

MOHAWK INDUSTRIES INC

Form POSASR

September 01, 2017

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As filed with the Securities and Exchange Commission on September 1, 2017

Registration No. 333-219716

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*

MOHAWK INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

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

**52-1604305**  
**(I.R.S. Employer**  
**Identification No.)**

**P.O. Box 12069**

**160 S. Industrial Blvd.**

**Calhoun, Georgia 30701**

**(706) 629-7721**

**(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)**

**MOHAWK CAPITAL FINANCE S.A.**

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

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

**Not Applicable**  
**(I.R.S. Employer**  
**Identification No.)**

**Mohawk Capital Finance S.A.**

**10B, rue des Mérovingiens**

**L-8070 Bertrange**

**Grand Duchy of Luxembourg**

**352 2700 4181**

**(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)**

**MOHAWK CAPITAL LUXEMBOURG S.A.**

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

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

**Not Applicable**  
**(I.R.S. Employer**  
**Identification No.)**

**Mohawk Capital Finance S.A.**

**10B, rue des Mérovingiens**

**L-8070 Bertrange**

**Grand Duchy of Luxembourg**

**R.C.S. Luxembourg: B 198.756**

**352 2700 4181**

**(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)**

**R. David Patton**

**Vice President-Business Strategy, General Counsel and Secretary**

**Mohawk Industries, Inc.**

**160 S. Industrial Blvd.**

**Calhoun, Georgia 30701**

**(706) 629-7721**

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

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*Copy to:*

**Paul J. Nozick**

**M. Hill Jeffries**

**Alston & Bird LLP**

**One Atlantic Center**

**1201 West Peachtree Street**

**Atlanta, Georgia 30309**

**(404) 881-7000**

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

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

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

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

### CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Proposed maximum aggregate offering price per unit/ Proposed maximum offering price/ Amount of registration fee
<b>Mohawk Industries, Inc.</b>	
Debt Securities	
Guarantees of Debt Securities(2)	
Common Stock, par value \$0.01 per share	(1)
Preferred Stock, par value \$0.01 per share	
Warrants(3)	
Purchase Contracts	
Units(4)	
<b>Mohawk Capital Finance S.A.</b>	
Debt Securities	
<b>Mohawk Capital Luxembourg S.A.</b>	
Debt Securities	

- (1) There is being registered herewith an indeterminate principal amount or number of the securities of each identified class as may from time to time be issued at indeterminate prices and as may from time to time be issued upon conversion, redemption, exchange, exercise or settlement of other securities registered hereunder, including under any applicable anti-dilution provisions. Any securities registered hereunder may be sold separately or together as units with other securities registered hereunder. Separate consideration may or may not be received for securities that are issuable upon conversion, exchange or exercise of other securities or that are issued in units with other securities registered hereunder. The proposed maximum offering price per security will be determined from time to time by the registrants in connection with the issuance of the securities registered hereunder. In accordance with

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Rules 456(b) and 457(r), the registrants are deferring payment of all of the registration fee.

- (2) Mohawk Industries, Inc. will fully and unconditionally guarantee the payment of principal of, and premium (if any) and interest on, the debt securities of Mohawk Capital Finance S.A. and Mohawk Capital Luxembourg S.A. Pursuant to Rule 457(n), no separate registration fee will be paid in respect of the guarantees. The guarantees will not be traded separately.
- (3) Represents warrants to purchase debt securities, shares of common stock or shares of preferred stock registered hereby.
- (4) Each unit will be issued under a unit agreement or indenture and will represent an interest in two or more debt or equity securities, warrants or purchase contracts, which may or may not be separable from one another.

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**EXPLANATORY NOTE**

This registration statement is post-effective amendment no. 1 to the registration statement on Form S-3 of Mohawk Industries, Inc. (File No. 333-219716) and Mohawk Capital Luxembourg S.A. (File No. 333-219716-01) (the Registration Statement ). This post-effective amendment to the Registration Statement adds Mohawk Capital Finance S.A., an indirect wholly-owned subsidiary of Mohawk Industries, Inc., as a registrant and includes the registration of debt securities of Mohawk Capital Finance S.A. and guarantees thereof by Mohawk Industries, Inc. This post-effective amendment to the Registration Statement contains a prospectus to be used by Mohawk Industries, Inc. in connection with offerings of its debt securities, guarantees of debt securities, common stock, preferred stock, warrants, purchase contracts and units and to be used by Mohawk Capital Finance S.A. and by Mohawk Capital Luxembourg S.A. in connection with offers of their respective debt securities, which will be fully and unconditionally guaranteed by Mohawk Industries, Inc.

