicable series as described in clause (4) under **Events of Defaults** above.

In order to effect any defeasance described in clause (1) or (2) above, we must irrevocably deposit with the trustee, in trust, money or specified government obligations (or depositary receipts therefor) that through the payment of principal and interest in accordance with their terms will provide money in an amount sufficient to pay all of the principal of, premium and make-whole amount, if any, and interest on the debt securities of such series on the dates such payments are due in accordance with the terms of such debt securities. In addition:

- no event of default or event which with the giving of notice or lapse of time, or both, would become an event of default under the indenture shall have occurred and be continuing on the date of such deposit;
- in the event of any defeasance described in clause (1) above, we shall have delivered an opinion of counsel, stating that (a) we have received from, or there has been published by, the Internal Revenue Service, or IRS, a ruling or (b) there has been a change in applicable federal law, in either case to the effect that, among other things, the holders of the debt securities of such series will not recognize gain or loss for United States federal

## **Table of Contents**

income tax purposes as a result of such deposit or defeasance and will be subject to United States federal income tax in the same manner as if such defeasance had not occurred; and  
in the event of any defeasance described in clause (2) above, we shall have delivered an opinion of counsel to the effect that, among other things, the holders of the debt securities of such series will not recognize gain or loss for United States federal income tax purposes as a result of such deposit or defeasance and will be subject to United States federal income tax in the same manner as if such defeasance had not occurred.

If we fail to comply with our remaining obligations under the indenture with respect to the debt securities of the applicable series following a defeasance described in clause (2) above and the debt securities of that series are declared due and payable because of the occurrence of any undefeased event of default, the amount of money and government obligations on deposit with the trustee may be insufficient to pay amounts due on the debt securities of that series at the time of the acceleration resulting from such event of default. However, we will remain liable in respect of such payments.

## **Satisfaction and Discharge**

We, at our option, may satisfy and discharge the indenture (except for specified obligations of us and the trustee, including, among others, the obligations to apply money held in trust) when:

either:

(1) all of our debt securities previously authenticated and delivered under the indenture (subject to specified exceptions relating to debt securities that have otherwise been satisfied or provided for) have been delivered to the trustee for cancellation; or

(2) all of our debt securities not previously delivered to the trustee for cancellation have become due and payable, will become due and payable at their stated maturity within one year, or are to be called for redemption within one year under arrangements satisfactory to the trustee for the giving of notice of redemption by the trustee, and we have deposited or caused to be deposited with the trustee as trust funds for such purpose an amount sufficient to pay and discharge the entire indebtedness on such debt securities, for principal and any premium, make-whole amount and interest to the date of such deposit (in the case of debt securities which have become due and payable) or to the stated maturity or redemption date, as the case may be;

we have paid or caused to be paid all other sums payable by us under the indenture; and

we have delivered to the trustee an officer's certificate and an opinion of counsel, each to the effect that all conditions precedent relating to the satisfaction and discharge of the indenture have been satisfied.

## **Governing Law**

The indenture and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York.

## **Regarding the Trustee**

We will provide the name of the trustee in any prospectus supplement relating to the issuance of debt securities and we will also provide certain other information related to the trustee, including describing any relationship we have with the trustee, in such prospectus supplement. The indenture will contain specified limitations on the right of the trustee, should it become our creditor within three months of, or subsequent to, a default by us to make payment in full of principal of or interest on any series of debt securities issued pursuant to the indenture when and as the same becomes due and payable, to obtain payment of claims, or to realize for its own account on property received in respect of any such claim as security or otherwise, unless and until such default is cured.

The indenture will not prohibit the trustee from serving as trustee under any other indenture to which we may be a party from time to time or from engaging in other transactions with us. If the trustee acquires any conflicting interest within the meaning of the Trust Indenture Act of 1939 and there is an event of default with respect to any series of debt securities, the trustee must eliminate the conflict or resign.

## **DESCRIPTION OF CAPITAL STOCK**

Our authorized capital stock consists of 175,000,000 shares of common stock, par value \$0.01 per share, and 500,000 shares of preferred stock, par value \$10.00 per share.

## **Table of Contents**

### **Common Stock**

Subject to the restrictions described below, the holders of our common stock are entitled to receive dividends from funds legally available when, as and if declared by our board of directors, and are entitled upon our liquidation, dissolution or winding up to receive pro rata our net assets after satisfaction in full of the prior rights of our creditors and holders of any preferred stock.

