BORGWARNER INC
Form 424B5
April 06, 2009

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The information in this preliminary prospectus supplement is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion
Preliminary Prospectus Supplement dated April 6, 2009

PROSPECTUS SUPPLEMENT
(To Prospectus dated March 4, 2008)

Filed pursuant to
Rule 424(b)(5)
Registration No. 333-149539

$275,000,000

% Convertible Senior Notes due 2012

We are offering $275,000,000 aggregate principal amount of our % Convertible Senior Notes due 2012. Interest on the notes will accrue from and will be payable semi-annually in arrears on April 15 and October 15 of each year, beginning October 15, 2009. The notes will mature on April 15, 2012, unless earlier repurchased by us or converted.

Holders may convert their notes at their option at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date for the notes. Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock or a combination thereof at our election as described in this prospectus supplement. The initial conversion rate for the notes will be shares of our common stock per $1,000 principal amount of notes, equivalent to an initial conversion price of approximately $ per share of common stock. Such conversion rate will be subject to adjustment in certain events but will not be adjusted for accrued interest, including any additional interest.

Following certain corporate transactions, we will increase the applicable conversion rate for a holder that elects to convert its notes in connection with such corporate transactions by a number of additional shares of our common stock as described in this prospectus supplement.

We may not redeem the notes prior to their stated maturity date.

If we undergo a fundamental change, as defined in this prospectus supplement, holders may require us to purchase all or a portion of their notes for cash at a price equal to 100% of the principal amount of the notes to be purchased plus any accrued and unpaid interest to, but excluding, the fundamental change purchase date, as defined herein.

The notes will be our senior unsecured obligations, will be equal in right of payment with our other senior unsecured debt and will be senior in right of payment to our debt that is expressly subordinated to the notes, if any. The notes will also be structurally subordinated to all debt and other liabilities and commitments (including trade payables) of our subsidiaries. The notes will also be effectively junior to our secured debt, if any, to the extent of the assets securing such debt.

The notes will not be listed on any securities exchange. Our common stock is listed on the New York Stock Exchange under the symbol BWA. On April 3, 2009, the last reported sale price of our common stock on the New York Stock Exchange was $24.63 per share.

Investing in the notes involves risks. See Risk Factors beginning on page S-10.

	Price to Public (1)	Underwriting Discounts	Proceeds to Company (1)
Per Note	%	%	%
Total	$	$	$

(1) Plus accrued interest from , 2009 if settlement occurs after that date.

We have granted the underwriters the right to purchase up to an additional $41,250,000 principal amount of the notes within the 13-day period beginning on the date the notes are first issued, solely to cover over-allotments.

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

The underwriters expect to deliver the notes to purchasers in book-entry form through the Depository Trust Company on or about , 2009.

Joint Book-Running Managers

Morgan Stanley

Merrill Lynch & Co.

Citi

Deutsche Bank Securities

April , 2009

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Prospectus Supplement

Prospectus

You should rely only on the information contained in this prospectus supplement and the accompanying prospectus and the documents incorporated by reference in this prospectus supplement and the accompanying prospectus. We have not authorized anyone to provide you with information that is different. If anyone provides you with different or inconsistent information, you should not rely on it. This document may be used only where it is legal to sell these securities. You should not assume that the information in this prospectus supplement and the

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accompanying prospectus is accurate as of any date other than the date of this prospectus supplement. Also, you should not assume that there has been no change in the affairs of BorgWarner since the date of this prospectus supplement.

SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS

Statements in this prospectus supplement and in the accompanying prospectus and other materials filed or to be filed with the Securities and Exchange Commission (or otherwise made by BorgWarner or on BorgWarner s behalf) contain various forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which represent our management s beliefs and assumptions concerning future events. When used in this prospectus supplement and in the accompanying prospectus and in other materials filed or to be filed with the SEC (or otherwise made by BorgWarner or on BorgWarner s behalf), forward-looking statements include, without limitation, statements regarding financial forecasts or projections, and our expectations, beliefs, intentions or future strategies that are signified by the words expects, anticipates, intends, believes, plans or similar language. These forward-looking statements are subject to risks, uncertainties and assumptions that could cause our actual results and the timing of certain events to differ materially from those expressed in the forward-looking statements. It is routine for our internal projections and expectations to change as the year or each quarter in the year progresses, and therefore it should be clearly understood that the internal projections, beliefs and assumptions upon which we base our expectations may change prior to the end of each quarter or year. Although these expectations may change, we may not inform you if they do.