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**PROSPECTUS**

**MOHAWK INDUSTRIES, INC.**

**Debt Securities**

**Guarantees of Debt Securities**

**Common Stock**

**Preferred Stock**

**Warrants**

**Purchase Contracts**

**Units**

**MOHAWK CAPITAL FINANCE S.A.**

**Debt Securities**

**MOHAWK CAPITAL LUXEMBOURG S.A.**

**Debt Securities**

From time to time, Mohawk Industries, Inc., or Mohawk, may offer and sell debt securities (which may be issued in one or more series), guarantees of debt securities, common stock, preferred stock (which may be issued in one or more series), warrants, purchase contracts and units that include any of these securities. From time to time, Mohawk Capital Finance S.A., or Mohawk Capital Finance, or Mohawk Capital Luxembourg S.A., or Mohawk Capital Luxembourg, may offer and sell debt securities (which may be issued in one or more series), and Mohawk will fully and unconditionally guarantee the payment of principal of, and premium (if any) and interest on, such debt securities.

We may offer and sell these securities from time to time in amounts, at prices and on terms that will be determined at the time of the applicable offering. We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. This prospectus provides a general description of the securities we may offer. Each time we offer securities pursuant to this prospectus, we will provide a prospectus supplement and attach it to this prospectus. The prospectus supplement will contain specific information about the offering and the terms of the securities.



Mohawk's common stock is listed on the New York Stock Exchange and trades under the ticker symbol MHK. Each prospectus supplement will indicate if the securities offered thereby will be listed on any securities exchange.

**You should refer to the risk factors included in our periodic reports and other information that we file with the Securities and Exchange Commission and carefully consider that information before buying our securities.**

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

**The date of this prospectus is September 1, 2017.**

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You should rely only on the information contained in this prospectus or any accompanying prospectus supplement, including the information incorporated by reference herein, as described under Incorporation of Certain Information by Reference, or any free writing prospectus that we prepare and distribute. We have not authorized anyone to provide you with information different from that contained in, or incorporated by reference into, this prospectus or any accompanying prospectus supplement or any free writing prospectus. This prospectus, any accompanying prospectus supplement and any free writing prospectus may be used only for the purposes for which they have been published, and no person has been authorized to give any information not contained in, or incorporated by reference into, this prospectus and the accompanying prospectus supplement or any free writing prospectus. If you receive any other information, you should not rely on it. You should not assume that the information contained in, or incorporated by reference into this prospectus is accurate of any date other than the date on the cover page of this prospectus. We are not making an offer of these securities in any jurisdiction where the offer is not permitted.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process. Under this shelf registration process, we may, from time to time, sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we offer securities, we will provide a prospectus supplement, together with this prospectus, that will contain specific information about the terms of that offering and the manner in which the securities will be offered. The prospectus supplement may also add to, update, modify or supersede the information contained in this prospectus. If information varies between this prospectus and the prospectus supplement, you should rely on the information in the prospectus supplement. We urge you to read this prospectus, the prospectus supplement and other offering material together with additional information described under the heading Incorporation of Certain Information By Reference.

In this prospectus, we refer to debt securities, common stock, preferred stock, warrants, purchase contracts and units collectively as the securities. The terms we, our, ours, us and the Company refer to Mohawk Industries, Inc. and its consolidated subsidiaries, except where specifically indicated otherwise.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any documents filed by us at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our filings with the SEC are also available to the public through the SEC's Internet site at <http://www.sec.gov> and through the New York Stock Exchange, 20 Broad Street, New York, New York 10005, on which our common stock is listed.

We have filed with the SEC a registration statement on Form S-3 relating to the securities covered by this prospectus and any prospectus supplement. This prospectus is a part of the registration statement and does not contain all the information in the registration statement. Whenever a reference is made in this prospectus or any prospectus supplement to a contract or other document, the reference is only a summary and you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room in Washington, D.C., as well as through the SEC's Internet site.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC's rules allow us to incorporate by reference information into this prospectus. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus will automatically update and, where applicable, supersede any information contained in this prospectus or incorporated by reference in this prospectus.

