THORATEC CORP
Form S-4/A
July 29, 2009

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As filed with the Securities and Exchange Commission on July 29, 2009
Registration No. 333-159034

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

AMENDMENT NO. 3
TO

Form S-4

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933
Thoratec Corporation
(Exact name of Registrant as specified in its charter)

California	**3845**	**94-2340464**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification Number)*

6035 Stoneridge Drive
Pleasanton, California 94588
(925) 847-8600
(Address, including zip code, and telephone number, including area code, of Registrant s principal executive offices)

David A. Lehman, Esq.
Senior Vice President and General Counsel
Thoratec Corporation
6035 Stoneridge Drive
Pleasanton, California 94588
(925) 847-8600
(Name, address, including zip code, and telephone number, including area code, of agent for service)

with copies to:

Charles K. Ruck, Esq.
Tad J. Freese, Esq.
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626
(714) 540-1235

David McIntyre
Chief Financial Officer and
Chief Operating Officer
HeartWare International, Inc.
205 Newbury Street
Framingham, Massachusetts 01701
(508) 739-0950

Clare O Brien, Esq.
Robert M. Katz, Esq.
Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
(212) 848-4000

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable following the effectiveness of this Registration Statement and upon the effective time of the merger described in the enclosed document.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. o

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) 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. o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) 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. o

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 þ	Accelerated filer o	Non-accelerated filer o	Smaller reporting company o
	(Do not check if a smaller reporting company)		

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this proxy statement/prospectus is not complete and may be changed. Thoratec Corporation may not sell the securities offered by this proxy statement/prospectus until the registration statement filed with the Securities and Exchange Commission, of which this proxy statement/prospectus is a part, is effective. This proxy statement/prospectus is not an offer to sell the securities described in this proxy statement/prospectus and is not soliciting an offer to buy in any jurisdiction where the offer or sale is not permitted.

PRELIMINARY SUBJECT TO COMPLETION DATED JULY 29, 2009

MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT

Dear Stockholder:

On February 12, 2009, the board of directors of HeartWare International, Inc., or HeartWare, and the board of directors of Thoratec Corporation, or Thoratec, approved a merger of HeartWare and a wholly-owned subsidiary of Thoratec. Before the merger can be completed, the stockholders of HeartWare must vote to adopt the Agreement and Plan of Merger, which we refer to as the merger agreement, dated as of February 12, 2009, by and among HeartWare, Thoratec, Thomas Merger Sub I, Inc., a direct wholly owned subsidiary of Thoratec, which we refer to as Merger Subsidiary, and Thomas Merger Sub II, Inc., another direct wholly owned subsidiary of Thoratec, which we refer to as Merger Subsidiary Two.

Pursuant to the merger agreement, Merger Subsidiary will merge with and into HeartWare, with HeartWare surviving the merger as a wholly owned subsidiary of Thoratec, which we refer to as the merger. Provided that certain tax-related conditions are satisfied, HeartWare, as the surviving corporation in the merger, will merge with and into Merger Subsidiary Two with Merger Subsidiary Two surviving the merger as a subsidiary of Thoratec, which we refer to as the second merger. The merger and second merger are referred to collectively in this proxy statement/prospectus as the mergers.

As a result of the merger, each share of HeartWare common stock will be converted into the right to receive $14.30 in cash and 0.6054 of a share of Thoratec common stock. Holders of HeartWare CHESS Depositary Interests, which we refer to as HeartWare CDIs and are traded on the Australian Securities Exchange and which represent 1/35 of a share of HeartWare common stock, will be entitled to receive in exchange for each of their HeartWare CDIs a combination of approximately $0.4085 in cash and approximately 0.01729 of a share of Thoratec common stock. In addition, if the volume weighted average of the per share closing prices of Thoratec common stock on The NASDAQ Stock Market for the twenty (20) consecutive trading days ending on and including the fifth (5th) trading day prior to, but not including, the closing date is less than or equal to $18.38, then HeartWare will have an option to terminate the merger agreement unless, subject to certain adjustments provided for in the merger agreement, Thoratec increases the number of shares of Thoratec common stock payable in the merger such that the value of the stock portion of the merger consideration at closing is equal to 70% of the value of the aggregate Thoratec stock consideration payable in the merger (calculated using the $26.25 price per share of Thoratec common stock used to determine the stock portion of the merger consideration). If that same volume weighted average price is equal to or exceeds $34.13 (130% of the $26.25 price per share of Thoratec common stock used to determine the stock portion of the merger consideration), then Thoratec may reduce the number of shares of Thoratec common stock payable in the merger such that the value of the stock portion of the merger consideration at closing is equal to 130% of the value of the aggregate Thoratec stock consideration payable in the merger (calculated using the $26.25 price per share of Thoratec common stock used to determine the stock portion of the merger consideration). Each HeartWare CDI is exchangeable at the option of the holder of the HeartWare CDI into shares of HeartWare common stock at the ratio of one (1) share of common stock

for every thirty-five (35) HeartWare CDIs held by such holder and as a result of the merger, holders of HeartWare CDIs will be entitled to receive 1/35 of the merger consideration described above for each HeartWare CDI held by such holder.

If certain tax-related conditions are satisfied, the transaction will be structured to qualify as a reorganization for U.S. federal income tax purposes, pursuant to which the amount of gain, if any, recognized by a U.S. holder of HeartWare common stock in the merger shall not exceed the cash portion of the merger consideration received. If the transaction is not structured to qualify as a reorganization, the transaction will be fully taxable to HeartWare stockholders for U.S. federal income tax purposes. As a result, in deciding whether to vote to adopt the merger agreement, you should consider the possibility that the transaction will be structured as a fully taxable transaction for U.S. federal income tax purposes because the stock value condition (as defined herein) is not satisfied. You will not be entitled to change your vote or vote again in the event that the stock value condition is not satisfied and the transaction is structured as a fully taxable transaction for U.S. federal income tax purposes. Other than the

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U.S. federal income tax consequences described above, neither HeartWare nor Thoratec is aware of any material effects on HeartWare stockholders if the second merger does not occur. HeartWare has sought a ruling from Australian tax authorities to confirm that a holder of shares of HeartWare common stock that is a resident of Australia for Australian tax purposes may choose to apply scrip-for-scrip roll-over relief to disregard any capital gain that results to it from the cancellation of its HeartWare common stock to the extent that the capital gain is attributable to the stock portion of the merger consideration it receives under the merger contemplated by the merger agreement.

The market prices of Thoratec common stock, HeartWare common stock and HeartWare CDIs will fluctuate before the merger. You should obtain current stock price quotations for Thoratec common stock, HeartWare common stock and HeartWare CDIs. HeartWare common stock is quoted on The NASDAQ Global Market under the symbol HTWR and HeartWare CDIs are quoted on the Australian Securities Exchange or ASX under the symbol HIN . Thoratec common stock is quoted on The NASDAQ Global Select Market under the symbol THOR .

At a special meeting of HeartWare stockholders, HeartWare stockholders will be asked to vote on the adoption of the merger agreement and certain other matters. The adoption of the merger agreement requires the affirmative vote of the holders of a majority of the outstanding shares of HeartWare common stock entitled to vote. Holders of HeartWare CDIs have a right to direct CHESS Depositary Nominees Pty Limited, the stockholder of record and which we refer to as CDN, on how it should vote its shares and are being requested to give directions to CDN to vote in accordance with the instructions set forth in this proxy statement/prospectus.

The HeartWare board of directors recommends that HeartWare stockholders vote FOR the proposal to adopt the merger agreement and FOR the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

This document describes the special meeting, the merger, the documents related to the merger and other related matters. Please carefully read this entire document, including all of its annexes. **In particular, we encourage you to read the section entitled *Risk Factors* beginning on page 25 for a discussion of the risks relating to the proposed merger**. You can also obtain information about Thoratec and HeartWare from documents that each of us has filed with the U.S. Securities and Exchange Commission, or the SEC.

DOUGLAS GODSHALL
President and Chief Executive Officer
HeartWare International, Inc.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the Thoratec common stock to be issued in connection with the merger or made any determination with regard to the adequacy or accuracy of this proxy statement/prospectus. Any representation to the contrary is a criminal offense.

This proxy statement/prospectus is dated , 2009, and is first being mailed or otherwise delivered to HeartWare stockholders on or about , 2009.

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NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
To Be Held On , 2009

To the stockholders of HeartWare International, Inc.:

A special meeting of stockholders of HeartWare will be held on , 2009, at , U.S. Eastern time (, Australia Eastern Standard Time on , 2009), at , for the following purposes:

to consider and vote upon a proposal to adopt the Agreement and Plan of Merger, dated as of February 12, 2009, by and among HeartWare, Thoratec, Merger Subsidiary, a direct wholly owned subsidiary of Thoratec, and Merger Subsidiary Two, a direct wholly owned subsidiary of Thoratec; and

to consider and vote upon a proposal to adjourn the HeartWare special meeting, if necessary or appropriate, to permit further solicitation of proxies if there are not sufficient votes at the time of the HeartWare special meeting to adopt the merger agreement.

Only stockholders who owned shares of HeartWare common stock at the close of business, U.S. Eastern time, on , 2009 (, Australia Eastern Standard Time on , 2009), the record date for the HeartWare special meeting, are entitled to notice of, and to attend and vote at, the HeartWare special meeting and any adjournment or postponement of the HeartWare special meeting.

Holders of HeartWare CDIs are entitled to receive notice of, and may attend the HeartWare special meeting, but cannot vote their HeartWare CDIs at the special meeting. Each HeartWare CDI holder has the right to direct CDN, the stockholder of record, on how it should vote on each proposal.

We cannot complete the merger unless the merger agreement is adopted by the affirmative vote of the holders of a majority of the outstanding shares of HeartWare common stock entitled to vote at the HeartWare special meeting. HeartWare stockholders have dissenters rights under Delaware law in connection with the merger. The proxy statement/prospectus accompanying this notice explains the merger, the merger agreement and HeartWare stockholders dissenters rights and provides specific information concerning the HeartWare special meeting. Please review the proxy statement/prospectus carefully.

The HeartWare board of directors has approved and declared the advisability of the merger agreement and has determined that the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of HeartWare and its stockholders and recommends that you vote FOR the proposal to adopt the merger agreement and FOR the proposal to adjourn the HeartWare special meeting, if necessary or appropriate, to permit further solicitation of proxies.

Your vote is important. Whether or not you plan to attend the HeartWare special meeting, if you are a holder of HeartWare common stock, please complete, sign and date the enclosed proxy card and return it promptly in the enclosed postage-paid return envelope as soon as possible. If you hold your shares through a bank, broker or other holder of record, you must vote your shares in accordance with the voting instruction form received from your bank, broker or other holder of record. If you are a holder of HeartWare CDIs, please complete, sign and date the enclosed CDI Voting Instruction Form and return it promptly in the enclosed postage-paid return envelope to CDN as soon as possible.

If you plan to attend the HeartWare special meeting in person, we ask that you notify HeartWare s Company Secretary by sending an e-mail to enquiries@heartware.com.au.

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Please do not send any HeartWare stock certificates at this time.

By order of the board of directors,

David McIntyre
Chief Financial Officer, Chief Operating Officer and Company Secretary

Framingham, Massachusetts
, 2009

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REFERENCES TO ADDITIONAL INFORMATION

This proxy statement/prospectus incorporates by reference important business and financial information about HeartWare and Thoratec from documents filed with the SEC that are not included in or delivered with this proxy statement/prospectus. This information is available to you without charge upon your written or oral request. You may obtain the documents incorporated by reference in this proxy statement/prospectus, other than certain exhibits to those documents, by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

THORATEC CORPORATION
6035 Stoneridge Drive
Pleasanton, California 94588
Attention: Investor Relations
Telephone: 925-847-8600
E-mail: ir@thoratec.com

HEARTWARE INTERNATIONAL, INC.
205 Newbury Street
Framingham, Massachusetts 01701
Attention: Mr. David McIntyre
Telephone: 305-818-4123
E-mail: enquiries@heartware.com.au

Investors may also consult HeartWare s or Thoratec s websites for more information concerning the merger described in this proxy statement/prospectus. HeartWare s website is *www.heartware.com.au*. Thoratec s website is *www.thoratec.com*. Information included on any of these websites is not incorporated by reference into this proxy statement/prospectus.

If you would like to request documents, please do so by , 2009 in order to receive them before the HeartWare special meeting.

You should rely only on the information contained or incorporated by reference into this proxy statement/prospectus. No one has been authorized to provide you with information that is different from that contained in, or incorporated by reference into, this proxy statement/prospectus. This proxy statement/prospectus is dated , 2009. You should not assume that the information contained in, or incorporated by reference into, this proxy statement/prospectus is accurate as of any date other than that date, except to the extent that such information is contained in an additional document filed with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, between the date of this proxy statement/prospectus and the date of the HeartWare special meeting and is incorporated by reference herein. Neither the mailing of this proxy statement/prospectus to HeartWare stockholders nor the issuance by Thoratec of Thoratec common shares in connection with the merger will create any implication to the contrary.

For more information about the information incorporated by reference into this proxy statement/prospectus and where to obtain copies of documents incorporated by reference into this proxy statement/prospectus, see *Where You Can Find More Information* on page 128.

This proxy statement/prospectus does not constitute an offer to sell, or a solicitation of an offer to buy, any securities, or the solicitation of a proxy, in any jurisdiction to or from any person to whom it is unlawful to make any such offer or solicitation in such jurisdiction. Information contained in this proxy statement/prospectus regarding Thoratec has been provided by Thoratec and information contained in this proxy statement/prospectus regarding HeartWare has been provided by HeartWare.

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QUESTIONS AND ANSWERS ABOUT THE MERGER

The following are some questions that you, as a stockholder of HeartWare or a holder of HeartWare CDIs, may have regarding the merger and the special meeting of stockholders of HeartWare and brief answers to those questions. We urge you to carefully read the remainder of this proxy statement/prospectus because the information in this section does not provide all the information that might be important to you with respect to the adoption of the merger agreement and the other matters being considered at the HeartWare special meeting of stockholders or the issuance of Thoratec common stock in connection with the merger. Additional important information is also contained in the annexes to, and the documents incorporated by reference in, this proxy statement/prospectus.

Q: Why am I receiving this proxy statement/prospectus?

A: Thoratec has agreed to acquire HeartWare under the terms of the merger agreement. Please see the section entitled *The Merger Agreement* beginning on page 84 of this proxy statement/prospectus for a more detailed summary of the terms and conditions contained in the merger agreement. A copy of the merger agreement is attached to this proxy statement/prospectus as Annex A.

In order to complete the merger, HeartWare stockholders must adopt the merger agreement and all other conditions to the consummation of the merger must be satisfied or waived. HeartWare will hold a special meeting of its stockholders, which we refer to as the HeartWare special meeting, to obtain the required approval of HeartWare stockholders to adopt the merger agreement.

Q: What are HeartWare stockholders being asked to vote on?

A: HeartWare stockholders are being asked to consider and vote on the adoption of the merger agreement and the adjournment of the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement.

Q: What vote is required to adopt the merger agreement?

A: The adoption of the merger agreement requires the affirmative vote of a majority of the outstanding shares of HeartWare common stock, including shares of HeartWare common stock represented by HeartWare CDIs, entitled to vote at the HeartWare special meeting. In connection with the transactions contemplated by the merger agreement, all but one of the directors on HeartWare s board of directors and certain executive officers of HeartWare, who collectively beneficially own in the form of HeartWare CDIs (and in the case of Mr. Douglas Godshall, in the form of shares of HeartWare common stock), as of the HeartWare record date, approximately % of the total outstanding shares of HeartWare common stock, and Apple Tree Partners I, L.P., who beneficially owns in the form of HeartWare CDIs, as of the HeartWare record date, approximately % of the total outstanding shares of HeartWare common stock have entered into separate support agreements dated as of February 12, 2009, to, among other things, vote or give directions to vote their respective shares of HeartWare common stock, **FOR** the adoption of the merger agreement with Thoratec, subject to the terms and conditions of the support agreements. Please see the section entitled *The Support Agreements* beginning on page 110 of this proxy statement/prospectus for a more detailed summary of the terms and conditions contained in the support agreements. Copies of the form of support agreements are attached to this proxy statement/prospectus as Annex D and Annex E.

