

TODCO Americas Inc.  
Form POSASR  
March 02, 2015  
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As filed with the Securities and Exchange Commission on March 2, 2015

Registration No. 333-192970

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

**POST-EFFECTIVE AMENDMENT NO. 1**

**to**

**FORM S-3**

**REGISTRATION STATEMENT**

***UNDER***

***THE SECURITIES ACT OF 1933***

**HERCULES OFFSHORE, INC.**

**Subsidiary Guarantors Listed on Schedule A Hereto**

**(Exact name of registrant as specified in its charter)**

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

**9 Greenway Plaza, Suite 2200**  
**Houston, Texas 77046**  
**(713) 350-5100**  
**(Address, including zip code, and**  
**telephone**  
**number, including area code, of**  
**registrant s principal executive**  
**offices)**

**56-2542838**  
**(I.R.S. Employer**  
**Identification Number)**

**Beau M. Thompson, Esq.**  
**General Counsel and Secretary**

**Hercules Offshore, Inc.**

**9 Greenway Plaza, Suite 2200**  
**Houston, Texas 77046**  
**(713) 350-5100**

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

*Copies To:*

**Melinda Brunger, Esq.**

**Andrews Kurth LLP**

**600 Travis Street**

**Suite 4200**

**Houston, Texas 77002**

**(713) 220-4200**

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

If the only securities being registered on this Form are to be 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, as amended (the *Securities Act*), other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting

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

(Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered/Proposed	Amount of Registration Fee(3)
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**Maximum**

**Aggregate**

**Offering Price(1)(2)**

Debt Securities		
Preferred Stock, par value \$0.01 per share		
Common Stock, par value \$0.01 per share		
Warrants		
Rights (4)		
Purchase Contracts (5)		
Depository Shares (6)		
Guarantees (7)		
Units (8)		
Total	\$400,000,000.00	\$46,480.00

- (1) Estimated solely for the purpose of computing the registration fee pursuant to Rule 457(o) under the Securities Act and exclusive of accrued interest, distributions and dividends, if any. In no event will the aggregate initial offering price of all securities issued from time to time pursuant to this Registration Statement exceed \$400,000,000.00 or the equivalent thereof in foreign currencies, foreign currency units or composite currencies. If any debt securities are issued at an original issue discount, then the offering price shall be in such greater principal amount as shall result in an aggregate initial offering price of up to \$400,000,000.00 or the equivalent thereof in foreign currencies, foreign currency units or composite currencies, less the dollar amount of any securities previously issued hereunder. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder or other securities.
- (2) There is being registered hereunder such indeterminate number or amount of debt securities (with or without guarantees), common stock, preferred stock, warrants, rights, units, purchase contracts, and depository shares as may from time to time be issued by the registrant at indeterminate prices and in such amount as shall result in an aggregate offering price not to exceed \$400,000,000.00, and as may be issuable upon conversion, redemption, exchange, exercise or settlement of any securities registered hereunder, including under any applicable antidilution provision.
- (3) Calculated under Rule 457(o) of the rules and regulations under the Securities Act of 1933, as amended.
- (4) Rights may be issued to purchase shares of common stock and/or any of the other securities of the registrant registered hereby. Each series of rights will be issued under a separate rights agreement to be entered into between the registrant and a bank or trust company, as rights agent.
- (5) Purchase contracts may be issued for the purchase and sale of any securities of the registrant registered hereby.
- (6) In the event the registrant elects to offer fractional interests in shares of the preferred stock registered hereunder, preferred stock will be issued to the depository under a deposit agreement, and fractional interests will be evidenced by a depository receipt.
- (7) Pursuant to Rule 457(m), no additional registration fee is required in respect of the guarantees of debt securities registered hereunder.
- (8) Units may consist of any combination of the securities being registered hereunder.

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<b>Exact Name of Registrant as Specified in its Charter (1)</b>	<b>State or Jurisdiction of Incorporation or Organization</b>	<b>I.R.S. Employer Identification No.</b>
Cliffs Drilling Company	Delaware	76-0248934
Cliffs Drilling Trinidad L.L.C.	Delaware	76-0555205
FDT LLC	Delaware	76-0667581
FDT Holdings LLC	Delaware	72-1494277
Hercules Drilling Company, LLC	Delaware	81-0652771
Hercules Liftboat Company, LLC	Delaware	43-2060791
Hercules Offshore Liftboat Company LLC	Delaware	27-0685303
Hercules Offshore Services LLC	Delaware	20-5951670
HERO Holdings, Inc.	Delaware	27-1705475
SD Drilling LLC	Delaware	27-5428190
THE Offshore Drilling Company	Delaware	72-1284465
THE Onshore Drilling Company	Delaware	20-5601072
TODCO Americas Inc.	Delaware	20-2970289
TODCO International Inc.	Delaware	20-2970326

(1) The name, address, including zip code, and telephone number of the agent for service of process are the same as those of Hercules Offshore, Inc.

