

CALLAWAY GOLF CO  
Form S-3  
December 22, 2010  
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As filed with the Securities and Exchange Commission on December 22, 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*

**CALLAWAY GOLF COMPANY**

(Exact name of Registrant as specified in its charter)

Delaware

95-3797580

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(State or other jurisdiction of  
incorporation or organization)

(I.R.S. Employer  
Identification No.)

2180 Rutherford Road

Carlsbad, California 92008

(760) 931-1771

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

Steven C. McCracken

Senior Executive Vice President and Chief Administrative Officer

Callaway Golf Company

2180 Rutherford Road

Carlsbad, California 92008

(760) 931-1771

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

*With a copy to:*

Thomas D. Magill

David C. Lee

Gibson, Dunn & Crutcher LLP

3161 Michelson Drive

Irvine, California 92612-4412

(949) 451-3800

Approximate date of commencement of proposed sale to the public: **From time to time after this Registration**

**Statement becomes effective.**

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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 from the same offering.

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

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

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

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

|  |   |  |
|--|---|--|
| Large accelerated filer <input type="checkbox"/> | Accelerated filer <input checked="" type="checkbox"/> |  |
| Non-accelerated filer <input type="checkbox"/>   | Smaller reporting company <input type="checkbox"/>    |  |

### CALCULATION OF REGISTRATION FEE

| Title of Each Class of<br>Securities to be Registered(1) | Amount to be<br>Registered(1)(2) | Proposed Maximum<br>Offering Price Per<br>Security(1)(2) | Proposed Maximum<br>Aggregate Offering<br>Price(1)(2) | Amount of<br>Registration Fee(3) |
|--|----------------------------------|--|---|----------------------------------|
| Debt Securities (1)                                      |                                  |  |   |                                  |
| Common Stock, par value \$0.01 per share (1)             |                                  |  |   |                                  |
| Preferred Stock, par value \$0.01 per share (1)          |                                  |  |   |                                  |
| Depository Shares (1)(2)                                 |                                  |  |   |                                  |
| Warrants (1)   |                                  |  |   |                                  |
| Rights (1)(4)  |                                  |  |   |                                  |
| Stock Purchase Contracts (1)                             |                                  |  |   |                                  |
| Stock Purchase Units (1)                                 |                                  |  |   |                                  |
| Units of the Securities listed above (1)                 |                                  |  |   |                                  |
| <b>TOTAL:</b>  | \$200,000,000                    | (1)  | \$200,000,000   | \$14,260                         |

- (1) An indeterminate number of the securities of each identified class as may from time to time be issued at indeterminate prices is being registered hereby, with an aggregate offering price not to exceed \$200,000,000. Pursuant to Rule 416 under the Securities Act of 1933, the securities offered hereby shall be deemed to cover additional securities to be offered to prevent dilution resulting from stock splits, stock dividends or similar transactions. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities.
- (2) Each depository share issued hereunder will be issued under a deposit agreement and will represent an interest in a fractional share of preferred stock or common stock and will be evidenced by a depository receipt.
- (3) Calculated pursuant to Rule 457(o) of the Securities Act.
- (4) Rights evidencing the right to purchase Callaway Golf Company common stock, preferred stock, depository shares or debt securities.

**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, as amended, 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.**

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**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 December 22, 2010**

**PROSPECTUS**

# **CALLAWAY GOLF COMPANY**

**\$200,000,000**

**Debt Securities**

**Common Stock**

**Preferred Stock**

**Depository Shares**

**Warrants**

**Rights**

**Stock Purchase Contracts**

**Stock Purchase Units**

**Units**

This prospectus provides a general description of the following securities that may be offered hereunder from time to time: Callaway Golf Company's debt securities, common stock, preferred stock, depository shares, warrants, rights, stock purchase contracts, stock purchase units and units of these securities. The aggregate initial offering price of all securities sold under this prospectus will not exceed \$200 million. When we offer securities pursuant to this prospectus, we will provide a supplement to this prospectus that contains specific information about the offering and the specific terms of the securities offered. The prospectus supplement may also add, update or change information contained in this prospectus. This prospectus may not be used to offer or sell securities without a prospectus supplement describing the method and terms of the offering.