We incorporate by reference into this prospectus the following documents or information filed with the SEC (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 year ended December 31, 2016;

portions of our definitive Proxy Statement for our 2017 Annual Meeting of Stockholders that are incorporated by reference into our Annual Report on Form 10-K for the year ended December 31, 2016;

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our Quarterly Reports on Form 10-Q for the quarters ended April 1, 2017 and July 1, 2017;

our Current Reports on Form 8-K filed with the SEC on March 13, 2017 and May 22, 2017;

the description of our common stock contained in our Registration Statement on Form 8-A filed on January 29, 1992; and

all documents filed by us 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 before the termination of this offering of securities.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon his or her written or oral request, a copy of any or all of the information that has been incorporated by reference into this prospectus, excluding exhibits to those documents, unless they are specifically incorporated by reference into those documents. These documents are available on our website at <http://www.mohawkind.com>. You can also request those documents from our Corporate Secretary at the following address and telephone number:

Mohawk Industries, Inc.

160 South Industrial Boulevard

Calhoun, Georgia 30701

(706) 629-7721

Except as expressly provided above, no other information, including information on our website, is incorporated by reference into this prospectus.

**FORWARD-LOOKING STATEMENTS**

Certain of the statements in this prospectus and the documents incorporated by reference in this prospectus, particularly those anticipating future performance, business prospects, growth and operating strategies, proposed acquisitions and similar matters and those that include the words could, should, believes, anticipates, expects and estimates or similar expressions, constitute forward-looking statements, for which Mohawk claims the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

There can be no assurance that the forward-looking statements will be accurate because they are based on many assumptions, which involve risks and uncertainties. The following important factors could cause future results to differ materially from those contemplated by our forward-looking statements: changes in economic or industry conditions; competition; inflation and deflation in raw material prices and other input costs; inflation and deflation in consumer markets; energy costs and supply; timing and level of capital expenditures; timing and implementation of price increases for the Company's products; impairment charges; integration of acquisitions; international operations; introduction of new products; rationalization of operations; tax, product and other claims; litigation; and other risks identified in Mohawk's SEC reports and public announcements. See Risk Factors below for further information regarding these and other important factors that could cause our actual results to differ materially from those contemplated by our forward-looking statements.

Our forward-looking statements contained herein speak only as of the date of this prospectus or, in the case of any document incorporated by reference into this prospectus, the date of that document. We make no commitment to revise or update any forward-looking statements to reflect events or circumstances after the date any such statements are made except as required by law.

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**MOHAWK INDUSTRIES, INC.**

Mohawk is a leading global flooring manufacturer that creates products to enhance residential and commercial spaces around the world. The Company has transformed its business from an American carpet manufacturer into the world's largest flooring company based on revenue, with operations in Australia, Brazil, Canada, Europe, India, Malaysia, Mexico, New Zealand, Russia and the United States. We are a significant participant in every major project category across the global flooring industry, including carpet, rugs, ceramic tile, laminate, wood, stone, luxury vinyl tile, or LVT, and vinyl flooring. Our brands are among the most recognized in the industry and include American Olean®, Daltile®, Durkan®, IVC®, Karastan®, Marazzi®, Mohawk®, Pergo®, Quick-Step® and Unilin®. Our industry-leading innovation develops products and technologies that differentiate our brands in the marketplace and satisfy all flooring related remodeling and new construction requirements.

Our principal executive offices are located at 160 South Industrial Boulevard, Calhoun, Georgia 30701, and our telephone number is (706) 629-7721. Our website can be accessed at [www.mohawkind.com](http://www.mohawkind.com). The contents of our website are not part of this prospectus or any accompanying prospectus.

**MOHAWK CAPITAL FINANCE S.A.**

Mohawk Capital Finance serves as a finance subsidiary to provide financing for Mohawk through the issuance of debt securities. The principal address of Mohawk Capital Finance is 10B, rue des Mérovingiens, L-8070 Bertrange, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies Register, and its telephone number is 352 2700 4181.

