

Malibu Boats, Inc.  
Form S-3ASR  
September 07, 2018  
Table of Contents

As filed with the Securities and Exchange Commission on September 7, 2018

Registration Statement No. 333-

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

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

**MALIBU BOATS, INC.**  
**(Exact name of registrant as specified in its charter)**

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

**46-4024640**  
**(I.R.S. Employer**  
**Identification Number)**

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**5075 Kimberly Way**

**Loudon, Tennessee 37774**

**(865) 458-5478**

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

**Wayne R. Wilson**

**Chief Financial Officer**

**Malibu Boats, Inc.**

**5075 Kimberly Way**

**Loudon, Tennessee 37774**

**(865) 458-5478**

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

*Copy to:*

**John-Paul Motley, Esq.**

**O Melveny & Myers LLP**

**400 South Hope Street**

**Los Angeles, California 90071**

**(213) 430-6000**

**From time to time after this Registration Statement becomes effective.**

**(Approximate date of commencement of proposed sale to the public)**

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 of 1933, 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, 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.

Large accelerated filer

Accelerated filer

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

Smaller reporting company

Emerging growth 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 Securities Act.

**Table of Contents****CALCULATION OF REGISTRATION FEE**

<b>Title of each class of securities to be registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price Per Unit (4)</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
<b>Primary Offering</b>				
Class A Common Stock, \$0.01 par value per share	(1)	(1)	(1)	(2)
Preferred Stock, \$0.01 par value per share	(1)	(1)	(1)	(2)
Debt Securities	(1)	(1)	(1)	(2)
Warrants	(1)	(1)	(1)	(2)
Rights	(1)	(1)	(1)	(2)
Units	(1)	(1)	(1)	(2)
<b>Secondary Offering</b>				
Class A Common Stock, \$0.01 par value per share	1,257,231 shares (3)	\$48.72 (4)	\$61,252,295 (4)	\$7,626

- (1) Omitted pursuant to General Instruction II.E to Form S-3 under the Securities Act of 1933, as amended (the Securities Act ). An unspecified and indeterminate aggregate initial offering price and number or amount of the securities of each identified class is being registered for possible offering from time to time at indeterminate prices. The proposed maximum offering price per security will be determined from time to time by the registrant in connection with, and at the time of, offering by the registrant of the securities registered hereby. The securities being registered hereunder include such indeterminate number of shares of Class A Common Stock and preferred stock and amount of debt securities as may be issued upon conversion of or exchange for Class A Common Stock, preferred stock or debt securities that provide for conversion or exchange, upon exercise of warrants or rights, or pursuant to the antidilution provisions of any such securities. In addition, pursuant to Rule 416 under the Securities Act, the shares being registered hereunder include such indeterminate number of shares of Class A Common Stock and preferred stock as may be issuable with respect to the securities being registered hereunder as a result of stock splits, stock dividends, reclassifications or similar transactions. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities or that are offered in units. Securities may be denominated in U.S. dollars or the equivalent thereof in foreign currency or currency units.
- (2) In accordance with Rules 456(b) and 457(r) of the Securities Act, the registrant is deferring payment of all of the registration fee.
- (3) With respect to the secondary offering, this registration statement registers 1,257,231 shares of Class A Common Stock, including 915,191 shares of Class A Common Stock of Malibu Boats, Inc. issuable upon exchange of an equivalent number of membership units of Malibu Boats Holdings, LLC, or LLC Units (together with one share of the Class B Common Stock). This registration statement also relates to an indeterminate number of additional

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shares of Class A Common Stock which may be issued with respect to such shares of common stock by way of stock splits, stock dividends and reclassifications.

- (4) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) under the Securities Act, and based on the average of the high and low sale prices of our Class A common stock on September 4, 2018, as reported on The Nasdaq Global Select Market.

**Table of Contents**

**PROSPECTUS**

**Malibu Boats, Inc.**

**Class A Common Stock**

**Preferred Stock**

**Debt Securities**

**Warrants**

**Rights**

**Units**

**Offered, from time to time, by Malibu Boats, Inc.**

**1,257,231 Shares**

**of**

**Class A Common Stock**

**Offered, from time to time, by the Selling Stockholders**

From time to time, in one or more offerings, we may offer the securities described in this prospectus separately or together in any combination, in one or more classes or series, in amounts, at prices and on terms that we will determine at the time of the offering.

In addition, the selling stockholders identified in this prospectus may, from time to time, in one or more offerings, offer and sell up to 1,257,231 shares of our Class A Common Stock, including 915,191 shares of our Class A Common Stock that may be issued in exchange for membership units, or LLC Units, in Malibu Boats Holdings, LLC, or the LLC, together with one share of our Class B Common Stock pursuant to certain contractual rights of the holders of the LLC Units. We are the sole managing member of the LLC. We are registering the offer and sale of the shares of Class A Common Stock by the selling stockholders to satisfy registration rights that we granted to the selling stockholders. The registration of these shares of our Class A Common Stock does not necessarily mean that any of our Class A Common Stock will be sold by the selling stockholders. Further, the registration of the shares of our Class A Common Stock that may be issued in exchange for LLC Units does not necessarily mean that any of the holders of LLC Units will request that we exchange their LLC Units or that upon any such exchange we will elect, in our sole discretion, to exchange the LLC Units tendered for exchange for Class A Common Stock, or that any shares of our

Class A Common Stock received in exchange for LLC Units will be sold by the selling stockholders. The LLC Units (and corresponding share of our Class B Common Stock) that may be exchanged by the selling stockholders were issued as part of our recapitalization that was effected on February 5, 2014, in connection with our initial public offering, or the IPO. We will not receive any proceeds from the resale of shares of Class A Common Stock from time to time by the selling stockholders, but we have agreed to pay all registration expenses other than brokerage commissions, transfer taxes or, if applicable, underwriting commissions and discounts.

This prospectus provides a general description of the securities we may offer. We may provide specific terms of securities to be offered in one or more supplements to this prospectus. We may also provide a specific plan of distribution for any securities to be offered in a prospectus supplement. Prospectus supplements may also add, update or change information in this prospectus. You should carefully read this prospectus and the applicable prospectus supplement, together with any documents incorporated by reference herein, before you invest in our securities.

Our Class A Common Stock is listed on The Nasdaq Global Select Market, or Nasdaq, under the symbol MBUU. On September 6, 2018, the last reported sale price of our Class A Common Stock was \$52.42 per share. The applicable prospectus supplement will contain information, where applicable, as to the listing of any other securities covered by the prospectus supplement other than our Class A Common Stock on Nasdaq or any other securities exchange.

**Investing in any of our securities involves a high degree of risk. Please read carefully the section entitled Risk Factors on page 6 of this prospectus, the Risk Factors section contained in the applicable prospectus supplement and the information included and incorporated by reference in this prospectus.**

**We are an emerging growth company under applicable Securities and Exchange Commission rules and will be eligible for reduced public company reporting requirements.**

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

**The date of this prospectus is September 7, 2018**

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>About This Prospectus</u>	1
<u>Where You Can Find More Information</u>	2
<u>Information We Incorporate By Reference</u>	2
<u>Special Note Regarding Forward-Looking Statements</u>	4
<u>Malibu Boats, Inc.</u>	5
<u>Risk Factors</u>	6
<u>Ratio Of Earnings To Fixed Charges</u>	6
<u>Use of Proceeds</u>	7
<u>Certain Relationships and Related Party Transactions with Selling Stockholders</u>	8
<u>Selling Stockholders</u>	12
<u>Description of Capital Stock</u>	16
<u>Description of Debt Securities</u>	21
<u>Description of Warrants</u>	29
<u>Description of Rights</u>	33
<u>Description of Units</u>	34
<u>Plan of Distribution</u>	35
<u>Legal Matters</u>	38
<u>Experts</u>	38



**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or the SEC, using a shelf registration or continuous offering process. Under this shelf registration process, we may, from time to time in one or more offerings, sell any combination of the securities described in this prospectus and our selling stockholders may sell up to 1,257,231 shares of Class A Common Stock from time to time in one or more offerings.

This prospectus provides a general description of the securities we may offer. We may provide specific terms of securities to be offered in one or more supplements to this prospectus. We may also provide a specific plan of distribution for any securities to be offered in a prospectus supplement. Prospectus supplements may also add, update or change information in this prospectus. If the information varies between this prospectus and the accompanying prospectus supplement, you should rely on the information in the accompanying prospectus supplement.

Before purchasing any securities, you should carefully read both this prospectus and any prospectus supplement, together with the additional information described under the heading **Information We Incorporate by Reference**. You should rely only on the information contained or incorporated by reference in this prospectus, any prospectus supplement and any free writing prospectus prepared by or on behalf of us or to which we have referred you. Neither we, any selling stockholder nor any underwriters have 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 take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. You should assume that the information contained in this prospectus, any prospectus supplement or any free writing prospectus is accurate only 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.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the heading **Where You Can Find More Information**.

This prospectus and any applicable prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate. Neither we nor any selling stockholder are making offers to sell the Class A Common Stock or any other securities described in this prospectus in any jurisdiction in which an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

Unless otherwise expressly indicated or the context otherwise requires, we use the terms **Malibu Boats**, **Malibu**, the **Company**, **we**, **us**, **our** or similar references to refer (i) prior to the consummation of the recapitalization transaction completed immediately prior to the closing of the IPO, or the Recapitalization, and the IPO, to the LLC and its consolidated subsidiaries and (ii) after the Recapitalization and the IPO, to Malibu Boats, Inc. and its consolidated subsidiaries. We refer to the owners of membership interests in the LLC immediately prior to the consummation of the IPO, collectively, as our **pre-IPO owners** and to owners of LLC Units, collectively, as our **LLC members**. We refer to our Malibu branded boats as **Malibu**, our Axis Wake Research branded boats as **Axis**, and our Cobalt branded boats as **Cobalt**.



**Table of Contents**

**WHERE YOU CAN FIND MORE INFORMATION**

We have filed our registration statement on Form S-3 with the SEC under the Securities Act. We also file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document that we file with the SEC, including the registration statement and the exhibits to the registration statement, at the SEC's Public Reference Room located at 100 F Street, N.E., Washington D.C. 20549. You may obtain further information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Our SEC filings are also available to the public at the SEC's web site at [www.sec.gov](http://www.sec.gov). These documents may also be accessed on our web site at [www.malibuboats.com](http://www.malibuboats.com). Information contained on our web site is not incorporated by reference into this prospectus and you should not consider information contained on our web site to be part of this prospectus.

This prospectus and any prospectus supplement are part of a registration statement 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 indicated above. Forms of any indenture or other documents establishing the terms of the offered securities are filed as exhibits to the registration statement or will be filed through an amendment to our registration statement on Form S-3 or under cover of a Current Report on Form 8-K and incorporated into this prospectus by reference.

**INFORMATION WE INCORPORATE BY REFERENCE**

The SEC allows us to incorporate by reference into this prospectus the information we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference into this document will be deemed to be modified or superseded for purposes of the document to the extent that a statement contained in this document or any other subsequently filed document that is deemed to be incorporated by reference into this document modifies or supersedes the statement. We incorporate by reference in this prospectus the following information (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

our Annual Report on Form 10-K for the fiscal year ended June 30, 2018 (filed with the SEC on September 6, 2018);

our Current Reports on Form 8-K filed with the SEC on August 8, 2018 and August 22, 2018 (with respect to Items 1.01 and 2.03 only); and

the description of our Class A Common Stock in our Registration Statement on Form S-1 (File No. 333-197095) filed with the SEC on June 27, 2014, including any amendments and reports filed for the purpose of updating such description.

We also incorporate by reference each of the documents that we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, on or after the date of this prospectus and prior to the termination of the offerings under this prospectus and any prospectus supplement. These documents include periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as proxy statements. We will not, however, incorporate by reference into this prospectus any documents or portions thereof that are not deemed filed with the SEC, including any information furnished pursuant to

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Item 2.02 or Item 7.01 of our Current Reports on Form 8-K after the date of this prospectus unless, and except to the extent, specified in such Current Reports.

**Table of Contents**

We will provide to each person, including any beneficial owner, to whom a prospectus (or a notice of registration in lieu thereof) is delivered a copy of any of these filings (other than an exhibit to these filings, unless the exhibit is specifically incorporated by reference as an exhibit to this prospectus) at no cost, upon a request to us by writing or telephoning us at the following address and telephone number:

Malibu Boats, Inc.