You should carefully read this prospectus and any accompanying prospectus supplement, together with the documents we incorporate by reference, before you invest in our securities.

The common stock of Callaway Golf Company is listed on the New York Stock Exchange under the symbol ELY. Our principal executive offices are located at 2180 Rutherford Road, Carlsbad, California 92008, and our telephone number is (760) 931-1771.

**Investing in our securities involves risks that are described in the section entitled **Risk Factors** on page 1 of this prospectus and the risk factors incorporated herein by reference. You should carefully read and consider these risk factors before you invest in our securities.**

*Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.*

The date of this prospectus is

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*Unless otherwise indicated or the context otherwise requires, the terms we, us, our, Callaway and the Company refer collectively to Callaway Golf Company, a Delaware corporation, and its consolidated subsidiaries.*

If you are in a jurisdiction where offers to sell, or solicitations of offers to purchase, the securities offered by this prospectus are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this prospectus does not extend to you.

We have not authorized anyone to give any information or make any representation about us that is different from, or in addition to, that contained in this prospectus, including in any of the materials that we have incorporated by reference into this prospectus, any accompanying prospectus supplement, and any free writing prospectus prepared or authorized by us. Therefore, if anyone gives you information of this sort, you should not rely on it as authorized by us. Neither the delivery of this prospectus, nor any sale made hereunder, shall under any circumstances create any implication that there has been no change in our affairs since the date hereof or that the information incorporated by reference herein is correct as of any time subsequent to the date of such information.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a shelf registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process. Under this shelf registration process, we may, from time to time, offer and sell any combination of the securities described in this prospectus in one or more offerings. The aggregate initial offering price of all securities sold under this prospectus will not exceed \$200,000,000.

The types of securities that we may offer and sell from time to time by this prospectus are:

debt securities of Callaway Golf Company;

common stock of Callaway Golf Company;

preferred stock of Callaway Golf Company;

depository shares of Callaway Golf Company;

warrants entitling the holders to purchase common stock, preferred stock, depository shares or debt securities of Callaway Golf Company;

rights to purchase Callaway Golf Company common stock, preferred stock, depository shares or debt securities;

stock purchase contracts issued by Callaway Golf Company;

stock purchase units issued by Callaway Golf Company; and

units consisting of any of the above securities.

We may issue debt securities convertible into shares of Callaway Golf Company common or preferred stock. The preferred stock issued may also be convertible into shares of Callaway Golf Company common stock or another series of its preferred stock.

This prospectus provides a general description of the securities that we may offer hereunder. Each time that we sell securities hereunder, we will describe in a prospectus supplement, which we will deliver with this prospectus, specific information about the offering and the terms of the particular securities offered. In each prospectus supplement, we will include the following information:

the type and amount of securities that we propose to sell;

the public offering price of the securities;



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the names of any underwriters, agents or dealers through or to which the securities will be sold;

any compensation of those underwriters, agents or dealers;

information about any securities exchanges or automated quotation systems on which the securities will be listed or traded;

any risk factors applicable to the securities that we propose to sell; and

any other material information about the offering and sale of the securities.

In addition, the prospectus supplement may also add, update or change the information contained in this prospectus. Any statement that we make in this prospectus will be modified or superseded by any inconsistent statement made by us in a prospectus supplement. You should read both this prospectus and any accompanying prospectus supplement together with the additional information described under the heading **Incorporation of Certain Documents by Reference**.

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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Statements made in this prospectus and the documents incorporated herein contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). All statements that relate to future plans, events, liquidity, financial results or performance, including statements relating to future cash flows and liquidity and future cost alignment actions, as well as estimated unrecognized stock compensation expense, computation of the annual estimated effective tax rate at each interim period, projected capital expenditures, future contractual obligations, the Company's business outlook for 2010, estimated charges related to the restructuring of the Company's global operations, future global economic conditions, future growth or market share gains, the ability to manage costs or invest in future initiatives, as well as future changes in foreign currency rates, are forward-looking statements as defined under the Private Securities Litigation Reform Act of 1995. In some cases, you can identify forward-looking statements by terminology such as anticipates, believes, estimates, expects, intends, may, plans, projects, and similar expressions or expressions of the negative of these terms.