**MOHAWK CAPITAL LUXEMBOURG S.A.**

Mohawk Capital Luxembourg provides financing for Mohawk on an ongoing basis through a commercial paper program, the issuance of debt securities and other financing arrangements. The principal address of Mohawk Capital Luxembourg is 10B, rue des Mérovingiens, L-8070 Bertrange, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies Register under number B198.756, and its telephone number is 352 2700 4181.

**RISK FACTORS**

Our operations are subject to a number of risks. When considering an investment in our securities, you should carefully read and consider the risk factors included in our most recent annual report on Form 10-K as supplemented by our quarterly reports on Form 10-Q and other reports we file with the SEC, each of which is incorporated herein by reference, and those specific risk factors that may be included in the applicable prospectus supplement, together with all of the other information presented in this prospectus, any prospectus supplement and the documents we incorporate by reference. If any of the events described in those risk factors actually occurs, our business, financial condition or operating results, as well as the market price of our securities, could be materially adversely affected.

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Unless otherwise specified in the applicable prospectus supplement, we intend to use the net proceeds from the sale of securities for general corporate purposes, which may include:

working capital;

capital expenditures;

acquisitions of or investments in businesses or assets;

redemption and repayment of short-term or long-term borrowings; and

purchases of our common stock.

Pending application of the net proceeds, we may temporarily invest the net proceeds in short-term marketable securities.

**RATIO OF EARNINGS TO FIXED CHARGES**

Our consolidated ratios of earnings to fixed charges for each of the five fiscal years ended December 31, 2016 and for the six months ended July 1, 2017 are set forth in the table below. You should read this table in conjunction with our consolidated financial statements and related notes to financial statements incorporated by reference herein. See Incorporation of Certain Information by Reference.

	<b>Year Ended December 31,</b>					<b>Six Months Ended July 1,</b>
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Ratio of Earnings to Fixed Charges (unaudited) (1)	3.6x	4.1x	5.4x	7.3x	15.0x	15.3x

- (1) For the purposes of determining the ratio of earnings to fixed charges, earnings consists of the aggregate of earnings from continuing operations before income taxes plus fixed charges and amortization of capitalized interest, less total capitalized interest. Fixed charges are defined as interest expensed and capitalized plus an estimate of interest included within rental expense.
- (2) Earnings (as defined above) for the year ended December 31, 2015 reflect a \$122.5 million charge related to the settlement and further defense of certain polyurethane foam litigation. Excluding this litigation-related charge, earnings for the year ended December 31, 2015 would have been \$985.9 million and the ratio of earnings to fixed charges would have been 8.4x.





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**DESCRIPTION OF DEBT SECURITIES**

*The following description of the debt securities is a summary of the general terms and provisions of the debt securities. This summary may not contain all of the information that is important to you and is qualified in its entirety by reference to the applicable indenture and its associated documents, including the form of note. We have filed the indentures or forms thereof with the SEC as exhibits to the registration statement of which this prospectus forms a part. See *Where You Can Find More Information* for information on how to obtain copies of them. The specific terms and provisions of any series of debt securities will be described in the applicable prospectus supplement. If so described in a prospectus supplement, the terms and provisions of that series of debt securities may differ from the general description of terms and provisions presented below.*

*Please note that in this section titled *Description of Debt Securities*, references to *we*, *our* and *us* refer either to Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg, as the case may be, as the issuer of the applicable securities of debt securities and not to any subsidiaries, unless the context requires otherwise. Also, in this section, references to *holders* mean those who own debt securities registered in their own names on the books that we or the trustee maintain for this purpose and not those who own beneficial interests in debt securities registered in street name or in debt securities issued in book-entry form through one or more depositaries. Owners of beneficial interests in the debt securities should read the section titled *Book-Entry Delivery and Settlement*.*

**General**

Either Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg may issue debt securities. When describing any debt securities below, references to *we*, *us* or *our* refer to the issuer of those securities.