Attn: Chief Financial Officer

5075 Kimberly Way

Loudon, Tennessee 37774

Telephone Number: (865) 458-5478

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**Table of Contents**

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus, including the documents incorporated by reference herein, may contain or incorporate forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as amended. All statements other than statements of historical facts contained in this prospectus, including the documents incorporated by reference herein, are forward-looking statements, including statements regarding the expected timing for the closing of our acquisition of the Pursuit division of S2 Yachts, Inc., or Pursuit, and the related financing and the expected financial and business impact of the transaction, the demand for our products and expected industry trends, our business strategy and plans, our prospective products or products under development, our vertical integration initiatives, our acquisition strategy including our continuing integration of Cobalt Boats, LLC, or Cobalt, into our business, and management's objectives for future operations. In some cases, you can identify forward-looking statements by terminology such as may, will, should, expects, plans, anticipates, believes, estimates, potential, continue, the negative of these terms, or by other similar expressions that convey uncertainty of future events or outcomes to identify these forward-looking statements. These statements are only predictions, involving known and unknown risks, uncertainties and other factors that may cause our or our industry's actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Such factors include, but are not limited to: general industry, economic and business conditions; the satisfaction of the closing conditions to the acquisition of Pursuit and conditions for borrowing under our revolving credit facility; our ability to grow our business through acquisitions or strategic alliances and new partnerships; our growth strategy which may require us to secure significant additional capital; significant fluctuations in our annual and quarterly financial results; unfavorable weather conditions; our reliance on our network of independent dealers and increasing competition for dealers; the financial health of our dealers and their continued access to financing; our obligation to repurchase inventory of certain dealers; our failure to manage our manufacturing levels while addressing the seasonal retail pattern for our products; our large fixed cost base; intense competition within our industry; increased consumer preference for used boats or the supply of new boats by competitors in excess of demand; the successful introduction of new products; competition with other activities for consumers' scarce leisure time; the continued strength of our brands; our ability to execute our manufacturing strategy successfully; the success of our engine integration strategy; our reliance on certain suppliers for our engines; our ability to meet our manufacturing workforce needs; our exposure to claims for product liability and warranty claims; our dependence on key personnel; our ability to protect our intellectual property; disruptions to our network and information systems; exposure to workers' compensation claims and other workplace liabilities; risks inherent in operating in foreign jurisdictions; changes in currency exchange rates; an increase in energy and fuel costs; any failure to comply with laws and regulations including environmental and other regulatory requirements; a natural disaster or other disruption at our manufacturing facilities; increases in income tax rates or changes in income tax laws; covenants in our the credit agreement governing our revolving credit facility and term loan which may limit our operating flexibility; our variable rate indebtedness which subjects us to interest rate risk; and any failure to maintain effective internal control over financial reporting or disclosure controls or procedures.

You should not rely on forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Actual results may differ materially from those suggested by the forward-looking statements for various reasons, including those discussed under Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended June 30, 2018, as such risk factors may be amended, supplemented or superseded from time to time by other reports we file with the SEC, including subsequent Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, and in any prospectus supplement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, we assume no obligation to update forward-looking statements for any reason after the date of this prospectus to conform these statements to actual results or to changes in our expectations.



**Table of Contents**

**MALIBU BOATS, INC.**

**Company Overview**

We are a leading designer, manufacturer and marketer of a diverse range of recreational powerboats, including performance sport boats, sterndrive and outboard boats under three brands Malibu, Axis, and Cobalt. We have the #1 market share position in the United States in the performance sport boat category through our Malibu and Axis brands as well as the #1 market share position in the United States in the 24' - 29' segment of the sterndrive category through our Cobalt brand. Our product portfolio of premium brands are used for a broad range of recreational boating activities including, among others, water sports such as water skiing, wakeboarding and wake surfing, as well as general recreational boating. Our passion for consistent innovation, which has led to propriety technology such as Surf Gate, has allowed us to expand the market for our products by introducing consumers to new and exciting recreational activities. We design products that appeal to an expanding range of recreational boaters and water sports enthusiasts whose passion for boating and water sports is a key aspect of their lifestyle and provide consumers with a better customer-inspired experience. With performance, quality, value and multi-purpose features, our product portfolio has us well positioned to broaden our addressable market and achieve our goal of increasing our market share in the expanding recreational boating industry.

In addition to our current market leading brands, we recently entered into an agreement to acquire the assets of Pursuit from S2 Yachts, Inc., for an aggregate purchase price of \$100 million, subject to customary closing conditions. Pursuit is a leader in the saltwater outboard fishing boat market through its offering of 15 models of offshore, dual console and center console boats. Pursuit has the #2 market share position in the United States in the offshore boat category. We expect to close the acquisition in the second quarter of fiscal year 2019.

Our flagship Malibu boats offer our latest innovations in performance, comfort and convenience, and are designed for consumers seeking a premium performance sport boat experience. We launched our Axis boats in 2009 to appeal to consumers who desire a more affordable performance sport boat product but still demand high performance, functional simplicity and the option to upgrade key features. Our Cobalt boats consist of mid to large-sized luxury cruisers and bowriders that we believe offer the ultimate experience in comfort, performance and quality. Retail prices for our boat models range from \$55,000 to \$750,000.

Our boats are constructed of fiberglass, available in a range of sizes, hull designs and propulsion systems (i.e., inboard, sterndrive and outboard). We employ experienced product development and engineering teams that enable us to offer a range of models across each of our brands while consistently introducing innovative features in our product offerings. Our engineering teams closely collaborate with our manufacturing personnel in order to improve product quality and process efficiencies. The results of this collaboration are reflected in our receipt of numerous industry awards, including the Boating Industry Magazine's Top Product award for Surf Band in 2018 and for our Integrated Surf Platform in 2016, as well as the WSIA Innovation of Year for our Malibu Command Center in 2017.

We sell our boats through a dealer network that we believe is the strongest in the recreational powerboat industry. As of July 1, 2018, our distribution channel consisted of over 300 dealer locations globally. Our dealer base is an important part of our consumers' experience, our marketing efforts and our brands. We devote significant time and resources to find, develop and improve the performance of our dealers and believe our dealer network gives us a distinct competitive advantage.

**Corporate Structure and Information**



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Malibu Boats, Inc. was incorporated as a Delaware corporation on November 1, 2013 in anticipation of its IPO to serve as a holding company that owns only an interest in Malibu Boats Holdings, LLC. As of June 30, 2018, Malibu Boats, Inc. held approximately 95.2% of the economic interest of the LLC. Malibu Boats, Inc., as sole managing member of the LLC, operates and controls all of the business and affairs and consolidates the financial results of the LLC.

**Table of Contents**

Our principal executive offices are located at 5075 Kimberly Way, Loudon, Tennessee 37774, and our telephone number is (865) 458-5478. Our website is [www.malibuboats.com](http://www.malibuboats.com). However, the information located on, or accessible from, our website is not, and should not be deemed to be, part of this prospectus, any accompanying prospectus supplement or any free writing prospectus or incorporated into any other filing that we submit to the SEC.

**RISK FACTORS**

Investing in our securities involves a high degree of risk. Before making an investment decision, you should carefully consider any risk factors set forth in the applicable prospectus supplement and the documents incorporated by reference in this prospectus, including the factors discussed under the heading **Risk Factors** in our most recent Annual Report on Form 10-K and each subsequently filed Quarterly Report on Form 10-Q and any risk factors set forth in our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act. See **Where You Can Find More Information** and **Information We Incorporate By Reference**. Each of the risks described in these documents could materially and adversely affect our business, financial condition, results of operations and prospects, and could result in a partial or complete loss of your investment. Additional risks and uncertainties not presently known to us, or that we currently deem immaterial, may also adversely affect our business. In addition, past financial performance may not be a reliable indicator of future performance and historical trends should not be used to anticipate results or trends in future periods.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of earnings to fixed charges for each of the periods indicated. The following table is qualified by the more detailed information appearing in the computation table set forth in Exhibit 12.1 to the registration statement of which this prospectus is part and the historical financial statements, including the notes to those financial statements, incorporated by reference in this prospectus.

	<b>Year Ended June 30,</b>				
	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>
Ratio of earnings to fixed charges (1)	15.6x	16.7x	20.3x	34.4x	(2)

- (1) For purposes of computing the ratio of earnings to fixed charges, earnings include pre-tax income (loss) from continuing operations and fixed charges (excluding capitalized interest) and amortization of capitalized interest. Fixed charges consist of interest expense, capitalized interest (including amounts charged to income and capitalized during the period), and amortization of debt discount costs.
- (2) Earnings were insufficient to cover fixed charges in the amount of \$3.4 million for the fiscal year ended June 30, 2014.

There was no preferred stock outstanding for any of the periods shown above. Accordingly, the ratio of earnings to combined fixed charges and preferred stock dividends was identical to the ratio of earnings to fixed charges for each period.

**Table of Contents**

**USE OF PROCEEDS**

We will retain broad discretion over the use of the net proceeds from the sale of the securities offered hereby. Unless otherwise specified in any prospectus supplement, we currently intend to use the net proceeds from the sale of our securities offered under this prospectus for working capital and general corporate purposes including, but not limited to, capital expenditures, working capital, repayment of indebtedness, potential acquisitions and other business opportunities. Pending any specific application, we may initially invest funds in short-term marketable securities or apply them to the reduction of short-term indebtedness.

We will not receive any proceeds from the sale of shares of our Class A Common Stock that may be sold from time to time pursuant to this prospectus by the selling stockholders. We will bear the costs associated with this registration in accordance with the LLC's limited liability company agreement. However, the selling stockholders will bear any brokerage commissions, transfer taxes, or underwriting commissions and discounts attributable to their sale of shares of our Class A Common Stock.

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**Table of Contents**

**CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS WITH SELLING STOCKHOLDERS**

**Exchange Agreement**

In connection with our Recapitalization and IPO, we entered into an exchange agreement with the pre-IPO owners of the LLC, several of whom are directors and/or officers of Malibu Boats, Inc. Under the exchange agreement, each pre-IPO owner of the LLC (or its permitted transferee) has the right to exchange its LLC Units for shares of Class A Common Stock of Malibu Boats, Inc. on a one-for-one basis, subject to customary conversion rate adjustments for stock splits, stock dividends and reclassifications, or, at our option, except in the event of a change in control, for a cash payment equal to the market value of the Class A Common Stock. The exchange agreement provides, however, that such exchanges must be for a minimum of the lesser of 1,000 LLC Units, all of the LLC Units held by the holder, or such amount as we determine to be acceptable. The exchange agreement also provides that LLC members do not have the right to exchange LLC Units if Malibu Boats, Inc. determines that such exchange would be prohibited by law or regulation or would violate other agreements with Malibu Boats, Inc. to which the LLC member may be subject or any of our written policies related to unlawful or insider trading. The exchange agreement also provides that we may impose additional restrictions on exchanges that we determine to be necessary or advisable so that the LLC is not treated as a publicly traded partnership for U.S. federal income tax purposes. In addition, pursuant to the limited liability company agreement, Malibu Boats, Inc., as managing member of the LLC, has the right to require all members of the LLC to exchange their LLC Units for Class A Common Stock in accordance with the terms of the exchange agreement, subject to the consent of the holders of a majority of outstanding LLC Units other than those held by Malibu Boats, Inc.

**Tax Receivable Agreement**

As a result of exchanges of LLC Units into Class A Common Stock and purchases by the Company of LLC Units from holders of LLC Units, Malibu Boats, Inc. will become entitled to a proportionate share of the existing tax basis of the assets of the LLC at the time of such exchanges or purchases. In addition, such exchanges and purchases of LLC Units are expected to result in increases in the tax basis of the assets of the LLC that otherwise would not have been available. These increases in tax basis may reduce the amount of tax that we would otherwise be required to pay in the future. These increases in tax basis may also decrease gains (or increase losses) on future dispositions of certain capital assets to the extent tax basis is allocated to those capital assets.