Except as otherwise provided by law and subject to the voting rights of any class or series of our preferred stock that may be outstanding from time to time, the holders of common stock are entitled to one vote for each share held on all matters as to which stockholders are entitled to vote. The holders of common stock do not have cumulative voting rights. The holders of common stock do not have any preferential, subscription or preemptive rights to subscribe to or purchase any new or additional issue of shares of any class of stock or of securities convertible into our stock or any conversion rights with respect to any of our securities. Our common stock is not subject to redemption. All of our issued and outstanding common stock is fully paid and non-assessable.

### **Preferred Stock**

Our certificate of incorporation authorizes our board of directors to establish one or more classes or series of preferred stock and to determine, with respect to any class or series of preferred stock, the terms and rights of the series, including the following:

- the designation of and number of shares constituting the class or series;
- the rate and time of, and conditions and preferences with respect to, dividends, and whether the dividends will be cumulative;
- the voting rights, if any, of shares of the class or series;
- the price, timing and conditions regarding any redemption of shares of the class or series;
- the rights and preferences of shares of the class or series in the event of voluntary or involuntary dissolution, liquidation or winding up of our affairs; and
- the right, if any, to convert or exchange shares of the class or series into or for stock or securities of any other series or class.

### **Provisions of Our Certificate of Incorporation and Bylaws and Delaware Law That May Have an Anti-Takeover Effect**

Our certificate of incorporation and bylaws contain certain provisions, some of which are intended to enhance the likelihood of continuity and stability in the composition of our board of directors and the policies formulated by our board of directors, and to discourage certain types of coercive takeover practices. However, these provisions, as well as certain provisions of Delaware law, may deter, hinder or delay a change of control of us. These provisions could discourage attempts to acquire us or remove incumbent management even if some or a majority of our stockholders believe that action is in their best interest.

*Certificate of Incorporation and Bylaws.* The provisions in our certificate of incorporation and bylaws with the intent described above include:

*Board of Directors.* Our board of directors is divided into three classes of directors serving staggered three-year terms, with one-third of the board of directors being elected each year. In addition, our directors may only be removed for cause. The certificate of incorporation and bylaws provide that the exact number of directors shall be fixed from time to time by the board of directors, but shall consist of not less than two nor more than fifteen directors. The classification of our board of directors means that, unless directors are removed for cause by stockholders, it could require at least two annual meetings of stockholders for a majority of stockholders to make a change of control of the board of directors, because only a portion of the directors will be elected at each meeting. A significant effect of a classified board of directors may be to deter hostile takeover attempts, because an acquiror could experience delay in replacing a majority of the directors. A classified board of directors also makes it more difficult for stockholders to effect a change of control of the board of directors, even if such a change of control were to be sought due to dissatisfaction with the performance of our company's directors.

*Vacancies Filled by the Board.* Vacancies may be filled by a majority of the remaining directors (including vacancies resulting from an increase in the number of directors), or by a sole remaining director.





**Table of Contents**

*Supermajority Approval of Business Combinations.* In addition to any vote required by law or our certificate of incorporation, the holders of at least 80% of each class of our capital stock must approve any business combination (as defined below) unless the business combination is approved by a majority of continuing directors (as defined below) or all of the following conditions are satisfied: (i) certain minimum price requirements are satisfied; (ii) the consideration paid on the business combination is either cash or the form used by the interested stockholder (as defined below) to acquire the greatest number of shares; (iii) the interested stockholder has not received any financial assistance, tax credits or other benefits from the Company and (iv) a proxy or information statement describing the proposed business combination and meeting the requirements of the Exchange Act is mailed to our public stockholders at least 30 days before consummation of the proposed transaction. An interested stockholder generally is a holder of more than 20% of our stock and its affiliates. A business combination generally means: (i) any merger with an interested stockholder or a corporation that is or would, as a result of the transaction, be an affiliate of an interested stockholder; (ii) any sale or other disposition of assets or issuance of securities to an interested stockholder with a value of at least \$1.0 million; (iii) the adoption of any plan for our liquidation or dissolution proposed by an interested stockholder and (iv) any reclassification of securities or other recapitalization or reorganization of the Company where the effect is to increase an interested stockholder's proportionate share ownership of the Company. A continuing director is a director who is not affiliated with an interested stockholder and either was a director prior to the interested stockholder becoming an interested stockholder or is a successor to such a director and is elected or recommended by a majority of the continuing directors.

*No Cumulative Voting.* There is no cumulative voting in the election of directors.