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**EXPLANATORY NOTE**

This Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 (Commission File No. 333-192970) (the Registration Statement ) of Hercules Offshore, Inc. (the Registrant ) is being filed because the Registrant expects that it will no longer be a well-known seasoned issuer (as such term is defined in Rule 405 of the Securities Act) when it files its Annual Report on Form 10-K for the fiscal year ended December 31, 2014. This Post-Effective Amendment No. 1 adds disclosure to the Registration Statement required for a registrant other than a well-known seasoned issuer and makes certain other amendments.

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**Prospectus**

**Hercules Offshore, Inc.**

**\$400,000,000**

**Debt Securities**

**Preferred Stock**

**Common Stock**

**Warrants**

**Rights**

**Purchase Contracts**

**Depository Shares**

**Guarantees**

**Units**

We will provide the specific terms of the securities in supplements to this prospectus. You should read this prospectus and any supplement carefully before you invest. Our common stock is listed on the NASDAQ Global Select Market under the trading symbol HERO.

**Investing in our securities involves risks. Please read Risk Factors on page 5 of this prospectus.**

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

**The date of this prospectus is March 2, 2015**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we file with the Securities and Exchange Commission (the SEC ) using a shelf registration process. Under this shelf registration process, we may offer from time to time up to \$400,000,000 in total aggregate offering price of our securities. Each time we offer securities, we will provide you with a prospectus supplement that will describe, among other things, the specific amounts, types and prices of the securities being offered and the terms of the offering. Any prospectus supplement may add, update or change information contained or incorporated by reference in this prospectus. Any statement that we make in or incorporate by reference in this prospectus will be modified or superseded by any inconsistent statement made by us or incorporated by reference in a prospectus supplement. Therefore, you should read this prospectus (including any documents incorporated by reference) and any attached prospectus supplement before you invest in our securities.

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**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You can read and copy these materials at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You can obtain information about the operation of the SEC's public reference room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet site that contains information we have filed electronically with the SEC, which you can access over the Internet at <http://www.sec.gov>.

This prospectus is part of a registration statement we have filed with the SEC relating to the securities we may offer. As permitted by SEC rules, this prospectus does not contain all of the information we have included in the registration statement and the accompanying exhibits and schedules we file with the SEC. You may refer to the registration statement, exhibits and schedules for more information about us and the securities. The registration statement, exhibits and schedules are available at the SEC's public reference room or through its Internet site.

General information about us, including our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, as well as any amendments and exhibits to those reports, are available free of charge through our website at <http://www.herculesoffshore.com> as soon as reasonably practicable after we file them with, or furnish them to, the SEC. Information on our website is not incorporated into this prospectus or our other securities filings and is not a part of this prospectus.

**INCORPORATION BY REFERENCE**

The SEC allows us to incorporate by reference the information we have filed with it, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), until the termination of this offering. The documents we incorporate by reference are:

our annual report on Form 10-K for the year ended December 31, 2013;

our quarterly reports on Form 10-Q for the periods ended March 31, 2014, June 30, 2014 and September 30, 2014;

our current reports on Form 8-K filed with the SEC on February 25, 2014, March 7, 2014, March 18, 2014, March 31, 2014, May 16, 2014, October 7, 2014, November 12, 2014 and February 24, 2015, in each case other than information furnished under Item 2.02 or 7.01 of Form 8-K;

our current report on Form 8-K filed with the SEC on April 27, 2011, as amended by our amended current reports on Form 8-K/A filed on July 8, 2011 and on March 20, 2012. The unaudited historical consolidated financial statements of Seahawk Drilling, Inc., as of and for the three-month period ending March 31, 2011, included in our current report on Form 8-K/A filed with the SEC on March 20, 2012, have not been subject to a review in accordance with Statement on Auditing Standards No. 100, *Interim Financial Information*, by KPMG LLP (or

any public accountant); and

the description of our common stock contained in our registration statement on Form 8-A as filed with the SEC on October 21, 2005, as that description may be updated from time to time.