The debt securities of Mohawk, Mohawk Capital Finance and Mohawk Capital Luxembourg may be either senior or senior subordinated debt securities, as described in greater detail below. When we refer to *senior debt securities*, we mean the senior debt securities of Mohawk, the senior debt securities of Mohawk Capital Finance and the senior debt securities of Mohawk Capital Luxembourg unless the context requires otherwise. When we refer to *senior subordinated debt securities*, we mean the senior subordinated debt securities of Mohawk, the senior subordinated debt securities of Mohawk Capital Finance and the senior subordinated debt securities of Mohawk Capital Luxembourg unless the context requires otherwise. When we refer to *debt securities*, we mean both the senior debt securities and the senior subordinated debt securities, unless the context requires otherwise. When we refer to a series of debt securities, we mean a series issued under the applicable indenture, as described below. When we refer to the prospectus supplement, we mean the prospectus supplement describing the specific terms of the debt security you purchase. The terms used in the prospectus supplement have the meanings described in this prospectus, unless otherwise specified.

We are not limited in the amount of debt securities that we may issue, and we may issue as many distinct series of debt securities as we wish. Additionally, the provisions of each indenture allow us to *reopen* a previous issue of a series of debt securities and issue additional debt securities of that series.

Neither the senior debt securities nor the senior subordinated debt securities will be secured by any property or assets of Mohawk, Mohawk Capital Finance, Mohawk Capital Luxembourg or any of their subsidiaries (Mohawk Capital Finance and Mohawk Capital Luxembourg have no subsidiaries). Thus, by owning a debt security, you are an unsecured creditor of Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg, as the case may be. As a result, both the senior debt securities and the senior subordinated debt securities will be structurally subordinate to the secured indebtedness of Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg, as the case may be, to the extent of the value of the applicable collateral.

**Senior or Senior Subordinated Debt Securities**

The senior debt securities of Mohawk, Mohawk Capital Finance and Mohawk Capital Luxembourg will be issued under the applicable indenture, as described in Indentures below, and will rank equally with all the

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other senior unsecured and unsubordinated debt of Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg, as the case may be.

The senior subordinated debt securities of Mohawk, Mohawk Capital Finance and Mohawk Capital Luxembourg will be issued under the applicable indenture, as described below, and payment of the principal of, and premium (if any) and interest on, the senior subordinated debt securities will be junior in right of payment to the prior payment in full of all of Mohawk's, Mohawk Capital Finance's or Mohawk Capital Luxembourg's senior indebtedness, as defined in the applicable indenture. The prospectus supplement for any series of senior subordinated debt securities will set forth the subordination terms of such debt securities, as well as the aggregate amount of senior indebtedness outstanding as of the end of the issuer's most recent fiscal quarter. The prospectus supplement will also set forth limitations, if any, on the issuance of additional senior indebtedness. Mohawk's senior indebtedness is, and any additional indebtedness of Mohawk will be, structurally subordinate to the indebtedness of Mohawk Capital Finance and Mohawk Capital Luxembourg. Mohawk Capital Finance's and Mohawk Capital Luxembourg's indebtedness is, and any additional indebtedness of Mohawk Capital Finance and Mohawk Capital Luxembourg will be, structurally senior to any indebtedness of Mohawk (except to the extent that Mohawk Capital Finance or Mohawk Capital Luxembourg guarantees such indebtedness and solely to the extent of such guarantee).

## **Indentures**

Mohawk's senior debt securities and senior subordinated debt securities are governed by an indenture, which is a contract between Mohawk, as the issuer of the debt securities, and U.S. Bank National Association, as trustee. The trustee has two main roles:

First, the trustee can enforce your rights against us if we default. There are some limitations on the extent to which the trustee acts on your behalf, which we describe under [Events of Default](#).

Second, the trustee performs administrative duties for us, such as sending interest payments and notices. The senior debt securities of Mohawk Capital Finance and Mohawk Capital Luxembourg and the senior subordinated debt securities of Mohawk Capital Finance and Mohawk Capital Luxembourg will each be governed by an indenture—a senior debt indenture, in the case of senior debt securities, and a senior subordinated debt indenture, in the case of senior subordinated debt securities. Each indenture is a contract between (i) Mohawk Capital Finance or Mohawk Capital Luxembourg, as applicable, as issuer of the debt securities, (ii) Mohawk as guarantor, and (iii) U.S. Bank National Association, as trustee. The indentures governing the debt securities of Mohawk Capital Finance and Mohawk Capital Luxembourg are substantially identical, except for the provisions relating to subordination, which are included only in the respective senior subordinated debt indentures.