Q:

What vote is required to adopt the proposal to adjourn the special meeting to a later time, if necessary or appropriate, to solicit additional proxies?

A: Assuming a quorum is present at the HeartWare special meeting, the adoption of the proposal to adjourn the special meeting to a later time, if necessary or appropriate, to solicit additional proxies requires the affirmative vote of a majority of shares of HeartWare common stock represented in person or by proxy at the special meeting and entitled to vote thereon.

Q: What will happen in the proposed mergers?

A: Pursuant to the terms of the merger agreement, Merger Subsidiary will merge with and into HeartWare, with HeartWare surviving the merger as a wholly owned subsidiary of Thoratec. Provided that certain tax-related conditions are met as more fully described in the section entitled *The Merger Agreement Conditions to the Obligations of Each Party to Consummate the Second Merger* beginning on page 100 of this proxy statement/prospectus, then immediately after the merger, HeartWare, as the surviving corporation in the merger, will

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merge with and into Merger Subsidiary Two with Merger Subsidiary Two surviving the second merger as a wholly owned subsidiary of Thoratec.

Q: What will HeartWare stockholders receive in the merger?

A: As a result of the merger, shares owned by holders of HeartWare common stock, including shares of HeartWare common stock represented by HeartWare CDIs, will be converted into the right to receive in exchange for each full share of HeartWare common stock, $14.30 in cash and 0.6054 of a share of Thoratec common stock.

In addition, if the volume weighted average of the per share closing prices of Thoratec common stock on The NASDAQ Stock Market for the twenty (20) consecutive trading days ending on and including the fifth (5th) trading day prior to, but not including, the closing date, which we refer to as the volume weighted average price, is equal to or less than $18.38, then HeartWare will have an option to terminate the merger agreement unless, subject to certain adjustments provided for in the merger agreement, Thoratec increases the number of shares of Thoratec common stock payable in the merger such that the value of the stock portion of the merger consideration at closing is equal to 70% of the value of the aggregate Thoratec stock consideration payable in the merger (calculated using the $26.25 price per share of Thoratec common stock used to determine the stock portion of the merger consideration). If that same volume weighted average price is equal to or exceeds $34.13 (130% of the $26.25 price per share of Thoratec common stock used to determine the stock portion of the merger consideration), then Thoratec may reduce the number of shares of Thoratec common stock payable in the merger such that the value of the stock portion of the merger consideration at closing is equal to 130% of the value of the aggregate Thoratec stock consideration payable in the merger (calculated using the $26.25 price per share of Thoratec common stock used to determine the stock portion of the merger consideration).

Each HeartWare CDI is exchangeable at the option of the HeartWare CDI holder into shares of HeartWare common stock at the ratio of one (1) share of HeartWare common stock for every thirty-five (35) HeartWare CDIs, and, as a result of the merger, holders of HeartWare CDIs will be entitled to receive 1/35 of the merger consideration described above for each HeartWare CDI held by such holder.

Q: What will happen if the value of the stock portion of the merger consideration payable at the effective time of the merger is equal to or less than 70% of the value of the aggregate Thoratec stock consideration as of February 12, 2009 (the date of execution of the merger agreement)?

A: Depending on the facts and circumstances then existing, the HeartWare board of directors may or may not determine to exercise HeartWare s right to terminate the merger agreement as described above. If the HeartWare board of directors determines not to exercise HeartWare s right to terminate the merger agreement, the HeartWare stockholders may receive Thoratec common stock as consideration in the merger with a per share value of less than $18.38, or 70% of the value of the stock consideration used to determine the merger consideration at signing. For illustrative purposes, if the volume weighted average price of Thoratec common stock is equal to $0.00 and the HeartWare board of directors determines not to exercise HeartWare s right to terminate the merger agreement, and if, as of the effective time of the merger, the per share value of the Thoratec common stock received by HeartWare stockholders in the merger is $0.00, the value of the aggregate merger consideration payable for each share of HeartWare common stock at the effective time would equal $14.30, which represents the cash portion of the merger consideration, as opposed to $25.42, the value of the aggregate merger consideration payable for each share of HeartWare common stock at the effective time had the HeartWare board of directors determined to exercise HeartWare s right to terminate the merger agreement and Thoratec s board of directors elected to increase the merger consideration payable in the merger. See *The Merger Merger Consideration* beginning on page 84. If the HeartWare board of directors determines, based on the facts and circumstances existing at the time, not to exercise its right to terminate the merger agreement, HeartWare does not intend to resolicit the votes of its

stockholders regarding their adoption of the merger agreement. Under Section 251 of the Delaware General Corporation Law, stockholder approval is only required for the adoption of the merger agreement, which in this case would have already been obtained prior to the determination by the HeartWare board of directors whether or not to terminate the merger agreement, or, in certain situations, if the merger agreement is amended, which would not be the case here as any determination to terminate the merger agreement made by the HeartWare board of directors would be pursuant to the terms of the merger agreement and would not require any amendment in the merger agreement. Accordingly, once the required statutory stockholder vote had been obtained, absent an amendment of the merger agreement, there is no obligation on the HeartWare board of directors to re-solicit stockholder approval. After the HeartWare board of directors determines, based on the facts and

circumstances existing at that time, whether to exercise its right to terminate the merger agreement, HeartWare will promptly notify its stockholders of such determination by issuing a press release announcing such determination, including the basis for the HeartWare board of directors determination, as well as filing such press release with the SEC on Form 8-K.

Accordingly, in determining whether to vote to adopt the merger agreement, HeartWare stockholders should be mindful that the per share value of the Thoratec common stock they receive in the merger could, as of the effective time of the merger, be less than $18.38, with the result that the value of the aggregate merger consideration payable for each share of HeartWare common stock, as of the effective time of the merger, could be less than $25.43 per share, i.e. $18.38 multiplied by the 0.6054 shares of Thoratec common stock payable in the merger plus $14.30 in cash, (as compared to a value of $30.19 per share of HeartWare common stock as of February 12, 2009, the date of execution of the merger agreement).

Q: What will holders of HeartWare CDIs receive in the merger?

A: Each HeartWare CDI is exchangeable at the option of the holder of the HeartWare CDI into shares of HeartWare common stock at the ratio of one (1) share of common stock for every thirty-five (35) HeartWare CDIs held by such holder and, as a result of the merger, holders of HeartWare CDIs will be entitled to receive 1/35 of the merger consideration described above for each HeartWare CDI held by such holder. Holders of HeartWare CDIs who do not convert their CDIs into shares of HeartWare common stock prior to the closing date of the merger will receive their merger consideration through Computershare Investor Services Pty Ltd, which we refer to as Computershare on behalf of CDN.

Q: Does the HeartWare board of directors support the merger?

A: Yes. The HeartWare board of directors, by unanimous vote of those present at a meeting duly called, has approved and declared the advisability of the merger agreement and has determined that the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of HeartWare and its stockholders and recommends that you vote **FOR** the proposal to adopt the merger agreement. You should read the section entitled, *HeartWare s Reasons for the Merger and Recommendation of the HeartWare Board of Directors* beginning on page 56. The HeartWare board of directors also recommends that you vote **FOR** the adoption of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies to facilitate the adoption of the merger agreement.

Q: Are there risks involved in undertaking the merger?

A: Yes. In evaluating the merger, HeartWare stockholders should carefully consider the factors discussed in the section of this proxy statement/prospectus entitled *Risk Factors* beginning on page 25 and other information about HeartWare and Thoratec included in the documents incorporated by reference in this proxy statement/prospectus.

Q: Where and when is the HeartWare special meeting?

A: The HeartWare special meeting will be held on , 2009, at , U.S. Eastern time (, Australia Eastern Standard Time on , 2009), at .

Q: Who can vote their shares of HeartWare common stock in connection with the HeartWare special meeting?

A: HeartWare stockholders can vote their shares in connection with the HeartWare special meeting if they owned HeartWare shares of common stock at the close of business, U.S. Eastern time, on , 2009 (, Australia Eastern Standard Time on , 2009), the record date for the HeartWare special meeting. As of the close of business on that day, shares of HeartWare common stock were outstanding, including shares represented by HeartWare CDIs.

Q: What do holders of shares of HeartWare common stock need to do now?

A: If you are a HeartWare stockholder, after you have carefully read this proxy statement/prospectus, including the annexes and the other documents referred to in this proxy statement/prospectus and have decided how you wish to vote your shares, please submit a proxy to vote your shares promptly as described below. You have one (1) vote for each share of HeartWare common stock you own as of the record date and a proportionate vote for any fractional shares so held.

Q: How do I vote if I am a holder of record of HeartWare common stock?

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A: If you are a holder of record of HeartWare common stock, after you have carefully read this document and have decided how you wish to vote your shares of common stock, please vote as soon as possible by:

completing, signing and dating each HeartWare proxy card you receive and returning it in the enclosed postage-prepaid envelope by mail; or

voting in person by appearing at the special meeting.

Mailing in your proxy card will not prevent you from attending the special meeting. You are encouraged to submit a proxy by mail even if you plan to attend the special meeting in person to ensure that your shares of HeartWare common stock are represented at the special meeting.

If you return your signed proxy card, but do not mark the boxes showing how you wish to vote, your shares will be voted **FOR** the proposal to adopt the merger agreement and **FOR** the adoption of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

If you would like to attend the HeartWare special meeting, see *Can I attend the HeartWare special meeting and vote my shares in person?* below.

Q: How do I vote if my shares are held by a brokerage firm, bank, trust or other nominee?

A: If you are a stockholder who holds shares of HeartWare common stock through a brokerage account or other nominee, such as a bank or trust, after you have carefully read this document and have decided how you wish to vote your shares, please submit a proxy for your shares promptly. If you hold your shares of HeartWare common stock through a brokerage account or another nominee, such as a bank or trust, then the brokerage firm, bank, trust or other nominee is considered to be the stockholder of record with respect to those shares of common stock. However, you are still considered to be the beneficial owner of those shares, with your shares being held in street name . Street name holders generally cannot vote their shares directly and must instead direct their brokerage firm, bank, trust or other nominee on how to vote their shares. Your brokerage firm, bank, trust or other nominee will only be permitted to vote your shares for you at the special meeting for the proposal to adopt the merger agreement if you instruct it on how to vote in accordance with the instruction form included with these materials and forwarded to you by your brokerage firm, bank, trust or other nominee. Submitting your proxy card or directing your brokerage firm, bank, trust or other nominee to vote your shares will ensure that your shares are represented and voted at the HeartWare special meeting. Without instructions, your shares will not be voted on the proposal to adopt the merger agreement, which will have the effect described below under the question, *What if I abstain from voting or fail to instruct my brokerage firm, bank, trust or other nominee on how to vote?*

In addition, because any shares you may hold in street name will be deemed to be held by a different stockholder than any shares you hold of record, shares held in street name will not be combined for voting purposes with shares you hold of record. To be sure your shares are voted, you should instruct your brokerage firm, bank, trust or other nominee to vote your shares. Shares held by a corporation or business entity must be voted by an authorized officer of the entity.

Q: How do I vote if my shares are held in the form of HeartWare CDIs?

A: If you are a holder of HeartWare CDIs, you may attend the special meeting but cannot vote your HeartWare CDIs in person at the special meeting. In order to vote your shares in person, you must have converted your HeartWare CDIs into HeartWare common stock before the record date for the HeartWare special meeting. If you wish to

convert your HeartWare CDIs, you should contact Computershare as soon as possible to find out how to convert your HeartWare CDIs into shares of HeartWare common stock and how long the conversion process will take.

If you are a holder of HeartWare CDIs and you do not wish to convert your HeartWare CDIs into shares of HeartWare common stock, you have a right to direct CDN, the stockholder of record, on how it should vote the shares of HeartWare common stock underlying your HeartWare CDIs in relation to each proposal. After you have carefully read this document and have decided how you wish to direct CDN to cast proxy votes with respect to the shares of HeartWare common stock underlying your HeartWare CDIs, please submit your voting instructions as soon as possible by submitting instructions to CDN to vote the underlying shares on your behalf at the meeting on each proposal according to your directions by:

returning by mail the enclosed CDI Voting Instruction Form (instructions on how to fill out the form are set out on the back of the form or on Computershare s website at *www.computershare.com.au*) to

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Computershare, using the enclosed postage-prepaid envelope or by mailing it to Computershare Investor Services Pty Ltd, GPO Box 242 Melbourne Victoria 3001 Australia or by faxing it to Computershare to (within Australia) 1800 783 447 or (outside Australia) +61 3 9473 2555; or

submitting your voting instructions via Computershare s website at *www.computershare.com.au*. You will need your Holder Identification Number or Security Holder Reference Number, which is shown on the enclosed CDI Voting Instruction Form. You will be taken to have signed the CDI Voting Instruction Form if you submit your instructions in accordance with the directions on the website.

If you are a holder of HeartWare CDIs, CDN cannot vote your HeartWare CDIs without instructions from you. You should instruct CDN how to vote your shares by following the directions on the CDI Voting Instruction Form. Without instructions, your HeartWare CDIs will not be voted, which will have the effect described below under the question *What if I abstain from voting or fail to instruct CDN on how to vote my HeartWare CDIs?* below.

Q: What is the last day for holders of HeartWare CDIs to submit voting instructions to Computershare?

A: If you are a holder of HeartWare CDIs directing CDN to vote the underlying shares of HeartWare common stock on your behalf, the latest time for receipt of CDI Voting Instruction Forms (and any necessary supporting documents) via mail and voting instructions via Internet is , U.S. Eastern time on , 2009 (, Australia Eastern Standard Time on , 2009).

Q: Why is my vote as a HeartWare stockholder important?

A: If you do not vote by proxy or vote in person at the HeartWare special meeting, it will be more difficult for HeartWare to obtain the necessary quorum to hold its special meeting. In addition, your failure to vote, whether by proxy or in person, will have the same effect as a vote **AGAINST** adoption of the merger agreement. The merger agreement must be adopted by the affirmative vote of the holders of a majority of the outstanding shares of HeartWare common stock (including shares represented by HeartWare CDIs) entitled to vote at the special meeting. **The HeartWare board of directors recommends that you vote FOR the proposal to adopt the merger agreement.**

Q: What constitutes a quorum for the special meeting?

A: The presence, in person or by proxy, of stockholders representing a majority of the shares of HeartWare common stock entitled to vote at the special meeting, including shares represented by HeartWare CDIs, will constitute a quorum for the special meeting. If you are a stockholder of record and you submit a properly executed proxy card or vote in person at the special meeting, then your shares will be counted as part of the quorum. Abstentions and broker non-votes will be treated as present at the HeartWare special meeting for purposes of determining the presence or absence of a quorum. All shares of HeartWare common stock held by stockholders (including shares represented by HeartWare CDIs) that are present in person or represented by proxy and entitled to vote at the special meeting, regardless of how such shares are voted or whether such stockholders abstain from voting, will be counted in determining the presence of a quorum.

If CDN has received directions to vote shares of HeartWare common stock underlying HeartWare CDIs in accordance with the procedures set out in this proxy statement/prospectus and on the CDI Voting Instruction Form, regardless of whether the directions are to vote the shares **FOR** , **AGAINST** or to abstain from voting, those shares of HeartWare common stock will be counted in determining the presence of a quorum. If you fail to instruct CDN to vote the shares of HeartWare common stock underlying your HeartWare CDIs, the shares

of HeartWare common stock underlying your HeartWare CDIs will not be treated as present at the HeartWare special meeting for purposes of determining the presence or absence of a quorum.

Q: What if I abstain from voting or fail to instruct my brokerage firm, bank, trust or other nominee on how to vote my shares of HeartWare common stock?

A: If you fail to instruct your brokerage firm, bank, trust or other nominee to vote your shares, the nominee will not be able to vote your shares on the proposal to adopt the merger agreement. Because the adoption of the merger agreement requires an affirmative vote of a majority of the outstanding shares of HeartWare common stock for approval, your abstention from voting or your failure to provide your nominee with voting instructions will have the same effect as a vote **AGAINST** the proposal to adopt the merger agreement. Because your brokerage

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firm, bank, trust or other nominee does have discretionary authority to vote on the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies, your broker or other nominee may vote your shares in its discretion on this proposal. If your broker or other nominee affirmatively abstains from voting your shares in its discretion on this proposal, it will have the same effect as a vote **AGAINST** the proposal to adjourn the special meeting.