You should understand that many important factors, in addition to those discussed or incorporated by reference in this prospectus supplement or in the accompanying prospectus or other public communications, could cause our results to differ materially from those expressed in the forward-looking statements. Potential factors that could affect our results include, in addition to others not described in this prospectus supplement or in the accompanying prospectus or other public communications, are those described in the Risk Factors section of this prospectus supplement and the accompanying prospectus. In light of these risks and uncertainties, the forward-looking events discussed in this prospectus supplement or the accompanying prospectus or other public communications might not occur.

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SUMMARY

This summary highlights selected information about our company and the offer and sale of notes. This summary is not complete and does not contain all of the information that may be important to you. You should read carefully this entire prospectus supplement and the accompanying prospectus, including the Risk Factors section, and the other documents that we refer to and incorporate by reference herein for a more complete understanding of us and this offering. In particular, we incorporate by reference important business and financial information into this prospectus supplement and the accompanying prospectus. As used in this prospectus supplement and the accompanying prospectus, the terms BorgWarner , we , us , our and similar terms refer to BorgWarner Inc. and its subsidiaries, unless the context indicates otherwise.

BorgWarner Inc.

BorgWarner Inc. is a leading, global supplier of highly engineered automotive systems and components, primarily for powertrain applications. Our products help improve vehicle performance, fuel efficiency, stability and air quality. These products are manufactured and sold worldwide, primarily to original equipment manufacturers (OEMs) of light-vehicles (passenger cars, sport-utility vehicles, vans and light-trucks). Our products are also sold to other OEMs of commercial trucks, buses and agricultural and off-highway vehicles. We also manufacture and sell our products to certain other tier one vehicle systems suppliers to the OEMs and into the aftermarket for light and commercial vehicles. We operate manufacturing facilities serving customers in the Americas, Europe and Asia, and we are an original equipment supplier to every major automotive OEM in the world.

Recent Developments

Industry Trends

The global credit crisis and recession have continued adversely to affect the automotive industry and, as a result, our business and financial performance, including in our recently completed quarter ended March 31, 2009. Additional information regarding the effect on us of adverse conditions in the automotive industry and related sectors is set forth under the heading Risk Factors in our annual report on Form 10-K for the year ended December 31, 2008, which is incorporated into this prospectus supplement by reference, including under the sub-headings Our industry is cyclical and our results of operations will be adversely affected by industry downturns, We are dependent on market segments that use our key products and would be affected by decreasing demand in those segments, Suppliers economic distress could result in the disruption of our operations and have a material effect on our business and Conditions in the automotive industry may adversely affect our business.

Pending Revolving Credit Facility

Our $600 million multi-currency revolving credit facility will expire, under its current terms, on July 22, 2009. We are currently negotiating an extension or renewal of the facility. If these negotiations were unsuccessful, it could adversely affect our liquidity and ability to operate. We expect that any renewed or extended facility would contain additional covenants and that the maximum borrowing amount under any such extended or renewed facility, taken together with the amount of the proceeds of this offering, will be less than the maximum borrowing amount under the current facility. We have received indications of interest in respect of a total of approximately $220 million of borrowing capacity from the banks that have responded to date, though these indications are subject to revocation or revision. The reduction in the liquidity available to us resulting from a lower maximum borrowing amount may in the future impact our ability to respond to financial challenges and to exploit business opportunities. In addition, we anticipate that the facility will be guaranteed by our existing and future direct and indirect domestic and, to the extent no material adverse tax consequences would result, foreign subsidiaries. We also anticipate that under the terms of the renewed or extended facility, if our senior, unsecured, long-term indebtedness is at any time rated less than or equal to BB+ by Standard & Poor s and less than or equal to Ba1 by Moody s Investors Service, then we will be required to secure the facility with collateral including our machinery and equipment, inventory and other goods, accounts receivable and intercompany debt. Our senior, unsecured long-term indebtedness is currently rated BBB by Standard & Poor s and Ba1 by Moody s Investors Service.

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At December 31, 2008 and December 31, 2007 there were no outstanding borrowings under our revolving credit facility. Affiliates of the underwriters act as administrative agent, syndication agent and lenders under our multi-currency revolving credit facility. See Underwriters.

BorgWarner was incorporated in Delaware in 1987. Our principal executive offices are located at 3850 Hamlin Road, Auburn Hills, Michigan 48326, and our telephone number is (248) 754-9200. Our website address is www.borgwarner.com. Information contained on our website is not a prospectus and does not constitute part of this prospectus supplement or the accompanying prospectus.

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Summary Financial Data

The following table sets forth our summary consolidated financial information. We derived the operating data and other financial data for the three years ended December 31, 2008 and balance sheet data as of such dates from our consolidated financial statements incorporated by reference into this prospectus supplement. This information should be read in conjunction with the consolidated financial statements and related notes thereto incorporated by reference into this prospectus supplement.

	For the Period Ended December 31,		
	2008	2007	2006
	(in millions, except per share data)		
Statement of Operations Data:			
Net sales	$ 5,263.9	$ 5,328.6	$ 4,585.4
Cost of sales	4,425.4	4,378.7	3,735.5
Gross profit	838.5	949.9	849.9
Selling, general and administrative expenses	542.9	531.9	498.1
Restructuring expense	127.5		84.7
Goodwill impairment charge	156.8		
Other income	(3.1)	(6.8)	(7.5)
Operating income	14.4	424.8	274.6
Equity in affiliates earnings, net of tax	(38.4)	(40.3)	(35.9)
Interest expense and finance charges	38.8	34.7	40.2
Earnings before income taxes and minority interest	14.0	430.4	270.3
Provision for income taxes	33.3	113.9	32.4
Minority interest, net of tax	16.3	28.0	26.3
Net earnings (loss)	$ (35.6)	$ 288.5	$ 211.6
Earnings (loss) per share basic	$ (0.31)	$ 2.49	$ 1.84
Earnings (loss) per share diluted	$ (0.31)	$ 2.45	$ 1.83
Other Financial Data:			
Operating margin	0.3%	8.0%	6.0%
Pre-tax margin	0.3%	8.1%	5.9%
Ratio of earnings to fixed charges (a)	1.14x	8.44x	5.88x
Net cash provided by operating activities	$ 400.8	$ 603.5	$ 442.1
Net cash used in investing activities	(485.1)	(368.0)	(341.1)
Net cash provided by (used in) financing activities	5.1	(159.3)	(59.9)

	As of December 31,		
	2008	2007	2006
	(in millions)		

Balance Sheet Data:						
Cash	$	103.4	$	188.5	$	123.3
Marketable securities				14.6		59.1
Total assets	$	4,644.0	$	4,958.5	$	4,584.0
Total debt		780.3		636.3		721.1
Minority interest		31.5		117.9		162.1
Total stockholders equity	$	2,006.0	$	2,321.1	$	1,875.4

(a) In the computation of our ratios of earnings to fixed charges, earnings consist of earnings before income taxes, minority interests and equity in affiliate earnings, plus fixed charges, amortization of capitalized interest, and dividends received from equity affiliates, less capitalized interest. Fixed charges consist of interest expensed and capitalized and one-third of rental expense (approximate portion representing interest).

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The Offering

The summary below describes the principal terms of the notes. Certain of the terms and conditions described below are subject to important limitations and exceptions. The Description of Notes section of this prospectus supplement contains a more detailed description of the terms and conditions of the notes.

Issuer	BorgWarner Inc.
Notes Offered	$275,000,000 aggregate principal amount of % Convertible Senior Notes due 2012. We have also granted the underwriters the option to purchase within the 13-day period beginning on the date the notes are first issued, up to an additional $41,250,000 aggregate principal amount of notes, solely to cover over-allotments.
Maturity Date	April 15, 2012, subject to earlier repurchase or conversion.
Ranking	The notes will be equal in right of payment with all of our existing and future unsecured senior debt and senior in right of payment to our debt that is expressly subordinated to the notes, if any. The indenture pursuant to which the notes will be issued will not limit the amount of debt that we or our subsidiaries may incur. The notes will be structurally subordinated to all debt and other liabilities and commitments (including trade payables) of our subsidiaries. The notes will also be effectively junior to our secured debt, if any, to the extent of the value of the assets securing such debt. As of December 31, 2008, our subsidiaries had $1,645.2 million of total liabilities.
Interest and Payment Dates	Interest on the notes will accrue at a rate of % per annum on the principal amount from , 2009, payable semi-annually in arrears on April 15 and October 15 of each year, beginning on October 15, 2009.
Optional Redemption	We may not redeem the notes prior to their stated maturity date.
Conversion Rights	Holders may convert their notes at their option at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date of the notes, into equal multiples of $1,000 principal amount. The initial conversion rate for the notes will be shares of our common stock per $1,000 principal amount of notes, equivalent to an initial conversion price of approximately $ per share of common stock. Such conversion rate will be subject to adjustment in certain events but will not be adjusted for accrued interest, including any additional interest. Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock or a combination thereof at our election. We refer to our obligation to pay or deliver these amounts as our conversion