Under each of the indentures that govern the debt securities of Mohawk Capital Finance and Mohawk Capital Luxembourg, Mohawk will fully and unconditionally guarantee, jointly and severally, to each holder of debt securities, the full and prompt performance of Mohawk Capital Finance's or Mohawk Capital Luxembourg's, as applicable, obligations under the indenture and the debt securities, including the payment of principal of, and premium (if any) and interest on, the debt securities. The guarantee of any senior subordinated debt securities by Mohawk will be subordinated to the senior indebtedness of Mohawk on the same basis as such senior subordinated debt securities are subordinated to the senior indebtedness of Mohawk Capital Finance or Mohawk Capital Luxembourg, as applicable. The prospectus supplement will describe any additional terms of the guarantee. See [Description of Guarantees](#).



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**Terms Contained in the Prospectus Supplement**

The prospectus supplement will contain the terms relating to the specific series of debt securities being offered. The prospectus supplement will include some or all of the following:

whether the issuer of the debt securities is Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg;

the title of the debt securities and whether they are senior debt securities or senior subordinated debt securities;

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

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

the rate or rates at which any debt securities of the series will bear interest, if any, and the date or dates from which any such interest will accrue;

the dates on which any interest will be payable and the regular record date for determining who is entitled to the interest payable on any interest payment date;

the person to whom any interest on a debt security of the series will be payable, if other than the person in whose name that debt security (or one or more predecessor debt securities) is registered at the close of business on the regular record date for such interest;

the place or places where the principal of, and premium (if any) and interest on, any debt securities of the series will be payable and the manner in which any payment may be made;

any provisions regarding the manner in which the amount of the principal of, and premium (if any) and interest on, any debt securities of the series may be determined with reference to a financial or economic measure or pursuant to a formula, if applicable;

the period or periods within which, the price or prices at which and the terms and conditions upon which any debt securities of the series may be redeemed, in whole or in part, at our option, and, if other than by a board resolution, the manner in which our election to redeem the debt securities will be evidenced;

our obligation, if any, to redeem or purchase any debt securities of the series pursuant to any sinking fund or analogous provision and the period or periods within which, the price or prices at which and the terms and conditions upon which any debt securities of the series will be redeemed or purchased, in whole or in part, pursuant to such obligation;

the denominations of the debt securities if other than denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof;

if other than the currency of the United States, the currency, currencies or currency units in which the principal of, and premium (if any) and interest on, any debt securities of the series will be payable and the manner of determining the equivalent thereof in the currency of the United States for any purpose;

if the principal of, and premium (if any) and interest on, any debt securities of the series is to be payable in one or more currencies or currency units other than that or those in which such debt securities are stated to be payable, the currency, currencies, or currency units in which the principal of, and premium (if any) and interest on, such debt securities will be payable, the periods within which and the terms and conditions upon which such payments are to be made, and the amount so payable (or the manner in which such amount will be determined);

if other than the entire principal amount, the portion of the principal amount of any debt securities of the series which will be payable upon declaration of acceleration of the maturity;

if the principal amount payable at the stated maturity of any debt securities of the series will not be determinable as of any one or more dates prior to the stated maturity, the amount which will be deemed

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to be the principal amount of such debt securities as of any such date for any purpose, including the principal amount which will be due and payable upon any maturity other than the stated maturity or which will be deemed to be outstanding as of any day prior to the stated maturity (or, in any such case, the manner in which such amount deemed to be the principal amount will be determined);

that the debt securities of the series will be subject to full defeasance or covenant defeasance, if applicable;

that any debt securities will be issuable in whole or in part in the form of one or more global securities and, in such case, the depositaries for such global securities and the form of any legend or legends which will be borne by such global security, if applicable;

any addition to, elimination of, or other change in, the events of default which applies to any debt securities of the series and any change in the right of the trustee or the requisite holders of such debt securities to declare the principal amount due and payable;

any addition to, elimination of or other change in the covenants which applies to any debt securities of the series;

the terms, if any, upon which the debt securities may be converted into, or exchanged for, stock, other debt securities or other securities, including whether such conversion or exchange is mandatory, at the option of the holder or at our option, the period during which such conversion or exchange may occur, the initial conversion or exchange rate and the circumstances or manner in which the conversion or exchange ratio may be adjusted or calculated;

in the case of debt securities issued by Mohawk Capital Finance or Mohawk Capital Luxembourg, any additional terms of the guarantee; and

any other terms of the debt securities not inconsistent with the indenture.