Q: What if I abstain from voting or fail to instruct CDN on how to vote my HeartWare CDIs?

A: If you are a holder of HeartWare CDIs, CDN cannot vote the shares of HeartWare common stock underlying your HeartWare CDIs on your behalf without instructions from you. You should instruct CDN as to how to vote the underlying shares, following the directions CDN provides to you. Please check the CDI Voting Instruction Form used by CDN. Without instructions, CDN cannot vote on your behalf. If you instruct CDN to abstain from voting the shares of HeartWare common stock underlying your HeartWare CDIs, or you fail to instruct CDN to vote the underlying shares of HeartWare common stock with respect to the proposal to adopt the merger agreement, your direction to abstain from voting on the proposal or failure to instruct CDN will have the same effect as a vote **AGAINST** the proposal to adopt the merger agreement. In addition, if you instruct CDN to abstain from voting on the proposal to adjourn the HeartWare special meeting, if necessary or appropriate, in order to solicit additional proxies, or you fail to instruct CDN to vote on this proposal, your instruction to CDN to abstain from voting or your failure to instruct CDN will have the same effect as a vote **AGAINST** the proposal to adjourn the HeartWare special meeting, if necessary or appropriate, in order to solicit additional proxies.

Q: How are votes counted?

A: Votes will be counted by the inspector of election appointed for the special meeting, who will separately count **FOR** and **AGAINST** votes and abstentions. Because the adoption of the merger agreement requires the affirmative vote of a majority of the outstanding shares of HeartWare common stock, your failure to vote, your failure to provide voting instructions to your broker or nominee or your abstention from voting will have the same effect as a vote against the adoption of the merger agreement. Because the adoption of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies, requires the affirmative vote of a majority of the shares of HeartWare common stock represented in person or by proxy at the special meeting, abstentions will count as a vote against the proposal and the failure to vote your shares will not affect the outcome of the proposal.

CDN, on behalf of the holders of HeartWare CDIs, will vote the underlying shares of HeartWare common stock represented by the HeartWare CDIs on an aggregate basis by (i) determining the total number of HeartWare CDIs **FOR** each proposal, (ii) determining the total number of HeartWare CDIs **AGAINST** each proposal, (iii) determining the total number of HeartWare CDIs abstaining from voting on each proposal, (iv) applying the ratio of one (1) share of HeartWare common stock for every thirty-five (35) HeartWare CDIs and (v) submitting the resultant number of shares of HeartWare common stock **FOR** each proposal and **AGAINST** each proposal and the number of shares abstaining from voting on each proposal, as appropriate.

Q: Can I attend the HeartWare special meeting and vote my shares in person?

A: All holders of HeartWare common stock, including stockholders of record and stockholders who hold their shares through brokerage firms, banks, trusts or other nominees or any other holder of record, and holders of HeartWare CDIs are invited to attend the HeartWare special meeting. If you are not a stockholder of record, you must obtain a proxy, executed in your favor, from the record holder of your shares, such as a brokerage firm, bank, trust or other nominee, to be able to vote in person at the HeartWare special meeting. If you plan to attend the HeartWare special meeting, you must hold your shares in your own name or have a letter from the record holder of your

shares confirming your ownership and you must bring a form of personal photo identification with you in order to be admitted. HeartWare reserves the right to refuse admittance to anyone without proper proof of share ownership or without proper photo identification.

Holders of HeartWare CDIs are entitled to attend the HeartWare special meeting but cannot vote their HeartWare CDIs in person at the HeartWare special meeting. In order to vote their shares in person, holders of HeartWare CDIs must have converted their HeartWare CDIs into HeartWare common stock before the record date for the HeartWare special meeting. If you wish to convert your HeartWare CDIs into HeartWare common stock you should contact Computershare as soon as possible to find out how to convert your HeartWare CDIs into shares of HeartWare common stock and how long the conversion process will take and follow the instructions under the question, *How do I vote if my shares are held in the form of HeartWare CDIs?* above.

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Q: Will HeartWare be required to submit the merger agreement to its stockholders even if the HeartWare board of directors has withdrawn, modified or qualified its recommendation?

A: Yes. Unless the merger agreement is terminated before the HeartWare special meeting, HeartWare is required to submit the merger agreement to its stockholders even if the HeartWare board of directors has withdrawn, modified or qualified its recommendation, consistent with the terms of the merger agreement.

Q: What is the purpose of the second merger, if it occurs?

A: As described below, if certain tax-related conditions are satisfied, the transactions contemplated by the merger agreement will be structured to qualify as a reorganization for U.S. federal income tax purposes. If the transactions are intended to qualify as a reorganization for U.S. federal income tax purposes, the merger of Merger Subsidiary into HeartWare will be followed by a second merger of HeartWare into Merger Subsidiary Two, with Merger Subsidiary Two surviving this second merger as a wholly owned subsidiary of Thoratec. The purpose of employing this two-merger structure is to follow the approach of applicable IRS pronouncements to provide protection against the risk of corporate-level tax to Thoratec and HeartWare in the event the mergers do not qualify as a reorganization .

Q: Will I be subject to U.S. federal income tax on the Thoratec common stock and cash that I receive?

A: For HeartWare stockholders that are U.S. persons (as defined in the section entitled, *The Merger Material U.S. Federal Income Tax Consequences* beginning on page 72), if certain tax-related conditions (described later in this document) are satisfied, the transactions contemplated by the merger agreement will be structured to qualify as a reorganization for U.S. federal income tax purposes. If such transactions qualify as a reorganization, you will recognize gain, but not loss, equal to the lesser of (i) the amount of cash you received in the merger and (ii) an amount equal to the excess, if any, of (x) the sum of the amount of cash and the fair market value of the Thoratec common stock you received in the merger over (y) the aggregate tax basis in your HeartWare common stock surrendered.

If the applicable conditions (described later in this document) are not satisfied, or the Internal Revenue Service, which we refer to as the IRS, successfully challenges the treatment of the mergers as a reorganization, the transactions contemplated by the merger agreement will be fully taxable to you for U.S. federal income tax purposes. In this case, you will recognize all of your gain or loss from the exchange of your HeartWare common stock for cash and Thoratec common stock in the merger.

Based on the number of shares of HeartWare common stock outstanding as of June 25, 2009 and assuming that no HeartWare stockholder exercises dissenters rights, the stock value condition, as described in *The Merger Material U.S. Federal Income Tax Consequences Transaction Structure* beginning on page 73 and subject to the discussion therein, will be satisfied if the mean between the high and low selling prices of a share of Thoratec common stock as reported on The NASDAQ Stock Market for the last trading session closing prior to the effective time of the merger, which we refer to as the effective stock price, is at least $16.74, in which case the second merger will occur and (i) Thoratec and HeartWare will treat the merger and the second merger, taken together, as a single integrated transaction for U.S. federal income tax purposes that qualifies as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, and (ii) as a condition to the completion of the acquisition of HeartWare pursuant to the merger agreement (which condition is not waivable after the receipt of stockholder approval for the merger unless further stockholder approval is obtained with appropriate disclosure), Shearman & Sterling LLP, which we refer to as Shearman, will deliver a tax opinion to HeartWare, and Latham & Watkins LLP, which we refer to as Latham, will deliver a tax opinion to Thoratec, in each case, to

the effect that the merger and the second merger, taken together, will constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. The tax opinions, if delivered, will be based on certain assumptions and on representation letters provided by HeartWare and Thoratec. Thus, if the stock value condition is satisfied but the tax opinions are not delivered, the merger will not occur unless further HeartWare stockholder approval is obtained with appropriate disclosure.

Whether the stock value condition is satisfied will depend on the effective stock price, as described above. Other relevant factors will include (i) whether there has been any adjustment to the merger consideration as a result of either (x) HeartWare electing to terminate the merger agreement and Thoratec electing to increase the number of shares of Thoratec common stock payable in the merger or (y) Thoratec electing to reduce the number of shares of Thoratec common stock payable in the merger, as described in *The Merger Agreement Merger Consideration* beginning on page 84 and (ii) the number of outstanding shares of HeartWare common stock

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with respect to which HeartWare stockholders exercise dissenters rights. See *The Merger Material U.S. Federal Income Tax Consequences* beginning on page 72.

No assurance, however, can be given that the stock value condition will be met because its satisfaction is dependent, in part, on factors that HeartWare and Thoratec do not control. As a result, in deciding whether to vote to adopt the merger agreement, you should consider the possibility that the transaction will be structured as a fully taxable transaction for U.S. federal income tax purposes because the stock value condition is not satisfied. You will not be entitled to change your vote or to vote again in the event that the stock value condition is not satisfied and the transaction is structured as a fully taxable transaction for U.S. federal income tax purposes. Other than the U.S. federal income tax consequences described above, neither HeartWare nor Thoratec is aware of any material effects on HeartWare stockholders if the second merger does not occur.

Assuming an effective stock price of $24.91 of Thoratec common stock, which was the per share closing price on July 20, 2009, and subject to the discussion under *The Merger Material U.S. Federal Income Tax Consequences* beginning on page 72, the transactions contemplated by the merger agreement would be structured to qualify as a reorganization for U.S. federal income tax purposes.

We will notify you via a press release announcing the consummation of the merger as to whether or not the acquisition of HeartWare by Thoratec has been structured to qualify as a reorganization .

You are urged to carefully read the discussion under *The Merger Material U.S. Federal Income Tax Consequences* beginning on page 72, and to consult your tax advisor on the consequences of participation in the transactions contemplated by the merger agreement.

Q: If I am a HeartWare stockholder, can I change or revoke my vote?

A: Yes. Regardless of the method you used to cast your vote, if you are a holder of record of shares, you may change your vote by signing and returning a new proxy card with a later date by 11:59 p.m., U.S. Eastern time on , 2009 (, Australia Eastern Standard Time on , 2009) or by attending the HeartWare special meeting and voting by ballot at the special meeting.

If you are a HeartWare stockholder of record of shares and wish to revoke rather than change your vote, you must send a written, signed revocation to HeartWare International, Inc., 205 Newbury Street, Framingham, Massachusetts 01701, which must be received by 11:59 p.m., U.S. Eastern time on , 2009 (, Australia Eastern Standard Time on , 2009). You must include your control number.

If you hold your shares in street name and wish to change or revoke your vote, please refer to the information on the voting instruction form included with these materials and forwarded to you by your brokerage firm, bank, trust or other nominee to see your voting options.

Any holder of HeartWare common stock entitled to vote in person at the HeartWare special meeting may vote in person regardless of whether a proxy has been previously given, but the mere presence of a stockholder at the special meeting will not constitute revocation of a previously given proxy.

Q: If I am a HeartWare CDI holder, can I change or revoke my direction to vote?

A: If you are a holder of HeartWare CDIs and have completed and returned your CDI Voting Instruction Form, you may change or revoke the directions contained therein by a written notice of change or revocation to Computershare by no later than , U.S. Eastern time on , 2009 (, Australia Eastern Standard Time on , 2009).

Q: If I am a HeartWare stockholder with shares represented by stock certificates, should I send in my HeartWare stock certificates now?

A: No. You should not send in your HeartWare stock certificates at this time. After the merger, Thoratec will send you instructions for exchanging your shares of HeartWare common stock for the merger consideration. If your shares are held in street name by your brokerage firm, bank, trust or other nominee, you will receive instructions from your brokerage firm, bank, trust or other nominee as to how to affect the surrender of your street name shares in exchange for the merger consideration. Please do not send in your stock certificates with your proxy card. Similarly, if you are a holder of HeartWare CDIs, you should not send your holding statement(s) with your CDI Voting Instruction Form. After the merger, Thoratec will send CDN instructions for exchanging its shares of HeartWare common stock for the merger consideration and Computershare will arrange for the merger consideration to be sent to HeartWare CDI holders on behalf of CDN.

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Q: When do you expect to complete the merger?

A: HeartWare and Thoratec are working to complete the merger as promptly as practicable. If HeartWare stockholders adopt the merger agreement and we receive the required regulatory approvals described below in *The Merger Regulatory Matters* beginning on page 79, HeartWare currently expects that the merger will be completed during the second half of 2009. However, it is possible that factors outside our control, including the review of the merger by the Federal Trade Commission, which we refer to as the FTC, or under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, which we refer to as the HSR Act, could require us to complete the merger at a later time or may result in us not completing the merger at all.

For a description of certain matters that could delay or prevent the completion of the merger, please refer to *Risk Factors*, beginning on page 25.

Q: Will the shares of Thoratec common stock to be issued as part of the merger consideration be listed on The NASDAQ Stock Market and ASX?

A: Pursuant to the terms of the merger agreement, Thoratec will use its reasonable best efforts to cause the shares of Thoratec common stock to be issued in connection with the merger to be approved for listing on The NASDAQ Stock Market upon the occurrence of the effective time of the merger, subject to official notice of issuance.

The shares of Thoratec common stock will not be listed on ASX.

Q: What happens if I sell my shares of HeartWare common stock or HeartWare CDIs before the special meeting?

A: The record date for stockholders entitled to vote at the special meeting is earlier than the date of the special meeting and the expected closing date of the merger. If you hold shares of HeartWare common stock or HeartWare CDIs on the record date for the special meeting but you transfer your shares of HeartWare common stock or your HeartWare CDIs after the record date but before the special meeting, you will, unless special arrangements are made, retain your right to vote, or in the case of HeartWare CDIs, your right to give directions to vote, at the special meeting but will transfer the right to receive the merger consideration to the person to whom you transfer your shares or HeartWare CDIs. In addition, if you sell your shares prior to the special meeting or prior to the effective time of the merger, you will not be eligible to exercise your dissenters rights in respect of the merger.

Q: Can I dissent and require appraisal of my shares?

A: Yes. HeartWare stockholders are entitled to dissenters rights under Section 262 of the General Corporation Law of the State of Delaware, which we refer to as the Delaware General Corporation Law, provided that they satisfy the special criteria and conditions set forth in Section 262 of the Delaware General Corporation Law. You must have been a holder of HeartWare common stock as of the record date for the HeartWare special meeting in order to have dissenters rights in connection with the merger.

Holders of HeartWare CDIs are not entitled to exercise dissenters rights in connection with the merger. Accordingly, holders of HeartWare CDIs must have converted their HeartWare CDIs into shares of HeartWare common stock prior to the record date for the HeartWare special meeting in order to have dissenters rights in connection with the merger.

For more information regarding dissenters rights, see *The Merger Dissenters Rights* beginning on page 80. In addition, a copy of Section 262 of the Delaware General Corporation Law is attached as Annex G to this proxy statement/prospectus.

Q: Where can I find more information about HeartWare?

A: You can obtain more information about HeartWare from the various sources described under *Where You Can Find More Information* beginning on page 128.

Q: Whom should I call with questions?

A: For additional questions about the merger, assistance in submitting proxies or voting shares of HeartWare common stock, or additional copies of this proxy statement/prospectus or the enclosed proxy card, HeartWare stockholders should contact HeartWare s Company Secretary, Mr. David McIntyre, at (305) 818-4123 or send an e-mail to enquiries@heartware.com.au.

If your brokerage firm, bank, trust or other nominee holds your shares in street name , you should also call your brokerage firm, bank, trust or other nominee for additional information.

Holders of HeartWare CDIs with questions regarding voting procedures should contact Computershare at (within Australia) 1300 850 505 or (outside Australia) +61 3 9415 4000.

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SUMMARY

This summary highlights selected information contained in this proxy statement/prospectus. This summary may not contain all of the information that might be important to you with respect to the adoption of the merger agreement and the issuance of Thoratec common stock. You should carefully read this entire proxy statement/prospectus and the other documents to which we refer you, including in particular the copies of the merger agreement, the loan agreement, the investor s rights agreement, the forms of support agreements, the opinion of J.P. Morgan Securities Inc., which we refer to as J.P. Morgan, and Section 262 of the Delaware General Corporation Law that are attached as annexes to this proxy statement/prospectus or as exhibits to the registration statement on Form S-4, of which this proxy statement/prospectus forms a part, filed by Thoratec with the SEC. In addition, we encourage you to read the information incorporated by reference into this proxy statement/prospectus, which includes important business and financial information about Thoratec and HeartWare that has been filed with the SEC. You may obtain the information incorporated by reference into this proxy statement/prospectus without charge by following the instructions in the section entitled Where You Can Find More Information beginning on page 128. We have included page references parenthetically to direct you to a more complete description of the topics presented in this summary. You should also note that all dollar amounts referred to in this proxy statement/prospectus are in U.S. dollars unless otherwise specifically indicated.