*Blank Check Preferred Stock.* We believe that the availability of the preferred stock under our certificate of incorporation will provide us with flexibility in structuring possible future financings and acquisitions and in meeting other corporate needs which might arise. Having these authorized shares available for issuance will allow us to issue shares of preferred stock without the expense and delay of a special stockholders meeting. The authorized shares of preferred stock, as well as shares of common stock, will be available for issuance without further action by our stockholders, unless action is required by applicable law or the rules of any stock exchange on which our securities may be listed. Our board of directors has the power, subject to applicable law, to issue classes or series of preferred stock that could, depending on the terms of the class or series, impede the completion of a merger, tender offer or other takeover attempt. For instance, a class or series of preferred stock might impede a business combination by including class voting rights which would enable the holder or holders of such class or series to block a proposed transaction. Our board of directors will make any determination to issue shares based on its judgment as to our and our stockholders' best interests. Our board of directors, in so acting, could issue preferred stock having terms which could discourage an acquisition attempt or other transaction that some, or a majority, of the stockholders might believe to be in their best interests or in which stockholders might receive a premium for their stock over the then prevailing market price of the stock.

*Delaware Takeover Statute.* We are subject to Section 203 of the DGCL, which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any business combination with any interested stockholder (both as defined below) for a period of three years following the date that such stockholder became an interested stockholder, unless: (i) prior to such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder, (ii) on consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding those shares owned (x) by persons who are directors and also officers and (y) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or (iii) on or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 of the DGCL defines generally business combination to include: (i) any merger or consolidation involving the corporation and the interested stockholder; (ii) any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder; (iii) subject to certain exceptions, any

transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; (iv) any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or (v) the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation. In general, Section 203 defines an interested stockholder as any entity or

**Table of Contents**

person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by such entity or person.

***Limitation of Director Liability***

Our certificate of incorporation limits the liability of directors to us and our stockholders to the fullest extent permitted by Delaware law. Specifically, a director will not be personally liable for monetary damages for breach of his or her fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- acts or omissions which involve intentional misconduct, fraud or a knowing violation of law;
- violations under Section 174 of the Delaware General Corporation Law, which relates to unlawful distributions to stockholders or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

These provisions in our certificate of incorporation may have the effect of reducing the likelihood of derivative litigation against our directors and officers and may discourage or deter stockholders or management from bringing a lawsuit against our directors or officers for breach of their duty of care, even though such an action, if successful, might otherwise have benefited our company and its stockholders. These provisions do not limit or affect a stockholder's ability to seek and obtain relief under federal securities laws.

**Transfer Agent**

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

**DESCRIPTION OF DEPOSITARY SHARES**

We may offer depositary shares (either separately or together with other securities) representing fractional shares of preferred stock of any series. In connection with the issuance of any depositary shares, we will enter into a deposit agreement with a bank or trust company, as depositary, which will be named in the applicable prospectus supplement. Depositary shares will be evidenced by depositary receipts issued pursuant to the related deposit agreement. Immediately following our issuance of the security related to the depositary shares, we will deposit the shares of preferred stock with the relevant depositary and will cause the depositary to issue, on our behalf, the related depositary receipts. Subject to the terms of the deposit agreement, each owner of a depositary receipt will be entitled, in proportion to the fraction of a share of preferred stock represented by the related depositary share, to all the rights, preferences and privileges of, and will be subject to all of the limitations and restrictions on, the preferred stock represented by the depositary receipt (including, if applicable, dividend, voting, conversion, exchange, redemption, sinking fund, repayment at maturity, subscription and liquidation rights).

**DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of debt securities, common stock, preferred stock, depositary shares or any combination thereof. We may issue warrants independently or together with any other securities offered by a prospectus supplement. Warrants may be attached to or separate from such securities. Each series of warrants will be issued under a separate warrant agreement we will enter into with a warrant agent specified in the applicable prospectus supplement. The warrant agent will act solely as our agent in connection with the warrants of a particular series and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

The applicable prospectus supplement will describe the terms of the warrants in respect of which this prospectus is being delivered, including, to the extent applicable, the following:

- the title of the warrants;
- the aggregate number of the warrants;
- the price or prices at which the warrants will be issued;
- the designation, number or principal amount and terms of the debt securities, common stock, preferred stock and/or depositary shares purchasable upon exercise of the warrants;
- the designation and terms of the other securities, if any, with which the warrants are issued and the number of warrants issued with each security;

**Table of Contents**

the date, if any, on and after which the warrants and the related underlying securities will be separately transferable; whether the warrants will be issued in registered form or bearer form; the price at which each underlying security purchasable upon exercise of the warrants may be purchased; the date on which the right to exercise the warrants will commence and the date on which that right will expire; the identity of the warrant agent; the maximum or minimum number of the warrants that may be exercised at any one time; information with respect to book-entry procedures, if any; a discussion of any material federal income tax considerations; and any other terms of the warrants, including terms, procedures, and limitations relating to the transferability, exchange, and exercise of the warrants.