Debt securities may bear interest at a fixed rate or a variable (or floating ) rate, as specified in the prospectus supplement. In addition, if specified in the prospectus supplement, we may sell debt securities bearing no interest or interest at a rate that at the time of issuance is below the prevailing market rate, or at a discount below their stated principal amount. We will describe in the prospectus supplement any material special federal income tax considerations applicable to any such discounted debt securities.

Some of the debt securities may be issued as original issue discount debt securities. Original issue discount debt securities bear no interest or bear interest at below market rates and will be sold at a discount below their stated principal amount. The prospectus supplement relating to an issue of original issue discount debt securities will contain information relating to United States federal income tax, accounting, and other special considerations applicable to original issue discount debt securities.



We will generally have no obligation to repurchase, redeem, or change the terms of debt securities upon any event (including a change in control) that might have an adverse effect on our credit quality.

Unless otherwise specified in the prospectus supplement, the debt securities will not be listed on any securities exchange.

### **Certain Covenants**

The indenture may include covenants of Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg, as the case may be. These covenants may impose limitations on our indebtedness, limitations on liens, limitations on the issuance of preferred stock of certain of our subsidiaries, limitations on certain distributions and limitations on transactions with our affiliates, or other limitations. Any such covenants applicable to a series of debt securities will be set forth in the prospectus supplement.

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**Consolidation, Merger, Conveyance, Transfer or Lease**

Mohawk, Mohawk Capital Finance and/or Mohawk Capital Luxembourg, as applicable, may not consolidate or merge with or into, or transfer or lease its assets substantially as an entirety to, any entity, unless:

Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg, as applicable, is the surviving entity or, if not, the successor entity formed by such consolidation or into which Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg is merged or which acquires or leases Mohawk's, Mohawk Capital Finance's or Mohawk Capital Luxembourg's assets is organized and existing under the laws of any U.S. jurisdiction and expressly assumes Mohawk's, Mohawk Capital Finance's or Mohawk Capital Luxembourg's obligations with respect to the debt securities and under the applicable indenture;

no default or event of default exists or will occur immediately after giving effect to the transaction; and

we have delivered to the trustee the certificates and opinions required under the indenture.

**Events of Default**

The following are events of default under the Indenture with respect to any series of debt securities:

failure to pay any installment of interest on such series of debt securities when due and the continuance of such failure for 30 days;

failure to pay principal of, or premium, if any, on such series of debt securities when due;

failure to deposit any sinking fund payment with respect to such series of debt securities when due and the continuance of such failure for 30 days;

failure to observe or perform any other covenant or agreement in respect of such series of debt securities and the continuance of such failure for 60 days after receipt by us from the trustee or by us and the trustee from the holders of at least 25% of the principal amount of such series of debt securities outstanding of written notice of such failure specifying such failure and requiring the same to be remedied;

certain events of bankruptcy, insolvency or reorganization of Mohawk, Mohawk Capital Finance or Mohawk Capital Luxembourg; and

any other event of default we may provide for that series of debt securities.

If an event of default with respect to the outstanding debt securities of a particular series occurs and continues, either the trustee or the holders of at least 25% in aggregate principal amount of such series of outstanding debt securities may declare the principal amount of such series of debt securities to be due and payable immediately; provided that, in the case of certain events of bankruptcy, insolvency or reorganization, such principal amount, or portion thereof will automatically become due and payable without any action by the trustee or any holder. In the case of original issue discount debt securities, only a specified portion of the principal amount may be accelerated. However, at any time after an acceleration with respect to the debt securities of a particular series has occurred but before a judgment or decree based on such acceleration is entered, the holders of a majority in aggregate principal amount of the outstanding debt securities of such series may, under certain circumstances, rescind and annul such acceleration. For information as to waiver of defaults, see [Modification and Waiver](#) below.

If the principal or any premium or interest on any debt security is payable in a currency other than U.S. dollars and such currency is not available to us for making payment due to the imposition of exchange controls or other circumstances beyond our control, we are entitled to satisfy our obligations to holders of such debt securities by making such payment in U.S. dollars in an amount equal to the U.S. dollar equivalent of the amount payable in such other currency, as determined by the trustee as provided in the indenture. Any payment made under such circumstances in U.S. dollars where the required payment is in a currency other than U.S. dollars will not constitute an event of default under the indenture.