In connection with our Recapitalization and IPO, we entered into a tax receivable agreement with the pre-IPO owners of the LLC that provides for the payment from time to time by us to pre-IPO owners of the LLC (or any permitted assignees) of 85% of the amount of the benefits, if any, that we are deemed to realize as a result of (1) increases in tax basis and (2) certain other tax benefits related to our entering into the tax receivable agreement, including those attributable to payments under the tax receivable agreement. These payment obligations are our obligations and not of the LLC. For purposes of the agreement, the benefit deemed realized by us will be computed by comparing our actual income tax liability (calculated with certain assumptions) to the amount of such taxes that we would have been required to pay had there been no increase to the tax basis of the assets of the LLC as a result of the purchases or exchanges, and had we not entered into the tax receivable agreement. The term of the agreement will continue until all such tax benefits have been utilized or expired, unless we exercise our right to terminate the tax receivable agreement for an amount based on the agreed payments remaining to be made under the agreement or we breach any of our material obligations under the tax receivable agreement or there is a change in control, in which case all obligations will generally be accelerated and due as if we had exercised our right to terminate the agreement. Estimating the amount of payments that may be made under the tax receivable agreement is by its nature imprecise, insofar as the calculation of amounts payable depends on a variety of factors. The actual increase in tax basis, as well as the amount

and timing of any payments under the agreement, will vary depending upon a number of factors, including:

*the timing of purchases or exchanges* for instance, the increase in any tax deductions will vary depending on the fair value, which may fluctuate over time, of the depreciable or amortizable assets of the LLC at the time of each purchase or exchange;

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**Table of Contents**

*the price of shares of our Class A Common Stock at the time of the purchase or exchange* the increase in any tax deductions, as well as the tax basis increase in other assets, of the LLC is directly related to the price of shares of our Class A Common Stock at the time of the purchase or exchange;

*the extent to which such purchases or exchanges are taxable* if an exchange or purchase is not taxable for any reason, increased deductions will not be available; and

*the amount and timing of our income* the corporate taxpayer will be required to pay 85% of the deemed benefits as and when deemed realized. If we do not have taxable income, we generally will not be required (absent a change of control or other circumstances requiring an early termination payment) to make payments under the tax receivable agreement for that taxable year because no benefit will have been realized. However, any tax benefits that do not result in realized benefits in a given tax year will likely generate tax attributes that may be utilized to generate benefits in previous or future tax years. The utilization of such tax attributes will result in payments under the tax receivable agreement.

We expect that the payments that we may make under the agreement may be substantial. Assuming no material changes in the relevant tax law, and that we earn sufficient taxable income to realize all tax benefits that are subject to the agreement, as of June 30, 2018, we expect future payments under the agreement to be approximately \$55.0 million over the next eighteen (18) years. Future payments to the pre-IPO owners of the LLC (or their permitted assignees) in respect of subsequent exchanges would be in addition to these amounts and are expected to be substantial. The foregoing numbers are merely estimates and the actual payments could differ materially. It is possible that future transactions or events, such as changes in tax legislation, could increase or decrease the actual tax benefits realized and the corresponding tax receivable agreement payments.

For example, during the second quarter of fiscal year 2018, the U.S. Congress enacted the Tax Cuts and Jobs Act of 2017, or the Tax Act, on December 22, 2017, which, among other provisions, lowered our U.S. corporate tax rate from 35% to 21%, effective January 1, 2018. The Tax Act lowered the estimated tax rate used to compute our future tax obligations and, in turn, reduced the future tax benefit expected to be realized by us related to increased tax basis from previous sales and exchanges of LLC Units by pre-IPO owners of the LLC. The change in the underlying tax rate assumptions used to estimate the tax receivable agreement liability, resulted in a decrease in the tax receivable agreement liability of \$30.3 million during the second quarter of fiscal year 2018. Also, during the first quarter of fiscal year 2018, we acquired Cobalt, which expanded our footprint into new state tax jurisdictions. This change in our state tax posture increased the estimated tax rate used in computing our future tax obligations and, in turn, increased the future tax benefit expected to be realized by us related to increased tax basis from previous sales and exchanges of LLC Units by pre-IPO owners of the LLC. The change in the underlying tax rate assumptions used to estimate the tax receivable agreement liability resulted in an increase in the tax receivable agreement liability of \$6.0 million during the first quarter of fiscal year 2018. During the fourth quarter of fiscal year 2017, the state of Tennessee enacted tax legislation, which lowered the estimated tax rate used in computing our future tax obligations and, in turn, reduced the future tax benefit expected to be realized by us related to increased tax basis from previous sales and exchanges of LLC Units by pre-IPO owners. The change in the underlying tax rate assumptions used to estimate our tax receivable agreement liability resulted in a decrease in such liability of \$8.1 million during the fourth quarter of fiscal year 2017.

The effects of the tax receivable agreement on our consolidated balance sheet as a result of our exchange of LLC Units into Class A common stock during the fiscal years ended June 30, 2018, 2017 and 2016 was an increase of \$3.0 million, \$1.2 million and \$0.1 million in deferred tax assets, respectively, and an increase of \$1.7 million, \$1.0 million and \$0.1 million in payable pursuant to tax receivable agreement and additional paid in capital, respectively.

There may be a material negative effect on our liquidity if distributions to Malibu Boats, Inc. by the LLC are not sufficient to permit Malibu Boats, Inc. to make payments under the agreement after it has paid taxes. For example, we may have an obligation to make tax receivable agreement payments for a certain amount while receiving distributions from the LLC in a lesser amount, which would negatively affect our liquidity. The payments under the agreement are not conditioned upon the LLC members' continued ownership of us.

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**Table of Contents**

The tax receivable agreement provides that, upon certain mergers, asset sales or other forms of business combinations or other changes of control, we (or our successor) would owe to the pre-IPO owners of the LLC (or their permitted assignees) a lump-sum payment equal to the present value of all forecasted future payments that would have otherwise been made under the tax receivable agreement which would be based on certain assumptions, including a deemed exchange of LLC Units and that we would have sufficient taxable income to fully utilize the deductions arising from the increased tax basis and other tax benefits related to entering into the tax receivable agreement. We are also entitled to terminate the tax receivable agreement, which, if terminated, would obligate us to make early termination payments to the pre-IPO owners of the LLC. A pre-IPO owner may also elect to unilaterally terminate the tax receivable agreement with respect to such pre-IPO owner, which would obligate us to pay to such pre-IPO owner certain payments for tax benefits received through the taxable year of the election.

Payments generally will be due under the tax receivable agreement within five business days following the finalization of the schedule with respect to which the payment obligation is calculated, although interest on such payments will begin to accrue at a rate equal to LIBOR plus 100 basis points from the due date (without extensions) of the applicable tax return until such payment due date. Any late payments under the tax receivable agreement generally will accrue interest at a rate of LIBOR plus 500 basis points.

Payments under the tax receivable agreement will be based on the tax reporting positions that we will determine. Although we are not aware of any issue that would cause the Internal Revenue Service to challenge a tax basis increase, the corporate taxpayer will not be reimbursed for any payments previously made under the agreement. As a result, in certain circumstances, payments could be made under the agreement in excess of the benefits that the corporate taxpayer actually realizes in respect of the tax attributes subject to the agreement.

We paid \$4.4 million, \$4.3 million and \$2.8 million to the pre-IPO owners during fiscal years ended June 30, 2018, 2017 and 2016, respectively, in connection with exchanges, which resulted in \$55.0 million, \$82.3 million and \$93.8 million in tax receivable agreement liabilities as of June 30, 2018, 2017 and 2016, respectively.

**Malibu Boats Holdings, LLC Limited Liability Company Agreement**

In connection with our Recapitalization and IPO, the limited liability company agreement of the LLC was amended and restated. As a result of our Recapitalization and IPO, Malibu Boats, Inc. holds LLC Units in the LLC and is the sole managing member of the LLC. Accordingly, Malibu Boats, Inc. operates and controls all of the business and affairs of the LLC and, through the LLC and its operating subsidiaries, conducts our business. Holders of LLC Units generally do not have voting rights under the limited liability company agreement.

Pursuant to the limited liability company agreement of the LLC, Malibu Boats, Inc. has the right to determine when distributions (other than tax distributions) will be made to the holders of LLC Units and the amount of any such distributions. If Malibu Boats, Inc. authorizes a distribution, such distribution will be made to the holders of LLC Units (including Malibu Boats, Inc.) pro rata in accordance with the percentages of their respective LLC Units.

The holders of LLC Units, including Malibu Boats, Inc., will incur U.S. federal, state and local income taxes on their proportionate share of any taxable income of the LLC. Net profits and net losses of the LLC will generally be allocated to the LLC's members (including Malibu Boats, Inc.) pro rata in accordance with the percentages of their respective limited liability company interests. The limited liability company agreement of the LLC provides for cash distributions to the holders of the LLC Units if Malibu Boats, Inc. determines that the taxable income of the LLC will give rise to taxable income for its members. In accordance with the limited liability company agreement, we intend to cause the LLC to make cash distributions to the holders of LLC Units for purposes of funding their tax obligations in respect of the income of the LLC that is allocated to them. Generally, these tax distributions will be computed based



on our estimate of the taxable income of the LLC

**Table of Contents**

allocable to the holders of LLC Units multiplied by an assumed tax rate equal to the highest effective marginal combined U.S. federal, state and local income tax rate prescribed for an individual or corporate resident in Los Angeles, California (taking into account the nondeductibility of certain expenses and the character of our income). For purposes of determining the taxable income of the LLC, such determination will be made by generally disregarding any adjustment to the taxable income of any member of the LLC that arises under the tax basis adjustment rules of the Internal Revenue Code of 1986, as amended, and is attributable to the acquisition by such member of an interest in the LLC in a sale or exchange transaction.

The limited liability company agreement of the LLC also provides that substantially all expenses incurred by or attributable to Malibu Boats, Inc., but not including income tax expenses of Malibu Boats, Inc., will be borne by the LLC.

The limited liability company agreement of the LLC provides that it may be amended, supplemented, waived or modified by the written consent of Malibu Boats, Inc. in its sole discretion without the approval of any other holder of LLC Units, except that no amendment may materially and adversely affect the rights of a holder of LLC Units without the consent of such holder, other than on a pro rata basis with other holders of LLC Units.

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**Table of Contents**

**SELLING STOCKHOLDERS**

The selling stockholders named below may offer from time to time in the future up to an aggregate of 1,257,231 shares of our Class A Common Stock, subject to adjustments for stock splits, stock dividends and reclassifications, which includes 915,191 shares of Class A Common Stock issuable upon exchange of an equivalent number of LLC Units (together with one share of the Class B Common Stock). Under the exchange agreement we entered into with the LLC members on February 5, 2014, holders of LLC Units may generally (subject to the terms of the exchange agreement) exchange their LLC Units for shares of our Class A Common Stock on a one-for-one basis, subject to customary conversion rate adjustments for stock splits, stock dividends and reclassifications, or, at our option, except in the event of a change in control, for cash. See Certain Relationships and Related Party Transactions with Selling Stockholders for additional information.

The following table sets forth the names of the selling stockholders (and/or the beneficial owners) and the number of shares of Class A Common Stock and LLC Units held by each of them (i) as of the date of this prospectus, and (ii) assuming the selling stockholder has exchanged all LLC Units currently owned by it for an equivalent number of shares of our Class A Common Stock and resold all such shares of our Class A Common Stock and any other shares of Class A Common Stock pursuant to this prospectus.

Information in the table below with respect to beneficial ownership has been furnished by each of the selling stockholders. There are currently no agreements, arrangements or understandings with respect to the sale of any of the shares. The shares are being registered to permit public secondary trading of the shares, and selling stockholders may offer the shares for resale from time to time. Beneficial ownership reflected in the table below includes the total shares or LLC Units held by the individual and his or her affiliates. Beneficial ownership is determined in accordance with the rules and regulations of the SEC.

The selling stockholders are not required to exchange their LLC Units for shares of our Class A Common Stock, nor are we required to issue shares of Class A Common Stock to any selling stockholder who elects to exchange LLC Units. Instead, we may, in our sole discretion and, except in the event of a change of control, elect to satisfy the LLC Unit exchanges by paying cash. In addition, the selling stockholders listed in the table below may have sold, transferred, otherwise disposed of or purchased, or may sell, transfer, otherwise dispose of or purchase, at any time and from time to time, LLC Units or shares of our Class A Common Stock in transactions exempt from the registration requirements of the Securities Act or in the open market after the date on which they provided the information set forth in the table below. The maximum number of shares of Class A Common Stock offered hereby by the selling stockholders assumes the selling stockholders exchange all of their LLC Units held on the date on which they provided the information set forth in the table below and we elect to satisfy all exchange requests by issuing only shares of Class A Common Stock. Assuming we do issue shares of our Class A Common Stock to a holder of LLC Units upon an exchange, such holder may offer for sale all, some or none of such shares of Class A Common Stock. Therefore, it is difficult to estimate with any degree of certainty the aggregate number of shares that the selling stockholders will ultimately offer pursuant to this prospectus or that the selling stockholders will ultimately own upon completion of the offering to which this prospectus relates.