**DESCRIPTION OF UNITS**

We may issue units comprising one or more securities described in this prospectus in any combination. Each unit will be issued so that the holder of the unit also is the holder of each security included in the unit. Thus, the holder of each unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately at any time or at any time before a specified date.

The applicable prospectus supplement will describe the terms of any units in respect of which this prospectus is being delivered, including, to the extent applicable, the following:

- the designation and terms of the units and the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;
- any provision for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units; and
- whether the units will be issued in fully registered or global form.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table shows our historical ratio of earnings to fixed charges for each of the five fiscal years ended December 31, 2005, 2006, 2007, 2008 and 2009 and for the nine months ended September 30, 2010.

	<b>Year Ended December 31,</b>					<b>Nine Months Ended Sept. 30, 2010</b>
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	
Ratio of earnings to fixed charges <sup>1</sup>	15.38	8.12	20.64	37.95	19.32	10.19

<sup>1</sup> In computing the ratio of earnings to fixed charges: (i) earnings were our income before income taxes plus fixed charges and (ii) fixed charges were the sum of our interest expense and the estimated interest component included in our rental expense. We do not present ratios of earnings to combined fixed charges and preferred stock dividend requirements because we did not have any outstanding preferred stock in any of the periods indicated.

**USE OF PROCEEDS**

We intend to use the net proceeds from the sales of the securities as set forth in the applicable prospectus supplement.

**Table of Contents**

**PLAN OF DISTRIBUTION**

We may sell the securities described in this prospectus to or through one or more agents, underwriters, dealers or directly to purchasers on a continuous or delayed basis.

The distribution of the securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed from time to time, at market prices prevailing at the times of sale, at prices related to such prevailing market prices or at negotiated prices.

Each time that we use this prospectus to sell our securities, we will also provide a prospectus supplement. For each series of securities, the applicable prospectus supplement will set forth the terms of the offering including:

the public offering price;

the name or names of any underwriters, dealers or agents;

the purchase price of the securities;

the proceeds from the sale of the securities to us;

any underwriting discounts, agency fees or other compensation payable to underwriters or agents;

any discounts or concessions allowed or reallocated or repaid to dealers; and

the securities exchange on which the securities will be listed, if any.

If we use underwriters in the sale of securities, the securities will be acquired by the underwriters for their own account. The underwriters may then resell the securities in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale or thereafter. The securities may be either offered to the public through underwriting syndicates represented by managing underwriters, or directly by underwriters. The obligations of the underwriters to purchase the securities will be subject to certain conditions. The underwriters will be obligated to purchase all the securities offered if they purchase any securities. The public offering price and any discounts or concessions allowed or re-allowed or paid to dealers may be changed from time to time.

If we use dealers in the sale of securities, we will sell securities to such dealers as principals. The dealers may then resell the securities to the public at varying prices to be determined by such dealers at the time of resale. We may solicit offers to purchase the securities directly, and we may sell the securities directly to institutional or other investors, who may be deemed underwriters within the meaning of the Securities Act with respect to any resales of those securities. The terms of these sales will be described in the applicable prospectus supplement. If we use agents in the sale of securities, unless otherwise indicated in the prospectus supplement, they will use their reasonable best efforts to solicit purchases for the period of their appointment. Unless otherwise indicated in a prospectus supplement, if we sell directly, no underwriters, dealers or agents would be involved. We will not make an offer of securities in any jurisdiction that does not permit such an offer.

We may grant underwriters who participate in the distribution of securities an option to purchase additional securities to cover overallotments, if any, in connection with the distribution. Any underwriter may engage in overallotment, stabilizing transactions, short covering transactions and penalty bids in accordance with SEC orders, rules and regulations and applicable law. To the extent permitted by applicable law and SEC orders, rules and regulations, an overallotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. To the extent permitted by applicable law and SEC orders, rules and regulations, short covering transactions involve purchases of the common stock in the open market after the distribution is completed to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the common stock originally sold by the dealer is purchased in a covering transaction to cover short positions. Those activities may cause the price of the common stock to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

Any underwriters who are qualified market makers on the Nasdaq Stock Market may engage in passive market making transactions in the common stock on the Nasdaq Stock Market in accordance with Rule 103 of Regulation M, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the common stock. Passive market makers must comply with the applicable volume and price limitations and must be identified as passive market makers. In general a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive

**Table of Contents**

market maker's bid, however, the passive market maker's bid must then be lowered when certain purchase limits are exceeded.

Underwriters, dealers and agents that participate in any distribution of securities may be deemed to be underwriters as defined in the Securities Act. Any discounts, commissions or profit they receive when they resell the securities may be treated as underwriting discounts and commissions under the Securities Act. Only underwriters named in the prospectus supplement are underwriters of the securities offered in the prospectus supplement. We may have agreements with underwriters, dealers and agents to indemnify them against certain civil liabilities, including certain liabilities under the Securities Act, or to contribute with respect to payments that they may be required to make.

We may authorize underwriters, dealers or agents to solicit offers from certain institutions whereby the institution contractually agrees to purchase the securities from us on a future date at a specific price. This type of contract may be made only with institutions that we specifically approve. Such institutions could include banks, insurance companies, pension funds, investment companies and educational and charitable institutions. The underwriters, dealers or agents will not be responsible for the validity or performance of these contracts.

Each series of securities will be a new issue of securities and will have no established trading market, other than our common stock, which is listed on the Nasdaq Global Select Market. Unless otherwise specified in the applicable prospectus supplement, the securities will not be listed on any exchange. It has not presently been established whether the underwriters, if any, of the securities will make a market in the securities. If the underwriters make a market in the securities, such market making may be discontinued at any time without notice. No assurance can be given as to the liquidity of the trading market for the securities.

Agents, dealers and underwriters may be entitled to indemnification by us against certain civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments which the agents, dealers or underwriters may be required to make in respect thereof. Agents, dealers or underwriters may be customers of, engage in transactions with, or perform services for us and our subsidiaries in the ordinary course of business.

**CERTAIN LEGAL MATTERS**

In connection with particular offerings of the securities in the future, and if stated in the applicable prospectus supplements, the validity of those securities may be passed upon for us by Duane Morris LLP, and for any underwriters or agents by counsel named in the applicable prospectus supplement.

**EXPERTS**

The consolidated financial statements and schedule of eResearchTechnology, Inc. and subsidiaries as of December 31, 2009 and 2008, and for each of the years in the three-year period ended December 31, 2009, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2009, have been incorporated by reference herein and in the registration statement in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The combined financial statements of Research Services (a division of CareFusion Corporation comprised of the research services division of CareFusion Germany 234 GmbH and certain operations of CareFusion Corporation) for the years ended December 31, 2009 and 2008 have been incorporated by reference herein and in the registration statement in reliance upon the report of Ernst & Young GmbH, independent auditors, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

**Table of Contents**

**eResearchTechnology, Inc.  
\$150,000,000  
Debt Securities  
Common Stock  
Preferred Stock  
Depository Shares  
Warrants  
Units  
PROSPECTUS  
, 20**

---



**Table of Contents**

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the expenses in connection with the issuance and distribution of the securities registered by this registration statement, other than any underwriting discounts and commissions. All of the expenses will be borne by us.

SEC registration fee	\$ 10,695
Legal fees and expenses	*
Accounting fees and expenses	*
Printing and engraving expenses	*
Trustee s fees and expenses	*
Miscellaneous expenses	*
Total	*

\* These fees and expenses will be determined based on the number of issuances and amount and type of securities issued. Accordingly, they cannot be estimated at this time.

**Item 15. Indemnification of Directors and Officers.**

eResearchTechnology, Inc. is a Delaware corporation. Subsection (b)(7) of Section 102 of the Delaware General Corporation Law (the "DGCL") enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit. Article VII of our Restated Certificate of Incorporation has eliminated the personal liability of directors to the fullest extent permitted by Subsection (b)(7) of Section 102 of the DGCL.

Subsection (a) of Section 145 of the DGCL empowers a corporation to indemnify any director or officer, or former director or officer, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding provided that such director or officer acted in good faith in a manner reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, provided further that such director or officer had no reasonable cause to believe his conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any director or officer, or former director or officer, who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit provided that such director or officer acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such director or officer shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such director or officer is fairly and reasonably entitled to indemnity

for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsections (a) and (b) or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith; that indemnification and advancement of expenses provided for, by, or granted

II-1

---

**Table of Contents**

pursuant to, Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and empowers the corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liabilities under Section 145.

Article X of our bylaws provides that the corporation shall indemnify directors and officers of the corporation in accordance with the above-described provisions of Delaware law.

These indemnification provisions may be sufficiently broad to permit indemnification of the registrant's officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act of 1933, as amended (the Securities Act).

Any underwriting agreement we file as an exhibit to this registration statement is expected to provide for indemnification by the underwriters of the registrant and its officers and directors for certain liabilities arising under the Securities Act or otherwise.

We also maintain director and officer liability insurance in the amount of \$35.0 million.

**Item 16. Exhibits.**

The following documents are filed as exhibits to this registration statement, including those exhibits incorporated herein by reference to one of our prior filings under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, as indicated in parentheses:

<b>Exhibit No.</b>	<b>Description</b>
*1.1	Form of Underwriting Agreement.
4.1	Form of Indenture between the Company and the Trustee to be designated therein relating to debt securities.
*4.2	Form of certificate of designations for preferred stock.
*4.3	Form of preferred stock certificate.
*4.4	Form of depositary receipt.
*4.5	Form of deposit agreement.
*4.6	Form of warrant.
*4.7	Form of warrant agreement.
*4.8	Form of unit certificate.
*4.9	Form of unit agreement.
5.1	Opinion of Duane Morris LLP.
*12.1	Statement regarding computation of ratio of earnings to fixed charges.
23.1	Consent of KPMG LLP.
23.2	Consent of Ernst & Young GmbH
23.3	Consent of Duane Morris LLP (included in Exhibit 5.1).
24.1	Powers of Attorney (included on the signature page hereto for eResearchTechnology, Inc.)
**25.1	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of the Trustee under the Indenture.

\* To be filed if applicable subsequent to the effectiveness of this registration statement by an amendment or as an exhibit to a document filed under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or otherwise filed, and incorporated by reference herein.

\*\* To be filed separately on a delayed basis under the electronic form type 305B2 if applicable

**Item 17. Undertakings.**

The undersigned registrant hereby undertakes:

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

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed

II-2

---

**Table of Contents**

that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement; *provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 242(b) that is part of the registration statement.

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

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

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

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

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

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

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

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

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

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

(6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where



**Table of Contents**

applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

**Table of Contents****SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the undersigned registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Philadelphia, Commonwealth of Pennsylvania, on November 10, 2010.

**eResearchTechnology, Inc.**

By: /s/ Michael J. McKelvey  
Michael J. McKelvey  
President and Chief Executive Officer

**POWER OF ATTORNEY**

The undersigned directors and officers of eResearchTechnology, Inc. hereby constitute and appoint Michael J. McKelvey and Keith D. Schneck, and each of them, each with full power to act and with full power of substitution and resubstitution, our true and lawful attorneys-in-fact and agents with full power to execute in our name and behalf in the capacities indicated below any and all amendments (including post-effective amendments and amendments thereto) to this registration statement and to file the same, with all exhibits and other documents relating thereto and any registration statement relating to any offering made pursuant to this registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act with the Securities and Exchange Commission and hereby ratify and confirm all that such attorney-in-fact or his or her substitute shall lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Michael J. McKelvey Michael J. McKelvey	President, Chief Executive Officer and Director (principal executive officer)	November 10, 2010
/s/ Keith D. Schneck Keith D. Schneck	Executive Vice President, Chief Financial Officer and Secretary (principal financial and accounting officer)	November 10, 2010
/s/ Joel Morganroth, MD Joel Morganroth, M.D.	Chairman of the Board of Directors	November 10, 2010
/s/ Sheldon M. Bonovitz Sheldon M. Bonovitz	Director	November 10, 2010
/s/ Michael DeMane Michael DeMane	Director	November 10, 2010
/s/ Gerald A. Faich	Director	November 10, 2010



Gerald A. Faich

II-5

---

**Table of Contents**

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Elam M. Hitchner Elam M. Hitchner	Director	November 10, 2010
/s/ Stephen S. Phillips Stephen S. Phillips	Director	November 10, 2010
/s/ Stephen M. Scheppman Stephen M. Scheppman	Director	November 10, 2010

II-6

---

**Table of Contents**

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
4.1	Form of Indenture between the Company and the Trustee to be designated therein relating to debt securities.
5.1	Opinion of Duane Morris LLP.
12.1	Statement regarding computation of ratio of earnings to fixed charges.
23.1	Consent of KPMG LLP.
23.2	Consent of Ernst & Young GmbH