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Subject to the duty of the trustee during an event of default to act with the required standard of care, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any of the holders unless such holders have offered the trustee security or indemnity reasonably satisfactory to the trustee.

Subject to such indemnification and certain other limitations, the holders of a majority in aggregate principal amount of the outstanding debt securities of a particular 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 such series.

Other than with respect to a lawsuit for the payment of principal, premium, if any, and interest on any series of debt securities when due, the indenture provides that no holder of such series of debt securities may institute any action against us under the indenture without first complying with the conditions set forth in the indenture.

We will furnish to the trustee an annual statement as to the performance of certain of our obligations under the indenture and as to any default in such performance.

## **Modification and Waiver**

Modifications and amendments of the indenture with respect to any series of debt securities outstanding may be made by us and the trustee with the consent of holders of a majority in aggregate principal amount of such series, except that no such modification or amendment may, without the consent of the holder of each outstanding debt security of the applicable series affected thereby:

extend the stated maturity date of the principal of, or any installment of principal of or interest on, any such debt security, or reduce the principal amount of or the rate (or extend the time for payment) of interest on, or any premium payable upon the redemption of, any such debt security;

reduce the amount of principal payable upon acceleration of the maturity thereof;

change the place or currency of payment of principal of, or premium, if any, or interest on, any such debt security;

impair the right to institute suit for the enforcement of any payment on, or with respect to, any such debt security;

reduce the percentage in aggregate principal amount of such series of outstanding debt securities, the consent of the holders of which is required for any amendment, supplemental indenture or waiver provided for in the indenture;

modify any of the waiver provisions of the indenture, except to increase any required percentage or to provide that certain other provisions of the indenture cannot be modified or waived without the consent of the holder of each outstanding debt security of the series affected thereby;

cause any such debt security to become subordinate in right of payment to any other debt, except to the extent provided in the terms of such security; or

if such debt security provides that the holder may require us to repurchase or convert such debt security, impair such holder's right to require repurchase or conversion of such debt security on the terms provided therein.

We and the trustee may also modify and amend the indenture without the consent of any holder of debt securities in limited circumstances, such as clarifications and changes that would not adversely affect the holders.

The holders of a majority in aggregate principal amount of any series of outstanding debt securities may, on behalf of the holders of all such debt securities, waive our compliance with certain restrictive provisions of the indenture or such series of debt securities. The holders of a majority in aggregate principal amount of any series of outstanding debt securities may, on behalf of the holders of all such debt securities, waive any past default

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under the indenture, except a default in the payment of the principal of, or premium (if any) or interest on, such debt securities or in respect of any provision of the indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security of such series affected thereby.

### **Legal Defeasance and Covenant Defeasance**

The indenture provides that we may, at our option, elect to discharge our obligations with respect to any series of debt securities, which we refer to as legal defeasance. If legal defeasance occurs, we will be deemed to have paid and discharged all amounts owed under the applicable series of debt securities and the indenture will cease to be of further effect as to such series of debt securities, except that:

holders will be entitled to receive timely payments for the principal of, premium, if any, and interest on, such series of debt securities, from the funds deposited for that purpose (as explained below);

our obligations will continue with respect to the issuance of temporary debt securities, the registration of debt securities, and the replacement of mutilated, destroyed, lost or stolen debt securities of the applicable series;

the trustee will retain its rights, powers, trusts, duties, and immunities under the indenture, and we will retain our obligations in connection therewith; and

other legal defeasance provisions of the indenture will remain in effect.

In addition, we may, at our option and at any time, elect to cause the release of our obligations with respect to most of the covenants in the indenture, which we refer to as covenant defeasance, with respect to any series of debt securities. If covenant defeasance occurs, certain events (not including non-payment events and bankruptcy, insolvency and reorganization events) relating to us described under Events of Default will no longer constitute events of default with respect to such series of debt securities. We may exercise legal defeasance regardless of whether we previously exercised covenant defeasance.

In order to exercise either legal defeasance or covenant defeasance, each of which we refer to as a defeasance, with respect to any series of debt securities: