

Gogo Inc.
Form S-3
August 08, 2018
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As filed with the Securities and Exchange Commission on August 8, 2018

Registration No. 333-

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

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

Gogo Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

27-1650905
(I.R.S. Employer
Identification Number)

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111 North Canal St., Suite 1500

Chicago, IL 60606

(312) 517-5000

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

Marguerite M. Elias

Executive Vice President and General Counsel

111 North Canal St., Suite 1500

Chicago, IL 60606

(312) 517-5000

(Address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Matthew E. Kaplan

Debevoise & Plimpton LLP

919 Third Avenue

New York, NY 10022

(212) 909-6000

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after the effective date of this registration statement.

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

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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 on 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.

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

Large accelerated filer Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company
 Emerging growth reporting company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)(2)	Proposed Maximum Aggregate Offering Price Per Unit(1)(2)	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee(2)
Common Stock, \$0.0001 par value per share(3)				
Preferred Stock, \$0.01 par value per share(4)				
Debt Securities(5)				
Depository Shares(6)				
Warrants(7)				
Purchase Contracts(8)				
Units(9)				
Subscription Rights(10)				
Total			\$100,000,000	\$12,450

(1) In no event will the aggregate offering price of all securities issued from time to time by the registrant under this registration statement exceed \$100,000,000 or its equivalent in any other currency, currency units, or composite currency or currencies. The securities covered by this registration statement may be sold separately, together or as units with other securities registered under this registration statement.

(2) The proposed maximum aggregate price has been estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended (the Securities Act).

(3) Subject to note (1), this registration statement covers such an indeterminate amount of common stock as may be sold, from time to time, at indeterminate prices, by the registrant and such indeterminate number of shares of common stock as may, from time to time, be issued upon conversion or exchange of other securities registered

hereunder, to the extent any such securities are, by their terms, convertible or exchangeable for common stock.

- (4) Subject to note (1), this registration statement covers such an indeterminate number of shares of preferred stock as may be sold from time to time at indeterminate prices by the registrant. Also covered is such an indeterminate amount of preferred stock, (i) as may be issuable or deliverable upon exercise of warrants or rights registered hereby, and (ii) as may be required for delivery, for which no consideration will be received by the registrant, upon conversion or exercise of debt securities of the registrant.
- (5) Subject to note (1), this registration statement covers such an indeterminate number of shares of debt securities as may be sold from time to time at indeterminate prices by the registrant. If any debt securities are issued at an original issue discount, then the offering price may be increased to the extent not to exceed the proposed maximum aggregate offering price less the dollar amount of any securities previously issued. Also, in addition to any debt securities that may be issued directly under this registration statement, this registrant statement covers an indeterminate amount of debt securities as may be issued upon the conversion or exchange of other debt securities, preferred stock or depositary shares, for which no consideration will be received by the registrant, or upon exercise of warrants or rights registered hereby.
- (6) Subject to note (1), this registration statement covers such an indeterminate amount and number of depositary shares as may be sold from time to time at indeterminate prices by the registrant.
- (7) Subject to note (1), this registration statement covers such an indeterminate amount and number of warrants, representing rights to purchase common stock, preferred stock or debt securities registered under this registration statement as may be sold from time to time at indeterminate prices by the registrant.
- (8) Subject to note (1), this registration statement covers an indeterminate number of purchase contracts, which may require the holder thereof to purchase or sell debt securities, shares of common stock, shares of preferred stock or depositary shares.
- (9) Subject to note (1), this registration statement covers an indeterminable number of units, which will be comprised of two or more of the securities registered hereby in any combination.
- (10) Subject to note (1), this registration statement covers an indeterminate number of subscription rights representing rights to purchase shares of common stock or other securities registered hereby.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant 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 this 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. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold until the registration statement is effective. This prospectus is not an offer to sell these securities and does not solicit an offer to buy these securities in any state or other jurisdiction where the offer or sale is not permitted.