These statements are based upon current information and expectations. Actual results may differ materially from those anticipated if the information on which those estimates were based ultimately proves to be incorrect or as a result of certain risks and uncertainties, including changes in economic conditions, credit markets, or foreign currency exchange rates, the level of promotional activity in the marketplace, consumer acceptance and demand for the Company's products, future consumer discretionary purchasing activity (which can be significantly adversely affected by unfavorable economic or market conditions), delays, difficulties, changed strategies, or unanticipated factors, including those affecting the implementation of the Company's cost alignment initiatives or initiatives targeted at improving gross margins, as well as the general risks and uncertainties applicable to the Company and its business. For details concerning these and other risks and factors contained in this prospectus, see the heading Risk Factors as well as the Company's other reports filed with the SEC from time to time. Investors are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. Except as required by law, the Company undertakes no obligation to update forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. Investors should also be aware that while the Company from time to time does communicate with securities analysts, it is against the Company's policy to disclose to them any material non-public information or other confidential commercial information. Furthermore, the Company has a policy against distributing or confirming financial forecasts or projections issued by analysts and any reports issued by such analysts are not the responsibility of the Company. Investors should not assume that the Company agrees with any report issued by any analyst or with any statements, projections, forecasts or opinions contained in any such report.

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**ABOUT US**

Callaway Golf Company was incorporated in the State of California in 1982 and reincorporated in the State of Delaware in 1999 with the main purpose of designing, manufacturing and selling high quality golf equipment. We manufacture and sell golf clubs and golf balls, and sell golf accessories, under the Callaway Golf®, Odyssey®, Top-Flite®, Ben Hogan® and uPro® brands in more than 100 countries worldwide. Our principal executive offices are located at 2180 Rutherford Road, Carlsbad, California 92008, and our telephone number is (760) 931-1771. We maintain a website on the Internet at www.CallawayGolf.com. Information that you may find on our website is not part of this prospectus.

**RISK FACTORS**

You should carefully consider the factors included or incorporated by reference in this prospectus, including those contained in our annual report on Form 10-K for the fiscal year ended December 31, 2009 under the heading "Risk Factors" before investing in our securities. You should also consider similar information contained in any annual report on Form 10-K or other document filed by us with the SEC after the filing of this prospectus before deciding to invest in our securities. If applicable, we will include in any prospectus supplement a description of those significant factors that could make the offering described therein speculative or risky.

**USE OF PROCEEDS**

Except as may be stated in the applicable prospectus supplement, we intend to use the net proceeds that we receive from the sale of the securities offered by this prospectus for general corporate purposes, which may include, among other things: reducing or refinancing indebtedness; making acquisitions of assets, businesses or securities; stock repurchases and capital expenditures; and for working capital. When specific securities are offered, the prospectus supplement relating thereto will set forth our intended use of the net proceeds that we receive from the sale of such securities. Pending the application of the net proceeds, we may invest the proceeds in marketable securities and short-term investments.

**RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table presents our historical ratio of earnings to fixed charges and preferred stock dividends for the periods indicated. The ratios are based solely on historical financial information, and no pro forma adjustments have been made thereto.

|   | Nine Months Ended September 30, |      | Year Ended December 31, |       |       |      |      |
|---|---------------------------------|------|-------------------------|-------|-------|------|------|
|   | 2010                            | 2009 | 2009                    | 2008  | 2007  | 2006 | 2005 |
| Ratio of earnings to fixed charges and preferred stock dividends (1)(2) | 1.63                            | 0.75 |                         | 12.38 | 11.36 | 5.18 | 3.58 |

- (1) Earnings for the year ended December 31, 2009 were insufficient to cover fixed charges and preferred stock dividends by \$11.8 million.
- (2) Dividends were paid on our preferred stock for the year ended December 31, 2009 in the amount of approximately \$5,688,000. Dividends were accrued and paid on our preferred stock during the nine months ended September 30, 2010 and 2009 in the amounts of approximately \$7,875,000 and \$3,063,000, respectively. Prior to 2009, we were not required to pay preferred stock dividends. Except with respect to 2009, no shares of our preferred stock, or any other class of preferred stock, were paid dividends during the calendar years shown.