obligation. If we satisfy our conversion obligation solely in cash or through payment and delivery, as the case may be, of a combination of cash and shares of our common stock, the amount of cash and shares of our common stock, if any, due upon conversion will be based on a daily conversion value (as described herein) calculated on a proportionate basis for each trading day in the 40 trading-day cash settlement averaging period (as described herein).

See Description of Notes Conversion Rights Settlement upon Conversion.

In addition, following certain corporate transactions, we will increase the applicable conversion rate for a holder who elects to convert in connection with such corporate transactions by a number of additional shares of our common stock as described under Description of Notes Conversion Rights Adjustment to Shares Delivered upon Conversion upon Certain Corporate Transactions.

You will not receive any additional cash payment, including any additional interest, upon conversion of a note except in circumstances described in Description of Notes Conversion Rights General. Instead, interest will be deemed paid by the cash, shares of our common stock or a combination thereof paid or delivered, as the case may be, to you upon conversion of a note.

Fundamental Change

If we undergo a fundamental change (as defined under Description of Notes Fundamental Change Permits Holders to Require us to Purchase Notes), you will have the option to require us to purchase all or any portion of your notes. The fundamental change purchase price will be 100% of the principal amount of the notes to be purchased plus any accrued and unpaid interest, including any additional interest, to but excluding the fundamental change purchase date. We will pay cash for all notes so purchased.

Use of Proceeds

We estimate that the proceeds from this offering will be approximately $266.8 million ($306.8 million if the underwriters exercise their option to purchase additional notes in full), after deducting fees and before estimated expenses.

We expect to use the remaining net proceeds of the offering for general corporate purposes, including to repay short-term indebtedness, after applying a portion of the net proceeds for the cost of the convertible note hedges after such cost is offset by the proceeds of the warrant transactions described in Purchase of Convertible Note Hedge and Sale of Warrants.

The cost of the convertible note hedges, after being partially offset by the proceeds from the sale of the warrants, was approximately $ million. If the underwriters exercise their over-allotment option to purchase additional notes, we will use a portion of the net proceeds from the sale of additional notes to increase the number of shares underlying the convertible note hedges and we expect to increase the number of shares underlying the sold warrant transactions as well (which would result in additional proceeds to us), in each case on a pro rata basis. We expect to use the remaining proceeds, together with the proceeds from the sale of additional warrants, for general corporate purposes. See Convertible Note Hedge and Warrant Transactions.

Book-Entry Form

The notes will be issued in book-entry form and will be represented by permanent global certificates deposited with, or on behalf of, The Depository Trust Company, which we refer to as DTC, and registered in the name of a nominee of DTC. Beneficial interests in any of the notes will be shown on, and transfers will be effected only through, records maintained by DTC or its nominee, and any such interest may not be exchanged for certificated securities, except in limited circumstances described herein. See Description of Notes Book-Entry, Settlement and Clearance.

Trading Symbol for Our Common Stock

Our common stock is listed on the New York Stock Exchange under the symbol BWA.

Convertible Note Hedge and Warrant Transactions

Concurrently with the pricing of the notes, we have entered into convertible note hedge transactions with respect to our common stock (the convertible note hedges) with one or more of the underwriters or their respective affiliates, whom we refer to as the hedge counterparties. The convertible note hedges will cover, subject to customary anti-dilution adjustments, approximately million shares of our common stock, assuming the underwriters do not exercise their over-allotment option. Separately and concurrently with the pricing of the notes, we have entered into warrant transactions whereby we will sell to the hedge counterparties warrants to acquire, subject to customary anti-dilution adjustments, approximately million shares of our common stock (the sold warrant transactions), assuming the underwriters do not exercise their over-allotment option. If the underwriters exercise their over-allotment option to purchase additional notes, the number of shares underlying the convertible note hedges will automatically increase and we expect to increase the number of shares underlying the sold warrant transactions as well, in each case on a pro rata basis.