Subject to Completion

Preliminary Prospectus, Dated August 8, 2018

\$100,000,000

GOGO INC.

Debt Securities

Common Stock

Preferred Stock

Depositary Shares

Warrants

Purchase Contracts

Units

Subscription Rights

By this prospectus, we may offer and sell, from time to time, the securities described in this prospectus separately or together in any combination.

We will provide specific terms of any securities to be offered in a supplement to this prospectus. You should read this prospectus and any applicable prospectus supplement carefully before you invest. A supplement may also change, add to, update, supplement or clarify information contained in this prospectus.

The aggregate public offering price of the securities to be offered and sold by this prospectus will not exceed \$100,000,000.

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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, using a shelf registration process. By using a shelf registration statement, we may, from time to time, sell any combination of the securities described in this prospectus in one or more offerings, up to a total dollar amount for all offerings of \$100,000,000 in the aggregate, denominated in U.S. dollars or the equivalent in foreign currencies, currency units or composite currencies. This prospectus provides a general description of the securities we may offer. Each time we sell securities under this shelf registration statement, a prospectus supplement to this prospectus will be provided that will contain specific information about the terms of that offering. The prospectus supplement 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, you should rely on the prospectus supplement (including any information incorporated by reference therein). Before purchasing any securities, you should carefully read both this prospectus and the applicable prospectus supplement, together with the additional information described under the heading **Where You Can Find More Information; Incorporation by Reference**.

We are responsible for the information contained or incorporated by reference in this prospectus, any accompanying prospectus supplement and in any related free-writing prospectus we prepare or authorize. We have not authorized anyone to give you any other information, and we take no responsibility for any other information that others may give you. 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 and the applicable prospectus supplement to this prospectus 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.

Unless the context otherwise indicates or requires, references to **we**, **us**, **our**, **Gogo** and the **Company** refer to Gogo Inc. and its directly and indirectly owned subsidiaries as a combined entity, except where otherwise stated or where it is clear that the terms mean only Gogo Inc. exclusive of its subsidiaries. Unless the context otherwise indicates or requires, the term **CA-NA** refers to our commercial aviation North America segment and the term **CA-ROW** refers to our commercial aviation rest of world segment. We have made rounding adjustments to reach some of the figures included in this prospectus and, unless otherwise indicated, percentages presented in this prospectus are approximate.

CERTAIN TRADEMARKS

Gogo, Gogo Biz, AVANCE L3, AVANCE L5, the Gogo logo, and other trademarks or service marks of Gogo Inc. and its subsidiaries appearing in this prospectus, are the property of Gogo Inc. or one of its subsidiaries. Solely for convenience, our trademarks and tradenames referred to in this prospectus may appear without the ® or symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks and tradenames. Trade names, trademarks and service marks of other companies appearing in this prospectus are the property of their respective owners. We do not intend our use or display of other companies' trade names, trademarks or service marks to imply relationships with, or endorsements of us by, these other companies.

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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 Room 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 web site 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>.

These periodic and current reports and all amendments to those reports are also available free of charge on the investor relations page of our website at <http://ir.gogoair.com>. We have included our website throughout this filing as textual references only. The information on our website, 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. Forms of the documents establishing the terms of the offered securities are or may be filed as exhibits to the registration statement. Statements in this prospectus or any prospectus supplement 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.

Our common stock is quoted on NASDAQ under the symbol GOGO, and our SEC filings can also be read at the offices of NASDAQ at One Liberty Plaza, 165 Broadway, New York, New York 10006.

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 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 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 (other than information that is furnished and not deemed filed under the Exchange Act).

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

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Our Annual Report on Form 10-K for the year ended December 31, 2017, filed with the SEC on February 22, 2018;

Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018, filed with the SEC on May 4, 2018;

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Our Definitive Proxy Statement on Schedule 14A, filed with the SEC on April 27, 2018;

Our Current Reports on Form 8-K filed with the SEC on March 6, 2018, March 5, 2018, April 6, 2018, April 20, 2018 and June 8, 2018; and

The description of our common stock contained in our Registration Statement on Form 8-A, filed with the SEC on June 20, 2013, and any amendment or report filed with the SEC 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 the offering of the securities described in this prospectus, but excluding any information 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 by writing or telephoning us at the following address:

Gogo Inc.

Attention: Corporate Secretary

111 North Canal Street

Chicago, IL, 60606

Telephone: (312) 517-5000

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.

Recent Accounting Changes

On January 1, 2018, we adopted the guidance in Accounting Standards Update 2016-18, *Restricted Cash* A Consensus of the FASB Emerging Issues Task Force (ASU 2016-18), which amends Accounting Standard Codification (ASC) 230, *Statement of Cash Flows*, to clarify guidance on the classification and presentation of restricted cash in the statement of cash flows using the full retrospective method. The effect of the adoption of ASU 2016-18 is reflected in the our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018 as filed with the SEC on May 4, 2018, incorporated by reference in this prospectus, but has not been reflected in our Annual Report on Form 10-K for the year ended December 31, 2017 as filed with the SEC on February 22, 2018, incorporated by reference in this prospectus. The amount of restricted cash at December 31, 2017, 2016 and 2015 subject to the change in presentation within the statement of cash flows was \$7.4 million, \$7.9 million and \$7.5 million, respectively.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained or incorporated in this prospectus and any accompanying prospectus supplement and any document incorporated by reference herein or therein include forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. These forward-looking statements include, without limitation, statements regarding our business outlook, industry, business strategy, plans, goals and expectations concerning our market position, international expansion, future technologies, future operations, margins, profitability, future efficiencies, capital expenditures, liquidity and capital resources and other financial and operating information. In some cases, you can identify forward-looking statements by terminology such as anticipate, assume, believe, budget, continue, could, estimate, expect, intend, may, plan, potential, predict, project, the negative of these terms or comparable terminology. Forward-looking statements reflect our current expectations regarding future events, results or outcomes. These expectations may or may not be realized. Although we believe the expectations reflected in the forward-looking statements are reasonable, we can give you no assurance these expectations will prove to have been correct. Some of these expectations may be based upon assumptions, data or judgments that prove to be incorrect. Actual events, results and outcomes may differ materially from our expectations due to a variety of known and unknown risks, uncertainties and other factors. Although it is not possible to identify all of these risks and factors, they include, among others, the following:

the loss of, or failure to realize benefits from, agreements with our airline partners or any failure to renew any existing agreements upon expiration or termination;

the failure to maintain airline and passenger satisfaction with our equipment or our service;

any inability to timely and efficiently deploy our 2Ku service or develop and deploy the technology to which our ATG network evolves or other components of our technology roadmap for any reason, including technological issues and related remediation efforts, changes in regulations or regulatory delays or failures affecting us or our suppliers, some of whom are single source, or the failure by our airline partners or customers to roll out equipment upgrades or new services or adopt new technologies in order to support increased network capacity demands;

the timing of deinstallation of our equipment from aircraft, including deinstallations resulting from aircraft retirements and other deinstallations permitted by certain airline contract provisions;

the loss of relationships with original equipment manufacturers or dealers;

our ability to make our equipment factory linefit available on a timely basis;

our ability to develop or purchase ATG and satellite network capacity sufficient to accommodate current and expected growth in passenger demand in North America and internationally as we expand;

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our reliance on third-party suppliers, some of whom are single source, for satellite capacity and other services and the equipment we use to provide services to commercial airlines and their passengers and business aviation customers;

unfavorable economic conditions in the airline industry and/or the economy as a whole;

our ability to expand our international or domestic operations, including our ability to grow our business with current and potential future airline partners and customers and the effect of shifts in business models;

an inability to compete effectively with other current or future providers of in-flight connectivity services and other products and services that we offer, including on the basis of price, service performance and line-fit availability;

our ability to successfully develop and monetize new products and services such as Gogo Vision and Gogo TV, including those that were recently released, are currently being offered on a limited or trial basis, or are in various stages of development;

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our ability to certify and install our equipment and deliver our products and services, including newly developed products and services, on schedules consistent with our contractual commitments to customers;

the failure of our equipment or material defects or errors in our software resulting in recalls or substantial warranty claims;

a revocation of, or reduction in, our right to use licensed spectrum, the availability of other air-to-ground spectrum to a competitor or the repurposing by a competitor of other spectrum for air-to-ground use;

our use of open source software and licenses;

the effects of service interruptions or delays, technology failures and equipment failures or malfunctions arising from defects or errors in our software or defects in or damage to our equipment;

the limited operating history of our CA-ROW segment;

contract changes and implementation issues resulting from decisions by airlines to transition from the turnkey model to the airline-directed model;

increases in our projected capital expenditures due to, among other things, unexpected costs incurred in connection with the roll-out of our technology roadmap or our international expansion;

compliance with U.S. and foreign government regulations and standards, including those related to regulation of the Internet, including e-commerce or online video distribution changes, and the installation and operation of satellite equipment and our ability to obtain and maintain all necessary regulatory approvals to install and operate our equipment in the United States and foreign jurisdictions;

our, or our technology suppliers', inability to effectively innovate;

changes as a result of U.S. federal tax reform;

costs associated with defending pending or future intellectual property infringement and other litigation or claims and any negative outcome or effect of pending or future litigation;

our ability to protect our intellectual property;

breaches of the security of our information technology network, resulting in unauthorized access to our customers' credit card information or other personal information;

our substantial indebtedness;

limitations and restrictions in the agreements governing our indebtedness and our ability to service our indebtedness;

our ability to obtain additional financing, or financing intended to refinance our existing indebtedness, on acceptable terms or at all;

fluctuations in our operating results;

our ability to attract and retain customers and to capitalize on revenue from our platform;

the demand for and market acceptance of our products and services;

changes or developments in the regulations that apply to us, our business and our industry, including changes or developments affecting the ability of passengers or airlines to use our in-flight connectivity services, including the recent U.S. and U.K. bans on the use of certain personal devices such as laptops and tablets on certain aircraft flying certain routes;

a future act or threat of terrorism, cyber-security attack or other events that could result in adverse regulatory changes or developments as referenced above, or otherwise adversely affect our business and industry;

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our ability to attract and retain qualified employees, including key personnel;

the effectiveness of our marketing and advertising and our ability to maintain and enhance our brands;

our ability to manage our growth in a cost-effective manner and integrate and manage acquisitions;

compliance with anti-corruption laws and regulations in the jurisdictions in which we operate, including the Foreign Corrupt Practices Act and the (U.K.) Bribery Act 2010;

restrictions on the ability of U.S. companies to do business in foreign countries, including, among others, restrictions imposed by the U.S. Office of Foreign Assets Control;

difficulties in collecting accounts receivable;

our ability to successfully implement our new enterprise resource planning system, our new integrated business plan and other improvements to systems, operations, strategy and procedures needed to support our growth; and

other risks and factors listed under **Risk Factors** in our Annual Report on Form 10-K for the year ended December 31, 2017 as filed with the SEC on February 22, 2018 and in Item 1A of our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 as filed with the SEC on May 4, 2018.

Important factors that could cause actual results to differ materially from our expectations are disclosed under **Risk Factors** in this prospectus and any accompanying prospectus supplement, as well as the documents we incorporate by reference. Any one of these factors or a combination of these factors could materially affect our financial condition or future results of operations and could influence whether any forward-looking statements contained in this prospectus or any prospectus supplement ultimately prove to be accurate. Our forward-looking statements are not guarantees of future performance, and you should not place undue reliance on them. All forward-looking statements speak only as of the date made and we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

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WHO WE ARE

Gogo is the inflight Internet company. Our mission is to provide ground-like connectivity to every device on every flight around the globe, enabling superior passenger experiences and efficient flight operations. To accomplish our mission, we design, build and operate dedicated satellite and air-to ground networks, engineer, install and maintain inflight systems of proprietary hardware and software, and deliver customizable connectivity and wireless entertainment services and global support capabilities to our aviation partners.

We are the global leader in providing broadband connectivity solutions and wireless in-flight entertainment to the aviation industry. We operate through the following three segments: Commercial Aviation North America, or CA-NA, Commercial Aviation Rest of World, or CA-ROW, and Business Aviation, or BA.

Services provided by our CA-NA and CA-ROW businesses include Passenger Connectivity, which allows passengers to connect to the Internet from their personal Wi-Fi-enabled devices; Passenger Entertainment, which offers passengers the opportunity to enjoy a broad selection of in-flight entertainment options on their personal Wi-Fi enabled devices; and Connected Aircraft Services (CAS), which offers airlines connectivity for various operations and currently include, among others, real-time credit card transaction processing, electronic flight bags and real-time weather information. Services are provided by CA-NA on commercial aircraft flying routes that generally begin and end within North America, which for this purpose includes the United States, Canada and Mexico. CA-ROW provides service on commercial aircraft operated by foreign-based commercial airlines and flights outside of North America for North American based commercial airlines. The routes included in our CA-ROW segment are those that begin and/or end outside of North America (as defined above) on which our international service is provided. BA provides in-flight Internet connectivity and other voice and data communications products and services and sells equipment for in-flight telecommunications to the business aviation market. BA services include Gogo Biz, our in-flight broadband service, Passenger Entertainment, our in-flight entertainment service, and satellite-based voice and data services through our strategic alliances with satellite companies.

Our principal executive offices are located at 111 N. Canal St., Suite 1500, Chicago, IL 60606. Our telephone number is (312) 517-5000.

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RISK FACTORS

Investment in our securities involves risks. You should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K and Quarterly Report on Form 10-Q and any subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K we file after the date of this prospectus, and all other information contained or incorporated by reference into this prospectus, as updated by our subsequent filings under the Exchange Act, as well as the risk factors and other information contained in the applicable prospectus supplement 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. See [Where You Can Find More Information; Incorporation by Reference](#).

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USE OF PROCEEDS

Unless otherwise indicated in an applicable prospectus supplement, we currently intend to use the net proceeds from the sale by the Company of the offered securities for working capital and other general corporate purposes. We may provide additional information on the use of the net proceeds from the sale of securities in an applicable prospectus supplement.

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The table below sets forth our ratio of earnings to fixed charges and preference security dividends for the periods indicated, computed on a consolidated basis.

	For the Six Months Ended June 30,		Fiscal Year Ended December 31,			
	2018	2017	2016	2015	2014	2013
Ratio of earnings to fixed charges (1)(2)						
Ratio of earnings to fixed charges and preference security dividends (1)(3)(4)						

- (1) Earnings consist of our consolidated net income (loss) before income taxes, reduced by the non-controlling interest in the pre-tax income of a consolidated subsidiary that did not incur fixed charges, plus fixed charges. Fixed charges consist of interest expense (including only interest expense on third party indebtedness and excluding interest expense accrued on uncertain tax positions), amortization of debt discounts and capitalized expenses and certain other non-capitalized fees related to indebtedness, as well as a portion of rental expense deemed by us to be representative of the interest factor within rental payments under operating leases.
- (2) Earnings for the years ended December 31, 2017, 2016, 2015, 2014 and 2013 were insufficient to cover fixed charges by \$175.0 million, \$124.6 million, \$107.8 million, \$85.2 million and \$111.7 million, respectively. Earnings for the six months ended June 30, 2018 were insufficient to cover fixed charges by \$68.4 million.
- (3) Preference security dividends represent the estimated amount of pre-tax earnings necessary to pay dividends on our previously outstanding Class A and Class B Senior Convertible Preferred Stock, including accretion in the carrying value of redeemable preferred stock. Dividends on our Class A and Class B Senior Convertible Preferred Stock were cumulative. Our Class A and Class B Senior Convertible Preferred Stock was converted into common stock on June 21, 2013 in connection with our initial public offering. As such, there were no shares outstanding of our Class A and Class B Senior Convertible Preferred Stock as of December 31, 2013, December 31, 2014, December 31, 2015, December 31, 2016, December 31, 2017 or June 30, 2018. No cash dividends had been declared or paid on our Class A or Class B Senior Convertible Preferred Stock.
- (4) As of the date of this prospectus, and during the years ended December 31, 2017, 2016, 2015 and 2014 and the six months ended June 30, 2018, we had no preferred stock outstanding. Consequently, during those periods, our ratio of earnings to fixed charges and preference security dividends would be identical to our ratio of earnings to fixed charges. Earnings for the year ended December 31, 2013 were insufficient to cover fixed charges and preference security dividends by \$146.3 million.

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DESCRIPTION OF CAPITAL STOCK

Our authorized capital stock consists of 500,000,000 shares of common stock, par value \$0.0001 per share, and 100,000,000 shares of preferred stock, par value \$0.01 per share. As of August 6, 2018, 87,351,448 shares of common stock were outstanding and no shares of preferred stock were outstanding.

The following descriptions of our capital stock and provisions of our third amended and restated certificate of incorporation, which we refer to as our amended and restated certificate of incorporation, and amended and restated bylaws, which we refer to as our amended and restated bylaws, are summaries of their material terms and provisions. You should keep in mind, however, that it is our amended and restated certificate of incorporation and our amended and restated bylaws, and the Delaware General Corporation Law, and not this summary, which define your rights as a security holder. There may be other provisions in these documents which are also important to you. You should read these documents for a full description of the terms of our capital stock. This description is summarized from, and qualified in its entirety by reference to, our amended and restated certificate of incorporation and amended and restated bylaws, which have been publicly filed with the SEC and which are incorporated by reference as exhibits to the registration statement of which this prospectus is a part.

Common Stock

Holders of common stock are entitled to cast one vote for each share held of record on all matters submitted to a vote of the stockholders; receive, on a pro rata basis, dividends and distributions, if any, that the board of directors may declare out of legally available funds, subject to preferences that may be applicable to preferred stock, if any, then outstanding; and upon our liquidation, dissolution or winding up, share equally and ratably in any assets remaining after the payment of all debt and other liabilities, subject to the prior rights, if any, of holders of any outstanding shares of preferred stock. Any dividends declared on the common stock will not be cumulative.

The holders of our common stock do not have any preemptive, cumulative voting, subscription, conversion, redemption or sinking fund rights. The common stock is not subject to future calls or assessments by us. Except as otherwise required by law, holders of the common stock are not entitled to vote on any amendment or certificate of designation relating to the terms of any series of preferred stock if the holders of the affected series are entitled to vote on such amendment or certificate of designation under the certificate of incorporation.

Preferred Stock

We will describe the particular terms of any series of preferred stock and any related guarantee in the prospectus supplement relating to the offering.

Our board of directors has the authority to issue preferred stock in one or more series and to fix the number of shares constituting any such series and the voting rights, designations, preferences and qualifications, limitations and restrictions of the shares constituting any series, without any further vote or action by our stockholders. The issuance of preferred stock by our board of directors could adversely affect the rights of holders of common stock.

We will fix or designate the rights, preferences, privileges and restrictions, including dividend rights, voting rights, terms of redemption, retirement and sinking fund provisions and liquidation preferences, if any, of a series of preferred stock through a certificate of designation adopted by our board of directors. We will describe the terms, if any, on which shares of any series of preferred stock are convertible or exchangeable into common stock in the prospectus supplement relating to the offering. The conversion or exchange may be mandatory, at your option or at our option. The applicable prospectus supplement will state the manner in which the shares of common stock that you

will receive as a holder of preferred stock would be converted or exchanged.

Table of Contents**Registration Rights**

On December 31, 2009, we entered into a registration rights agreement (the *Registration Rights Agreement*) with certain of our stockholders party thereto, including certain entities affiliated with Oakleigh Thorne. The following description of the terms of the *Registration Rights Agreement* is intended as a summary only and is qualified in its entirety by reference to the *Registration Rights Agreement* filed as an exhibit to the registration statement of which this prospectus is a part. The registration of shares of our common stock pursuant to the exercise of registration rights described below would enable the holders to trade these shares without restriction under the Securities Act when the applicable registration statement is declared effective. We will pay the registration expenses, other than underwriting discounts and commissions and certain counsel or advisor fees as described therein, of the shares registered pursuant to the demand and piggyback registrations described below.

The demand and piggyback registration rights described below commenced 180 days after the closing of our initial public offering on June 26, 2013 and shall continue perpetually. We are not required to effect more than two demand registrations in any twelve month period or any demand registration within 180 days following the date of effectiveness of any other registration statement. If the board of directors (or an authorized committee thereof), in its reasonable good faith judgment determines that the filing of a registration statement will materially affect a significant transaction or would force us to disclose confidential information which is adverse to our interest, then the board of directors may delay a required registration filing for periods of up to 90 days, so long as the periods do not aggregate to more than 120 days in a twelve-month period. Generally, in an underwritten offering, the managing underwriter has the right, subject to specified conditions, to limit the number of shares such holders may include.

Demand Registration Rights. Under the terms of the *Registration Rights Agreement*, stockholders that are a party to the agreement may, under certain circumstances and provided they meet certain thresholds described in the *Registration Rights Agreement*, make a written request to us for the registration of the offer and sale of all or part of the shares subject to such registration rights (*Registrable Securities*). If we are eligible to file a registration statement on Form S-3 or any successor form with similar short-form disclosure requirements, the holders of *Registrable Securities* may make a written request to us for the registration of the offer and sale of all or part of the *Registrable Securities* provided that the *Registrable Securities* to be registered under such short-form registration have an aggregate market value, based upon the offering price to the public, equal to at least \$15.0 million.

Piggyback Registration Rights. If we register the offer and sale of any of our securities (other than a registration statement relating to an initial public offering or on Form S-4 or S-8 or any successor form for securities to be offered in a transaction of the type referred to in Rule 145 under the Securities Act or to our employees pursuant to any employee benefit plan, respectively) either on our behalf or on the behalf of other security holders, the holders of the *Registrable Securities* under the *Registration Rights Agreement* are entitled to include their *Registrable Securities* in the registration subject to certain exceptions relating to employee benefit plans and mergers and acquisitions. The managing underwriters of any underwritten offering may limit the number of *Registrable Securities* included in the underwritten offering if the underwriters believe that including these shares would have a materially adverse effect on the offering. If the number of *Registrable Securities* is limited by the managing underwriter, the securities to be included first in the registration will depend on whether we or certain holders of our securities initiate the piggyback registration. If we initiate the piggyback registration, we are required to include in the offering (i) first, the securities we propose to sell and (ii) second, the *Registrable Securities* requested to be included in such registration, pro rata among the holders of such *Registrable Securities* on the basis of the number of *Registrable Securities* owned by each such holder. If the holder of *Registrable Securities* initiates the piggyback registration, it is required to include in the offering (i) first, the *Registrable Securities* requested to be included in such registration, pro rata among the holders of such *Registrable Securities* on the basis of the number of *Registrable Securities* owned by each such holder and (ii) second, the securities we propose to sell.

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