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**DESCRIPTION OF SECURITIES**

The following is a general description of the terms and provisions of the securities we may offer and sell by this prospectus. These summaries are not meant to be complete. This prospectus and the applicable prospectus supplement will contain the material terms and conditions of each security. The prospectus supplement may add, update or change the terms and conditions of the securities as described in this prospectus.

**COMMON STOCK, PREFERRED STOCK AND DEPOSITARY SHARES**

As of December 22, 2010, our authorized capital stock consisted of 240,000,000 shares of common stock, \$0.01 par value, and 3,000,000 shares of preferred stock, \$0.01 par value. Of the preferred stock, 240,000 shares are designated Series A Junior Participating Preferred Stock ( Series A Preferred ) and 1,400,000 shares are designated as 7.50% Series B Cumulative Perpetual Convertible Preferred Stock ( Series B Preferred ). The remaining shares of preferred stock are undesignated as to series, rights, preferences, privileges or restrictions. Our certificate of incorporation does not authorize any other classes of capital stock.

***Common Stock***

We have one existing class of common stock. Holders of shares of our existing common stock are entitled to one vote per share on all matters to be voted upon by our stockholders and are entitled to vote for the election of directors cumulatively for one or more nominees.

The holders of shares of our existing common stock are entitled to receive ratably dividends as may be declared from time to time by our board of directors out of funds legally available for dividend payments, subject to any dividend preferences of any holders of any other series of common stock and preferred stock. In the event of our liquidation, dissolution or winding up, after full payment of all debts and other liabilities and liquidation preferences of any other series of common stock and any preferred stock, the holders of shares of our existing common stock are entitled to share ratably in all remaining assets. Our existing common stock has no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the shares of our existing common stock.

All issued and outstanding shares of common stock are fully paid and nonassessable. Any shares of common stock we offer under this prospectus will be fully paid and nonassessable.

Our common stock is listed under the symbol ELY on the New York Stock Exchange. BNY Mellon Shareowner Services LLC is the Transfer Agent and Registrar for our common stock.

***Outstanding Preferred Stock***

No shares of Series A Preferred are outstanding. At the date of this prospectus, 1,400,000 shares of our Series B Preferred are outstanding. The Series B Preferred ranks, with respect to distribution rights and rights upon our liquidation, winding-up or dissolution:

junior to all of our existing and future debt obligations, including convertible or exchangeable debt securities;

senior to our common stock and to any other of our equity securities that by their terms rank junior to the Series B Preferred with respect to distribution rights or payments upon our liquidation, winding-up or dissolution;

on a parity with other series of our preferred stock or other equity securities that we may later authorize and that by their terms are on a parity with the Series B Preferred; and

junior to any equity securities that we may later authorize and that by their terms rank senior to the Series B Preferred.

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While any shares of the Series B Preferred are outstanding, we may not authorize or issue any equity securities that rank senior to the Series B Preferred without the affirmative vote of the holders of at least two-thirds of the Series B Preferred.

Holders of the Series B Preferred generally do not have any voting rights, except as set forth in the Certificate of Designations relating to the Series B Preferred (the "Certificate of Designations").

The Series B Preferred has no maturity date, and we are not required to redeem the Series B Preferred at any time. Accordingly, the Series B Preferred will remain outstanding indefinitely unless a holder of shares of the Series B Preferred or we decide to convert it or we decide to redeem it, or we elect to repurchase it upon a fundamental change.