General

The Companies (page 37)

Thoratec Corporation
6035 Stoneridge Drive
Pleasanton, California 94588
(925) 897-8600

Thoratec Corporation, a California corporation, is a world leader in therapies to address advanced heart failure and point-of-care diagnostics, and its business is comprised of two operating divisions: Cardiovascular and International Technidyne Corporation, or ITC, a wholly owned subsidiary. For advanced heart failure, Thoratec s Cardiovascular division develops, manufactures and markets proprietary medical devices used for mechanical circulatory support. Thoratec s ITC division develops, manufactures and markets point-of-care diagnostic test systems for hospital point-of-care and alternate site point-of-care markets and incision products.

Thoratec was incorporated in California in March 1976 under the former name of Thoratec Laboratories Corporation. On February 14, 2001, Thoratec changed its name to Thoratec Corporation. Thoratec common stock is traded on The NASDAQ Global Select Market under the symbol THOR . Additional information about Thoratec and its subsidiaries is included in documents incorporated by reference in this document. See *Where You Can Find More Information* beginning on page 128.

Thomas Merger Sub I, Inc. and Thomas Merger Sub II, Inc.
6035 Stoneridge Drive
Pleasanton, California 94588
(925) 897-8600

Thomas Merger Sub I, Inc. and Thomas Merger Sub II, Inc. are each wholly owned subsidiaries of Thoratec and were each incorporated in Delaware in February 2009 solely for the purpose of facilitating the mergers. Neither Merger

Subsidiary nor Merger Subsidiary Two has carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement.

HeartWare International, Inc.
205 Newbury Street
Framingham, Massachusetts 01701
(508) 739-0950

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HeartWare International, Inc., a Delaware corporation, is a medical device company that develops and manufactures miniaturized implantable heart pumps to treat patients suffering from advanced heart failure. Its first product, the HeartWare Ventricular Assist System, or the HVAS, is designed to provide circulatory support for patients with advanced heart failure. The HVAS has received regulatory approval for commercial sales in Europe and it is the subject of an ongoing clinical trial investigation by the U.S. Food and Drug Administration, or the FDA. HeartWare s operating subsidiary, HeartWare, Inc., is a Delaware corporation which was incorporated on April 8, 2003 under the name Perpetual Medical, Inc.

HeartWare common stock is traded on The NASDAQ Global Market under the symbol HTWR and HeartWare CDIs are traded on ASX under the symbol HIN . Additional information about HeartWare and its subsidiaries is included in documents incorporated by reference in this document. See *Where You Can Find More Information* beginning on page 128.

The Mergers (page 84)

On February 12, 2009, Thoratec, HeartWare, Merger Subsidiary and Merger Subsidiary Two entered into the merger agreement, which is the legal document governing the mergers. Pursuant to the terms of the merger agreement, which is governed by Delaware law, Merger Subsidiary will merge with and into HeartWare, with HeartWare surviving the merger as a wholly owned subsidiary of Thoratec. If the value of the stock portion of the merger consideration to be received by HeartWare stockholders is at least 41% of the aggregate merger consideration at closing (in each case, as determined pursuant to the merger agreement), then immediately following the merger, HeartWare, as the surviving corporation in the merger, will merge with and into Merger Subsidiary Two, with Merger Subsidiary Two surviving the second merger as a wholly owned subsidiary of Thoratec. Upon completion of the mergers, HeartWare common stock will no longer be publicly traded.

What HeartWare Stockholders Will Receive in the Merger (page 84)

At the effective time of the merger, each share of HeartWare common stock, including shares of common stock represented by HeartWare CDIs, will be converted into the right to receive $14.30 in cash, without interest, and 0.6054 of a share of Thoratec common stock, which we refer to as the merger consideration. However, if the volume weighted average of the per share closing prices of Thoratec common stock on The NASDAQ Stock Market for the twenty (20) consecutive trading days ending on and including the fifth (5th) trading day prior to, but not including, the closing date is equal to or less than $18.38, then HeartWare will have an option to terminate the merger agreement unless, subject to certain adjustments provided for in the merger agreement, Thoratec increases the number of shares of Thoratec common stock payable in the merger such that the value of the stock portion of the merger consideration at closing is equal to 70% of the value of the aggregate Thoratec stock consideration payable in the merger (calculated using the $26.25 price per share of Thoratec common stock used to determine the stock portion of the merger consideration). If that same volume weighted average price is equal to or exceeds $34.13, then Thoratec may reduce the number of shares payable in the merger such that the value of the stock portion of the merger consideration at closing is equal to 130% of the value of the aggregate Thoratec stock consideration payable in the merger (calculated using the $26.25 price per share of Thoratec common stock used to determine the stock portion of the merger consideration).

Based on the number of shares of HeartWare common stock and shares issuable upon exercise of stock options and other stock-based awards outstanding as of February 12, 2009, and a price of $26.25 per Thoratec common share (the volume weighted average closing price of Thoratec common shares on The NASDAQ Stock Market for the four (4) trading days preceding the execution of the merger agreement), HeartWare stockholders would receive Thoratec common shares having a market value of approximately $141.0 million in the merger and an aggregate of

approximately $141.0 million in cash.

Each HeartWare CDI is exchangeable at the option of the holder of the HeartWare CDI into shares of HeartWare common stock at the ratio of one (1) share of common stock for every thirty-five (35) HeartWare CDIs held by such holder and, as a result of the merger, holders of HeartWare CDIs will be entitled to receive 1/35 of the merger consideration described above for each HeartWare CDI held by such holder. Holders of HeartWare CDIs who do not convert their CDIs into shares of HeartWare common stock prior to the closing date of the merger will receive their merger consideration through Computershare on behalf of CDN.

Thoratec will not issue any fractional shares of Thoratec common stock in the merger. Each HeartWare stockholder who would otherwise have been entitled to receive a fractional share of Thoratec common stock will

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instead receive an amount in cash based on such holder s proportionate interest in the net proceeds from the sale or sales in the open market by the exchange agent on behalf of such holder of the aggregate fractional shares of Thoratec common stock that such holder otherwise would be entitled to receive.

Treatment of Options and Other Equity-Based Awards (page 89)

The merger agreement provides that, at or immediately prior to the effective time of the merger, the terms of each then outstanding vested option to purchase shares of HeartWare common stock granted or issued under incentive option agreements or similar arrangements with directors, employees or consultants of HeartWare or under the HeartWare International, Inc. Incentive Option Terms: Non-Executive Directors or the HeartWare International, Inc. 2008 Stock Incentive Plan, which we refer to collectively as HeartWare incentive options, and each outstanding option to purchase shares of HeartWare common stock issued under the HeartWare International, Inc. Employee Stock Option Plan, which we refer to as the HeartWare employee stock option plan, whether or not exercisable or vested, that is outstanding immediately prior to the effective time will be cancelled and will be converted into a right to receive a cash payment, without interest, equal to (i) the excess, if any, of $30.19 over the applicable exercise price per share of HeartWare common stock of such cancelled option multiplied by (ii) the number of shares of HeartWare common stock such holder would have purchased had such holder exercised such cancelled option in full immediately prior to the effective time.

At the effective time of the merger, each then outstanding unvested HeartWare incentive option shall cease to represent the right to acquire shares of HeartWare common stock and will be converted into, and deemed to constitute, an option to acquire, on the same terms and conditions as were applicable under such unvested HeartWare incentive option, a number of shares of Thoratec common stock equal to the product of (i) the number of shares of HeartWare common stock represented by such unvested HeartWare incentive option and (ii) 1.1499, and such new option to acquire Thoratec common stock will have an exercise price per share equal to (x) the per share exercise price specified in such unvested HeartWare incentive option divided by (y) 1.1499. The 1.1499 exchange ratio for each outstanding unvested HeartWare incentive option is subject to the same volume weighted average price adjustments to the stock portion of the merger consideration described in the section entitled, *What HeartWare Stockholders Will Receive in the Merger* above.

The terms of each right of any kind, contingent or accrued, to receive shares of HeartWare common stock or benefits measured by the value of a number of shares of HeartWare common stock, and each other award of any kind consisting of shares of HeartWare common stock, issued under the HeartWare International, Inc. Restricted Stock Unit Plan, the HeartWare International, Inc. 2008 Stock Incentive Plan or the HeartWare employee stock option plan (including restricted stock, restricted stock units, deferred stock units and dividend equivalents), which we refer to collectively as HeartWare stock-based awards, will be adjusted as necessary to provide that at, or immediately prior to, the effective time, each such HeartWare stock-based award, whether or not exercisable or vested, that is outstanding immediately prior to the effective time, will be cancelled and will be converted into the right to receive a cash payment, without interest, equal to $30.19 multiplied by the number of shares of HeartWare common stock the holder of such HeartWare stock-based award would have received had such HeartWare stock-based award been fully earned, vested and exercisable and had been exercised or settled immediately prior to the effective time.

For a more complete description of the treatment of options and other equity-based awards, see *The Merger Agreement Treatment of Options and Other Equity-Based Awards* .

Dissenters Rights (page 80)

Dissenters rights are statutory rights that enable stockholders to dissent from an extraordinary transaction, such as a merger, and to demand that the corporation pay the fair value for their shares as determined by a court in a judicial

proceeding instead of receiving the consideration offered to stockholders in connection with the extraordinary transaction. HeartWare stockholders will have dissenters rights in connection with the merger. If any dissenting HeartWare stockholder demands to be paid the fair value of its dissenting shares, such dissenting shares will not be converted into or exchangeable for the right to receive the merger consideration, and the dissenting stockholder will instead be entitled to be paid the fair value of such dissenting shares, as determined by the Delaware Court of Chancery, in accordance with Section 262 of the Delaware General Corporation Law, unless and until such dissenting stockholder (a) withdraws (in accordance with the Delaware General Corporation Law) or (b) effectively loses the right to dissent and receive the fair value of such dissenting shares under Section 262 of

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the Delaware General Corporation Law. If any dissenting stockholder effectively withdraws or otherwise loses its right to dissent, then as of the later of the occurrence of such event or the closing of the merger, the dissenting shares held by such dissenting stockholder will be cancelled and converted into solely the right to receive the merger consideration, without interest.

You must have been a holder of HeartWare common stock as of the record date for the HeartWare special meeting in order to have dissenters rights in connection with the merger. Holders of HeartWare CDIs are not entitled to exercise dissenters rights in connection with the merger and therefore must have converted their HeartWare CDIs into shares of HeartWare common stock prior to the record date for the HeartWare special meeting in order to have dissenters rights in connection with the merger.

For a more complete description of dissenters rights associated with the mergers, see *The Merger Dissenters Rights* beginning on page 80.

Material U.S. Federal Income Tax Consequences (page 72)

If certain tax-related conditions contained in the merger agreement (described below) are satisfied, the transaction will be structured to qualify as a reorganization for U.S. federal income tax purposes. If the mergers, taken together, qualify as a reorganization, you will recognize gain, but not loss, equal to the lesser of (i) the amount of cash you receive in the merger and (ii) an amount equal to the excess, if any, of (x) the sum of the amount of cash and the fair market value of the Thoratec common stock you receive in the merger over (y) the aggregate tax basis in your HeartWare common stock surrendered.

These conditions to the transaction being structured to qualify as a reorganization for U.S. federal income tax purposes include: (i) the aggregate value of the Thoratec common stock (measured immediately prior to the merger based on the effective stock price) received by HeartWare stockholders in the merger being equal to at least 41% of the value of the aggregate merger consideration (as determined pursuant to the merger agreement), and (ii) the delivery of tax opinions by Shearman to HeartWare, and Latham to Thoratec, in each case to the effect that the mergers, taken together, will constitute a reorganization for U.S. federal income tax purposes.

The trading value of Thoratec common stock will fluctuate and thus we cannot assure you that these conditions will be satisfied. If the condition described in (i) above, or the stock value condition, is not satisfied, or the IRS successfully challenges the treatment of the mergers, taken together, as a reorganization, the merger will not qualify as a reorganization for U.S. federal income tax purposes and will be treated as a fully taxable transaction. In such an event, you will recognize and be subject to tax on all of your gain with respect to the disposition of your HeartWare common stock in the merger, including to the extent your HeartWare common stock is exchanged for Thoratec common stock. If the stock value condition is satisfied but the tax opinion condition described in (ii) above is not satisfied, the acquisition of HeartWare pursuant to the merger agreement will not be completed unless further HeartWare stockholder approval is obtained with appropriate disclosure.

Based on the number of shares of HeartWare common stock outstanding as of June 25, 2009 and assuming that no HeartWare stockholder exercises dissenters rights, the stock value condition, as described in *The Merger Material U.S. Federal Income Tax Consequences Transaction Structure* beginning on page 73 and subject to the discussion therein, will be satisfied if the effective stock price is at least $16.74, in which case the second merger will occur and (i) Thoratec and HeartWare will treat the merger and the second merger, taken together, as a single integrated transaction for U.S. federal income tax purposes that qualifies as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, and (ii) as a condition to the completion of the acquisition of HeartWare pursuant to the merger agreement (which condition is not waivable after the receipt of stockholder approval for the merger unless further stockholder approval is obtained with appropriate disclosure), Shearman will deliver a tax

opinion to HeartWare, and Latham will deliver a tax opinion to Thoratec, in each case, to the effect that the merger and the second merger, taken together, will constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. The tax opinions, if delivered, will be based on certain assumptions and on representation letters provided by HeartWare and Thoratec. If the stock value condition is satisfied but the tax opinions are not delivered, the merger will not occur unless further HeartWare stockholder approval is obtained with appropriate disclosure.

Whether the stock value condition will be satisfied depends on the effective stock price, as described above. Other relevant factors will include (i) whether there has been any adjustment to the merger consideration as a result

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of either (x) HeartWare electing to terminate the merger agreement and Thoratec electing to increase the number of shares of Thoratec common stock payable in the merger or (y) Thoratec electing to reduce the number of shares of Thoratec common stock payable in the merger, as described in *The Merger Agreement Merger Consideration* beginning on page 84 and (ii) the number of outstanding shares of HeartWare common stock with respect to which HeartWare stockholders exercise dissenters rights. See *The Merger Material U.S. Federal Income Tax Consequences* beginning on page 72.

No assurance, however, can be given that the stock value condition described above will be met. As a result, in deciding whether to vote to adopt the merger agreement, you should consider the possibility that the transaction will be structured as a fully taxable transaction for U.S. federal income tax purposes because the stock value condition is not satisfied. You will not be entitled to change your vote or to vote again in the event that the stock value condition is not satisfied and the transaction is structured as a fully taxable transaction for U.S. federal income tax purposes. Other than the U.S. federal income tax consequences described above, neither HeartWare nor Thoratec is aware of any material effects on HeartWare stockholders if the second merger does not occur.

Assuming an effective stock price of $24.91 of Thoratec common stock, which was the per share closing price on July 20, 2009, and subject to the discussion under *The Merger Material U.S. Federal Income Tax Consequences* beginning on page 72, the transactions contemplated by the merger agreement would be structured to qualify as a reorganization for U.S. federal income tax purposes.

We will notify you via a press release announcing the consummation of the merger as to whether or not the acquisition of HeartWare by Thoratec has been structured to qualify as a reorganization .

THE U.S. FEDERAL INCOME TAX CONSEQUENCES DESCRIBED ABOVE MAY NOT APPLY TO ALL HEARTWARE STOCKHOLDERS, INCLUDING CERTAIN HEARTWARE STOCKHOLDERS SPECIFICALLY REFERRED TO ON PAGES 72 THROUGH 79. YOUR TAX CONSEQUENCES, INCLUDING ANY STATE, LOCAL AND NON-U.S. TAX CONSEQUENCES, WILL DEPEND ON YOUR OWN SITUATION. YOU SHOULD CONSULT YOUR TAX ADVISOR TO DETERMINE THE PARTICULAR TAX CONSEQUENCES OF PARTICIPATION IN THE TRANSACTIONS CONTEMPLATED BY THE MERGER AGREEMENT.

