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Raptor Pharmaceutical Corp
Form POSASR
March 02, 2015

As filed with the Securities and Exchange Commission on March 2, 2015

Registration No. 333-195885
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1
to
FORM S-3
REGISTRATION STATEMENT
Under
The Securities Act of 1933

Raptor Pharmaceutical Corp.
(Exact name of Registrant as specified in its charter)

Delaware	86-0883978
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

7 Hamilton Landing, Suite 100
Novato, California 94949
(415) 408-6200
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Michael Smith
Chief Financial Officer
Raptor Pharmaceutical Corp.
7 Hamilton Landing, Suite 100
Novato, California 94949
(415) 408-6231
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Charles K. Ruck, Esq.
Kathleen M. Wells, Esq.
Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
(650) 328-4600

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

Registration Statement.

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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, check the following box.

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

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

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

If this Form is a post-effective amendment to a registration statement 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.

Large accelerated filer

Accelerated Filer

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share (1)	(2)	(2)	(2)	(2)
Preferred Stock, par value \$0.001 per share	(2)	(2)	(2)	(2)
Warrants	(2)	(2)	(2)	(2)
Units	(2)	(2)	(2)	(2)
Total	\$246,193,473.43 (3)	\$246,193,473.43 (3)	\$246,193,473.43 (3)	\$23,240.00 (4)

Includes associated rights to purchase shares of the registrant's Series A participating preferred stock par value \$0.001 per share, or Purchase Rights, that are associated with all shares of the registrant's common stock, in accordance with that certain Rights Agreement, dated as of May 13, 2005, as amended, by and between the registrant and American Stock Transfer & Trust Company, LLC, as rights agent, or the Rights Agreement. The Purchase Rights are not exercisable until the occurrence of certain events specified in the Rights Agreement and, until the occurrence of certain events specified in the Rights Agreement, are evidenced by the stock certificates representing common stock and are transferrable only with the common stock. The value attributable to the Purchase Rights, if any, is reflected in the value of the common stock.

(2) Not specified as to each class of securities to be registered hereunder pursuant to Form S-3 General Instruction II.D. There are being registered hereunder such indeterminate number of shares of common stock, such indeterminate number of shares of preferred stock, such indeterminate number of warrants to purchase common stock or preferred stock, and such indeterminate number of units (consisting of one or more shares of common stock or preferred stock and one or more warrants to purchase shares of common stock or preferred stock) as may

be sold by the registrant from time to time at unspecified prices. The securities registered hereunder also include such indeterminate number of shares of common stock or preferred stock as may be issued upon exercise of warrants or pursuant to the antidilution provisions of any of such securities. In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended, or the Securities Act, the shares being registered hereunder include such indeterminate number of shares of common stock or preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.

Estimated solely for the purpose of calculating the registration fee. Includes shares of common stock with an (3) aggregate offering price of \$46,193,473.43 previously sold under the registration statement (the “previously sold shares”).

Calculated pursuant to Rule 457(o) under the Securities Act. This registration statement registers an indeterminate amount of securities having an aggregate initial offering price of \$246,193,473.43, including the previously sold (4) shares. The amount of the registration fee in the “Calculation of Registration Fee” table relates to the additional \$200,000,000.00 of securities being registered hereunder. As a result, a registration fee of \$23,240.00 is being paid herewith. A registration fee of \$5,950 was previously paid with respect to the previously sold shares.

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 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.

EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 (Commission File No. 333-195885) (the “Registration Statement”) of Raptor Pharmaceutical Corp. (the “Registrant”) is being filed because the Registrant expects that it will no longer be a well-known seasoned issuer (as such term is defined in Rule 405 of the Securities Act) when it files its Annual Report on Form 10-K for the fiscal year ended December 31, 2014. This Post-Effective Amendment No. 1 adds disclosure to the Registration Statement required for a registrant other than a well-known seasoned issuer and makes certain other amendments.

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The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, dated March 2, 2015.

PROSPECTUS

Raptor Pharmaceutical Corp.

\$246,193,473.43

Common Stock

Preferred Stock

Warrants

Units

We may offer and sell up to \$246,193,473.43 in the aggregate of the securities identified above from time to time in one or more offerings. This prospectus provides you with a general description of the securities. These securities are inclusive of \$46,193,473.43 of shares of common stock previously sold pursuant to our second amended and restated sales agreement with Cowen and Company, LLC, or Cowen, relating to shares of our common stock, and offered by the prospectus supplement dated August 21, 2014 (to prospectus dated May 12, 2014), under the shelf registration statement on Form S-3 (Registration No. 333-195885).