Holders may convert the Series B Preferred at any time at an initial conversion rate of 14.1844 shares of common stock per share of Series B Preferred, subject to certain adjustments as described in the Certificate of Designations. This initial conversion rate is equivalent to a conversion price of approximately \$7.05 per share of common stock. We will not make any adjustment for accrued or unpaid dividends or for common stock dividends upon conversion, except as otherwise described in the Certificate of Designations.

The Series B Preferred is not listed on any securities exchange.

### ***Preferred Stock to be Offered***

The terms and provisions of the preferred stock that may be offered by this prospectus will be described in the applicable prospectus supplement. You should read the certificate of designations relating to the applicable series of preferred stock for additional information before you purchase any preferred stock. In addition to the Series A Preferred and Series B Preferred, our board of directors may, without stockholder approval, issue up to 1,360,000 shares of preferred stock in one or more series and, subject to Delaware corporation law, may:

fix or alter the designations, powers and preferences, and relative participating, optional or other rights, if any, of any series of preferred stock, and qualifications, limitations or restrictions thereof, including without limitation, dividend rights (and whether dividends are cumulative);

fix the conversion rights, if any, and voting rights (including the number of votes, if any, per share, as well as the number of members, if any, of our board of directors or the percentage of members, if any, of our board of directors each class or series of preferred stock may be entitled to elect);

fix the rights and terms of redemption (including sinking fund provisions, if any), redemption price and liquidation preferences of any wholly unissued series of preferred stock;

fix the number of shares constituting any series; and

increase (but not above the total number of authorized shares of the class) or decrease (but not below the total number of such series then outstanding) the number of shares of any series of preferred stock subsequent to the issuance of shares of such series.

Our board of directors has no power to alter the rights of any outstanding shares of our preferred stock. Our board may issue shares of preferred stock with voting and conversion rights that could negatively affect the voting power or other rights of our common stock, and the board has the ability to take that action without stockholder approval.

### ***Depositary Shares***

We may, at our option, elect to offer fractional shares of either preferred stock or common stock, rather than full shares of preferred stock or common stock (as applicable). If we exercise this option, we will issue to the public receipts for depositary shares, and each of these depositary shares will represent a fraction (to be set forth in the applicable prospectus supplement) of either a share of the particular series of preferred

stock or common stock.

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The shares of any series of preferred stock or common stock (as applicable) underlying the depositary shares will be deposited under a deposit agreement between us and a bank or trust company selected by us and identified in the applicable prospectus supplement. The depositary will have its principal office in the United States and, with its affiliates, a combined capital and surplus of at least \$50,000,000. Subject to the terms of the deposit agreement, each owner of a depositary share will be entitled, in proportion, to the applicable fraction of a share of preferred stock or common stock (as applicable) underlying that depositary share, and to all of the rights and preferences of the preferred stock or common stock (as applicable) underlying that depositary share. Those rights include proportionate dividend, voting, redemption and liquidation rights. The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Depositary receipts will be issued to those persons purchasing the fractional shares of preferred stock or common stock (as applicable) underlying the depositary shares, in accordance with the terms of the offering.

We will describe in the applicable prospectus supplement the terms of the deposit agreement and the rights of the holders of the depositary shares, among other matters.

### ***Effect of New Issuance***

If the board were to issue common stock or a new series of preferred stock, the issuance of such shares could:

decrease the amount of earnings and assets available for distribution to existing common stockholders;

make removal of the present management more difficult;

result in restrictions upon the payment of dividends and other distributions to the existing common stockholders;

delay or prevent a change in control of the Company; and

limit the price that investors are willing to pay in the future for our existing common stock.

### ***Possible Anti-Takeover Effects of Delaware Law and Relevant Provisions of Our Certificate of Incorporation and Bylaws***

Provisions of Delaware law and our certificate of incorporation and bylaws may make more difficult the acquisition of the Company by tender offer, a proxy contest or otherwise or the removal of our officers and directors. For example:

As discussed above, our certificate of incorporation permits our board of directors to issue a new series of preferred stock with terms that may make an acquisition by a third person more difficult or less attractive.

Our bylaws provide time limitations on stockholders who desire to present nominations for election to our board of directors or propose matters that can be acted upon at stockholders' meetings.