Recommendation of the HeartWare Board of Directors (page 56)

The HeartWare board of directors has, by unanimous vote of those present at a meeting duly called, approved and declared the advisability of the merger agreement and has determined that the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of HeartWare and its stockholders and recommends that you vote **FOR** the proposal to adopt the merger agreement.

To review the background of, and HeartWare s reasons for, the merger, as well as certain risks related to the merger, see pages 50 through 56, pages 56 through 59 and pages 25 through 31, respectively.

Opinion of HeartWare s Financial Advisor

At the meeting of the HeartWare board of directors on February 12, 2009, J.P. Morgan rendered its oral opinion, subsequently confirmed in writing, to the HeartWare board of directors that, as of such date, and based upon and subject to the factors, procedures, assumptions, qualifications and limitations set forth in its opinion, the merger consideration to be paid to the holders of shares of HeartWare common stock in the merger was fair, from a financial point of view, to such holders.

The full text of the written opinion of J.P. Morgan dated February 12, 2009, which sets forth, among other things, the assumptions made, procedures followed, matters considered, and qualifications and limitations on the review undertaken in connection with its opinion, is included as Annex F to this proxy statement/prospectus and is incorporated herein by reference. J.P. Morgan provided its opinion for the information of the HeartWare board of directors in connection with and for the purposes of the evaluation of the transactions contemplated by the merger agreement. J.P. Morgan s written opinion addresses only the consideration to be paid to the holders of shares of HeartWare common stock in the merger, and does not address any other matter. J.P. Morgan s opinion does not constitute a recommendation to any stockholder of HeartWare as to how such stockholder should vote with respect to any matter.

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Interests of HeartWare Directors and Executive Officers in the Mergers (page 66)

In considering the recommendation of the HeartWare board of directors with respect to the merger, HeartWare stockholders should be aware that certain executive officers and non-employee directors of HeartWare have certain interests in the merger that may be different from, or in addition to, the interests of HeartWare stockholders generally. The HeartWare board of directors was aware of these interests and considered them, among other matters, when approving the merger agreement and recommending that the HeartWare stockholders vote to adopt the merger agreement. These interests include the following:

at the effective time of the merger, each then outstanding vested HeartWare incentive option and each outstanding option to purchase shares of HeartWare common stock issued under the HeartWare employee stock option plan, whether vested or unvested, will be cancelled and will convert into a right to receive the cash payment described above under the section entitled, *Treatment of Options and other Equity-Based Awards* and on page 89. Based upon the number of unvested options to purchase shares of HeartWare common stock issued under the HeartWare employee stock option plan outstanding as of the HeartWare record date, such unvested options held by the HeartWare non-employee directors and executive officers relating to shares of HeartWare common stock will be cancelled and will be converted into aggregate cash payments of $ million;

at the effective time of the merger, each then outstanding unvested HeartWare incentive option will be converted into an option to acquire, on the same terms and conditions, an equivalent number of shares of Thoratec common stock as converted as described above under the section entitled, *Treatment of Options and other Equity-Based Awards* and on page 89. As of the HeartWare record date, there were outstanding unvested HeartWare incentive options held by the HeartWare non-employee directors and executive officers.

each HeartWare stock-based award (other than options granted or issued under (i) incentive option agreements or similar arrangements with directors and executive officers and (ii) the HeartWare employee stock option plan) will be cancelled and will convert into the right to receive the cash payment described above under the section entitled, *Treatment of Options and other Equity-Based Awards* and on page 89. Based upon the number of such restricted stock units as of the HeartWare record date, such units held by the HeartWare executive officers and non-employee directors relating to shares will be cancelled and will be converted into aggregate cash payments of $ million;

three (3) of HeartWare s executive officers have each entered into a retention bonus agreement that requires Thoratec to make certain payments to them upon the occurrence of certain events;

two (2) of HeartWare s executive officers have accepted offer letters with Thoratec that will be effective at the effective time of the merger. Additionally, these executive officers have each entered into a separation benefits agreement with Thoratec that becomes effective on the effective time of the merger, which supersedes such executive officer s employment agreement with HeartWare. This agreement requires Thoratec to make certain payments and provide certain benefits if the executive officer s employment is involuntarily terminated by Thoratec without cause or by the executive for good reason as defined in the agreement; and

subject to certain conditions, HeartWare will also be permitted to award additional cash retention bonuses to other HeartWare employees, payable on or following the effective time of the merger. The maximum aggregate amount payable (inclusive of any and all payments, reimbursements and tax gross ups) pursuant to such bonuses and the three (3) retention bonus agreements described above will be $8.0 million.

For a more complete description of the interests of HeartWare s directors and executive officers in the merger, see *The Merger Interests of HeartWare Directors and Executive Officers in the Mergers* .

Comparison of Rights of Shareholders of Thoratec and Stockholders of HeartWare (page 113)

HeartWare stockholders, whose rights are currently governed by the Certificate of Incorporation of HeartWare, Bylaws of HeartWare and Delaware law, will, upon completion of the merger, become shareholders of Thoratec and their rights will be governed by the Amended and Restated Articles of Incorporation of Thoratec, the Amended and Restated By-laws of Thoratec and California law.

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For a more complete description of the comparison of rights of shareholders of Thoratec and stockholders of HeartWare, see *Comparison of Rights of Shareholders of Thoratec and Stockholders of HeartWare*.

The Merger Agreement

Conditions to the Completion of the Mergers (pages 99 through 100)

Currently the companies expect to complete the mergers in the second half of 2009. As more fully described in this document and in the merger agreement, the completion of the merger depends on a number of conditions being satisfied or, where legally permissible, waived. These conditions include, among others, receipt of the requisite approval of HeartWare stockholders, the expiration or termination of the required waiting period under the HSR Act and the absence of legal impediments to the consummation of the merger. See *The Merger Regulatory Matters* for a description of the request for additional information regarding HeartWare and Thoratec from the FTC. As more fully described in this document and in the merger agreement, a copy of which is attached to this proxy statement/prospectus as Annex A, the completion of the second merger depends on the satisfaction of certain tax-related conditions.

We cannot be certain when, or if, the conditions to the mergers will be satisfied or waived, or that the mergers will be completed.

For a more complete description of the conditions to completion of the mergers, see *The Merger Agreement Conditions to the Obligations of Each Party to Consummate the Merger, Conditions to the Obligations of Thoratec and Merger Subsidiary to Consummate the Merger, Conditions to the Obligations of HeartWare to Consummate the Merger* and *Conditions to the Obligations of Each Party to Consummate the Second Merger*.

Termination of the Merger Agreement; Termination Fee (pages 101 through 103)

The merger agreement contains provisions addressing the circumstances under which HeartWare or Thoratec may terminate the merger agreement. In addition, the merger agreement provides that, in certain circumstances, HeartWare may be required to pay Thoratec a termination fee of $11.3 million or, in certain other circumstances, $5.0 million.

For a more complete description, see *The Merger Agreement Termination* and *Termination Fee*.

Regulatory Matters (page 79)

Both HeartWare and Thoratec have agreed to use reasonable best efforts to obtain all regulatory approvals required to complete the transactions contemplated by the merger agreement and both Thoratec and HeartWare have agreed to use their respective reasonable best efforts to take all actions necessary to cause the termination of any waiting period under the HSR Act to be satisfied as soon as practicable. HeartWare and Thoratec have completed the initial filing of applications and notifications to obtain the expiration or termination of the waiting period under the HSR Act. On March 26, 2009, each of HeartWare and Thoratec received a request for additional information, or a second request, from the FTC. Each of HeartWare and Thoratec has substantially complied with the second request and the parties are waiting for a final determination from the FTC. Although the companies do not know of any reason as to why they cannot obtain these regulatory approvals in a timely manner, they cannot be certain when or if they will obtain them.

For a more complete description of these regulatory matters, see *The Merger Regulatory Matters*.

The Support Agreements (pages 110 through 111)

As a condition to its entering into the merger agreement, Thoratec required certain stockholders of HeartWare to each enter into a support agreement with Thoratec with respect to all of the shares of HeartWare common stock and HeartWare CDIs beneficially owned by such stockholders on the date thereof, along with all such shares purchased or beneficially acquired after the execution of the support agreements and, pursuant to the support agreements, such stockholders have agreed to vote such shares of HeartWare common stock and HeartWare CDIs held by them in favor of the adoption of the merger agreement and, subject to certain exceptions, have agreed not to dispose of their shares prior to the date of the HeartWare special meeting.

For a more complete description of the support agreements, see *The Support Agreements* .

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The Loan Documents

The Loan Agreement (pages 104 through 108)

Concurrent with the execution and delivery of the merger agreement, Thoratec entered into a loan agreement with HeartWare and all of HeartWare s subsidiaries, as guarantors, pursuant to which Thoratec agreed to deposit up to an aggregate of $28.0 million into an escrow account and to loan such funds through one or more term loans to HeartWare, subject to the terms and conditions set forth in the loan agreement, in order to fund the ongoing operations of HeartWare through the anticipated closing of the merger.

Thoratec has deposited $20.0 million into the escrow account, although HeartWare could not borrow any funds prior to May 1, 2009. Beginning as of May 1, 2009, HeartWare may borrow up to an aggregate of $12.0 million of funds and, beginning on July 31, 2009, HeartWare may borrow up to an aggregate of $20.0 million of funds. In the event that all of the conditions to closing the merger have been satisfied (other than those conditions that, by their terms, are not capable of being satisfied until the closing, and the condition that relates to the expiration or termination of the applicable waiting period under the HSR Act) and Thoratec exercises an option under the merger agreement to extend the outside date for the completion of the merger until January 31, 2010, HeartWare may borrow up to an additional $8.0 million, which Thoratec must deposit into the escrow account at the time it exercises its extension option. The maximum aggregate amount that HeartWare may borrow under the loan agreement shall not exceed $28.0 million.

In the event that the merger agreement is terminated in accordance with its terms, Thoratec may convert the outstanding principal amount of the loans to HeartWare, including any accrued and unpaid interest, as well as any amounts remaining in the escrow account that have not been loaned to HeartWare, in whole or in part, into shares of HeartWare common stock based on a conversion rate equal to (i) $21.5355 per share of HeartWare common stock in the event the mergers are not consummated as a result of a termination of the merger agreement by either HeartWare or Thoratec due to a competing acquisition proposal that the HeartWare board of directors determines is a superior proposal in accordance with the terms of the merger agreement or (ii) $35.00 Australian dollars per share of HeartWare common stock in the event the merger agreement is terminated for any other reason, in each case subject to adjustment as provided in the loan agreement.

The outstanding loans to HeartWare under the loan agreement accrue interest at the rate of 10% per annum and are due and payable, together with accrued and unpaid interest, on the earlier of (i) November 1, 2011, (ii) the date on which all of the loans and all of the amounts held in the escrow account have been converted into HeartWare s common stock in accordance with the loan agreement and (iii) the date on which all of the loans become due and payable in full in accordance with the loan agreement.

For a more complete description of the loan agreement, see *The Loan Agreement* .

The Investor s Rights Agreement (pages 109 through 110)

Concurrent with the execution of the loan agreement, HeartWare and Thoratec entered into an investor s rights agreement pursuant to which HeartWare has agreed to provide certain registration rights with respect to any HeartWare common stock issued upon the conversion of the loans or any amounts held in the escrow account, as further described under the heading *The Loan Agreement Conversion of Loans* .

For a more complete description of the investor s rights agreement, see *The Investor s Rights Agreement* .

The HeartWare Special Meeting

Date, Time and Place

The special meeting of HeartWare stockholders will be held on , 2009, at , U.S. Eastern time (, Australia Eastern Standard Time on , 2009), at . At the HeartWare special meeting, HeartWare stockholders will be asked to consider and vote upon the adoption of the merger agreement and the adjournment of the HeartWare special meeting, if necessary or appropriate, to permit further solicitation of proxies if there are not sufficient votes at the time of the HeartWare special meeting to adopt the merger agreement.

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Record Date; Voting Power; Quorum (page 32)

Holders of record of HeartWare common stock are entitled to vote at the HeartWare special meeting if they owned shares of HeartWare common stock as of the close of business, U.S. Eastern time on , 2009 (, Australia Eastern Standard Time on , 2009), the HeartWare record date.

As of the HeartWare record date, there were shares of HeartWare common stock (including shares represented by HeartWare CDIs) entitled to vote at the HeartWare special meeting. Stockholders will have one vote at the HeartWare special meeting for each share of HeartWare common stock that they owned on the HeartWare record date and a proportionate vote for any fractional shares so held. CDN, on behalf of the holders of HeartWare CDIs, will vote the underlying shares of HeartWare common stock represented by the HeartWare CDIs on an aggregate basis by (i) determining the total number of HeartWare CDIs **FOR** each proposal, (ii) determining the total number of HeartWare CDIs **AGAINST** each proposal, (iii) determining the total number of HeartWare CDIs abstaining from voting on each proposal, (iv) applying the ratio of one (1) share of HeartWare common stock for every thirty-five (35) HeartWare CDIs and (v) submitting the resultant number of shares of HeartWare common stock **FOR** each proposal and **AGAINST** each proposal and the number of shares abstaining from voting on each proposal, as appropriate.

As of the HeartWare record date, there were HeartWare CDIs entitled to give directions to vote at the HeartWare special meeting. Each HeartWare CDI is exchangeable at the option of the HeartWare CDI holder into shares of HeartWare common stock at the ratio of one (1) share of HeartWare common stock for every thirty-five (35) HeartWare CDIs.

A majority of shares of HeartWare common stock issued, outstanding and entitled to vote constitutes a quorum for the purpose of considering the proposals. In the event that a quorum is not present at the special meeting, the meeting may be adjourned by the affirmative vote of a majority of shares present or represented at the special meeting, in order to solicit additional proxies.

Vote Required (page 33)

Adoption of the merger agreement requires the affirmative vote of the holders of a majority of the outstanding shares of HeartWare common stock entitled to vote in connection with the HeartWare special meeting. Because approval is based on the affirmative vote of a majority of outstanding shares entitled to vote, a HeartWare stockholder s failure to vote, failure to provide its broker or other nominee with voting instructions on how to vote its shares or a HeartWare stockholder s abstention from voting will have the same effect as a vote **AGAINST** the adoption of the merger agreement.

Approval of the proposal to adjourn the HeartWare special meeting, if necessary or appropriate, to permit further solicitation of proxies requires the affirmative vote of the holders of a majority of the shares present in person or represented by proxy and entitled to vote at the HeartWare special meeting. Because approval of such proposal to adjourn is based on the affirmative vote of a majority of shares present or represented, abstentions from voting will have the same effect as a vote **AGAINST** this proposal and the failure by a HeartWare stockholder to vote its shares will not affect the outcome of this proposal. Brokers or other nominees holding shares of HeartWare common stock in street name will have the authority to vote the shares in their discretion on the proposal. If any such broker or nominee abstains from voting, such abstention will have the same effect as a vote **AGAINST** this proposal. CDN cannot vote the underlying shares on behalf of holders of HeartWare CDIs without instructions from such holders. An instruction to CDN to abstain on this proposal will have the same effect as a vote **AGAINST** this proposal.

Shares Owned by HeartWare Directors and Executive Officers (page 33)

As of the HeartWare record date, directors and executive officers of HeartWare were entitled to vote shares of HeartWare common stock, which represented approximately % of the outstanding shares of HeartWare common stock at that date.

As of the HeartWare record date, directors and executive officers of HeartWare were entitled to give directions to vote HeartWare CDIs, which represented approximately % of the outstanding shares of HeartWare common stock at that date. Each HeartWare CDI is exchangeable at the option of the HeartWare CDI holder, into shares of HeartWare common stock at the ratio of one (1) share of HeartWare common stock for every thirty-five (35) HeartWare CDIs.

See *The Merger Interests of HeartWare Directors and Executive Officers in the Mergers* .