Each time we offer and sell securities, we will provide a supplement to this prospectus that contains specific information about the offering and the amounts, prices and terms of the securities. The supplement may also add, update or change information contained in this prospectus with respect to that offering. You should carefully read this prospectus and the applicable prospectus supplement before you invest in any of our securities.

We may offer and sell the securities described in this prospectus and any prospectus supplement to or through one or more underwriters, dealers and agents, or directly to purchasers, or through a combination of these methods. If any underwriters, dealers or agents are involved in the sale of any of the securities, their names and any applicable purchase price, fee, commission or discount arrangement between or among them will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. See the sections of this prospectus entitled "About this Prospectus" and "Plan of Distribution" for more information. No securities may be sold without delivery of this prospectus and the applicable prospectus supplement describing the method and terms of the offering of such securities.

INVESTING IN OUR SECURITIES INVOLVES RISKS. SEE THE "RISK FACTORS" ON PAGE 6 OF THIS PROSPECTUS AND ANY SIMILAR SECTION CONTAINED IN THE APPLICABLE PROSPECTUS SUPPLEMENT CONCERNING FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN OUR SECURITIES.

Our common stock is listed on The NASDAQ Global Market under the symbol "RPTP." On February 27, 2015, the last reported sale price of our common stock on The NASDAQ Global Market was \$9.27 per share.

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

The date of this prospectus is .

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the U.S. Securities and Exchange Commission, or the SEC, using a “shelf” registration process. By using a shelf registration statement, we may sell securities from time to time and in one or more offerings up to a total dollar amount of \$246,193,473.43 (inclusive of \$46,193,473.43 of shares of common stock previously sold) as described in this prospectus. Each time that we offer and sell securities, we will provide a prospectus supplement to this prospectus, and may provide one or more free writing prospectuses, that contain specific information about the securities being offered and sold and the specific terms of that offering. The prospectus supplement and any related free writing prospectus that we may provide may also add, update or change information contained in this prospectus with respect to that offering. If there is any inconsistency between the information in this prospectus and the applicable prospectus supplement or any related free writing prospectus that we may provide, you should rely on that prospectus supplement or such free writing prospectus, as the case may be. Before purchasing any securities, you should carefully read this prospectus, the applicable prospectus supplement and any related free writing prospectus that we may provide, together with the documents incorporated by reference herein as described under the heading “Where You Can Find More Information; Incorporation by Reference.”

We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We will not make an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus, the applicable prospectus supplement to this prospectus and any related free writing prospectus that we may provide is accurate as of the date on its respective cover, and that any information incorporated by reference is accurate only as of the date of the document incorporated by reference, unless we indicate otherwise. Our business, financial condition, results of operations and prospects may have changed since those dates.

When we refer to “Raptor Pharmaceutical,” “we,” “our,” “us” and the “Company” in this prospectus, we mean Raptor Pharmaceutical Corp. (including its predecessors) and its consolidated subsidiaries, unless otherwise specified. When we refer to “you,” we mean the prospective purchasers of the applicable securities.

This prospectus and any accompanying prospectus supplement, including the information incorporated by reference into this prospectus and any accompanying prospectus supplement, and any free writing prospectuses we have authorized for use in connection with any offering, include trademarks, service marks and trade names owned by us or others companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus and any accompanying prospectus supplement, and any free writing prospectuses we have authorized for use in connection with any offering, are the property of their respective owners.

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NOTE REGARDING MARKET DATA

We obtained the statistical data, market data and other industry data and forecasts that appears or may appear in this prospectus, any related prospectus supplement or any related free writing prospectus that we may provide and the documents incorporated by reference in this prospectus from sources such as market research reports, publicly available information, industry publications and estimates made by our management. While we believe that this data and these forecasts are reliable, we have not independently verified this information, and we do not make any representation as to the accuracy of this information. We have not sought the consent of the sources to refer to their reports or data appearing or incorporated by reference in this prospectus or any related prospectus supplement or any related free writing prospectus that we may provide.

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WHERE YOU CAN FIND MORE INFORMATION; INCORPORATION BY REFERENCE

Available Information

We file reports, proxy statements and other information with the SEC. Information filed with the SEC by us can be inspected and copied at the Public Reference Room maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of this information by mail from the Public Reference Section of the SEC at prescribed rates. Further information on the operation of the SEC's Public Reference Room in Washington, D.C. can be obtained by calling the SEC at 1-800-SEC-0330. The SEC also maintains a website that contains reports, proxy and information statements and other information about issuers, such as us, who file electronically with the SEC. The address of that website is <http://www.sec.gov>.

Our web site address is <http://www.raptorpharma.com>. The information on our web site, however, is not, and should not be deemed to be, a part of this prospectus.

This prospectus and any prospectus supplement are part of a registration statement that we filed with the SEC and do not contain all of the information in the registration statement. The full registration statement may be obtained from the SEC or us, as provided below. Documents establishing the terms of the offered securities are or may be filed as exhibits to the registration statement or as exhibits to a document incorporated by reference in the registration statement. Statements in this prospectus, any prospectus supplement or any related free writing prospectus that we may provide about these documents are summaries and each statement is qualified in all respects by reference to the document to which it refers. You should refer to the actual documents for a more complete description of the relevant matters. You may inspect a copy of the registration statement at the SEC's Public Reference Room in Washington, D.C. or through the SEC's website, as provided above.

Incorporation by Reference

The SEC's rules allow us to "incorporate by reference" information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, and subsequent information that we file with the SEC will automatically update and, if applicable, supersede that information. Any statement contained in a previously filed document incorporated by reference will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, any related prospectus supplement or any related free writing prospectus that we may provide or any subsequently filed document that is incorporated by reference in this prospectus modifies or replaces that statement.

We incorporate by reference our documents listed below and any future filings made by us with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, which we refer to as the "Exchange Act" in this prospectus, between the date of this prospectus and the termination of the offering of the securities described in this prospectus. We are not, however, incorporating by reference any documents or portions thereof or exhibits thereto, whether specifically listed below or filed in the future, that are not deemed "filed" with the SEC, including our Compensation Committee report and performance graph or any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K.

This prospectus and any accompanying prospectus supplement incorporate by reference the documents set forth below that have previously been filed with the SEC:

Our Transition Report on Form 10-KT for the four month period ended December 31, 2012, originally filed with the SEC on March 14, 2013, as amended by Amendment No. 1 on Form 10-KT/A on June 19, 2013 and Amendment No. 2 on Form 10-KT/A on May 12, 2014;

Our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013, filed with the SEC on August 9, 2013, as amended by Amendment No. 1 on Form 10-Q/A on June 19, 2013 and Amendment No. 2 on Form 10-Q/A on May 12, 2014;

Our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2013, filed with the SEC on May 8, 2013, as amended by Amendment No. 1 on Form 10-Q/A on May 12, 2014;

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Our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2013, filed with the SEC on November 7, 2013, as amended by Amendment No. 1 on Form 10-Q/A on May 12, 2014;

Our Annual Report on Form 10-K for the year ended December 31, 2013, filed with the SEC on March 17, 2014;

Our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2014, filed with the SEC on May 9, 2014;

Our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2014, filed with the SEC on August 7, 2014;

Our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014, filed with the SEC on November 6, 2014;

Our Current Reports on Form 8-K filed with the SEC on January 14, 2014, January 22, 2014, February 24, 2014, February 26, 2014, July 3, 2014, July 8, 2014, July 29, 2014, August 4, 2014, August 5, 2014, August 21, 2014 (two reports), October 24, 2014, December 18, 2014, January 7, 2015 and February 13, 2015; and

The description of our Series A Participating Preferred Stock contained in the Registration Statement on Form 8-A filed on May 16, 2005 (File No. 000-25571), as amended on May 12, 2014, pursuant to Section 12(g) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All reports and other documents we subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of this offering, including all such documents we may file with the SEC after the date of the initial registration statement and prior to the effectiveness of the registration statement, but excluding any documents or portions thereof or exhibits thereto that are “furnished” to, rather than “filed” with, the SEC, will also be incorporated by reference into this prospectus and deemed to be part of this prospectus from the date of the filing of such reports and documents.

You may request a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents) by writing or telephoning us at the following address:

Raptor Pharmaceutical Corp.
7 Hamilton Landing, Suite 100
Novato, CA 94949
(415) 408-6200
Attn: Secretary

Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference in this prospectus and any accompanying prospectus supplement.

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THE COMPANY

We are a biopharmaceutical company focused on developing and commercializing life-altering therapeutics that treat debilitating and often fatal diseases.

Our product, PROCYSBI® (cysteamine bitartrate) delayed-release capsules, or PROCYSBI, received marketing approval from the U.S. Food and Drug Administration, or FDA, in April 2013 for the management of nephropathic cystinosis in adults and children six years and older. In Europe, PROCYSBI gastro-resistant hard capsules of cysteamine (as mercaptamine bitartrate), received a marketing authorization in September 2013 from the European Commission, or EC, as an orphan medicinal product for the management of proven nephropathic cystinosis in the European Union, or EU. The EU marketing authorization allows us to commercialize PROCYSBI in the 28 Member States of the EU plus Norway, Liechtenstein and Iceland (which are not EU Member States but are part of the European Economic Area, or EEA). PROCYSBI received seven and ten years of market exclusivity due to its designation as an orphan drug in the United States and the EU, respectively. We achieved first commercial sales of PROCYSBI in the United States in June 2013 and in the EU, specifically in Germany, in April 2014.

Raptor Pharmaceutical Corp. was initially incorporated in Nevada on July 29, 1997 as Axonyx Inc. In October 2006, Axonyx Inc. and its then-wholly-owned subsidiary completed a reverse merger, business combination with TorreyPines Therapeutics, Inc., reincorporated in Delaware and changed its name to TorreyPines Therapeutics, Inc. In September 2009, we and our wholly-owned subsidiary completed a reverse merger, business combination with Raptor Pharmaceuticals Corp. pursuant to which Raptor Pharmaceuticals Corp. became our wholly-owned subsidiary. Immediately prior to the merger, we changed our corporate name from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp.

Our principal executive offices are located at 7 Hamilton Landing, Suite 100, Novato, CA 94949, and our telephone number is (415) 408-6200.

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RISK FACTORS

Investment in any securities offered pursuant to this prospectus and the applicable prospectus supplement involves risks. You should carefully consider the risk factors incorporated by reference from our most recent Annual Report on Form 10-K, and any subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K (in each case including all amendments thereto), and all other information contained or incorporated by reference into this prospectus, as updated by our subsequent filings under the Exchange Act, and the risk factors and other information contained in the applicable prospectus supplement and any related free writing prospectus that we may provide before acquiring any of such securities. The occurrence of any of these risks might cause you to lose all or part of your investment in the offered securities.

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USE OF PROCEEDS

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

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RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the dollar amount of the coverage deficiency for each of the periods presented. As the ratios of earnings to fixed charges indicate less than one-to-one coverage in each of the periods presented, we have provided the coverage deficiency amounts for those periods. You should read these figures in connection with our consolidated financial statements, including the notes to those statements, incorporated by reference in this prospectus. See Exhibit 12.1 hereto for additional detail regarding the computation of the deficiency of earnings to cover fixed charges.

	Nine Months Ended September 30, 2014	Year Ended December 31, 2013	Four Months Ended December 31, 2012	Years Ended August 31,			
				2012	2011	2010	2009
Deficiency of earnings to cover fixed charges (1)	\$ (33,613)	\$ (69,417)	\$ (19,292)	\$ (38,644)	\$ (37,195)	\$ (18,928)	\$ (9,224)

(1) For purposes of computing the deficiency of earnings to fixed charges, earnings consist of reported net loss plus fixed charges. Fixed charges are the sum of Interest expense, amortization of debt costs, and portion of rental expense attributable to interest. Due to our net losses for each of the periods presented, earnings were insufficient to cover fixed charges for these periods

For the periods indicated above, we had no outstanding shares of preferred stock with required dividend payments. Therefore, the deficiency of earnings to fixed charges and preferred stock dividends are identical to the table above.

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DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock is not complete and may not contain all the information you should consider before investing in our capital stock. This description is summarized from, and qualified in its entirety by reference to, our certificate of incorporation, as amended, our bylaws, as amended, and our Rights Agreement (as defined below), which have been publicly filed with the SEC. See “Where You Can Find More Information; Incorporation by Reference.”

Our authorized capital stock consists of:

150,000,000 shares of common stock, \$0.001 par value; and

15,000,000 shares of preferred stock, \$0.001 par value.

Common Stock

Dividends

Subject to any preferential rights to receive dividends of any outstanding shares of our preferred stock (including, if issued, our Series A participating preferred stock described below), the holders of our common stock will be entitled to receive, ratably in proportion to the number of shares of our common stock held by them, any dividends that may be declared on our common stock by our board of directors out of funds legally available for the payment of dividends.

Voting Rights

For the purpose of determining those stockholders entitled to vote at any meeting of our stockholders, except as otherwise provided by law, only persons in whose names shares of stock stand on our stock records on the applicable record date, as provided in our bylaws, as amended, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Each outstanding share of common stock will entitle the holder to one vote on each matter properly submitted to our stockholders for their vote; provided, however, that holders of common stock shall not be entitled to vote on any amendment to our certificate of incorporation, as amended, that relates solely to the terms of one or more outstanding series of our preferred stock if the holders of such affected series of preferred stock are entitled to vote thereon. The holders of our common stock are not entitled to cumulative voting rights in the election of our directors, which means that holders of a majority of the outstanding shares of our common stock will be entitled to elect all of our directors standing for election by holders of our common stock. In the event that shares of our Series A Participating Preferred Stock are issued, the Series A Participating Preferred Stock and our common stock will vote together as one class on all matters submitted to a vote of our stockholders as described below under “—Shareholder Rights Plan; Series A Participating Preferred Stock”.

Our bylaws, as amended, provide that our stockholders have the power to adopt, amend or repeal our bylaws; provided, that in addition to any vote of the holders of any class or series of our stock required by law or by our certificate of incorporation, as amended, such action by stockholders shall require the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the then-outstanding shares of our capital stock entitled to vote generally in the election of directors, voting together as a single class. Our board of directors also is empowered to

amend our bylaws without the consent of our stockholders. In addition, our certificate of incorporation, as amended, and our bylaws, as amended, provide that a director may be removed at any time (a) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of our capital stock entitled to vote at an election of directors or (b) without cause by the affirmative vote of the holders of $66\frac{2}{3}\%$ of the voting power of all then-outstanding shares of our capital stock entitled to vote at an election of directors.

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No Preemptive or Similar Rights

Our common stock is not entitled to preemptive or similar rights to acquire shares of our common stock or other securities and is not subject to conversion into other securities or redemption at our option or at the option of any holder.

Right to Receive Liquidation Distributions

If we voluntarily or involuntarily liquidate, dissolve or wind-up, the holders of our common stock will be entitled to receive, after payment of or provision for all of our debts and other liabilities and distribution in full of the preferential amounts, if any, to be distributed to the holders of any outstanding preferred stock, all of our remaining assets available for distribution, ratably in proportion to the number of shares of our common stock held by them.

Other

Our outstanding common stock is fully paid and non-assessable. The rights, preferences and privileges of holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of our preferred stock, which our board of directors may designate and issue in the future.

Transfer Agent

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC.

Preferred Stock

Our board of directors is authorized, without action by our stockholders, to provide for the issuance of shares of preferred stock in one or more series, and to fix the number of shares and to determine for each series such voting rights, if any, designations, preferences and relative, participating, optional or other rights and such qualifications, limitations or restrictions as provided in a resolution or resolutions adopted by our board of directors. Prior to the issuance of shares of a series of preferred stock, we are required by the General Corporation Law of the State of Delaware, or the DGCL, to file a certificate of designation with the Secretary of State of the State of Delaware. The certificate of designation sets forth, for each such series, the designations, powers, preferences, rights, qualifications, limitations and restrictions, established by the resolution or resolutions of our board of directors as described above.

Our board of directors, without stockholder approval, could issue one or more series of our preferred stock with voting, economic or other rights that are senior or superior to those of our common stock that could, among other things, dilute the voting power of our common stock, reduce the likelihood that holders of our common stock will receive dividend payments (if we were to elect to pay dividends) or payments in the event of our liquidation, dissolution or winding-up, and delay, deter or prevent a change in control or other takeover of our company.

Shareholder Rights Plan; Series A Participating Preferred Stock

Our board of directors has established a shareholder rights plan and, in connection therewith, has authorized the issuance of 100,000 shares of our Series A Participating Preferred Stock, or the Junior Preferred Stock. Both our shareholder rights plan and our authorized but unissued Junior Preferred Stock include terms and conditions which could discourage a takeover or other transaction that holders of some or a majority of common stock might believe to be in their best interests.

Pursuant to the Rights Agreement (as defined below), our board of directors has authorized the issuance of 136 preferred share purchase rights, or a “Right”, for each outstanding share of our common stock, including any shares

offered pursuant to this prospectus and any applicable prospectus supplement. Each Right entitles its holder to purchase one one-thousandth of a share of our Junior Preferred Stock (we refer to this fractional share as an “Unit”) at a price of \$15.00. As described below, this fraction of a share of Junior Preferred Stock is intended to give the owner approximately the same dividend, voting and liquidation rights as would one share of our common stock. However, prior to exercise, a Right does not give its owner any dividend, voting, liquidation or other rights as a stockholder.

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The terms of the Rights are set forth in a rights agreement dated as of May 13, 2005, as amended, by and between American Stock Transfer & Trust Company, LLC, as rights agent, and us, which is referred to herein as the Rights Agreement.