Our bylaws provide that special meetings of stockholders can be called only by our board of directors, or by the chairman of the board, or by the president.

Our certificate of incorporation and bylaws permit shareholders to act by written consent, but such consent must be unanimous in the case of election of directors.

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Copies of our certificate of incorporation and bylaws, as amended, have been filed with and are publicly available at or from the SEC as described under the heading [Where You Can Find More Information](#).



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### ***Limitation of Liability; Indemnification***

Our certificate of incorporation contains certain provisions permitted under the Delaware General Corporation Law relating to the liability of directors. These provisions eliminate a director's personal liability for monetary damages resulting from a breach of fiduciary duty to the fullest extent permitted by the Delaware General Corporation Law. Our bylaws also provide that we must indemnify our directors and officers to the fullest extent permitted by Delaware law and also provide that we must pay expenses, as incurred, to our directors and officers in connection with a legal proceeding to the fullest extent permitted by Delaware law, subject to very limited exceptions.

## **DEBT SECURITIES**

We may issue debt securities under an indenture to be entered into between us and a trustee chosen by us, qualified to act as such under the Trust Indenture Act and appointed under an indenture. The indenture will be governed by the Trust Indenture Act.

The following is a summary of the indenture. It does not restate the indenture entirely. We urge you to read the indenture. We have filed the form of indenture as an exhibit to the registration statement of which this prospectus is a part, and we will file the indenture we enter into and the supplemental indentures or authorizing resolutions with respect to particular series of debt securities as exhibits to current or other reports that we file with the SEC. See [Where You Can Find More Information](#) for information on how to obtain copies of the indentures and the supplemental indentures or authorizing resolutions. You may also inspect copies of the documents for the particular series at the office of the trustee. References below to an indenture are references to the applicable indenture, as supplemented, under which a particular series of debt securities is issued.

### **Terms of the Debt Securities**

Our debt securities will be general obligations of Callaway Golf Company. We may issue them in one or more series. Authorizing resolutions or a supplemental indenture will set forth the specific terms of each series of debt securities. We will provide a prospectus supplement for each series of debt securities that will describe:

the title of the debt securities and whether the debt securities are senior, senior subordinated, or subordinated debt securities;

the aggregate principal amount of the debt securities and any limit upon the aggregate principal amount of the series of debt securities, and, if the series is to be issued at a discount from its face amount, the method of computing the accretion of such discount;

the percentage of the principal amount at which debt securities will be issued and, if other than the full principal amount thereof, the percentage of the principal amount of the debt securities that is payable if maturity of the debt securities is accelerated because of a default;

the date or dates on which principal of the debt securities will be payable and the amount of principal that will be payable;

the rate or rates (which may be fixed or variable) at which the debt securities will bear interest, if any, or the method of calculation of such rate or rates, as well as the dates from which interest will accrue, the dates on which interest will be payable and the record date for the interest payable on any payment date;

any collateral securing the performance of the obligations under the debt securities;

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the currency or currencies (including any composite currency) in which principal, premium, if any, and interest, if any, will be payable, and if such payments may be made in a currency other than that in which the debt securities are denominated, the manner for determining such payments, including the time and manner of determining the exchange rate between the currency in which such securities are

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denominated and the currency in which such securities or any of them may be paid, and any additions to, modifications of or deletions from the terms of the debt securities to provide for or to facilitate the issuance of debt securities denominated or payable in a currency other than U.S. dollars;

the place or places where principal, premium, if any, and interest, if any, on the debt securities will be payable and where debt securities that are in registered form can be presented for registration of transfer or exchange;

the denominations in which the debt securities will be issuable, if different from \$2,000 and multiples of \$1,000 in excess thereof;

any provisions regarding our right to redeem or purchase debt securities or the right of holders to require us to redeem or purchase debt securities;