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Comparative Market Prices

HeartWare common stock is quoted on The NASDAQ Global Market under the symbol HTWR and HeartWare CDIs are quoted on ASX under the symbol HIN . Thoratec common stock is quoted on The NASDAQ Global Select Market under the symbol THOR . The following table presents the closing sale prices of HeartWare common stock, HeartWare CDIs and Thoratec common stock, as reported on their respective exchanges on:

February 12, 2009, the last full trading day prior to the public announcement of the merger agreement; and

, 2009, the last full trading day prior to the date of this proxy statement/prospectus.

The table also presents the equivalent value of the merger consideration proposed for each share of HeartWare common stock, which was calculated by multiplying the closing price of Thoratec common stock on those dates by the exchange ratio of 0.6054 and adding $14.30 (which represents the cash component of the merger consideration).

	HeartWare Common Stock	HeartWare CDIs	Thoratec Common Stock	Equivalent Value of One Share of HeartWare Common Stock
February 12, 2009	$N/A(1)	AUD$0.665	$26.37	$30.26
, 2009	$	AUD$	$	$

(1) Shares of HeartWare common stock commenced trading on The NASDAQ Global Market on February 24, 2009.

These prices will fluctuate prior to the merger. HeartWare stockholders are urged to obtain current market quotations for the shares of Thoratec common stock prior to voting or providing a proxy with respect to the proposal to adopt the merger agreement.

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Comparative Per Share Information

The following table sets forth for the periods presented certain per share data of Thoratec and HeartWare on a historical basis, and an unaudited pro forma combined basis, which gives effect to the merger, as if it had been completed on April 4, 2009 for the book value per share data and on December 30, 2007 for the net income (loss) and the cash dividends declared per share data.

The historical per share data of Thoratec has been derived from, and should be read in conjunction with, the historical consolidated financial statements of Thoratec incorporated by reference in this proxy statement/prospectus and the historical per share data of HeartWare has been derived from, and should be read in conjunction with, the historical consolidated financial statements of HeartWare incorporated by reference in this proxy statement/prospectus. See *Where You Can Find More Information* beginning on page 128 of this proxy statement/prospectus. The unaudited pro forma per share data has been derived from, and should be read in conjunction with, the unaudited pro forma condensed combined financial statements included elsewhere in this proxy statement/prospectus. See *Unaudited Pro Forma Condensed Combined Financial Statements* beginning on page 38 of this proxy statement/prospectus. The unaudited pro forma combined equivalent data was calculated by multiplying the corresponding unaudited pro forma combined data by an assumed exchange ratio of 0.6054.

The unaudited combined pro forma information is presented for illustrative purposes only and is not necessarily indicative of the operating results or financial position that would have occurred if the merger had been consummated as of the assumed date, nor is it necessarily indicative of future operating results or the financial position of the combined companies. The pro forma adjustments are based upon available information and certain assumptions that management believes are reasonable. See *Unaudited Pro Forma Condensed Combined Financial Statements* beginning on page 38 of this proxy statement/prospectus.

(i) the Trustee may rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper person, and the Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(ii) before the Trustee acts or refrains from acting, it may require an officers certificate or an opinion of counsel, and the Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion;

(iii) the Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care;

(iv) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request or direction of any of the Holders, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(v) the Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers or for any action it takes or omits to take in accordance with the direction of the Holders of a majority in principal amount of the outstanding debt securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under the Indenture; and

(vi) the Trustee may consult with counsel and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it under the Indenture in good faith and in reliance on such advice or opinion. (Section 7.2)

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Subject to such provisions in the Indenture for the indemnification of the Trustee and certain other limitations, the Holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series affected (each such series voting as a separate class) may 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; provided, that the Trustee may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction; and provided further, that the Trustee may take any other action it deems proper that is not inconsistent with any directions received from Holders of debt securities pursuant to this paragraph. (Section 6.5)

The Indenture provides that no Holder of any debt security of any series may institute any proceeding, judicial or otherwise, with respect to the Indenture or the debt securities of such series, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture, unless:

(i) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the debt securities of such series;

(ii) the Holders of at least 25% in aggregate principal amount of outstanding debt securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee under the Indenture;

(iii) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against any costs, liabilities or expenses to be incurred in compliance with such request;

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

(v) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding debt securities of such series have not given the Trustee a direction that is inconsistent with such written request.

A Holder may not use the Indenture to prejudice the rights of another Holder or to obtain a preference or priority over such other Holder. (Section 6.6)

The Indenture contains a covenant that the Company will file annually, not more than 90 days after the end of its fiscal year, with the Trustee a certification from the principal executive officer, principal financial officer or principal accounting officer that a review has been conducted of the activities of the Company and its Subsidiaries and the Company s and its Subsidiaries performance under the Indenture and that the Company has complied with all conditions and covenants under the Indenture. (Section 4.6)

Discharge, Defeasance and Covenant Defeasance

The Indenture provides that, except as provided below, the Company may terminate its obligations under the debt securities of any series and the Indenture with respect to debt securities of such series if:

(i) all debt securities of such series previously authenticated and delivered (other than destroyed, lost or stolen debt securities of such series that have been replaced or debt securities of such series that are fully paid or debt securities of such series for whose payment money or debt securities have previously been held in trust and subsequently repaid to the Company, as provided in the Indenture) have been delivered to the Trustee for cancellation and the Company has paid all sums payable by it under the Indenture; or

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(ii) (A) the debt securities of such series mature within one year or all of them are to be called for redemption within one year under arrangements satisfactory to the Trustee for giving the notice of redemption, (B) the Company irrevocably deposits in trust with the Trustee, as trust funds solely for the benefit of the Holders of such debt securities for that purpose, money or U.S. Government Obligations (as defined in the Indenture) or a combination of money and U.S. Government Obligations sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification of such firm delivered to the Trustee), without consideration of any reinvestment, to pay principal of and interest on the debt securities of such series to maturity or redemption, as the case may be, and to pay all other sums payable by it under the Indenture, (C) no default with respect to the debt securities of such series has occurred and is continuing on the date of such deposit, (D) such deposit does not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company is a party or by which it is bound and (E) the Company delivers to the Trustee an officers certificate and an opinion of counsel, in each case stating that all conditions precedent provided for in the Indenture relating to the satisfaction and discharge of the Indenture have been complied with.

With respect to the foregoing clause (i), only the Company s obligations under Section 7.7 of the Indenture in respect of the debt securities of such series shall survive. With respect to the foregoing clause (ii), only the Company s obligations in Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.11, 4.2, 7.7, 7.8, 8.5 and 8.6 of the Indenture in respect of the debt securities of such series shall survive until the debt securities of such series are no longer outstanding. Once there are no longer any debt securities of a particular series outstanding, only the Company s obligations in Sections 7.7, 8.5 and 8.6 of the Indenture in respect of the debt securities of such series shall survive. After any such irrevocable deposit, the Trustee upon request shall acknowledge in writing the discharge of the Company s obligations under the debt securities of such series and this Indenture with respect to the debt securities of such series except for those surviving obligations specified above. (Section 8.1)

The Indenture provides that, except as provided below, the Company will be deemed to have paid and will be discharged from any and all obligations in respect of the debt securities of any series after the period specified in clause (D)(2)(z) of this paragraph, and the provisions of the Indenture will no longer be in effect with respect to the debt securities of such series, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same; provided, that the following conditions shall have been satisfied:

(i) the Company has irrevocably deposited in trust with the Trustee as trust funds solely for the benefit of the Holders for payment of the principal of and interest on the debt securities of such series, money or U.S. Government Obligations or a combination of money or U.S. Government Obligations sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification of such firm delivered to the Trustee) without consideration of any reinvestment and after payment of all federal, state and local taxes or other charges and assessments in respect of such funds payable by the Trustee, to pay and discharge the principal of and accrued interest on the outstanding debt securities of such series to maturity or earlier redemption (irrevocably provided for under arrangements satisfactory to the Trustee), as the case may be;

(ii) such deposit will not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(iii) no Default (as defined in the Indenture) with respect to the debt securities of such series shall have occurred and be continuing on the date of such deposit or at any time during the period specified in clause (iv)(2)(z) below;

(iv) the Company shall have delivered to the Trustee (1) either (x) a ruling directed to the Trustee received from the Internal Revenue Service to the effect that the Holders of the debt securities

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of such series will not recognize income, gain or loss for federal income tax purposes as a result of the Company s exercise of its option under this provision of the Indenture and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised or (y) an opinion of counsel to the same affect as the ruling described in clause (x) above and based on a change in law and (2) an opinion of counsel to the effect that (x) the creation of the defeasance trust does not violate the Investment Company Act of 1940, as amended, (y) the Holders of the debt securities of such series have a valid first priority security interest in the trust funds, and (z) after the passage of 123 days following the deposit (except after one year following the deposit, with respect to any trust funds for the account of any Holder of the debt securities of such series who may be deemed to be an insider as to an obligor on the debt securities of such series for purposes of the United States Bankruptcy Code), the trust funds will not be subject to the effect of Section 547 of the United States Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law in a case commenced by or against the Company under either such statute, and either (I) the trust funds will no longer remain the property of the Company (and therefore will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors rights generally) or (II) if a court were to rule under any such law in any case or proceeding that the trust funds remained in the property of the Company, to the extent not paid to such Holders, the Trustee will hold, for the benefit of such Holders, a valid and perfected first priority security interest in such trust funds that is not avoidable in bankruptcy or otherwise (except for the effect of Section 552(b) of the United States Bankruptcy Code on interest on the trust funds accruing after the commencement of a case under such statute) and the Holders of the debt securities of such series will be entitled to receive adequate protection of their interests in such trust funds if such trust funds are used in such case or proceeding;

(v) if the debt securities of such series are then listed on a national securities exchange, the Company shall have delivered to the Trustee an opinion of counsel to the effect that the defeasance contemplated by this provision of the Indenture of the debt securities of such series will not cause the debt securities of such series to be delisted; and

(vi) the Company has delivered to the Trustee an officers, certificate and an opinion of counsel, in each case stating that all conditions precedent provided for in the Indenture relating to the defeasance contemplated by this provision of the Indenture of the debt securities of such series have been complied with. Notwithstanding the foregoing, prior to the end of the 123-day (or one year) period referred to in clause (iv)(2)(z) of this paragraph, none of the Company s obligations under the Indenture with respect to the debt securities of such series shall be discharged. Subsequent to the end of such 123-day (or one year) period, the Company s obligations in Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.11, 4.2, 7.7, 7.8, 8.5 and 8.6 of the Indenture with respect to the debt securities of such series shall survive until such debt securities are no longer outstanding. Once there are no longer any debt securities of a particular series outstanding, only the Company s obligations in Sections 7.7, 8.5 and 8.6 of the Indenture with respect to the debt securities of such series shall survive. If and when a ruling from the Internal Revenue Service or an opinion of counsel referred to in clause (iv)(1) of this paragraph is able to be provided specifically without regard to, and not in reliance upon, the continuance of the Company s obligations under Section 4.1 of the Indenture, then the Company s obligations under such Section 4.1 of the Indenture with respect to the debt securities of such series shall cease upon delivery to the Trustee of such ruling or opinion of counsel and compliance with the other conditions precedent provided for in this provision of the Indenture relating to the defeasance contemplated by this provision of the Indenture. (Section 8.2)

The Indenture provides that the Company may omit to comply with any term, provision or condition described under Certain Covenants, and such omission shall be deemed not to be an Event of Default, with respect to the outstanding debt securities of any series if:

(i) the Company has irrevocably deposited in trust with the Trustee as trust funds solely for the benefit of the Holders of the debt securities of such series for payment of the principal of and interest, if

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any, on the debt securities of such series money or U.S. Government Obligations or a combination of money or U.S. Government Obligations in an amount sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification of such firm delivered to the Trustee) without consideration of any reinvestment and after payment of all federal, state and local taxes or other charges and assessments in respect of such funds payable by the Trustee, to pay and discharge the principal of and interest on the outstanding debt securities of such series to maturity or earlier redemption (irrevocably provided for under arrangements satisfactory to the Trustee), as the case may be;

(ii) such deposit will not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(iii) no Default with respect to the debt securities of such series shall have occurred and be continuing on the date of such deposit;

(iv) the Company has delivered to the Trustee an opinion of counsel to the effect that (A) the creation of the defeasance trust does not violate the Investment Company Act of 1940, as amended, (B) the Holders of the debt securities of such series have a valid first-priority security interest in the trust funds, (C) such Holders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and covenant defeasance and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred and (D) after the passage of 123 days following the deposit (except after one year following the deposit, with respect to any trust funds for the account of any Holder of the debt securities of such series who may be deemed to be an insider as to an obligor on the debt securities of such series for purposes of the United States Bankruptcy Code), the trust funds will not be subject to the effect of Section 547 of the United States Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law in a case commenced by or against the Company under either such statute, and either (1) the trust funds will no longer remain the property of the Company (and therefore will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors rights generally) or (2) if a court were to rule under any such law in any case or proceeding that the trust funds remained property of the Company, to the extent not paid to such Holders, the Trustee will hold, for the benefit of such Holders, a valid and perfected first priority security interest in such trust funds that is not avoidable in bankruptcy or otherwise (except for the effect of Section 552(b) of the United States Bankruptcy Code on interest on the trust funds accruing after the commencement of a case under such statute), and the Holders of the debt securities of such series will be entitled to receive adequate protection of their interests in such trust funds if such trust funds are used in such case or proceeding;

(v) if the debt securities of such series are then listed on a national securities exchange, the Company shall have delivered to the Trustee an opinion of counsel to the effect that the covenant defeasance contemplated by this provision of the Indenture of the debt securities of such series will not cause the debt securities of such series to be delisted; and

(vi) the Company has delivered to the Trustee an officers certificate and an opinion of counsel, in each case stating that all conditions precedent provided for in the Indenture relating to the covenant defeasance contemplated by this provision of the Indenture of the debt securities of such series have been complied with. (Section 8.3)

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Modification of the Indenture

The Indenture provides that the Company and the Trustee may amend or supplement the Indenture or the debt securities of any series without notice to or the consent of any Holder:

(i) to cure any ambiguity, defect or inconsistency in the Indenture; provided, that such amendments or supplements shall not adversely affect the interests of the Holders in any material respect;

(ii) to comply with Article 5 of the Indenture;

(iii) to comply with any requirements of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;

(iv) to evidence and provide for the acceptance of appointment under the Indenture with respect to the debt securities of any or all series by a successor Trustee;

(v) to establish the form or forms or terms of debt securities of any series or of the coupons appertaining to such debt securities as permitted by the Indenture;

(vi) to provide for uncertificated debt securities and to make all appropriate changes for such purpose; or

(vii) to make any change that does not materially and adversely affect the rights of any Holder. (Section 9.1)

The Indenture also provides that, without prior notice to any Holders, the Company and the Trustee may amend the Indenture and the debt securities of any series outstanding under the Indenture with the written consent of the Holders of a majority in principal amount of the outstanding debt securities of all series affected by such supplemental indenture (all such series voting as one class). The Indenture also provides that the Holders of a majority in principal amount of the outstanding debt securities of all series affected by such supplemental indenture (all such series voting as one class) by written notice to the Trustee may waive future compliance by the Company with any provision of the Indenture or the debt securities of such series. Notwithstanding the foregoing provision, without the consent of each Holder of the debt securities of each series affected by such supplemental indenture, an amendment or waiver, including a waiver pursuant to Section 6.4 of the Indenture, may not:

(i) extend the stated maturity of the principal of, or any sinking fund obligation or any installment of interest on, such Holder s debt security;

(ii) reduce the principal amount of such debt security or the rate of interest on such debt security (including any amount in respect of original issue discount), or any premium payable with respect to such debt security;

(iii) adversely affect the rights of such Holder under any mandatory repurchase provision or any right of repurchase at the option of such Holder;

(iv) reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the maturity of such debt security pursuant to the Indenture or the amount of such debt security provable in bankruptcy;

(v) change any place of payment where, or the currency in which, any debt security of such series or any premium or the interest on such debt security is payable;

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(vi) impair the right to institute suit for the enforcement of any such payment on or after the stated maturity of such debt security (or, in the case of redemption, on or after the redemption date or, in the case of mandatory repurchase, the date of such repurchase);

(vii) reduce the percentage in principal amount of outstanding debt security of such series the consent of whose Holders is required for any such supplemental indenture, for any waiver of compliance with certain provisions of the Indenture or certain Defaults and their consequences provided for in the Indenture;

(viii) waive a Default in the payment of principal of or interest on, any debt security of such series;

(ix) cause any debt security of such series to be subordinated in right of payment to any obligation of the Company; or

(x) modify any of the provisions of this section of the Indenture, except to increase any such 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 any series affected by such supplemental indenture.

A supplemental indenture which changes or eliminates any covenant or other provision of the Indenture which has expressly been included solely for the benefit of one or more particular series of debt securities, or which modifies the rights of Holders of debt securities of such series with respect to such covenant or provision, shall be deemed not to affect the rights under the Indenture of the Holders of debt securities of any other series or of the coupons appertaining to such debt securities. It shall not be necessary for the consent of the Holders under this section of the Indenture to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance of such proposed amendment, supplement or waiver. After an amendment, supplement or waiver under this section of the Indenture becomes effective, the Company shall give to the Holders affected by such amendment, supplement or waiver a notice briefly describing such amendment, supplement or waiver. The Company will mail supplemental indentures to Holders upon request. Any failure of the Company to mail such notice, or any defect in such notice, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver. (Section 9.2)

Governing Law

The Indenture and the debt securities will be governed by the laws of the State of New York.

Concerning the Trustee

The Company and its subsidiaries maintain ordinary banking relationships with JPMorgan Chase Bank, N.A. and its affiliates and a number of other banks. JPMorgan Chase Bank, N.A. and its affiliates along with a number of other banks have extended credit facilities to the Company and its subsidiaries.

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PLAN OF DISTRIBUTION

We may sell the debt securities:

- through underwriters or dealers;
- through agents; or
- directly to purchasers.

The debt securities may be sold in one or more transactions at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, at prices relating to prevailing market prices or at negotiated prices.

We will describe in a prospectus supplement the particular terms of the offering of the debt securities, including the following:

- the names of any underwriters or agents;
- the proceeds we will receive from the sale;
- any discounts and other items constituting underwriters or agents compensation;
- any discounts or concessions allowed or reallowed or paid to dealers; and
- any securities exchanges on which the applicable debt securities may be listed.

If we use underwriters in the sale, such underwriters will acquire the debt securities for their own account. The underwriters may resell the debt securities in one or more transactions, at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, at prices relating to prevailing market prices or at negotiated prices.

The debt securities may be offered to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. The obligations of the underwriters to purchase the debt securities will be subject to certain conditions. The underwriters will be obligated to purchase all the debt securities of the series offered if any of the debt securities are purchased.

We may sell debt securities through agents or dealers designated by us. Any agent or dealer involved in the offer or sale of the debt securities for which this prospectus is delivered will be named, and any commissions payable by us to that agent or dealer will be set forth, in the prospectus supplement. Unless indicated in the prospectus supplement, the agents will agree to use their reasonable efforts to solicit purchases for the period of their appointment and any dealer will purchase debt securities from us as principal and may resell those debt securities at varying prices to be determined by the dealer.

We also may sell debt securities directly. In this case, no underwriters or agents would be involved.

Underwriters, dealers and agents that participate in the distribution of the debt securities may be underwriters as defined in the Securities Act, and any discounts or commissions received by them from us and any profit on the resale of the debt securities by them may be treated as underwriting discounts and commissions under the Securities Act.

We may have agreements with the underwriters, dealers and agents to indemnify them against certain civil liabilities, including liabilities under the Securities Act or to contribute with respect to payments which the underwriters, dealers or agents may be required to make.

Underwriters, dealers and agents may engage in transactions with, or perform services for, us or our subsidiaries in the ordinary course of their businesses.

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In order to facilitate the offering of the debt securities, any underwriters or agents, as the case may be, involved in the offering of such securities may engage in transactions that stabilize, maintain or otherwise affect the price of such securities or other securities the prices of which may be used to determine payments on the securities. Specifically, the underwriters or agents, as the case may be, may overallot in connection with the offering, creating a short position in such securities for their own account. In addition, to cover overallotments or to stabilize the price of the securities or of such other securities, the underwriters or agents, as the case may be, may bid for, and purchase, such securities in the open market. Finally, in any offering of such securities through a syndicate of underwriters, the underwriting syndicate may reclaim selling concessions allotted to an underwriter or a dealer for distributing such securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the securities above independent market levels. The underwriters or agents, as the case may be, are not required to engage in these activities, and may end any of these activities at any time.

We may solicit offers to purchase debt securities directly from, and we may sell debt securities directly to, institutional investors or others. The terms of any of those sales, including the terms of any bidding or auction process, if utilized, will be described in the applicable prospectus supplement.

Some or all of the debt securities may be new issues of securities with no established trading market. We cannot and will not give any assurances as to the liquidity of the trading market for any of our securities.

LEGAL MATTERS

The validity of the debt securities and certain other matters will be passed upon for us by Sidley Austin LLP, Chicago, Illinois. Davis Polk & Wardwell, New York, New York, will act as counsel for any underwriters or agents.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, have audited our consolidated financial statements and schedule included in our Annual Report, as amended, on Form 10-K/A for the year ended October 1, 2005 and management s assessment of the effectiveness of our internal control over financial reporting as of October 1, 2005, as set forth in its reports (which conclude, among other things that Tyson Foods, Inc. did not maintain effective internal control over financial reporting as of October 1, 2005, based on Internal Control Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission, because of the effects of the material weakness described therein), which are incorporated by reference in this prospectus and elsewhere in the registration statement. Such financial statements and schedule and management s assessment have been incorporated herein by reference in reliance upon Ernst & Young LLP s reports, given on their authority as experts in accounting and auditing.

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PROSPECTUS

$500,000,000

TYSON FOODS, INC.

DEBT SECURITIES

Tyson Foods, Inc. (the Company) intends to issue from time to time debt securities (the Debt Securities), which will be direct, unsecured obligations of the Company and offered to the public on terms determined by market conditions at the time of sale. The Company may sell Debt Securities for proceeds of up to $500,000,000, or the equivalent thereof in one or more foreign currencies or composite currencies, (i) directly to purchasers, (ii) through agents designated from time to time, (iii) to dealers, or (iv) through underwriters or a group of underwriters.

The Debt Securities may be issued in one or more series with the same or various maturities at or above par or with an original issue discount. The specific designation, aggregate principal amount, authorized denominations, purchase price, maturity, rate (or method of calculation) and time of payment of any interest, any terms for redemption or repurchase or conversion, the currency or composite currency in which the Debt Securities shall be denominated or payable, any listing on a securities exchange, whether the Debt Securities will be issued in the form of a Global Security (as hereafter defined) or securities, or other specific terms of the Debt Securities in respect of which this Prospectus is being delivered (Offered Securities) are set forth in the accompanying supplement to the Prospectus (the Prospectus Supplement), together with the terms of offering of the Offered Securities. Unless otherwise indicated in the Prospectus Supplement, the Company does not intend to list any of the Debt Securities on a national securities exchange. See Plan of Distribution.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS OR ANY SUPPLEMENT HERETO. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE DATE OF THIS PROSPECTUS IS JUNE 1, 1998.

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No person has been authorized to give any information or to make any representations not contained or incorporated by reference in this Prospectus or the accompanying Prospectus Supplement and, if given or made, such information or representation must not be relied upon as having been authorized by the Company or any agent, dealer or underwriter. Neither the delivery of this Prospectus or the accompanying Prospectus Supplement nor any sale made hereunder or thereunder shall, under any circumstances, create any implication that the information contained herein or in the accompanying Prospectus Supplement is correct as of any date subsequent to the date hereof or thereof or that there has been no change in the affairs of the Company since the date hereof or thereof. Neither this Prospectus nor the accompanying Prospectus Supplement constitutes an offer to sell or solicitation of an offer to buy Debt Securities in any jurisdiction in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act), and in accordance therewith files reports and other information with the Securities and Exchange Commission (the Commission). Such reports, proxy statements and other information can be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549 and at the following regional offices of the Commission: Seven World Trade Center, Suite 1300, New York, New York 10048, and Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material can be obtained by mail at prescribed rates from the Public Reference Section of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549. The Commission also maintains a Web Site at http://www.sec.gov that contains reports, proxy statements and other information. Reports and other information concerning the Company can also be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005, on which certain of the Company s securities are listed.

This Prospectus constitutes a part of a Registration Statement on Form S-3, as amended (the Registration Statement) filed by the Company with the Commission under the Securities Act of 1933, as amended (the Securities Act). This Prospectus and the accompanying Prospectus Supplement omit certain of the information contained in the Registration Statement in accordance with the rules and regulations of the Commission. Reference is hereby made to the Registration Statement and related exhibits for further information with respect to the Company and the Debt Securities. Statements contained herein concerning the provisions of any document are not necessarily complete and, in each instance, reference is made to the copy of such document filed as an exhibit to the Registration Statement or otherwise filed with the Commission. Each such statement is qualified in its entirety by such reference.

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INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents previously filed by the Company with the Commission are incorporated by reference in this Prospectus:

1. The Company s Annual Report on Form 10-K for the fiscal year ended September 27, 1997;

2. The Company s Current Report on Form 8-K dated December 16, 1997;

3. The Company s Current Report on Form 8-K dated January 2, 1998;

4. The Company s Current Report on Form 8-K dated January 9, 1998;

5. The Company s Current Report on Form 8-K dated January 26, 1998;

6. The Company s Current Report on Form 8-K dated February 4, 1998;

7. The Company s Quarterly Report on Form 10-Q for the quarter ended December 27, 1997;

8. The Company s Current Report on Form 8-K dated April 27, 1998; and

9. The Company s Quarterly Report on Form 10-Q for the quarter ended March 28, 1998.

All documents filed by the Company pursuant to Section 13(a), 13(c), 14, or 15(d) of the Exchange Act subsequent to the date of this Prospectus and prior to the termination of the offering hereunder shall be deemed to be incorporated by reference in this Prospectus and to be a part hereof from the date of the filing of such documents.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of the Registration Statement and this Prospectus to the extent that a statement contained herein or in any subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of the Registration Statement

or this Prospectus.

The Company will provide, without charge, to each person to whom this Prospectus is delivered, on the written or oral request of any such person, a copy of any or all of the documents which have been incorporated herein by reference, other than exhibits to such documents (unless such exhibits are specifically incorporated by reference into such documents). Requests should be directed to Corporate Secretary, Tyson Foods, Inc., 2210 West Oaklawn Drive, Springdale, Arkansas 72762-6999, telephone: (501) 290-4000.

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THE COMPANY

Tyson Foods, Inc. and its various subsidiaries produce, market and distribute a variety of food products consisting of value-enhanced poultry, fresh and frozen poultry, value-enhanced seafood products, fresh and frozen seafood products, prepared foods, and other products such as flour and corn tortillas and chips. Additionally, the Company has live swine, animal feed and pet food ingredient operations. The Company s integrated operations consist of breeding and rearing chickens, and harvesting seafood, as well as the processing, further processing and marketing of these food products. The Company s products are marketed and sold to national and regional grocery chains, regional grocery wholesalers, clubs and warehouse stores, military commissaries, industrial food processing companies, national and regional chain restaurants and their distributors, international export companies and domestic distributors who service restaurants, food service operations such as plant and school cafeterias, convenience stores, hospitals and other vendors.

As of March 28, 1998, Don Tyson, Senior Chairman of the Board of Directors of the Company, directly and through the Tyson Limited Partnership, of which he is the managing general partner, beneficially owned 0.4% and 99.9% of the Company s Class A Common Stock, $.10 par value per share, and Class B Common Stock, $.10 par value per share, respectively which represented approximately 88.9% of the combined voting power of the shares of such Class A Common Stock and Class B Common Stock on such date.

The Company commenced business in 1935, was incorporated in Arkansas in 1947, and was reincorporated in Delaware in 1986. The Company s executive offices are located at 2210 West Oaklawn Drive, Springdale, Arkansas 72762- 6999 and its telephone number is (501) 290-4000.

RATIOS OF EARNINGS TO FIXED CHARGES

The following table sets forth the ratio of earnings to fixed charges for the Company for each year in the five year period ended September 27, 1997 and for the six months ended March 28, 1998. For the purposes of calculating the ratio of earnings to fixed charges, earnings consist of income from continuing operations before income taxes and fixed charges (excluding capitalized interest). Fixed charges consist of (i) interest on indebtedness, whether expensed or capitalized, but excluding interest to fifty-percent-owned subsidiaries (ii) the Company s proportionate share of interest of fifty-percent-owned subsidiaries, (iii) that portion of rental expense the Company believes to be representative of interest (one-third of rental expense) and (iv) amortization of debt discount and expense.

	FISCAL YEAR ENDED				
SIX MONTHS ENDED MARCH 28, 1998	1997	1996	1995	1994	1993
2.38	3.37	1.84	3.59	2.14	4.48

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USE OF PROCEEDS

The Company intends to use the net proceeds from the sale of the Debt Securities to refinance existing indebtedness, to finance acquisitions as opportunities may arise, and for other general corporate purposes. Further details relating to the uses of the net proceeds of any such offering will be set forth in the applicable Prospectus Supplement. The Company expects to engage in additional financing as needs arise.

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DESCRIPTION OF DEBT SECURITIES

The Debt Securities will be issued under an Indenture dated as of June 1, 1995, as supplemented, (hereinafter referred to as the Indenture), between the Company and The Chase Manhattan Bank, as Trustee (hereinafter referred to as the Trustee). The following statements are subject to the detailed provisions of the Indenture, a copy of which is filed as an exhibit to the Registration Statement and which is also available for inspection at the office of the Trustee. Section references are to the Indenture. The following summarizes the material terms of the Indenture; however, the following summaries of certain provisions of the Indenture do not purport to be complete, and wherever particular provisions of the Indenture are referred to, such provisions, including definitions of certain terms, are incorporated by reference as part of such summaries or terms, which are qualified in their entirety by such reference to the provisions of the Indenture.

General

The Indenture does not limit the aggregate principal amount of Debt Securities which may be issued thereunder and provides that the Debt Securities may be issued from time to time in one or more series. The Debt Securities will be direct, unsecured and unsubordinated obligations of the Company. Except as described under Certain Covenants, the Indenture does not limit other indebtedness or securities which may be incurred or issued by the Company or any of its subsidiaries or contain financial or similar restrictions on the Company or any of its subsidiaries. The Company s rights and the rights of its creditors, including holders of Debt Securities, to participate in any distribution of assets of any subsidiary upon the latter s liquidation or reorganization or otherwise are effectively subordinated to the claims of the subsidiary s creditors, except to the extent that the Company or any of its creditors may itself be a creditor of that subsidiary.

The Prospectus Supplement which accompanies this Prospectus sets forth where applicable the following terms of and information relating to the Offered Securities offered thereby: (i) the designation of the Offered Securities; (ii) the aggregate principal amount of the Offered Securities; (iii) the date or dates on which principal of, and premium, if any, on the Offered Securities is payable; (iv) the rate or rates at which the Offered Securities shall bear interest, if any, or the method by which such rate shall be determined, and the basis on which interest shall be calculated if other than a 360-day year consisting of twelve 30-day months, the date or dates from which such interest will accrue and on which such interest will be payable and the related record dates; (v) if other than the offices of the Trustee, the place where the principal of and any premium or interest on the Offered Securities will be payable; (vi) any redemption, repayment or sinking fund provisions; (vii) if other than denominations of $1,000 or multiples thereof, the denominations in which the Offered Securities will be issuable; (viii) if other than the principal amount thereof, the portion of the principal amount due upon acceleration; (ix) if other than U.S. dollars, the currency or currencies (including composite currencies) in which the Offered Securities are denominated or payable; (x) whether the Offered Securities shall be issued in the form of a Global Security or securities; (xi) any other specific terms of the Offered Securities; and (xii) the identity of any trustees, depositories, authenticating or paying agents, transfer agents or registrars with respect to the Offered Securities. (Section 2.3)

The Debt Securities will be issued either in certificated, fully registered form, without coupons, or as global securities under a book-entry system, as specified in the accompanying Prospectus Supplement. See Book-Entry System.