The convertible note hedges are expected to reduce the potential dilution with respect to our common stock upon conversion of the notes in the event that the market value per share of our common stock, as measured under the convertible note hedges, at the time of exercise is greater than the strike price of the convertible note hedges, which corresponds to the initial conversion price of the notes and is similarly subject to customary antidilution adjustments. If, however, the volume-weighted price per share of our common stock exceeds the strike price of the sold warrants when they expire, there would be additional dilution from the issuance of common stock pursuant to the warrants.

The convertible note hedges and sold warrant transactions are separate transactions (in each case entered into by us with the hedge counterparties), are not part of the terms of the notes and will not affect the holders rights under the notes. As a holder of the notes, you will not have any rights with respect to the convertible note hedges or the sold warrant transactions.

For a discussion of the impact of any market or other activity by the hedge counterparties (or their respective affiliates) in connection with the convertible note hedge and sold warrant transactions, see Risk Factors Risks Relating to the Notes The convertible note hedge and warrant transactions may affect the value of the notes and our common stock.

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U.S. Federal Income Tax Consequences	Holders are urged to consult their own tax advisors with respect to the federal, state, local and foreign tax consequences of purchasing, owning and disposing of the notes and the common stock issuable upon conversion of the notes. See Material United States Federal Income Tax Considerations.
Trustee	The trustee for the notes is The Bank of New York Mellon Trust Company, National Association.
Governing Law	The indenture and the notes will be governed by the laws of the State of New York.

You should refer to the section entitled Risk Factors and other information included or incorporated by reference in this prospectus supplement for an explanation of certain risks of investing in the notes.

RISK FACTORS

An investment in the notes involves certain risks. You should carefully consider the risks described below, as well as the other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus, before making an investment decision. Our business, financial condition or results of operations could be materially adversely affected by any of these risks. The market or trading price of the notes could decline due to any of these risks, and you may lose all or part of your investment. In addition, please read Special Note About Forward-Looking Statements in this prospectus supplement where we describe additional uncertainties associated with our business and the forward-looking statements included or incorporated by reference in this prospectus supplement and the accompanying prospectus. Please note that additional risks not presently known to us or that we currently deem immaterial may also impair our business and operations.

Risks Relating to Our Business

Certain risks relating to us and our business are described under the heading Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2008, which is incorporated by reference into this prospectus supplement, and which you should carefully review and consider. Additional discussion of the potential impact on us of certain recent developments is set forth above under Recent Developments.

Risks Relating to Our Common Stock

The market price of our common stock may be volatile, which could cause the value of your investment in BorgWarner to decline.

Any of the following factors could affect the market price of our common stock:

- general market, political and economic conditions;
- changes in earnings estimates and recommendations by financial analysts;
- our failure to meet financial analysts performance expectations; and
- changes in market valuations of other automotive suppliers.

In addition, many of the risks that are described elsewhere in this Risk Factors section and under the heading Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2008 (which is incorporated by reference into this prospectus supplement) could materially and adversely affect our stock price. The stock markets have experienced price and volume volatility that has affected many companies stock prices. Stock prices for many companies have experienced wide fluctuations that have often been unrelated to the operating performance of those companies. Fluctuations such as these may affect the market price of our common stock.

Other companies may have difficulty acquiring us due to provisions under our corporate charter and by-laws, as well as Delaware law.

Provisions in our restated certificate of incorporation, our amended and restated by-laws and under Delaware law could make it more difficult for other companies to acquire us, even if that acquisition would benefit our stockholders. Our restated certificate of incorporation and amended and restated by-laws contain the following provisions, among others, which may inhibit an acquisition of our company by a third party:

our board of directors is divided into three classes of directors, each serving staggered, three-year terms;

directors may be removed only for cause and only upon the affirmative vote of holders of at least 80% of our outstanding voting power;

any alteration, amendment or repeal of the sections of the restated certificate of incorporation regarding the composition, election and classification of the board of directors requires the approval of the holders of at least 80% of our outstanding voting power;

our board of directors may issue up to 25,000,000 shares of preferred stock without a stockholder vote;

when it is evaluating any proposal from another party to make a tender offer for our equity securities, merge or consolidate us with another corporation or purchase or otherwise acquire substantially all of our properties and assets, our board of directors must give due consideration to all relevant factors, including the social and economic effects on our employees, customers, suppliers and other constituents and the communities in which we operate or are located;

directors will not be personally liable for monetary damages to us or our stockholders for breach of fiduciary duty as a director, with limited exceptions; and

specified persons, including our directors, officers, employees or agents, are indemnified by us to the full extent permitted by the Delaware General Corporation Law, and we may enter into agreements with any person providing for indemnification greater or different than that provided by our certificate of incorporation.

We are also subject to provisions of Delaware law that prohibit us from engaging in any business combination with any interested stockholder, meaning generally that a stockholder who beneficially owns 15% or more of our stock cannot acquire us for a period of three years from the date this person became an interested stockholder, unless various conditions are met, such as approval of the transaction by our board of directors.

Any of these restrictions could have the effect of delaying or preventing a change of control.

Risks Relating to the Notes,

If we complete the extension or renewal of our revolving credit facility on the currently anticipated terms certain of our subsidiaries will be required to guarantee the facility and under specified circumstances we will be required to secure the facility; as a result any borrowings under that facility will be effectively senior to the notes.

Our obligations under the notes will be unsecured. Our $600 million multi-currency revolving credit facility will expire, under its current terms, on July 22, 2009 and we are currently negotiating an extension or renewal of the facility. We expect that any renewed or extended facility would contain additional covenants, provide for certain subsidiary guarantees and require us to provide security under certain circumstances. We anticipate that under the terms of the renewed or extended facility, if our senior, unsecured, long-term indebtedness is at any time rated less than or equal to BB+ by Standard & Poor s and less than or equal to Ba1 by Moody s Investors Service, we will be required to secure the facility with collateral including our machinery and equipment, inventory and other goods, accounts receivable and intercompany debt. Our senior, unsecured long-term indebtedness is currently rated BBB by Standard & Poor s and Ba1 by Moody s Investors Service. In addition, we anticipate that the facility will be guaranteed by our existing and future direct and indirect domestic and, to the extent no material adverse tax consequences would result, foreign subsidiaries. In the event of our bankruptcy, liquidation, reorganization or other winding up, (a) assets that secure debt will be available to pay obligations on the notes only after all debt secured by those assets has been repaid in full and (b) assets of our subsidiaries will be available to our creditors only after satisfaction of the subsidiaries obligations, including any guaranties of the revolving credit facility and it is possible that payment obligations under the revolving credit facility would be satisfied and obligations under the notes would not.

Recent developments in the convertible debt markets may adversely affect the market value of the notes.

The convertible debt markets have experienced unprecedented disruptions resulting from, among other things, the recent instability in the credit and capital markets and the emergency orders issued by the Securities and Exchange Commission (the SEC) on September 17 and 18, 2008 (and extended on October 1, 2008). These orders were issued as a stop-gap measure while Congress worked to provide a comprehensive legislative plan to stabilize the credit and capital markets. Among other things, these orders temporarily imposed a prohibition on effecting short sales of the common stock of certain financial companies. As a result, the SEC orders made the convertible arbitrage strategy that many convertible notes investors employ difficult to execute for outstanding convertible notes of those companies whose common stock was subject to the short sale prohibition. The SEC orders expired at 11:59 p.m., New York City Time, on Wednesday, October 8, 2008. However, the SEC and New York Stock Exchange are currently considering instituting other limitations on effecting short sales (such as the up-tick rule), and other regulatory organizations may do the same. Any future governmental actions that interfere with the ability of convertible notes investors to effect short sales on the underlying common stock could significantly affect the market value of convertible securities, including the notes.

We will have the ability to incur substantially more indebtedness, including secured indebtedness.

Our indenture governing the notes offered hereby do not contain any restrictions on our ability to incur additional indebtedness; although our other financing agreements contain certain such limitations, noteholders do not have any rights under such agreements. If we and our subsidiaries incur significant additional indebtedness, the related risks that we face could intensify.

Your right to receive payments on the notes is effectively junior to those lenders who have a security interest in our assets.

Our obligations under the notes will be unsecured. If we incur secured indebtedness and subsequently default under that indebtedness, the lenders could declare all of the funds borrowed thereunder, together with accrued interest, immediately due and payable. If we were unable to repay such indebtedness, the lenders could foreclose on the pledged assets to the exclusion of holders of the notes, even if an event of default exists under the indenture governing the notes offered hereby at such time. In any such event, because the notes will not be secured by any of our assets, it is possible that there would be no assets remaining from which payments could be made on the notes or, if any assets remained, they might be insufficient to satisfy fully our obligations under the notes. Additionally, in the event of our bankruptcy, liquidation, reorganization or other winding up, assets that secure debt will be available to pay obligations on the notes only after all debt secured by those assets has been repaid in full.

As a holder of notes, you will not be entitled to any rights with respect to our common stock, but you will be subject to all changes made with respect to our common stock.

If you hold notes, you will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but you will be subject to all changes affecting our common stock. You will have the rights with respect to our common stock only if you receive our common stock upon conversion and only as of the date when you become an owner of the shares of our common stock upon such conversion. For example, in the event that an amendment is proposed to our charter or by-laws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the date you are deemed the owner of the shares of our common stock, if any, due upon conversion, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

The market price of the notes is expected to be significantly affected by the market price of our common stock, which may be volatile and will be affected by factors beyond our control.

We expect that the market price of our notes will be significantly affected by the market price of our common stock. This may result in greater volatility in the market price of the notes than would be expected for nonconvertible debt securities. The market price of our common stock will likely continue to fluctuate in response to the factors discussed elsewhere in Risk Factors, including under the subheading, Risks Relating to Our Common Stock, and in Forward-Looking Statements, among others, many of which are beyond our control.

Upon conversion of the notes, you may receive less proceeds than expected because the value of our common stock may decline (or not appreciate as much as you may expect) between the day that you exercise your conversion right and the day the conversion value of your notes is finally determined.

Unless we elect to deliver solely shares of our common stock in respect of our conversion obligation, we will satisfy our conversion obligation to holders by paying cash in respect of a specified portion of our conversion obligation and by delivering shares of our common stock in settlement of any amounts in excess of such specified portion of our conversion obligation. Accordingly, upon conversion of a note, you may not receive any shares of our common stock, or you may receive fewer shares of our common stock relative to the conversion value of that note. In addition, unless we elect to deliver solely shares of our common stock in respect of our conversion obligation, settlement of conversions may be delayed up to the 122nd day following the conversion date. See Description of Notes Conversion Rights Settlement upon Conversion. As a result, upon conversion of the notes, you may receive less proceeds than expected because the value of our common stock may decline (or not appreciate as much as you may expect) between the day that you exercise your conversion right and the day the conversion value of your notes is finally determined.

The notes are not protected by restrictive covenants.

The indenture governing the notes does not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries. In addition, the indenture does not contain covenants or other provisions to afford protection to holders of the notes in the event of a fundamental change involving us except to the extent described under Description of Notes Fundamental Change Permits Holders to Require Us to Purchase Notes and Description of Notes Conversion Rights Adjustment to Shares Delivered upon Conversion upon Certain Corporate Transactions.

The conversion rate for notes may not be adjusted for all dilutive events.

The conversion rate of the notes is subject to adjustment for certain events, including, but not limited to, the issuance of stock dividends on our common stock, the issuance of certain rights or warrants, subdivisions, combinations, distributions of capital stock, indebtedness or assets, cash dividends and certain issuer tender or exchange offers as described under Description of Notes Conversion Rights Conversion Rate Adjustments. Such conversion rate will not be adjusted, however, for other events, such as a third-party tender or exchange offer or an issuance of common stock for cash, that may adversely affect the trading price of the notes or our common stock. In addition, an event that adversely affects the value of the notes may occur, and that event may not result in an adjustment to such conversion rate.

We may not have the ability to raise the funds necessary to purchase the notes upon a fundamental change as required by the indenture governing the notes.

Holders may require us to purchase their notes upon a fundamental change as described under Description of Notes Fundamental Change Permits Holders to Require Us to Purchase Notes. A fundamental change may also constitute an event of default, and result in the effective acceleration of the maturity of our then-existing indebtedness. There can be no assurance that we would have sufficient financial resources, or would be able to arrange financing, to pay the fundamental ch