All documents that we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and until any offerings hereunder are completed will be deemed to be incorporated by reference into this prospectus and will be a part of this prospectus from the date of the filing of the document. Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or in any other subsequently filed document that also is or is deemed to be incorporated by reference in this prospectus modifies or supersedes that statement. Any statement that is modified or superseded will not constitute a part of this prospectus, except as modified or superseded.

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We will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of these filings, other than an exhibit to these filings unless we have specifically incorporated that exhibit by reference into the filing, upon written or oral request and at no cost. Requests should be made by writing or telephoning us at the following address:

Hercules Offshore, Inc.  
9 Greenway Plaza, Suite 2200  
Houston, Texas 77046  
Telephone: (713) 350-5100  
Attention: Investor Relations

**You should rely only on the information contained or incorporated by reference in this prospectus, the prospectus supplement and any pricing supplement. We have not authorized any person, including any salesman or broker, to provide information other than that provided or incorporated by reference in this prospectus, the prospectus supplement or any pricing supplement. We are not making an offer to sell or soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information in this prospectus, the prospectus supplement and any pricing supplement is accurate only as of the date on its cover page and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference.**

**FORWARD-LOOKING INFORMATION**

This prospectus, including the information we incorporate by reference, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Exchange Act. All statements, other than statements of historical fact, included in this prospectus or the documents we incorporate by reference that address outlook, activities, events or developments that we intend, contemplate, estimate, expect, project, believe or anticipate will or may occur in the future are forward-looking statements. These include such matters as:

our levels of indebtedness, covenant compliance and access to capital under current market conditions;

our ability to enter into new contracts for our rigs and liftboats, including the *Hercules Triumph* and *Hercules Resilience*, and future utilization rates and dayrates for the units;

our ability to maintain our contracts on current terms, to renew or extend our contracts, or enter into new contracts, when such contracts expire;

demand for our rigs and our liftboats;

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activity levels of our customers and their expectations of future energy prices and ability to obtain drilling permits in an efficient manner or at all;

sufficiency and availability of funds for required capital expenditures, working capital and debt service;

our ability to close the sale and purchase of assets on time;

expected completion times for our repair, refurbishment and upgrade projects;

our ability to complete our shipyard projects incident free;

our ability to complete our shipyard projects on time to avoid cost overruns and contract penalties;

our ability to effectively reactivate rigs that we have stacked;

the timing and cost of shipyard projects and refurbishments and the return of idle rigs to work;

our plans to increase international operations;

expected useful lives of our rigs and liftboats;

future capital expenditures and refurbishment, reactivation, transportation, repair and upgrade costs;

liabilities and restrictions under applicable laws of the jurisdictions in which we operate and regulations protecting the environment;

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expected outcomes of litigation, investigations, claims, disputes and tax audits and their expected effects on our financial condition and results of operations;

the existence of insurance coverage and the extent of recovery from our insurance underwriters for claims made under our insurance policies; and

expectations regarding offshore drilling and liftboat activity and dayrates, market conditions, demand for our rigs and liftboats, operating revenue, operating and maintenance expense, insurance coverage, insurance expense and deductibles, interest expense, debt levels and other matters with regard to outlook and future earnings.

We have based these statements on our assumptions and analyses in light of our experience and perception of historical trends, current conditions, expected future developments and other factors we believe are appropriate in the circumstances. Forward-looking statements by their nature involve substantial risks and uncertainties that could significantly affect expected results, and actual future results could differ materially from those described in such statements. Although it is not possible to identify all factors, we continue to face many risks and uncertainties. Among the factors that could cause actual future results to differ materially are the risks and uncertainties described under the heading **Risk Factors** below and in our most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q filed with the SEC, as well as the following:

oil and natural gas prices and industry expectations about future prices;

levels of oil and gas exploration and production spending;

demand for and supply of offshore drilling rigs and liftboats;

our ability to enter into and the terms of future contracts;

compliance by our customers with the terms of our contracts, including the dayrate and payment obligations;

the adequacy and costs of sources of credit and liquidity;

our ability to collect receivables due from our customers;

the worldwide military and political environment, uncertainty or instability resulting from an escalation or additional outbreak of armed hostilities or other crises in the Middle East, North Africa, West Africa, Asia, Eastern Europe and other significant oil and natural gas producing regions or acts of terrorism or piracy;

the ability of our customers in the U.S. Gulf of Mexico to obtain drilling permits in an efficient manner or at all;

the impact of governmental laws and regulations, including laws and regulations in the U.S. Gulf of Mexico following the Macondo well incident;

our ability to obtain in a timely manner visas and work permits for our employees working in international jurisdictions;

the impact of local content and cabotage laws and regulations in international jurisdictions in which we operate, particularly Nigeria;

the impact of tax laws, regulations, interpretations and audits in jurisdictions where we conduct business;

uncertainties relating to the level of activity in offshore oil and natural gas exploration, development and production;

competition and market conditions in the contract drilling and liftboat industries;

the availability of skilled personnel and the rising cost of labor;

labor relations and work stoppages, particularly in the Nigerian labor environment;

operating hazards such as hurricanes, severe weather and seas, fires, cratering, blowouts and other well control incidents, war, terrorism and cancellation or unavailability of insurance coverage or insufficient insurance coverage;

the impact of public health outbreaks;

the enforceability and interpretations of indemnity and liability provisions contained in our drilling contracts, particularly in the U.S. Gulf of Mexico;

the effect of litigation, investigations, audits and contingencies; and

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our inability to achieve our plans or carry out our strategy.

Many of these factors are beyond our ability to control or predict. Any of these factors, or a combination of these factors, could materially affect our future financial condition or results of operations and the ultimate accuracy of the forward-looking statements. These forward-looking statements are not guarantees of our future performance, and our actual results and future developments may differ materially from those projected in the forward-looking statements. Management cautions against putting undue reliance on forward-looking statements or projecting any future results based on such statements or present or prior earnings levels. In addition, each forward-looking statement speaks only as of the date of the particular statement, and we undertake no obligation to publicly update or revise any forward-looking statements except as required by applicable law.

### **HERCULES OFFSHORE, INC.**

Hercules Offshore, Inc., a Delaware corporation, is a leading provider of shallow-water drilling and marine services to the oil and natural gas exploration and production industry globally. We provide these services to national oil and gas companies, major integrated energy companies and independent oil and natural gas operators. Our diverse fleet of jackup rigs and liftboat vessels, including two ultra-high specification jackup rigs, is capable of providing services such as oil and gas exploration and development drilling, well service, platform inspection, maintenance and decommissioning operations in several key shallow-water provinces around the world.

Our principal executive office is located at 9 Greenway Plaza, Suite 2200 in Houston, Texas, and our telephone number is (713) 350-5100.

### **RECENT EVENTS**

Demand for the Company's oilfield services is driven by its exploration and production customers' capital spending, which can experience significant fluctuation depending on current commodity prices and their expectations of future price levels, among other factors. The recent decline in the price of crude oil has negatively impacted dayrates and demand for the Company's services. In addition to the oil price decline, the consolidation of the domestic customer base has negatively impacted demand for jackup rigs in the U.S. Gulf of Mexico. Internationally, the new capacity growth expected over the next three years could put further pressure on the operating environment for the existing jackup rig fleet. Although activity levels for liftboats are not as closely correlated to commodity prices as the Company's drilling segments, commodity prices are still a key driver of liftboat demand. Demand for liftboat services in West Africa has been volatile, which the Company believes has been driven by budgetary constraints with major customers primarily in Nigeria.

On February 25, 2015, the Company received a notice from Saudi Aramco terminating for convenience its drilling contract for the *Hercules 261*, effective on or about March 27, 2015. The Company is in the process of seeking a basis for continuing the *Hercules 261* contract. There will be no termination fee payable to the Company under the contract as a result of such termination.

The Company's immediate capital resources to fund and grow operations come from cash on hand, cash from operations and availability under its revolving credit facility. The Company has taken numerous actions to mitigate the effects of the decline in activity levels, including but not limited to: (i) cold stacking nine rigs over the past six months to significantly reduce operating expenses, (ii) significantly reducing its capital expenditures planned for 2015 and (iii) significantly reducing its workforce, both onshore and offshore. The Company continues to monitor its operating environment and will respond to further activity level declines as appropriate. The Company believes these steps will enhance its liquidity and further believes, based upon the current business environment and activity levels, it will have adequate liquidity to fund its operations through December 31, 2015; however, the Company cannot predict how an

extended period of low commodity prices will affect its operations and liquidity levels.

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**RISK FACTORS**

The securities to be offered by this prospectus may involve a high degree of risk. When considering an investment in our securities, you should consider carefully all of the risk factors described in our Annual Report on Form 10-K for the year ended December 31, 2013 and any subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K or other documents incorporated by reference into this prospectus or filed by us with the SEC after the date of this prospectus, as well as those risk factors that may be included in any applicable prospectus supplement.

**USE OF PROCEEDS**

Unless we inform you otherwise in any applicable prospectus supplement, we expect to use the net proceeds from the sale of the securities described in this prospectus for general corporate purposes, including repayment or refinancing of debt, acquisitions, working capital, capital expenditures and repurchases and redemptions of securities. Pending any specific application, we may initially invest funds in short-term marketable securities or apply them to the reduction of indebtedness.

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We have presented in the table below our historical consolidated ratio of earnings to fixed charges for the periods shown. We had no preferred stock outstanding for any period presented, and accordingly, the ratio of earnings to combined fixed charges and preferred stock dividends is the same as the ratio of earnings to fixed charges.

	Nine Months Ended September 30,		Year Ended December 31,				
	2014	2013	2012	2011	2010	2009	
	(a)	(b)	(c)	(d)	(e)	(f)	
Ratio of earnings to fixed charges							

- (a) Earnings as adjusted were insufficient to cover our fixed charges by \$59.6 million for the nine months ended September 30, 2014.
- (b) Earnings as adjusted were insufficient to cover our fixed charges by \$56.3 million for the year ended December 31, 2013.
- (c) Earnings as adjusted were insufficient to cover our fixed charges by \$142.2 million for the year ended December 31, 2012.
- (d) Earnings as adjusted were insufficient to cover our fixed charges by \$81.4 million for the year ended December 31, 2011.
- (e) Earnings as adjusted were insufficient to cover our fixed charges by \$208.9 million for the year ended December 31, 2010.
- (f) Earnings as adjusted were insufficient to cover our fixed charges by \$112.2 million for the year ended December 31, 2009.

We have computed the ratios of earnings to fixed charges by dividing earnings by fixed charges. For this purpose, earnings consist of pretax income (loss) from continuing operations before adjustment for noncontrolling interest and loss from equity investee, plus fixed charges and amortization of capitalized interest, less capitalized interest. Fixed charges consist of interest expensed and capitalized (including amortization of debt expense), less realized losses on derivative instruments included in interest expense, plus our estimate of the interest component of rental expense.

**DESCRIPTION OF DEBT SECURITIES**

Any debt securities that we offer under a prospectus supplement will be direct, unsecured general obligations. The debt securities will be either senior debt securities or subordinated debt securities. The debt securities will be issued under one or more separate indentures between us and U.S. Bank National Association, as trustee. Senior debt securities will be issued under a senior indenture and subordinated debt securities will be issued under a subordinated indenture. Together, the senior indenture and the subordinated indenture are called indentures. The indentures will be supplemented by supplemental indentures, the material provisions of which will be described in a prospectus supplement.

As used in this description, the words we, us and our refer to Hercules Offshore, Inc. and not to any of its subsidiaries or affiliates.

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We have summarized some of the material provisions of the indentures below. This summary does not restate those agreements in their entirety. A form of senior indenture and a form of subordinated indenture have been filed as exhibits to the registration statement of which this prospectus is a part. We urge you to read each of the indentures because each one, and not this description, defines the rights of holders of debt securities.

Capitalized terms defined in the indentures have the same meanings when used in this prospectus.

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**General**

The debt securities issued under the indentures will be our direct, unsecured general obligations. The senior debt securities will rank equally with all of our other senior and unsubordinated debt. The subordinated debt securities will have a junior position to all of our senior debt.

The following description sets forth the general terms and provisions that could apply to debt securities that we may offer to sell. A prospectus supplement relating to any series of debt securities being offered will include specific terms relating to the offering. These terms will include some or all of the following, among others:

the title and type of the debt securities;

the total principal amount of the debt securities;

the percentage of the principal amount at which the debt securities will be issued and any payments due if the maturity of the debt securities is accelerated;

the dates on which the principal of the debt securities will be payable;

the interest rate which the debt securities will bear and the interest payment dates for the debt securities;

any conversion or exchange features;

any optional redemption periods;

any sinking fund or other provisions that would obligate us to repurchase or otherwise redeem some or all of the debt securities;

any provisions granting special rights to holders when a specified event occurs;

any changes to or additional events of default or covenants;

any special tax implications of the debt securities, including provisions for original issue discount securities, if offered; and

any other terms of the debt securities.

Neither of the indentures will limit the amount of debt securities that may be issued. Each indenture will allow debt securities to be issued up to the principal amount that may be authorized by us and may be in any currency or currency unit designated by us.

Debt securities of a series may be issued in registered or global form.

### **Subsidiary Guarantees**

If the applicable prospectus supplement relating to a series of our senior debt securities provides that those senior debt securities will have the benefit of a guarantee by any or all of our subsidiaries, payment of the principal, premium, if any, and interest on those senior debt securities will be fully and unconditionally guaranteed on an unsecured, unsubordinated basis by such subsidiary or subsidiaries. The guarantee of senior debt securities will rank equally in right of payment with all of the unsecured and unsubordinated indebtedness of such subsidiary or subsidiaries.

If the applicable prospectus supplement relating to a series of our subordinated debt securities provides that those subordinated debt securities will have the benefit of a guarantee by any or all of our subsidiaries, payment of the principal, premium, if any, and interest on those subordinated debt securities will be fully and unconditionally guaranteed on an unsecured, subordinated basis by such subsidiary or subsidiaries. The guarantee of the subordinated debt securities will be subordinated in right of payment to all of such subsidiary s or subsidiaries existing and future senior indebtedness (as defined in the related prospectus supplement), including any guarantee of the senior debt securities, to the same extent and in the same manner as the subordinated debt securities are subordinated to our senior indebtedness (as defined in the related prospectus supplement). See Subordination below.

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The obligations of our subsidiaries under any such guarantee will be limited as necessary to prevent the guarantee from constituting a fraudulent conveyance or fraudulent transfer under applicable law.

**Covenants**

Under the indentures, we:

will pay the principal of, and interest and any premium on, the debt securities when due;

will maintain a place of payment;

will deliver a certificate to the trustee each fiscal year reviewing our compliance with our obligations under the indentures;

will preserve our corporate existence; and

will segregate or deposit with any paying agent sufficient funds for the payment of any principal, interest or premium on or before the due date of such payment.

**Mergers and Sale of Assets**

Each of the indentures will provide that we may not consolidate with or merge into any other Person or sell, convey, transfer or lease all or substantially all of our properties and assets (on a consolidated basis) to another Person, unless:

either: (a) we are the surviving Person; or (b) the Person formed by or surviving any such consolidation, amalgamation or merger or resulting from such conversion (if other than us) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, limited liability company or limited partnership organized or existing under the laws of the United States, any State thereof or the District of Columbia;

the Person formed by or surviving any such conversion, consolidation, amalgamation or merger (if other than us) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all of our obligations under such indenture and the debt securities governed thereby pursuant to agreements reasonably satisfactory to the trustee, which may include a supplemental indenture;

we or the successor will not immediately be in default under such indenture; and

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we deliver an officer's certificate and opinion of counsel to the trustee stating that such consolidation, amalgamation, merger, conveyance, sale, transfer or lease and any supplemental indenture comply with such indenture and that all conditions precedent set forth in such indenture have been complied with.

Upon the assumption of our obligations under each indenture by a successor, we will be discharged from all obligations under such indenture.

As used in the indenture and in this description, the word *Person* means any individual, corporation, company, limited liability company, partnership, limited partnership, joint venture, association, joint-stock company, trust, other entity, unincorporated organization or government or any agency or political subdivision thereof.

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### Events of Default

*Event of default*, when used in the indentures with respect to debt securities of any series, will mean any of the following:

- (1) 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;
- (2) default in the payment of the principal of (or premium, if any, on) any debt security of that series at its maturity;
- (3) default in the performance, or breach, of any covenant set forth in Article Ten of the applicable indenture (other than a covenant a default in the performance of which or the breach of which is elsewhere specifically dealt with as an event of default or which has expressly been included in such indenture solely for the benefit of one or more series of debt securities other than that series), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to us by the trustee or to us and the trustee by the holders of at least 25% in principal amount of the then-outstanding debt securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a *Notice of Default* thereunder;
- (4) default in the performance, or breach, of any covenant in the applicable indenture (other than a covenant set forth in Article Ten of such indenture or any other covenant a default in the performance of which or the breach of which is elsewhere specifically dealt with as an event of default or which has expressly been included in such indenture solely for the benefit of one or more series of debt securities other than that series), and continuance of such default or breach for a period of 180 days after there has been given, by registered or certified mail, to us by the trustee or to us and the trustee by the holders of at least 25% in principal amount of the then-outstanding debt securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a *Notice of Default* thereunder;
- (5) we, pursuant to or within the meaning of any bankruptcy law, (i) commence a voluntary case, (ii) consent to the entry of any order for relief against us in an involuntary case, (iii) consent to the appointment of a custodian of us or for all or substantially all of our property, or (iv) make a general assignment for the benefit of our creditors;
- (6) a court of competent jurisdiction enters an order or decree under any bankruptcy law that (i) is for relief against us in an involuntary case, (ii) appoints a custodian of us or for all or substantially all of our property, or (iii) orders the liquidation of us, and the order or decree remains unstayed and in effect for 60 consecutive days;
- (7) default in the deposit of any sinking fund payment when due; or
- (8) any other event of default provided with respect to debt securities of that series in accordance with provisions of the indenture related to the issuance of such debt securities.

An event of default for a particular series of debt securities does not necessarily constitute an event of default for any other series of debt securities issued under an indenture. The trustee may withhold notice to the holders of debt securities of any default (except in the payment of principal, interest or any premium) if it considers the withholding of notice to be in the interests of the holders.

If an event of default for any series of debt securities occurs and continues, the trustee or the holders of 25% in aggregate principal amount of the debt securities of the series may declare the entire principal of all of the debt securities of that series to be due and payable immediately. If this happens, subject to certain conditions, the holders of

a majority of the aggregate principal amount of the debt securities of that series can void the declaration.

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Other than its duties in case of a default, a trustee is not obligated to exercise any of its rights or powers under any indenture at the request, order or direction of any holders, unless the holders offer the trustee reasonable indemnity. If they provide this reasonable indemnification, the holders of a majority in principal amount outstanding of any series of debt securities may direct the time, method and place of conducting any proceeding or any remedy available to the trustee, or exercising any power conferred upon the trustee, for any series of debt securities.

## **Amendments and Waivers**

Subject to certain exceptions, the indentures, the debt securities issued thereunder or the subsidiary guarantees may be amended or supplemented with the consent of the holders of a majority in aggregate principal amount of the then-outstanding debt securities of each series affected by such amendment or supplemental indenture, with each such series voting as a separate class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, debt securities) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with respect to each series of debt securities with the consent of the holders of a majority in principal amount of the then-outstanding debt securities of such series voting as a separate class (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, debt securities).

Without the consent of each holder of the outstanding debt securities affected, an amendment, supplement or waiver may not, among other things:

- (1) change the stated maturity of the principal of, or any installment of principal of or interest on, any debt security, reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, reduce the amount of the principal of an original issue discount security that would be due and payable upon a declaration of acceleration of the maturity thereof pursuant to the applicable indenture, change the coin or currency in which any debt security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption, on or after the redemption date therefor);
- (2) reduce the percentage in principal amount of the then-outstanding debt securities of any series, the consent of the holders of which is required for any such amendment or supplemental indenture, or the consent of the holders of which is required for any waiver of compliance with certain provisions of the applicable indenture or certain defaults thereunder and their consequences provided for in the applicable indenture;
- (3) modify any of the provisions set forth in (i) the provisions of the applicable indenture related to the holder's unconditional right to receive principal, premium, if any, and interest on the debt securities or (ii) the provisions of the applicable indenture related to the waiver of past defaults under such indenture;
- (4) waive a redemption payment with respect to any debt security; provided, however, that any purchase or repurchase of debt securities shall not be deemed a redemption of the debt securities;
- (5) release any guarantor from any of its obligations under its guarantee or the applicable indenture, except in accordance with the terms of such indenture (as amended or supplemented); or
- (6) make any change in the foregoing amendment and waiver provisions, except to increase any percentage provided for therein or to provide that certain other provisions of the applicable indenture cannot be modified or waived without the consent of the holder of each then-outstanding debt security affected thereby.

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Notwithstanding the foregoing, without the consent of any holder of debt securities, we, the guarantors and the trustee may amend each of the indentures or the debt securities issued thereunder to:

(1) cure any ambiguity or defect or to correct or supplement any provision therein that may be inconsistent with any other provision therein;

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(2) evidence the succession of another Person to us and the assumption by any such successor of our covenants therein and, to the extent applicable, of the debt securities;

(3) provide for unc