the right, if any, of holders of the debt securities to convert or exchange them into our common stock or other securities, cash or other property of us or another obligor, and, if so, the terms and conditions upon which such securities will be so convertible or exchangeable, including the initial conversion or exchange price or rate or the method of calculation, how and when the conversion price or exchange ratio may be adjusted, whether conversion or exchange is mandatory, at the option of the holder or at our option, the conversion or exchange period, any provisions granting special rights to holders when a specified event occurs, and any other provision in relation thereto;

any provisions requiring or permitting us to make payments to a sinking fund to be used to redeem debt securities or a purchase fund to be used to purchase debt securities;

the terms, if any, upon which debt securities may be senior or subordinated to our other indebtedness;

any additions to, modifications of or deletions from the terms of the debt securities with respect to events of default, covenants, defined terms or other provisions set forth in the indenture for the series to which the supplemental indenture or authorizing resolution relates;

whether and upon what terms the debt securities of such series may be defeased or discharged, if different from the provisions set forth in the indenture for the series to which the supplemental indenture or authorizing resolution relates;

whether the debt securities will be issued in registered or bearer form and the terms of these forms;

whether the debt securities will be issued in whole or in part in the form of a global security and, if applicable, the identity of the depositary for such global security;

any provision for electronic issuance of the debt securities or issuance of the debt securities in uncertificated form; and

any other material terms of the debt securities, which may be different from the terms set forth in this prospectus.

The applicable prospectus supplement will also describe any material covenants to which a series of debt securities will be subject and the applicability of those covenants to any of our subsidiaries to be restricted thereby, which are referred to herein as restricted subsidiaries. The

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applicable prospectus supplement will also describe provisions for restricted subsidiaries to cease to be restricted by those covenants.

### **Events of Default and Remedies**

Unless otherwise described in the applicable prospectus supplement, an event of default with respect to any series of debt securities will be defined in the indenture or applicable supplemental indenture or authorizing resolution as being:

our failure to pay interest on any debt security of such series when the same becomes due and payable and the continuance of any such failure for a period of 30 days;

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our failure to pay the principal or premium of any debt security of such series when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise;

our failure to comply with any of our agreements or covenants in, or provisions of, the debt securities of such series, or the indenture (as they relate thereto), and such failure continues for a period of 60 days after our receipt of notice of the default from the trustee or from the holders of at least 25 percent in aggregate principal amount of the then outstanding debt securities of that series (except in the case of a default with respect to the provisions of the indenture regarding the consolidation, merger, sale, lease, conveyance or other disposition of all or substantially all of the assets (or any other provision specified in the applicable authorizing resolution or supplemental indenture), which will constitute an event of default with notice but without passage of time); or

certain events of bankruptcy, insolvency or reorganization occur with respect to us or any restricted subsidiary that is a significant subsidiary (as defined in the indenture).

The indenture will provide that the trustee may withhold notice to the holders of any series of debt securities of any default, except a default in payment of principal, premium, if any, or interest, if any, with respect to such series of debt securities, if the trustee considers it in the interest of the holders of such series of debt securities to do so.

The indenture will provide that if any event of default has occurred and is continuing with respect to any series of debt securities, the trustee or the holders of not less than 25% in principal amount of such series of debt securities then outstanding may declare the principal of all the debt securities of such series to be due and payable immediately. However, the holders of a majority in principal amount of the debt securities of such series then outstanding by notice to the trustee may waive any existing default and its consequences with respect to such series of debt securities, other than any event of default in payment of principal or interest. Holders of a majority in principal amount of the then outstanding debt securities of any series may rescind an acceleration with respect to such series and its consequences, if the rescission would not conflict with any judgment or decree and if all existing events of default with respect to such series have been cured or waived (other than nonpayment of the principal of, or interest on, such series as a result of acceleration).

The holders of a majority of the outstanding principal amount of the debt securities of any series will have the right to direct the time, method and place of conducting any proceedings for any remedy available to the trustee with respect to such series, subject to limitations specified in the indenture.

**Defeasance**

The indenture will permit us to terminate all our obligations under the indenture as they relate to any particular series of debt securities, other than the obligation to pay interest, if any, on and the principal of the debt securities of such series and certain other obligations, at any time by:

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