Information about additional selling stockholders, if any, including their identities and the Class A Common Stock to be registered on their behalf, will be set forth in a prospectus supplement, in a post-effective amendment or in filings that we make with the SEC under the Exchange Act, which are incorporated by reference in this prospectus. Information concerning the selling stockholders may change from time to time. Any changes to the information provided below will be set forth in a supplement to this prospectus, in a post-effective amendment or in filings we make with the SEC under the Exchange Act, which are incorporated by reference into this prospectus if and when necessary.

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Unless otherwise indicated and subject to applicable community property laws, to our knowledge, each stockholder named in the following table possesses sole voting and investment power over the shares listed.

**Table of Contents**

Unless otherwise noted below, the address of each person or entity listed on the table is c/o Malibu Boats, Inc., 5075 Kimberly Way, Loudon, Tennessee 37774.

	Beneficial Ownership Before Resale				Shares of Class A Common Stock that may be sold hereby (3)	Beneficial Ownership After Resale			
	Class A Common Stock		LLC Units			Class A Common Stock		LLC Units	
	#	% (1)	#	% (2)		#	% (4)	#	%
Horizon Holdings, LLC (5)			623,637	2.9	623,637				
Malibu Holdings, L.P. (5)			23,637	*	23,637				
Jack D. Springer (6)	146,584	*	122,735	*	269,319				
Wayne R. Wilson (7)	52,920	*	29,352	*	82,272				
Ritchie Anderson (8)	46,541	*	9,912	*	56,453				
Dan L. Gasper (9)	1,320	*	54,419	*	55,739				
Michael K. Hooks (10)	33,407	*	25,000	*	58,407				
Phillip S. Estes (11)	28,298	*	623,637	2.9	651,935				
Mark W. Lanigan (12)	32,970	*	50,136	*	83,106				

\* Represents less than 1.0%.

- (1) Percentage of Class A Common Stock is based on 20,555,734 shares of our Class A Common Stock outstanding as of September 7, 2018.
- (2) Percentage of LLC Units is based on 21,598,920 LLC Units outstanding as of September 7, 2018, including 20,555,734 LLC Units held by Malibu Boats, Inc.
- (3) Assumes selling stockholder has exchanged all LLC Units for an equivalent number of shares of Class A Common Stock and is offering such Class A Common Stock and any other shares of Class A Common Stock held by such selling stockholder pursuant to this prospectus.
- (4) Percentage of Class A Common Stock is based on 21,470,925 shares of Class A Common Stock outstanding as if each LLC Unit held by a selling stockholder was exchanged for one share of Class A Common Stock as of September 7, 2018.
- (5) Horizon Holdings, LLC is the general partner of Malibu Holdings, L.P. and may be deemed the beneficial owner of the securities beneficially owned by Malibu Holdings, L.P. Horizon Holdings, LLC directly holds 600,000 LLC Units. Malibu Holdings, L.P. directly holds 23,637 LLC Units. Phillip S. Estes, one of our directors, and James Shorin share the voting power and dispositive power with respect to the securities beneficially owned by Horizon Holdings, LLC and may be deemed the beneficial owner of the securities beneficially owned by Horizon Holdings, LLC. The address of Horizon Holdings, LLC and Malibu Holdings, L.P. is 1 Bush Street, San Francisco, California 94104.
- (6) Jack D. Springer was our interim Chief Executive Officer beginning in 2009 and became our Chief Executive Officer in February 2010. Mr. Springer is also a member of our Board of Directors. Includes (i) 45,938 shares of Class A Common Stock held directly by Mr. Springer, (ii) 15,187 shares of restricted stock vesting in three substantially equal annual installments beginning on November 4, 2018, (iii) 3,390 shares of restricted stock vesting on November 6, 2018, (iv) 11,300 shares of restricted stock vesting in two substantially equal annual installments beginning on November 6, 2018, (v) 11,000 shares of restricted stock vesting in four equal annual installments beginning on November 6, 2018, (vi) options to purchase 13,000 shares of Class A Common Stock

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that are fully vested, (vii) options to purchase 2,500 shares of Class A Common Stock vesting on November 6, 2018 and (viii) 44,269 shares of restricted stock that vest subject to the achievement of certain performance targets. Does not include (i) options to purchase 39,000 shares of Class A Common Stock vesting in three equal annual installments beginning on June 29, 2019, (ii) options to purchase 7,500 shares of Class A Common Stock vesting in three equal annual installments beginning on November 6, 2019 and (iii) options to purchase 25,000 shares of Class A Common Stock vesting in four equal annual installments beginning on August 22, 2019. Includes 122,735 LLC Units held directly by a limited liability company. Mr. Springer and his wife each own a 50% membership interest in, and Mr. Springer is the managing member of, the limited liability company.

**Table of Contents**

- (7) Wayne R. Wilson has served as our Chief Financial Officer since November 2009. Includes (i) 16,273 shares of Class A Common Stock held directly by Mr. Wilson, (ii) 5,250 shares of restricted stock vesting in three equal annual installments beginning on November 4, 2018, (iii) 5,500 shares of restricted stock vesting in four equal annual installments beginning on November 6, 2018, (iv) options to purchase 6,500 shares of Class A Common Stock that are fully vested, (v) options to purchase 1,250 shares of Class A Common Stock vesting on November 6, 2018, (vi) 15,250 shares of restricted stock that vest subject to the achievement of certain performance targets, (vii) 1,159 restricted stock units vesting on November 6, 2018 and (viii) 1,738 restricted stock units vesting on November 6, 2018. Does not include (i) 1,738 restricted stock units vesting on November 6, 2019, (ii) options to purchase 19,500 shares of Class A Common Stock vesting in three equal annual installments beginning on June 29, 2019, (iii) options to purchase 3,750 shares of Class A Common Stock vesting in three equal annual installments beginning on November 6, 2019 and (iv) options to purchase 12,500 shares of Class A Common Stock vesting in four equal annual installments beginning on August 22, 2019. The restricted stock units represent the contingent right to receive an equivalent number of shares of our Class A Common Stock. Includes 29,352 LLC Units held directly by Mr. Wilson.
- (8) Ritchie L. Anderson has served as our Chief Operating Officer since September 2013. Includes (i) 10,952 shares of Class A Common Stock held directly by Mr. Anderson, (ii) 3,750 shares of restricted stock vesting in three equal annual installments beginning on November 4, 2018, (iii) 5,500 shares of restricted stock vesting in four substantially equal annual installments beginning on November 6, 2018, (iv) options to purchase 6,500 shares of Class A Common Stock that are fully vested, (v) options to purchase 1,250 shares of Class A Common Stock vesting on November 6, 2018, (vi) 16,750 shares of restricted stock that vest subject to the achievement of certain performance targets, (vii) 536 restricted stock units vesting on November 6, 2018 and (viii) 1,303 restricted stock units vesting on November 6, 2018. Does not include (i) 1,304 restricted stock units vesting on November 6, 2019, (ii) options to purchase 19,500 shares of Class A Common Stock vesting in three equal annual installments beginning on June 29, 2019, (iii) options to purchase 3,750 shares of Class A Common Stock vesting in three equal annual installments beginning on November 6, 2019 and (iv) options to purchase 12,500 shares of Class A Common Stock vesting in four equal annual installments beginning on August 22, 2019. The restricted stock units represent the contingent right to receive an equivalent number of shares of our Class A Common Stock. Includes 9,912 LLC Units held directly by Mr. Anderson.
- (9) Dan Gasper has served as our Vice President of Product Design since September 2013. Includes (i) 376 shares of Class A Common Stock held directly by Mr. Gasper, (ii) 625 restricted stock units vesting on November 4, 2018 and (iii) 319 restricted stock units vesting on November 6, 2018. Does not include (i) 1,250 restricted stock units vesting in two equal annual installments beginning on November 4, 2019 and (ii) 956 restricted stock units vesting in three substantially equal annual installments beginning on November 6, 2019. The restricted stock units represent the contingent right to receive an equivalent number of shares of our Class A Common Stock. Includes 54,419 LLC Units held directly by Mr. Gasper.
- (10) Michael K. Hooks is Chairman of our Board of Directors. Includes 33,407 stock units and 25,000 LLC Units held directly by Mr. Hooks. The stock units are fully vested and payable in an equivalent number of shares of our Class A Common Stock upon or as soon as practicable, and in all events within 30 days, following the first to occur of (A) the date of Mr. Hooks' separation from service (as defined in our director compensation policy) or (B) the occurrence of a change in control under our Long-Term Incentive Plan.
- (11) Phillip S. Estes is a member of our Board of Directors. Includes 28,298 shares of Class A Common Stock held directly by Mr. Estes and 623,637 LLC Units owned as follows: (i) 600,000 LLC Units held directly by Horizon Holdings, LLC and (ii) 23,637 LLC Units held directly by Malibu Holdings, L.P. Horizon Holdings, LLC is the general partner of Malibu Holdings, L.P. and may be deemed the beneficial owner of the securities beneficially owned by Malibu Holdings, L.P. Mr. Estes and James Shorin share the voting power and dispositive power with respect to the securities beneficially owned by Horizon Holdings, LLC and may be deemed the beneficial owner of the securities beneficially owned by Horizon Holdings, LLC. Mr. Estes disclaims beneficial ownership of such securities, except to the extent of his pecuniary interest therein.





**Table of Contents**

(12) Mark W. Lanigan is a member of our Board of Directors. Includes 32,970 stock units and 50,136 LLC Units held directly by Mr. Lanigan. The stock units are fully vested and payable in an equivalent number of shares of our Class A Common Stock upon or as soon as practicable, and in all events within 30 days, following the first to occur of (A) the date of Mr. Lanigan's separation from service (as defined in our director compensation policy) or (B) the occurrence of a change in control under our Long-Term Incentive Plan.

**Table of Contents**

**DESCRIPTION OF CAPITAL STOCK**

**General**

The following is a summary of the rights of our Class A Common Stock, Class B Common Stock and preferred stock and of certain provisions of our certificate of incorporation and bylaws. For more detailed information, please see our certificate of incorporation and bylaws, which are filed as exhibits to reports we file with the SEC.

Our certificate of incorporation provides for two classes of common stock. In addition, our certificate of incorporation authorizes shares of undesignated preferred stock, the rights, preferences and privileges of which may be designated from time to time by our Board of Directors.

**Authorized Capitalization**

Our authorized capital stock consists of shares, all with a par value of \$0.01 per share, of which:

100,000,000 shares are designated as Class A Common Stock;

25,000,000 shares are designated as Class B Common Stock; and

25,000,000 shares are designated as preferred stock.

**Common Stock**

*Voting Rights*

Holders of our Class A Common Stock and our Class B Common Stock have voting power over Malibu Boats, Inc., the sole managing member of the LLC, at a level that is consistent with their overall equity ownership of our business. Pursuant to our certificate of incorporation and bylaws, each share of Class A Common Stock entitles the holder to one vote with respect to each matter presented to our stockholders on which the holders of Class A Common Stock are entitled to vote. Each holder of Class B Common Stock is entitled to the number of votes equal to the total number of LLC Units held by such holder multiplied by the exchange rate specified in the exchange agreement with respect to each matter presented to our stockholders on which the holders of Class B Common Stock are entitled to vote. Accordingly, the holders of LLC Units collectively have a number of votes that is equal to the aggregate number of LLC Units that they hold. Subject to any rights that may be applicable to any then outstanding preferred stock, our Class A and Class B Common Stock vote as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise provided in our certificate of incorporation or bylaws or required by applicable law. Holders of our Class A Common Stock and Class B Common Stock do not have cumulative voting rights. Except in respect of matters relating to the election and removal of directors on our Board of Directors and as otherwise provided in our certificate of incorporation, our bylaws, or as required by law, all matters to be voted on by our stockholders must be approved by a majority of the shares present in person or by proxy at the meeting and entitled to vote on the subject matter.

*Dividends*

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our Class A Common Stock are entitled to share equally, identically and ratably in any dividends that our Board of Directors may determine to issue from time to time. Holders of our Class B Common Stock do not have any right to receive dividends.

*Liquidation Rights*

In the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, holders of our Class A Common Stock would be entitled to share ratably in our assets that are legally available for distribution

## **Table of Contents**

to stockholders after payment of our debts and other liabilities. If we have any preferred stock outstanding at such time, holders of the preferred stock may be entitled to distribution and/or liquidation preferences. In either such case, we must pay the applicable distribution to the holders of our preferred stock before we may pay distributions to the holders of our Class A Common Stock. Holders of our Class B Common Stock do not have any right to receive a distribution upon a voluntary or involuntary liquidation, dissolution or winding up of our affairs.

### *Other Rights*

Holders of our Class A Common Stock have no preemptive, conversion or other rights to subscribe for additional shares. The rights, preferences and privileges of the holders of our Class A Common Stock will be subject to, and may be adversely affected by, the rights of the holders of shares of any series of our preferred stock that we may designate and issue in the future.

## **Preferred Stock**

Though we currently have no plans to issue any shares of preferred stock, our Board of Directors has the authority, without further action by our stockholders, to designate and issue up to 25,000,000 shares of preferred stock in one or more series. Our Board of Directors may also designate the rights, preferences and privileges of the holders of each such series of preferred stock, any or all of which may be greater than or senior to those granted to the holders of common stock. Though the actual effect of any such issuance on the rights of the holders of common stock will not be known until our Board of Directors determines the specific rights of the holders of preferred stock, the potential effects of such an issuance include:

diluting the voting power of the holders of common stock;

reducing the likelihood that holders of common stock will receive dividend payments;

reducing the likelihood that holders of common stock will receive payments in the event of our liquidation, dissolution, or winding up; and

delaying, deterring or preventing a change-in-control or other corporate takeover.

As of September 7, 2018, no shares of preferred stock were issued and outstanding. All shares of preferred stock offered hereby will, when issued, be fully paid and non-assessable and, unless otherwise stated in a prospectus supplement relating to the series of preferred stock being offered, will not have any preemptive or similar rights. We will set forth in a prospectus supplement relating to the class or series of preferred stock being offered the specific terms of each series of our preferred stock, including the price at which the preferred stock may be purchased, the number of shares of preferred stock offered, and the terms, if any, on which the preferred stock may be convertible into common stock or exchangeable for other securities.

## **Warrants**

There are no outstanding warrants to purchase our Class A Common Stock.

**Anti-Takeover Provisions**

Set forth below is a summary of the relevant provisions of our certificate of incorporation and bylaws and certain applicable sections of the General Corporation Law of the State of Delaware. For additional information we refer you to the provisions of our certificate of incorporation, our bylaws and such sections of the General Corporation Law of the State of Delaware.

*Certificate of Incorporation and Bylaws*

Our certificate of incorporation provides for our Board of Directors to be divided into three classes with staggered three-year terms. Only one class of directors is elected at each annual meeting of our stockholders,

## Table of Contents

with the other classes continuing for the remainder of their respective three-year terms. Because our stockholders do not have cumulative voting rights, our stockholders holding a majority of the shares of common stock outstanding is able to elect all of our directors. Our certificate of incorporation provides that all stockholder actions must generally be effected at a duly called meeting of stockholders and not by a consent in writing, and that only the chair of the board or a majority of our Board of Directors may call a special meeting of stockholders.

Our certificate of incorporation and bylaws require a 66 <sup>2</sup>/<sub>3</sub>% stockholder vote for the amendment or repeal of the bylaws or the provisions in our certificate of incorporation relating to the election and classification of directors. The combination of the classification of our Board of Directors, the lack of cumulative voting and the 66 <sup>2</sup>/<sub>3</sub>% stockholder voting requirements makes it more difficult for our existing stockholders to replace our Board of Directors as well as for another party to obtain control of us by replacing our Board of Directors. Because our Board of Directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our Board of Directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions may have the effect of deterring hostile takeovers or delaying changes in our control or management. These provisions are intended to enhance the likelihood of continued stability in the composition of our Board of Directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of us. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. Such provisions could have the effect, however, of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our stock that could result from actual or rumored takeover attempts.

### *Section 203 of the Delaware General Corporation Law*

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

before such date, the Board of Directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

on or after such date, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 <sup>2</sup>/<sub>3</sub>% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

## **Table of Contents**

subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an interested stockholder as an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

The overall effect of the foregoing provisions may be to deter a future tender offer. Stockholders might view such an offer to be in their best interest should the offer include a substantial premium over the market price of our common stock at that time. In addition, these provisions may have the effect of assisting our management to retain its position and place it in a better position to resist changes that the stockholders may want to make if dissatisfied with the conduct of our business.

## **Limitations of Liability and Indemnification Matters**

We have adopted provisions in our certificate of incorporation that limit or eliminate the liability of our directors for monetary damages for breach of their fiduciary duties, except for liability that cannot be eliminated under the Delaware General Corporation Law. Accordingly, our directors will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except with respect to any of the following:

any breach of their duty of loyalty to us or our stockholders;

acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or

any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission. If Delaware law is amended to authorize the further elimination or limiting of director liability, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law as so amended.

Our certificate of incorporation and our bylaws also provide that we shall indemnify our directors and executive officers and shall indemnify our other officers and employees and other agents to the fullest extent permitted by law. We believe that indemnification under our bylaws covers at least negligence and gross negligence on the part of



indemnified parties. Our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether our bylaws would permit indemnification.

We have entered into indemnification agreements with each of our directors and executive officers that are, in some cases, broader than the specific indemnification provisions provided by Delaware law and our governing documents, and may provide additional procedural protection. These agreements require us, among other things, to:

indemnify officers and directors against certain liabilities that may arise because of their status as officers and directors;

**Table of Contents**

advance expenses, as incurred, to officers and directors in connection with a legal proceeding subject to limited exceptions; and

cover officers and directors under any general or directors and officers liability insurance policy maintained by us.

We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling our company pursuant to the foregoing provisions, the opinion of the SEC is that such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

In addition, we maintain standard policies of insurance under which coverage is provided to our directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, and to us with respect to payments which may be made by us to such directors and officers pursuant to the above indemnification provisions or otherwise as a matter of law.

**Transfer Agent and Registrar**

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

**Exchange Listing**

Our Class A Common Stock is listed on the Nasdaq Global Select Market under the symbol MBUU.

**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes certain general terms and provisions of the debt securities that we may offer in one or more series under this prospectus. When we offer to sell a particular series of debt securities, we will describe the specific terms of the series in a supplement to this prospectus. We will also indicate in the supplement to what extent the general terms and provisions described in this prospectus apply to a particular series of debt securities.

We may issue debt securities either separately, or together with, or upon the conversion or exercise of or in exchange for, other securities described in this prospectus. Debt securities may be our senior, senior subordinated or subordinated obligations and, unless otherwise specified in a supplement to this prospectus, the debt securities will be our direct, unsecured obligations.

We will issue the debt securities under the indenture that we will enter into with a national banking association or other eligible party, as trustee. The indenture will be qualified under the Trust Indenture Act of 1939, as amended, or the Trust Indenture Act. We have filed the form of indenture as an exhibit to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of the debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports that we file with the SEC.

The following summary of material provisions of the debt securities and the indenture is subject to, and qualified in its entirety by reference to, all of the provisions of the indenture applicable to a particular series of debt securities. The summary is not complete. The form of the indenture has been filed as an exhibit to the registration statement and you should read the indenture for provisions that may be important to you. We urge you to read the applicable prospectus supplements and any related free writing prospectuses related to the debt securities that we may offer under this prospectus, as well as the complete indenture that contains the terms of the debt securities.

**General**

We can issue an unlimited amount of debt securities under the indenture that may be in one or more series with the same or various maturities, at par, at a premium, or at a discount. The terms of each series of debt securities will be established by or pursuant to a resolution of our board of directors and set forth in an officer's certificate or a supplemental indenture. The particular terms of each series of debt securities will be described in a prospectus supplement relating to such series (including any pricing supplement or term sheet), including the following terms, if applicable:

the title and ranking of the debt securities (including the terms of any subordination provisions);

the price or prices (expressed as a percentage of the principal amount) at which we will sell the debt securities;

the aggregate principal amount of the debt securities being offered and any limit on the aggregate principal amount of such series of debt securities;

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whether any of our direct or indirect subsidiaries will guarantee the debt securities, including the terms of subordination, if any, of such guarantees;

the date or dates on which the principal of the securities of the series is payable;

the interest rate, if any, and the method for calculating the interest rate;

the dates from which interest will accrue, the interest payment dates and the record dates for the interest payments;

the place or places where principal of, and any interest on, the debt securities will be payable (and the method of such payment), where the securities of such series may be surrendered for registration of transfer or exchange, and where notices and demands to us in respect of the debt securities may be delivered;

**Table of Contents**

any mandatory or optional redemption terms;

any obligation we have to redeem or purchase the debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder of debt securities and the period or periods within which, the price or prices at which and the terms and conditions upon which securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

any dates, if any, on which and the price or prices at which we will repurchase debt securities at the option of the holders of debt securities and other detailed terms and provisions of such repurchase obligations;

the denominations in which the debt securities will be issued;

whether the debt securities will be issued in the form of certificated debt securities or global debt securities;

the currency of denomination of the debt securities, which may be U.S. dollars or any foreign currency, and if such currency of denomination is a composite currency, the agency or organization, if any, responsible for overseeing such composite currency;

the designation of the currency, currencies or currency units in which payment of the principal of, and any interest on, the debt securities will be made;

if payments of principal of, any interest on, the debt securities will be made in one or more currencies or currency units other than that or those in which the debt securities are denominated, the manner in which the exchange rate with respect to such payments will be determined;

the manner in which the amounts of payment of principal of, or any interest on, the debt securities will be determined, if these amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index;

any provisions relating to any security provided for the debt securities;

any addition to, deletion of or change in the events of default described in this prospectus or in the indenture with respect to the debt securities and any change in the acceleration provisions described in this prospectus or in the indenture with respect to the debt securities;

any addition to, deletion of or change in the covenants described in this prospectus or in the indenture with respect to the debt securities;

any depositaries, interest rate calculation agents, exchange rate calculation agents or other agents appointed with respect to the debt securities;

the provisions, if any, relating to conversion or exchange of any series of debt securities, including if applicable, the conversion or exchange price and period, the securities or other property into which the debt securities will be convertible, provisions as to whether conversion or exchange will be mandatory, at the option of the holders thereof or at our option, the events requiring an adjustment of the conversion price or exchange price and provisions affecting conversion or exchange if such series of debt securities are redeemed; and

any other terms of the series of debt securities that may supplement, modify or delete any provision of the indenture as it applies to that series, including any terms that may be required under applicable law or regulations or advisable in connection with the marketing of the debt securities.

We may issue debt securities that provide for an amount less than their stated principal amount to be due and payable upon maturity or a declaration of acceleration of their maturity following an event of default pursuant to the terms of the indenture. We will provide you with information on the federal income tax considerations and other special considerations applicable to any of these debt securities in the applicable prospectus supplement.

## **Table of Contents**

If we denominate the purchase price of any of the debt securities in a foreign currency or currencies or a foreign currency unit or units, or if the principal of and any premium and interest on any series of debt securities is payable in a foreign currency or currencies or a foreign currency unit or units, we will provide you with information on the restrictions, elections, general tax considerations, specific terms and other information with respect to that issue of debt securities and such foreign currency or currencies or foreign currency unit or units in the applicable prospectus supplement.

## **Transfer and Exchange**

Each debt security will be represented by either one or more global securities registered in the name of The Depository Trust Company, or the depository, or a nominee of the depository (we will refer to any such debt security as a global debt security ), or a certificate issued in definitive registered form (we will refer to any debt security represented by a certificate as a certificated debt security ) as set forth in the applicable prospectus supplement. Except as set forth below, global debt securities will not be issuable in certificated form.

### ***Certificated Debt Securities***

You may transfer or exchange certificated debt securities at any office we maintain for this purpose in accordance with the terms of the indenture. No service charge will be made for any transfer or exchange of certificated debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with a transfer or exchange.

You may effect the transfer of certificated debt securities and the right to receive the principal of, premium and interest on certificated debt securities only by surrendering the certificate representing those certificated debt securities and either reissuance by us or the trustee of the certificate to the new holder or the issuance by us or the trustee of a new certificate to the new holder.

### ***Global Debt Securities and Book-Entry System***

Each global debt security will be deposited with, or on behalf of, the depository, and registered in the name of the depository or a nominee of the depository. Beneficial interests in global debt securities will not be issuable in certificated form unless (i) the depository has notified us that it is unwilling or unable to continue as depository for such global debt security or has ceased to be qualified to act as such as required by the indenture and we fail to appoint a successor depository within 90 days of such event, (ii) we determine, in our sole discretion, not to have such securities represented by one or more global securities or (iii) any other circumstances shall exist, in addition to or in lieu of those described above, as may be described in the applicable prospectus supplement. Unless and until a global debt security is exchanged for certificated debt securities under the limited circumstances described in the previous sentence, a global debt security may not be transferred except as a whole by the depository to its nominee or by the nominee to the depository, or by the depository or its nominee to a successor depository or to a nominee of the successor depository.

## **Covenants**

We will set forth in the applicable prospectus supplement any restrictive covenants applicable to any issue of debt securities.

## **No Protection In the Event of a Change of Control**

Unless we state otherwise in the applicable prospectus supplement, the debt securities will not contain any provisions which may afford holders of the debt securities protection in the event we have a change in control or in the event of a highly leveraged transaction (whether or not such transaction results in a change in control) which could adversely affect holders of debt securities.



**Table of Contents**

**Consolidation, Merger and Sale of Assets**

Malibu may not consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its assets to any person (a successor person ) unless:

Malibu is the surviving corporation or the successor person (if other than Malibu) is a corporation organized and validly existing under the laws of any U.S. domestic jurisdiction and expressly assumes Malibu's obligations on the debt securities and under the indenture; and

immediately after giving effect to the transaction, no default or event of default, shall have occurred and be continuing.

Notwithstanding the above, any of Malibu's subsidiaries may consolidate with, merge into or transfer all or part of its properties to Malibu.

**Events of Default**

*Event of Default* means with respect to any series of debt securities, any of the following:

default in the payment of any interest upon any debt security of that series when it becomes due and payable, and continuance of such default for a period of 30 days (unless the entire amount of the payment is deposited by us with the trustee or with a paying agent prior to the expiration of the 30-day period);

default in the payment of principal of any security of that series at its maturity;

default in the performance or breach of any covenant by us in the indenture (other than defaults described above or defaults relating to a covenant that has been included in the indenture solely for the benefit of a series of debt securities other than that series), which default continues uncured for a period of 60 days after we receive written notice from the trustee, or we and the trustee receive written notice from the holders of not less than 25% in principal amount of the outstanding debt securities of that series as provided in the indenture;

certain voluntary or involuntary events of bankruptcy, insolvency or reorganization of Malibu; and

any other event of default provided with respect to a series of debt securities, including any events of default relating to guarantors, if any, or subsidiaries that is described in the applicable prospectus supplement.

No event of default with respect to a particular series of debt securities (except as to certain events of bankruptcy, insolvency or reorganization) necessarily constitutes an event of default with respect to any other series of debt securities. The occurrence of certain events of default or an acceleration under the indenture may constitute an event of default under certain indebtedness of ours or our subsidiaries outstanding from time to time.

If an event of default with respect to any series of debt securities at the time outstanding occurs and is continuing (other than an event of default resulting from certain events of bankruptcy, insolvency or reorganization), then the trustee or the holders of not less than 25% in principal amount of the outstanding debt securities of that series may, by a notice in writing to us (and to the trustee if given by the holders), declare to be due and payable immediately the principal of (or, if the debt securities of that series are discount securities, that portion of the principal amount as may be specified in the terms of that series) and accrued and unpaid interest, if any, on all debt securities of that series. In the case of an event of default resulting from certain events of bankruptcy, insolvency or reorganization, the principal amount (or such specified amount) of and accrued and unpaid interest, if any, on all outstanding debt securities will become and be immediately due and payable without any declaration or other act on the part of the trustee or any holder of outstanding debt securities. At any time after a declaration of acceleration with respect to debt securities of any series has been made, but before a judgment or decree for payment of the money due has been obtained by the trustee, the holders of a majority in principal

**Table of Contents**

amount of the outstanding debt securities of that series, by written notice to us and the trustee, may rescind and annul such declaration of acceleration and its consequences if all events of default, other than the non-payment of accelerated principal and interest, if any, with respect to debt securities of that series, have been cured or waived as provided in the indenture. We refer you to the prospectus supplement relating to any series of debt securities that are discount securities for the particular provisions relating to acceleration of a portion of the principal amount of such discount securities upon the occurrence of an event of default.

The indenture provides that the trustee will be under no obligation to perform any duty or exercise any of its rights or powers under the indenture unless the trustee receives indemnity satisfactory to it against any cost, liability or expense which might be incurred by it in performing such duty or exercising such right of power. Subject to certain rights of the trustee, the holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee with respect to the debt securities of that series.

No holder of any debt security of any series will have any right to institute any proceeding, judicial or otherwise, with respect to the indenture or for the appointment of a receiver or trustee, or for any remedy under the indenture, unless:

that holder has previously given to the trustee written notice of a continuing event of default with respect to debt securities of that series;

the holders of not less than 25% in principal amount of the outstanding debt securities of that series have made written request to the trustee to institute the proceedings in respect of such event of default in its own name as trustee under the indenture;

such holder or holders have offered to the trustee indemnity or security satisfactory to the trustee against the costs, expenses and liabilities which might be incurred by the trustee in compliance with such request;

the trustee has failed to institute any such proceeding for 60 days after its receipt of such notice, request and offer of indemnity; and

no direction inconsistent with such written request has been given to the trustee during such 60-day period by holders of a majority in principal amount of the outstanding debt securities of that series.

Notwithstanding any other provision in the indenture, the holder of any debt security will have an absolute and unconditional right to receive payment of the principal of, and any interest on, that debt security on or after the due dates expressed in that debt security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment and such rights shall not be impaired without the consent of such holder.

The indenture requires us, within 120 days after the end of our fiscal year, to furnish to the trustee a statement as to compliance with the indenture from our principal executive officer, principal financial officer or principal accounting officer. If a default or event of default occurs and is continuing with respect to the debt securities of any series and if it is actually known to a responsible officer of the trustee, the trustee shall mail to each holder of the debt securities of that series notice of a default or event of default within 60 days after it occurs or, if later, after a responsible officer of

the trustee has knowledge of such default or event of default. The indenture provides that the trustee may withhold notice to the holders of debt securities of any series of any default or event of default (except in payment on any debt securities of that series) with respect to debt securities of that series if the trustee determines in good faith that withholding notice is in the interest of the holders of those debt securities.

**Table of Contents**

**Modification and Waiver**

We and the trustee may modify and amend or supplement the indenture or the debt securities of one or more series without the consent of any holder of any debt security:

to add guarantees with respect to debt securities of a series or secure debt securities of a series;

to surrender any of our rights or powers under the indenture;

to add covenants or events of default for the benefit of the holders of any series of debt securities;

to comply with the applicable procedures of the applicable depositary;

to cure any ambiguity, defect or inconsistency;

to comply with covenants in the indenture described above under the heading Consolidation, Merger and Sale of Assets ;

to provide for uncertificated securities in addition to or in place of certificated securities;

to make any change that does not materially adversely affect the rights of any holder of debt securities;

to provide for the issuance of and establish the form and terms and conditions of debt securities of any series as permitted by the indenture;

to effect the appointment of a successor trustee with respect to the debt securities of any series and to add to or change any of the provisions of the indenture to provide for or facilitate administration by more than one trustee;

to comply with requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act; and

for certain other reasons set forth in any prospectus supplement.

We may also modify and amend the indenture with the consent of the holders of at least a majority in principal amount of the outstanding debt securities of each series affected by the modifications or amendments. We may not

make any modification or amendment without the consent of the holders of each affected debt security then outstanding if that amendment will:

reduce the principal amount of debt securities whose holders must consent to an amendment, supplement or waiver;

reduce the rate of or extend the time for payment of interest (including default interest) on any debt security;

reduce the principal of, or change the fixed maturity of, any debt security or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation with respect to any series of debt securities;

reduce the principal amount of discount securities payable upon acceleration of maturity;

waive a default in the payment of the principal of, or interest, if any, on any debt security (except a rescission of acceleration of the debt securities of any series by the holders of at least a majority in principal amount of the then outstanding debt securities of that series and a waiver of the payment default that resulted from such acceleration);

make the principal of, or any interest on, any debt security payable in currency other than that stated in the debt security;

make any change to certain provisions of the indenture relating to, among other things, the right of holders of debt securities to receive payment of the principal of, and any interest on, those debt securities and to institute suit for the enforcement of any such payment;

## **Table of Contents**

make any change to certain provisions of the indenture relating to waivers or amendments; or

waive a redemption payment with respect to any debt security, provided that such redemption is made at our option.

Except for certain specified provisions, the holders of at least a majority in principal amount of the outstanding debt securities of any series may, on behalf of the holders of all debt securities of that series, by written notice to the trustee, waive our compliance with provisions of the indenture or the debt securities with respect to such series. The holders of a majority in principal amount of the outstanding debt securities of any series may, on behalf of the holders of all the debt securities of such series, waive any past default under the indenture with respect to that series and its consequences, except a default in the payment of the principal of, or any interest on, any debt security of that series; provided, however, that the holders of a majority in principal amount of the outstanding debt securities of any series may rescind an acceleration and its consequences, including any related payment default that resulted from the acceleration.

## **Defeasance of Debt Securities and Certain Covenants in Certain Circumstances**

### ***Legal Defeasance***

The indenture provides that, unless otherwise provided by the terms of the applicable series of debt securities, we may be discharged from any and all obligations in respect of the debt securities of any series (subject to certain exceptions). We will be so discharged upon the deposit with the trustee, in trust, of money and/or U.S. government obligations or, in the case of debt securities denominated in a single currency other than U.S. dollars, government obligations of the government that issued or caused to be issued such currency, that, through the payment of interest and principal in accordance with their terms, will provide money in an amount sufficient in the opinion of a nationally recognized firm of independent public accountants or investment bank to pay and discharge each installment of principal and interest, if any, on and any mandatory sinking fund payments in respect of the debt securities of that series on the stated maturity of those payments in accordance with the terms of the indenture and those debt securities.

This discharge may occur only if, among other things, we have delivered to the trustee an opinion of counsel stating that we have received from, or there has been published by, the United States Internal Revenue Service a ruling or, since the date of execution of the indenture, there has been a change in the applicable United States federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the debt securities of that series will not recognize income, gain or loss for United States federal income tax purposes as a result of the deposit, defeasance and discharge and will be subject to United States federal income tax on the same amounts and in the same manner and at the same times as would have been the case if the deposit, defeasance and discharge had not occurred.

### ***Defeasance of Certain Covenants***

The indenture provides that, unless otherwise provided by the terms of the applicable series of debt securities, upon compliance with certain conditions:

we may omit to comply with the covenant described under the heading **Consolidation, Merger and Sale of Assets** and certain other covenants set forth in the indenture, as well as any additional covenants which may be set forth in the applicable prospectus supplement; and

any omission to comply with those covenants will not constitute a default or an event of default with respect to the debt securities of that series ( covenant defeasance ).

The conditions include:

depositing with the trustee money and/or U.S. government obligations or, in the case of debt securities denominated in a single currency other than U.S. dollars, government obligations of the government



**Table of Contents**

that issued or caused to be issued such currency, that, through the payment of interest and principal in accordance with their terms, will provide money in an amount sufficient in the opinion of a nationally recognized firm of independent public accountants or investment bank to pay and discharge each installment of principal of, and interest, if any, on and any mandatory sinking fund payments in respect of the debt securities of that series on the stated maturity of those payments in accordance with the terms of the indenture and those debt securities; and

delivering to the trustee an opinion of counsel to the effect that the holders of the debt securities of that series will not recognize income, gain or loss for United States federal income tax purposes as a result of the deposit and related covenant defeasance and will be subject to United States federal income tax on the same amounts and in the same manner and at the same times as would have been the case if the deposit and related covenant defeasance had not occurred.

**Governing Law**

The indenture and the debt securities, including any claim or controversy arising out of or relating to the indenture or the securities, will be governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof other than Section 5-1401 of the General Obligations Law).

**Table of Contents**

**DESCRIPTION OF WARRANTS**

**General**

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the warrants that we may offer under this prospectus, which consist of warrants to purchase shares of Class A Common Stock, preferred stock and/or debt securities in one or more series. Warrants may be offered independently or together with shares of Class A Common Stock, preferred stock and/or debt securities offered by any prospectus supplement and may be attached to or separate from those securities.

While the terms we have summarized below will generally apply to any future warrants we may offer under this prospectus, we will describe the particular terms of any warrants that we may offer in more detail in the applicable prospectus supplement. The specific terms of any warrants may differ from the description provided below as a result of negotiations with third parties in connection with the issuance of those warrants, as well as for other reasons. Because the terms of any warrants we offer under a prospectus supplement may differ from the terms we describe below, you should rely solely on information in the applicable prospectus supplement if that summary is different from the summary in this prospectus.

We will issue the warrants under a warrant agreement, which we will enter into with a warrant agent to be selected by us. We use the term *warrant agreement* to refer to any of these warrant agreements. We use the term *warrant agent* to refer to the warrant agent under any of these warrant agreements. The warrant agent will act solely as an agent of ours in connection with the warrants and will not act as an agent for the holders or beneficial owners of the warrants.

We will incorporate by reference into the registration statement of which this prospectus is a part the form of warrant agreement, including a form of warrant certificate that describes the terms of the series of warrants we are offering before the issuance of the related series of warrants. The following summaries of material provisions of the warrants and the warrant agreements are subject to, and qualified in their entirety by reference to, all the provisions of the warrant agreement applicable to a particular series of warrants. We urge you to read any applicable prospectus supplement related to the warrants that we sell under this prospectus, as well as the complete warrant agreement that contain the terms of the warrants and defines your rights as a warrant holder.

We will describe in the applicable prospectus supplement the terms relating to a series of warrants. If warrants for the purchase of debt securities are offered, the prospectus supplement will describe the following terms, to the extent applicable:

the offering price and the aggregate number of warrants offered;

the currencies in which the warrants are being offered;

the designation, aggregate principal amount, currencies, denominations and terms of the series of debt securities that can be purchased if a holder exercises a warrant;

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the designation and terms of any series of debt securities with which the warrants are being offered and the number of warrants offered with each such debt security;

the date on and after which the holder of the warrants can transfer them separately from the related series of debt securities;

the terms of any rights to redeem or call the warrants;

the date on which the right to exercise the warrants begins and the date on which that right expires;

federal income tax consequences of holding or exercising the warrants; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the warrants.

**Table of Contents**

Warrants for the purchase of debt securities will be in registered form only.

If warrants for the purchase of shares of Class A Common Stock or preferred stock are offered, the prospectus supplement will describe the following terms, to the extent applicable:

the offering price and the aggregate number of warrants offered;

the total number of shares that can be purchased if a holder of the warrants exercises them;

the number of warrants being offered with each share of Class A Common Stock;

the date on and after which the holder of the warrants can transfer them separately from the related shares of Class A Common Stock or preferred stock;

the number of shares of Class A Common Stock or preferred stock that can be purchased if a holder exercises the warrant and the price at which those shares may be purchased upon exercise, including, if applicable, any provisions for changes to or adjustments in the exercise price and in the securities or other property receivable upon exercise;

the terms of any rights to redeem or call, or accelerate the expiration of, the warrants;

the date on which the right to exercise the warrants begins and the date on which that right expires;

federal income tax consequences of holding or exercising the warrants; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the warrants.

Warrants for the purchase of shares of Class A Common Stock or preferred stock will be in registered form only.

A holder of warrant certificates may exchange them for new certificates of different denominations, present them for registration of transfer and exercise them at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Until any warrants to purchase debt securities are exercised, the holder of the warrants will not have any of the rights of holders of the debt securities that can be purchased upon exercise, including any rights to receive payments of principal, premium or interest on the underlying debt securities or to enforce covenants in the applicable indenture. Until any warrants to purchase shares of Class A Common Stock or preferred stock are exercised, holders of the warrants will not have any rights of holders of the underlying shares of Class A Common Stock or preferred stock, including any rights to receive dividends or to exercise any voting rights, except to the extent set forth under Warrant Adjustments below.

## Exercise of Warrants

Each holder of a warrant is entitled to purchase the principal amount of debt securities or number of shares of Class A Common Stock or preferred stock, as the case may be, at the exercise price described in the applicable prospectus supplement. After the close of business on the day when the right to exercise terminates (or a later date if we extend the time for exercise), unexercised warrants will become void.

A holder of warrants may exercise them by following the general procedure outlined below:

deliver to the warrant agent the payment required by the applicable prospectus supplement to purchase the underlying security;

properly complete and sign the reverse side of the warrant certificate representing the warrants; and

deliver the warrant certificate representing the warrants to the warrant agent within five business days of the warrant agent receiving payment of the exercise price.

If you comply with the procedures described above, your warrants will be considered to have been exercised when the warrant agent receives payment of the exercise price, subject to the transfer books for the securities

## **Table of Contents**

issuable upon exercise of the warrant not being closed on such date. After you have completed those procedures and subject to the foregoing, we will, as soon as practicable, issue and deliver to you the debt securities or shares of common stock or preferred stock that you purchased upon exercise. If you exercise fewer than all of the warrants represented by a warrant certificate, a new warrant certificate will be issued to you for the unexercised amount of warrants. Holders of warrants will be required to pay any tax or governmental charge that may be imposed in connection with transferring the underlying securities in connection with the exercise of the warrants.

## **Amendments and Supplements to the Warrant Agreements**

We may amend or supplement a warrant agreement without the consent of the holders of the applicable warrants to cure ambiguities in the warrant agreement, to cure or correct a defective provision in the warrant agreement, or to provide for other matters under the warrant agreement that we and the warrant agent deem necessary or desirable, so long as, in each case, such amendments or supplements do not materially adversely affect the interests of the holders of the warrants.

## **Warrant Adjustments**

Unless the applicable prospectus supplement states otherwise, the exercise price of, and the number of securities covered by, a warrant for shares of Class A Common Stock or preferred stock will be adjusted proportionately if we subdivide or combine our Class A Common Stock or preferred stock, as applicable. In addition, unless the prospectus supplement states otherwise, if we, without payment:

issue shares of Class A Common Stock or preferred stock or other securities convertible into or exchangeable for Class A Common Stock or preferred stock, or any rights to subscribe for, purchase or otherwise acquire any of the foregoing, as a dividend or distribution to all or substantially all holders of our Class A Common Stock or preferred stock;

pay any cash to all or substantially all holders of our Class A Common Stock or preferred stock, other than a cash dividend paid out of our current or retained earnings;

issue any evidence of our indebtedness or rights to subscribe for or purchase our indebtedness to all or substantially all holders of our common stock or preferred stock; or

issue Class A Common Stock, preferred stock or additional shares or other securities or property to all or substantially all holders of our Class A Common Stock or preferred stock by way of spinoff, split-up, reclassification, combination of shares or similar corporate rearrangement;

then the holders of Class A Common Stock warrants or preferred stock warrants will be entitled to receive upon exercise of the warrants, in addition to the securities otherwise receivable upon exercise of the warrants and without paying any additional consideration, the amount of shares and other securities and property such holders would have been entitled to receive had they held the Class A Common Stock or preferred stock issuable under the warrants on the dates on which holders of those securities received or became entitled to receive such additional shares and other securities and property.

Except as stated above, the exercise price and number of securities covered by a warrant for shares of Class A Common Stock or preferred stock, and the amounts of other securities or property to be received, if any, upon exercise of those warrants, will not be adjusted or provided for if we issue those securities or any securities convertible into or exchangeable for those securities, or securities carrying the right to purchase those securities or securities convertible into or exchangeable for those securities.

Holders of Class A Common Stock warrants or preferred stock warrants may have additional rights under the following circumstances:

certain reclassifications, capital reorganizations or changes of the Class A Common Stock or preferred stock;

**Table of Contents**

certain share exchanges, mergers, or similar transactions involving us that result in changes of the Class A Common Stock or preferred stock; or

certain sales or dispositions to another entity of all or substantially all of our property and assets.

If one of the above transactions occurs and holders of our Class A Common Stock or preferred stock are entitled to receive shares, securities or other property with respect to or in exchange for their securities, the holders of the Class A Common Stock warrants or preferred stock warrants then outstanding, as applicable, will be entitled to receive upon exercise of their warrants the kind and amount of shares and other securities or property that they would have received upon the applicable transaction if they had exercised their warrants immediately before the transaction.



**Table of Contents**

**DESCRIPTION OF RIGHTS**

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the general features of the rights that we may offer under this prospectus. We may issue rights to our stockholders to purchase shares of our Class A Common Stock and/or any of the other securities offered hereby. Each series of rights will be issued under a separate rights agreement to be entered into between us and a bank or trust company, as rights agent. When we issue rights, we will provide the specific terms of the rights and the applicable rights agreement in a prospectus supplement. Because the terms of any rights we offer under a prospectus supplement may differ from the terms we describe below, you should rely solely on information in the applicable prospectus supplement if that summary is different from the summary in this prospectus. We will incorporate by reference into the registration statement of which this prospectus is a part the form of rights agreement that describes the terms of the series of rights we are offering before the issuance of the related series of rights. The applicable prospectus supplement relating to any rights will describe the terms of the offered rights, including, where applicable, the following:

the date for determining the persons entitled to participate in the rights distribution;

the exercise price for the rights;

the aggregate number or amount of underlying securities purchasable upon exercise of the rights;

the number of rights issued to each stockholder and the number of rights outstanding, if any;

the extent to which the rights are transferable;

the date on which the right to exercise the rights will commence and the date on which the right will expire;

the extent to which the rights include an over-subscription privilege with respect to unsubscribed securities;

anti-dilution provisions of the rights, if any; and

any other terms of the rights, including terms, procedures and limitations relating to the distribution, exchange and exercise of the rights.

Holders may exercise rights as described in the applicable prospectus supplement. Upon receipt of payment and the rights certificate properly completed and duly executed at the corporate trust office of the rights agent or any other office indicated in the prospectus supplement, we will, as soon as practicable, forward the securities purchasable upon exercise of the rights. If less than all of the rights issued in any rights offering are exercised, we may offer any unsubscribed securities directly to persons other than stockholders, to or through agents, underwriters or dealers or

through a combination of such methods, including pursuant to standby underwriting arrangements, as described in the applicable prospectus supplement.

**Table of Contents**

**DESCRIPTION OF UNITS**

We may issue units comprising two or more securities described in this prospectus in any combination. For example, we might issue units consisting of a combination of debt securities and warrants to purchase Class A Common Stock. The following description sets forth certain general terms and provisions of the units that we may offer pursuant to this prospectus. The particular terms of the units and the extent, if any, to which the general terms and provisions may apply to the units so offered will be described in the applicable prospectus supplement.

Each unit will be issued so that the holder of the unit also is the holder of each security included in the unit. Thus, the unit will have the rights and obligations of a holder of each included security. Units will be issued pursuant to the terms of a unit agreement, which may provide that the securities included in the unit may not be held or transferred separately at any time or at any time before a specified date. A copy of the forms of the unit agreement and the unit certificate relating to any particular issue of units will be filed with the SEC each time we issue units, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the unit agreement and the related unit certificate, see [Where You Can Find More Information](#).

The prospectus supplement relating to any particular issuance of units will describe the terms of those units, including, to the extent applicable, the following:

the designation and terms of the units and the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;

any provision for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units; and

whether the units will be issued in fully registered or global form.

**Table of Contents**

**PLAN OF DISTRIBUTION**

We may sell the securities, and the selling stockholders may sell some or all of the shares of Class A Common Stock that they currently hold or that may be issued in exchange for outstanding LLC Units, from time to time, by a variety of methods, including the following:

on any national securities exchange or quotation service on which our securities may be listed at the time of sale, including the Nasdaq;

in the over-the-counter market;

in transactions otherwise than on such exchange or in the over-the-counter market, which may include privately negotiated transactions and sales directly to one or more purchasers;

through ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

through purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

through underwriters, broker-dealers, agents, in privately negotiated transactions, or any combination of these methods;

through short sales;

through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;

a combination of any of these methods; or

by any other method permitted pursuant to applicable law.

As used in this prospectus, selling stockholders includes donees, pledgees, transferees or other successors-in-interest selling shares received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other non-sale related transfer.

We will not receive any proceeds from the sale of shares of our Class A Common Stock that may be sold from time to time pursuant to this prospectus by the selling stockholders. We will bear the costs associated with this registration in accordance with the LLC's limited liability company agreement. However, the selling stockholders will bear any brokerage commissions, transfer taxes, or underwriting commissions and discounts attributable to their sale of shares

of our Class A Common Stock.

The securities may be distributed from time to time in one or more transactions:

at a fixed price or prices, which may be changed;

at market prices prevailing at the time of sale;

at prices related to such prevailing market prices; or

at negotiated prices.

Offers to purchase the securities being offered by this prospectus may be solicited directly. Agents may also be designated to solicit offers to purchase the securities from time to time. Any agent involved in the offer or sale of our securities will be identified in a prospectus supplement.

If a dealer is utilized in the sale of the securities being offered by this prospectus, the securities will be sold to the dealer, as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.

If an underwriter is utilized in the sale of the securities being offered by this prospectus, an underwriting agreement will be executed with the underwriter at the time of sale and the name of any underwriter will be

**Table of Contents**

provided in the prospectus supplement that the underwriter will use to make resales of the securities to the public. In connection with the sale of the securities, we, or selling stockholders, or the purchasers of securities for whom the underwriter may act as agent, may compensate the underwriter in the form of underwriting discounts or commissions. The underwriter may sell the securities to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for which they may act as agent. Unless otherwise indicated in a prospectus supplement, an agent will be acting on a best efforts basis and a dealer will purchase securities as a principal, and may then resell the securities at varying prices to be determined by the dealer.

Any compensation paid to underwriters, dealers or agents in connection with the offering of the securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers will be provided in the applicable prospectus supplement. Underwriters, dealers and agents participating in the distribution of the securities may be deemed to be underwriters within the meaning of the Securities Act, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions. In compliance with the guidelines of the Financial Industry Regulatory Authority, Inc., or FINRA, the maximum amount of underwriting compensation, including underwriting discounts and commissions, to be paid in connection with any offering of securities pursuant to this prospectus may not exceed 8% of the aggregate principal amount of securities offered. We may enter into agreements to indemnify underwriters, dealers and agents against civil liabilities, including liabilities under the Securities Act, or to contribute to payments they may be required to make in respect thereof and to reimburse those persons for certain expenses.

The securities may or may not be listed on a national securities exchange. To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. This may include over-allotments or short sales of the securities, which involve the sale by persons participating in the offering of more securities than were sold to them. In these circumstances, these persons would cover such over-allotments or short positions by making purchases in the open market or by exercising their over-allotment option, if any. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.

If indicated in the applicable prospectus supplement, underwriters or other persons acting as agents may be authorized to solicit offers by institutions or other suitable purchasers to purchase the securities at the public offering price set forth in the prospectus supplement, pursuant to delayed delivery contracts providing for payment and delivery on the date or dates stated in the prospectus supplement. These purchasers may include, among others, commercial and savings banks, insurance companies, pension funds, investment companies and educational and charitable institutions. Delayed delivery contracts will be subject to the condition that the purchase of the securities covered by the delayed delivery contracts will not at the time of delivery be prohibited under the laws of any jurisdiction in the United States to which the purchaser is subject. The underwriters and agents will not have any responsibility with respect to the validity or performance of these contracts.

We may engage in at-the-market offerings into an existing trading market in accordance with rule 415(a)(4) under the Securities Act. In addition, we or the selling stockholders may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions.

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If the applicable prospectus supplement so indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third party may use securities pledged by us, the selling stockholders or borrowed from us, the selling stockholders or others to settle those sales or to close out any related open borrowings of common stock, and may use securities received from us or the selling stockholders in settlement of those derivatives to

**Table of Contents**

close out any related open borrowings of our common stock. In addition, we or the selling stockholders may loan or pledge securities to a financial institution or other third party that in turn may sell the securities using this prospectus and an applicable prospectus supplement. Such financial institution or other third party may transfer its economic short position to investors in our securities or in connection with a concurrent offering of other securities.

The underwriters, dealers and agents may engage in transactions with us, or perform services for us, in the ordinary course of business for which they receive compensation.



**Table of Contents**

**LEGAL MATTERS**

Unless otherwise indicated in the applicable prospectus supplement, certain legal matters in connection with the offering and the validity of the securities offered by this prospectus, and any supplement thereto, will be passed upon by O Melveny & Myers LLP.

**EXPERTS**

The consolidated financial statements of Malibu Boats, Inc. as June 30, 2018 and 2017, and for each of the years in the three-year period ended June 30, 2018, have been incorporated by reference herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon authority of said firm as experts in accounting and auditing.

**Table of Contents**

**Malibu Boats, Inc.**

**Class A Common Stock**

**Preferred Stock**

**Debt Securities**

**Warrants**

**Rights**

**Units**

**Offered, from time to time, by Malibu Boats, Inc.**

**1,257,231 Shares**

**of**

**Class A Common Stock**

**Offered, from time to time, by the Selling Stockholders**

**Table of Contents****PART II****INFORMATION NOT REQUIRED IN THE PROSPECTUS****ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION**

The following table sets forth the estimated costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the offering of the securities being registered. The selling stockholders will not bear any portion of such costs and expenses. All the amounts shown are estimates, except for the SEC registration fee.

SEC registration fee	\$7,626	(1)
Printing and duplicating expenses		(2)
Legal fees and expenses		(2)
Accounting fees and expenses		(2)
Transfer agent and trustee fees		(2)
Miscellaneous expenses		(2)
<b>Total (3)</b>	<b>\$</b>	<b>(2)</b>

- (1) SEC registration fee reflects fees incurred only for the secondary offering by the selling stockholders named in the prospectus. With respect to the primary offering, we are registering an indeterminate amount of securities under this registration statement, and in accordance with Rules 456(b) and 457(r), we are deferring payment of the registration fee.
- (2) These fees are calculated based on the securities offered and the number of issuances and accordingly cannot be estimated at this time.
- (3) Does not include any fees or expenses in connection with any subsequent underwritten offering and any prospectus supplements prepared in connection therewith.

**ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Our certificate of incorporation limits or eliminates the personal liability of our directors to the fullest extent permitted by Delaware law. We have adopted provisions in our certificate of incorporation and bylaws that allow us to indemnify our officers and directors to the fullest extent allowed by Delaware law, as it now exists or may in the future be amended. These documents further provide that we shall pay expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding for which such officer or director may be entitled to indemnification in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by us.

In addition to the foregoing provisions of our certificate of incorporation and bylaws, our officers and directors may be indemnified by us pursuant to Section 145 of the Delaware General Corporation Law, or the DGCL. Section 145 of the DGCL authorizes a corporation to indemnify its directors and officers against liabilities arising out of actions, suits and proceedings to which they are made or threatened to be made by a party by reason of the fact that they have served or are currently serving as a director or officer to a corporation. The indemnity may cover expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the director or

officer in connection with any such action, suit or proceeding. Section 145 permits corporations to pay expenses (including attorney's fees) incurred by directors and officers in advance of the final disposition of such action, suit or proceeding. In addition, Section 145 provides that a corporation has the power to purchase and maintain insurance on behalf of its directors and officers against any liability asserted against them and incurred by them in their capacity as director or officer, or arising out of their status as such, whether or not the corporation would have the power to indemnify the director or officer against such liability under Section 145.

II-1

**Table of Contents**

We maintain an insurance policy on behalf of our officers and directors against liability asserted against or incurred by such persons in or arising from their capacity as such.

We have entered into indemnification agreements with each of our directors and our executive officers. These agreements provide that we will indemnify each of our directors and executive officers to the fullest extent permitted by law and by our certificate of incorporation or bylaws.

**ITEM 16. EXHIBITS**

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>
1.1*	Form of Underwriting Agreement
4.1(1)	<u>Certificate of Incorporation of Malibu Boats, Inc.</u>
4.2(2)	<u>Bylaws of Malibu Boats, Inc.</u>
4.3(3)	<u>Certificate of Formation of Malibu Boats Holdings, LLC</u>
4.4(4)	<u>First Amended and Restated Limited Liability Company Agreement of Malibu Boats Holdings, LLC, dated as of February 5, 2014</u>
4.4.1(5)	<u>First Amendment, dated as of February 5, 2014, to First Amended and Restated Limited Liability Company Agreement of Malibu Boats Holdings, LLC</u>
4.4.2(6)	<u>Second Amendment, dated as of June 27, 2014, to First Amended and Restated Limited Liability Company Agreement of Malibu Boats Holdings, LLC</u>
4.5(7)	<u>Form of Class A Common Stock Certificate</u>
4.6	<u>Form of Indenture</u>
4.7*	Form of Global Note
4.8*	Certificate of Designations for Preferred Stock
4.9*	Form of Common Stock Warrant Agreement and Warrant Certificate
4.10*	Form of Preferred Stock Warrant Agreement and Warrant Certificate
4.11*	Form of Debt Securities Warrant Agreement and Warrant Certificate
4.12*	Form of Rights Agreement
4.13*	Form of Unit Agreement and Unit Certificate
5.1	<u>Opinion of O Melveny &amp; Myers LLP</u>
10.1(8)	<u>Exchange Agreement, dated as of February 5, 2014, by and among Malibu Boats, Inc. and Affiliates of Black Canyon Capital LLC and Horizon Holdings LLC</u>
10.2(9)	<u>Exchange Agreement, dated as of February 5, 2014, by and among Malibu Boats, Inc. and the Other Members of Malibu Boats Holdings, LLC</u>
12.1	<u>Calculation of ratio of earnings to fixed charges</u>

- 23.1 Consent of KPMG LLP
- 23.2 Consent of O Melveny & Myers LLP (included in Exhibit 5.1)

II-2

**Table of Contents**

**EXHIBIT  
NUMBER**

**DESCRIPTION**

24.1	<u>Power of Attorney (included on signature pages)</u>
25.1	Form T-1 Statement of Eligibility of Trustee under the Indenture.

\* To be filed either by amendment or as an exhibit to a report filed under the Exchange Act, and incorporated herein by reference.

To be filed separately under the electronic form type 305(b)(2) of the Trust Indenture Act of 1939, as amended.

- (1) Incorporated by reference to Exhibit 3.1 to Amendment No. 1 to Malibu Boats, Inc. s Registration Statement on Form S-1 filed on January 8, 2014.
- (2) Incorporated by reference to Exhibit 3.2 to Amendment No. 1 to Malibu Boats, Inc. s Registration Statement on Form S-1 filed on January 8, 2014.
- (3) Incorporated by reference to Exhibit 3.3 to Amendment No. 1 to Malibu Boats, Inc. s Registration Statement on Form S-1 filed on January 8, 2014.
- (4) Incorporated by reference to Exhibit 10.1 to Malibu Boats, Inc. s Current Report on Form 8-K filed on February 6, 2014.
- (5) Incorporated by reference to Exhibit 3.5 to Malibu Boats, Inc. s Quarterly Report on Form 10-Q/A filed on May 13, 2014.
- (6) Incorporated by reference to Exhibit 3.1 to Malibu Boats, Inc. s Current Report on Form 8-K filed on June 27, 2014.
- (7) Incorporated by reference to Exhibit 4.1 to Amendment No. 1 to Malibu Boats, Inc. s Registration Statement on Form S-1 filed on January 8, 2014.
- (8) Incorporated by reference to Exhibit 10.2 to Malibu Boats, Inc. s Current Report on Form 8-K filed on February 6, 2014.
- (9) Incorporated by reference to Exhibit 10.3 to Malibu Boats, Inc. s Current Report on Form 8-K filed on February 6, 2014.

**ITEM 17. UNDERTAKINGS**

The undersigned registrant hereby undertakes:

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

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that clauses (i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those clauses is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act, as amended, that are incorporated by

II-3



**Table of Contents**

reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is a part of this registration statement;

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

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

(4) That, for the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; and

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

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

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

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

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

The undersigned registrant hereby further undertakes:

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(1) That for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof;

II-4

**Table of Contents**

(2) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue; and

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

Table of Contents**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Loudon, State of Tennessee, on September 7, 2018.

MALIBU BOATS, INC.

By: /s/ Jack D. Springer  
Jack D. Springer

Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints each of Michael K. Hooks and Wayne R. Wilson, or either of them, each acting alone, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for such person and in his or her name, place and stead, in any and all capacities, in connection with the registrant's Registration Statement on Form S-3 under the Securities Act, any and all post-effective amendments to this Registration Statement, and any Registration Statement filed pursuant to Rule 413 or Rule 462 under the Securities Act, and to file or cause to be filed the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them singly, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the foregoing, as fully and to all intents and purposes as each might or could do in person hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitute or substitutes, may lawfully do or cause to be done by virtue of this Power of Attorney.

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

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Jack D. Springer	Chief Executive Officer and Director	September 7, 2018
Jack D. Springer	(Principal Executive Officer)	
/s/ Wayne R. Wilson	Chief Financial Officer	September 7, 2018
Wayne R. Wilson	(Principal Financial and Accounting Officer)	
/s/ Michael K. Hooks	Chairman of the Board and Director	September 7, 2018
Michael K. Hooks		

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/s/ Mark W. Lanigan	Director	September 7, 2018
Mark W. Lanigan		
/s/ Phillip S. Estes	Director	September 7, 2018
Phillip S. Estes		
/s/ James R. Buch	Director	September 7, 2018
James R. Buch		
/s/ Ivar S. Chhina	Director	September 7, 2018
Ivar S. Chhina		

II-6

**Table of Contents**

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Michael J. Connolly Michael J. Connolly	Director	September 7, 2018
/s/ Peter E. Murphy Peter E. Murphy	Director	September 7, 2018
/s/ William Paxson St. Clair, Jr. William Paxson St. Clair, Jr.	Director	September 7, 2018
/s/ John E. Stokely John E. Stokely	Director	September 7, 2018

II-7