Unless otherwise specified in the accompanying Prospectus Supplement, principal and premium, if any, will be payable, and the Debt Securities will be transferable and exchangeable without any service charge, at the office of the Trustee. However, the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with any such transfer or exchange. (Sections 2.7, 4.1 and 4.2)

Unless otherwise specified in the accompanying Prospectus Supplement, interest on any series of Debt Securities will be payable on the interest payment dates set forth in the accompanying Prospectus Supplement to

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the persons in whose names the Debt Securities are registered at the close of business on the related record date and will be paid, at the option of the Company, by wire transfer or by checks mailed to such persons. (Sections 2.7, 4.1 and 4.2)

If the Debt Securities are issued as Original Issue Discount Securities (bearing no interest or interest at a rate which at the time of issuance is below market rates) to be sold at a substantial discount below their stated principal amount, the federal income tax consequences and other special considerations applicable to such Original Issue Discount Securities will be generally described in the Prospectus Supplement.

Unless otherwise described in the accompanying Prospectus Supplement, there are no covenants or provisions contained in the Indenture which afford the holders of the Debt Securities Protection in the event of a highly leveraged transaction involving the Company.

Book-Entry System

If so specified in the accompanying Prospectus Supplement, Debt Securities of any series may be issued under a book-entry system in the form of one or more global securities (each a Global Security). Each Global Security will be deposited with, or on behalf of, a depositary, which, unless otherwise specified in the accompanying Prospectus Supplement, will be The Depository Trust Company, New York, New York (the Depositary). The Global Securities will be registered in the name of the Depositary or its nominee.

The Depositary has advised the Company that the Depositary is a limited purpose trust company organized under the laws of the State of New York, a banking organization within the meaning of the New York banking law, a member of the Federal Reserve system, a clearing corporation within the meaning of the New York Uniform Commercial Code, and a clearing agency registered pursuant to the provisions of section 17A of the Exchange Act. The Depositary was created to hold securities of its participants and to facilitate the clearance and settlement of securities transactions among its participants through electronic book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates. The Depositary s participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations, some of whom (and/or their representatives) own the Depositary. Access to the Depositary s book-entry system is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

Upon the issuance of a Global Security in registered form, the Depositary will credit, on its book-entry registration and transfer system, the respective principal amounts of the Debt Securities represented by such Global Security to the accounts of participants. The accounts to be credited will be designated by the underwriters, dealers or agents, if any, or by the Company, if such Debt Securities are offered and sold directly by the Company. Ownership of beneficial interests in the Global Security will be limited to participants or persons that may hold interests through participants. Ownership of beneficial interests by participants in the Global Security will be shown on, and the transfer of that ownership interest will be effected only through, records maintained by such participants. The laws of some jurisdictions may require that certain purchasers of securities take physical delivery of such securities in definitive form. Such laws may impair the ability to transfer beneficial interest in a Global Security.

So long as the Depositary or its nominee is the registered Owner of a Global Security, it will be considered the sole owner or holder of the Debt Securities represented by such Global Security for all purposes under the Indenture. Except as set forth below, owners of beneficial interests in such Global Security will not be entitled to have the Debt Securities represented thereby registered in their names, will not receive or be entitled to receive physical delivery of certificates representing the Debt Securities and will not be considered the owners or holders thereof under the Indenture. Accordingly, each person owning a beneficial interest in such Global Security must rely on the procedures of the Depositary and, if such person is not a participant, on the procedures of the participant through which such person owns its interest, to exercise any rights of a

holder under the

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Indenture. The Company understands that under existing practice, in the event that the Company requests any action of the holders or a beneficial owner desires to take any action a holder is entitled to take, the Depositary would act upon the instructions of, or authorize, the participant to take such action.

Payment of principal of, premium, if any, and interest on Debt Securities represented by a Global Security will be made to the Depositary or its nominee, as the case may be, as the registered owner and holder of the Global Security representing such Debt securities. None of the Company, the Trustee, any paying agent or registrar for such Debt Securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company has been advised by the Depositary that the Depositary will credit participants accounts with payments of principal, premium, if any, or interest on the payment date thereof in amounts proportionate to their respective beneficial interests in the principal amount of the Global Security as shown on the records of the Depositary. The Company expects that payments by participants to owners of beneficial interests in the Global Security held through such participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers registered in street name, and will be the responsibility of such participants.

A Global Security may not be transferred except as a whole by the Depositary to a nominee or successor of the Depositary or by a nominee of the Depositary to another nominee of the Depositary. A Global Security representing all but not part of the Debt Securities being offered hereby is exchangeable for Debt Securities in definitive form of like tenor and terms if (i) the Depositary notifies the Company that it is unwilling or unable to continue as depositary for such Global Security or if at any time the Depositary is no longer eligible to be or in good standing as a clearing agency registered under the Exchange Act, and in either case, a successor depositary is not appointed by the Company within 90 days of receipt by the Company of such notice or of the Company becoming aware of such ineligibility, or (ii) the Company in its sole discretion at any time determines not to have all of the Debt Securities represented by a Global Security and notifies the Trustee thereof. A Global Security exchangeable pursuant to the preceding sentence shall be exchangeable for Debt Securities registered in such names and in such authorized denominations as the Depositary for such Global Security shall direct. (Section 2.7)

Certain Covenants

Restrictions on Liens. The Indenture provides that the Company will not, and will not permit any Restricted Subsidiary (as hereinafter defined) to, create, incur or suffer to exist any mortgage or pledge, as security for any indebtedness, on or of any shares of stock, indebtedness or other obligations of a Subsidiary (as hereinafter defined) or any Principal Property (as hereinafter defined) of the Company or a Restricted Subsidiary, whether such shares of stock, indebtedness or other obligations of a Subsidiary or Principal Property is owned at the date of the Indenture or thereafter acquired, unless the Company secures or causes such Restricted Subsidiary to secure the outstanding Debt equally and ratably with all indebtedness secured by such mortgage or pledge, so long as such indebtedness shall be so secured. This covenant will not apply in the case of: (i) the creation of any mortgage, pledge or other lien on any shares of stock, indebtedness or other obligations of a Subsidiary or any Principal Property acquired after the date of the Indenture (including acquisitions by way of merger or consolidation) by the Company or a Restricted Subsidiary contemporaneously with such acquisition, or within 180 days thereafter, to secure or provide for the payment or financing of any part of the purchase price thereof, or the assumption of any mortgage, pledge or other lien upon any shares of stock, indebtedness or other obligations of a Subsidiary or any Principal Property acquired after the date of the Indenture existing at the time of such acquisition, or the acquisition of any shares of stock, indebtedness or other obligations of a Subsidiary or any Principal Property subject to any mortgage, pledge or other lien without the assumption thereof, provided that every such mortgage, pledge or lien referred to in this clause (i) will attach only to the shares of stock, indebtedness or other obligations of a Subsidiary or any Principal Property so acquired and fixed improvements thereon; (ii) any mortgage, pledge or other lien on any shares of stock, indebtedness or other obligations of a

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Subsidiary or any Principal Property existing at the date of this Indenture; (iii) any mortgage, pledge or other lien on any shares of stock, indebtedness or other obligations of a Subsidiary or any Principal Property in favor of the Company or any Restricted Subsidiary; (iv) any mortgage, pledge or other lien on Principal Property being constructed or improved securing loans to finance such construction or improvements; (v) any mortgage, pledge or other lien on shares of stock, indebtedness or other obligations of a Subsidiary or any Principal Property incurred in connection with the issuance of tax-exempt governmental obligations; and (vi) any renewal of or substitution for any mortgage, pledge or other lien permitted by any of the preceding clauses (i) through (v), provided, in the case of a mortgage, pledge or other lien permitted under clause (i), (ii) or (iv), the indebtedness secured is not increased nor the lien extended to any additional shares of stock, indebtedness or other obligations of a Subsidiary or any additional Principal Property. Notwithstanding the foregoing, the Company or any Restricted Subsidiary may create or assume liens in addition to those permitted by this paragraph, and renew, extend or replace such liens, provided that at the time of such creation, assumption, renewal, extension or replacement, and after giving effect thereto, Exempted Debt (as hereinafter defined) does not exceed 10% of Consolidated Net Tangible Assets (as hereinafter defined). (Section 4.3)

Restrictions on Sale and Lease-Back Transactions. The Indenture provides that the Company will not, and will not permit any Restricted Subsidiary to, sell or transfer, directly or indirectly, except to the Company or a Restricted Subsidiary, any Principal Property as an entirety, or any substantial portion thereof, with the intention of taking back a lease of such property, except a lease for a period of three years or less at the end of which it is intended that the use of such property by the lessee will be discontinued; provided that, notwithstanding the foregoing, the Company or any Restricted Subsidiary may sell any such Principal Property and lease it back for a longer period (i) if the Company or such Restricted Subsidiary would be entitled, pursuant to the provisions described above under Restrictions on Liens, to create a mortgage on the property to be leased securing Funded Debt (as hereinafter defined) in an amount equal to the Attributable Debt (as hereinafter defined) with respect to such sale and lease-back transaction without equally and ratably securing the outstanding Debt Securities or (ii) if (A) the Company promptly informs the Trustee of such transaction, (B) the net proceeds of such transaction are at least equal to the fair value (as determined by board resolution of the Company) of such property and (C) the Company causes an amount equal to the net proceeds of the sale to be applied to the retirement, within 180 days after receipt of such proceeds, of Funded Debt incurred or assumed by the Company or a Restricted Subsidiary (including the Debt Securities); provided further that, in lieu of applying all of or any part of such net proceeds to such retirement, the Company may, within 75 days after such sale, deliver or cause to be delivered to the applicable trustee for cancellation either debentures or notes evidencing Funded Debt of the Company (which may include the outstanding Debt Securities) or of a Restricted Subsidiary previously authenticated and delivered by the applicable trustee, and not theretofore tendered for sinking fund purposes or called for a sinking fund or otherwise applied as a credit against an obligation to redeem or retire such notes or debentures, and an officers certificate (which will be delivered to the Trustee and each paying agent and which need not contain the statements prescribed by the second paragraph of Section 10.4 of the Indenture) stating that the Company elects to deliver or cause to be delivered such debentures or notes in lieu of retiring Funded Debt as hereinabove provided. If the Company shall so deliver Debentures or notes to the applicable trustee and the Company shall duly deliver such officers certificate, the amount of cash which the Company will be required to apply to the retirement of Funded Debt under this provision of the Indenture shall be reduced by an amount equal to the aggregate of the then applicable optional redemption prices (not including any optional sinking fund redemption prices) if such debentures or notes or, if there are no such redemption prices, the principal amount of such debentures or notes; provided, that in the case of debentures or notes which provide for an amount less than the principal amount thereof to be due and payable upon a declaration of the maturity thereof, such amount of cash shall be reduced by the amount of principal of such debentures or notes that would be due and payable as of the date of such application upon a declaration of acceleration of the maturity thereof pursuant to the terms of the Indenture pursuant to which such debentures or notes were issued. Notwithstanding the foregoing, the Company or any Restricted Subsidiary may enter into sale and lease-back transactions in addition to those permitted by this paragraph and without any obligation to retire any outstanding Debt Securities or other Funded Debt, provided that at the time of entering into such sale and lease-back transactions and after giving effect thereto, Exempted Debt does not exceed 10% of Consolidated Net Tangible Assets. (Section 4.4)

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Certain Definitions

The term Attributable Debt as defined in the Indenture means, as to any particular lease under which any Person is at the time liable, other than a capital lease, and at any date as of which the amount thereof is to be determined, the total net amount of rent required to be paid by such Person under such lease during the initial term thereof as determined in accordance with generally accepted accounting principles, discounted from the last date of such initial term to the date of determination at a rate per annum equal to the discount rate which would be applicable to a capital lease with like term in accordance with generally accepted accounting principles. The net amount of rent required to be paid under any such lease for any such period shall be the aggregate amount of rent payable by the lessee with respect to such period after excluding amounts required to be paid on account of insurance, taxes, assessments, utility, operating and labor costs and similar charges. In the case of any lease which is terminable by the lessee upon the payment of a penalty, such net amount shall also include the amount of such penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated. Attributable Debt means, as to a capital lease under which any Person is at the time liable and at any date as of which the amount thereof is to be determined, the capitalized amount thereof that would appear on the face of a balance sheet of such Person in accordance with generally accepted accounting principles.

The term Consolidated Net Tangible Assets as defined in the Indenture means the excess over the current liabilities of the Company of all of its assets as determined by the Company and as would be set forth in a consolidated balance sheet of the Company and its Subsidiaries, on a consolidated basis, in accordance with generally accepted accounting principles as of a date within 90 days of the date of such determination, after deducting goodwill, trademarks, patents, other like intangibles and minority interests of others.

The term Exempted Debt as defined in the Indenture means the sum, without duplication, of the following items outstanding of the date Exempted Debt is being determined: (i) indebtedness of the Company and its Restricted Subsidiaries incurred after the date of the Indenture and secured by liens created, assumed or otherwise incurred or permitted to exist pursuant to the provision described in the last sentence under Certain Covenants Restrictions on Liens and (ii) Attributable Debt of the Company and its Restricted Subsidiaries in respect of all sale and lease-back transactions with regard to any Principal Property entered into pursuant to the provision described in the last sentence under Certain Covenants Restrictions on Sale and Lease-Back Transactions.

The term Funded Debt as defined in the Indenture means all indebtedness for money borrowed, including purchase money indebtedness, having a maturity of more than one year from the date of its creation or having a maturity of less than one year but by its terms being renewable or extendible, at the option of the obligor in respect thereof, beyond one year from its creation.

The term Principal Property as defined in the Indenture means (i) land, land improvements, buildings and associated factory and laboratory equipment owned or leased pursuant to a capital lease and used by the Company or a Restricted Subsidiary primarily for processing, producing, packaging or storing its products, raw materials, inventories or other materials and supplies and located within the United States of America and having an acquisition cost plus capitalized improvements in excess of 1% of Consolidated Net Tangible Assets as of the date of such determination, (ii) certain property referred to in the Indenture and (iii) any asset held by Tyson Holding Company, but shall not include any such property or assets described in clauses (i), (ii) or (iii) that is financed through the issuance of tax exempt governmental obligations, or any such property or assets that has been determined by board resolution of the Company not to be of material importance to the respective businesses conducted by the Company or such Restricted Subsidiary, effective as of the date such resolution is adopted.

The term Restricted Subsidiary as defined in the Indenture means any Subsidiary organized and existing under the laws of the United States of America and the principal business of which is carried on within

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the United States of America which owns or is a lessee pursuant to a capital lease of any Principal Property or owns shares of capital stock or indebtedness of another Restricted Subsidiary other than: (i) each Subsidiary the major part of whose business consists of finance, banking, credit, leasing, insurance, financial services or other similar operations, or any combination thereof; and (ii) each Subsidiary formed or acquired after the date of the Indenture for the purpose of acquiring the business or assets of another person and which does not acquire all or any substantial part of the business or assets of the Company or any Restricted Subsidiary; provided, however, the Board of Directors of the Company may declare any such Subsidiary to be a Restricted Subsidiary effective as of the date such resolution is adopted.

The term Subsidiary as defined in the Indenture means, with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock (as defined in the Indenture) is owned, directly or indirectly, by such Person and one or more other Subsidiaries of such Person.

Restrictions on Consolidations, Mergers and Sales of Assets

The Indenture provides that the Company will not consolidate with, merge with or into, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets (as an entirety or substantially an entirety in one transaction or a series of related transactions) to, any Person (other than a consolidation with or merger with or into a Subsidiary) or permit any Person to merge with or into the Company unless: (a) either (i) the Company will be the continuing Person or (ii) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or that acquired or leased such property and assets of the Company shall be a corporation organized and validly existing under the laws of the United States of America or any jurisdiction thereof and shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, all of the obligations of the Company on all of the Debt Securities and the Company shall have delivered to the Trustee an opinion of counsel stating that such consolidation, merger or transfer and such supplemental indenture complies with this provision and that all conditions precedent provided for herein relating to such transaction have been complied with; and (b) immediately after giving effect to such transaction, no Default (as defined in the Indenture) shall have occurred and be continuing. (Section 5.1)

Events of Default

An Event of Default, as defined in the Indenture and applicable to Debt Securities, will occur with respect to the Debt Securities of any series if: (a) the Company defaults in the payment of the principal of any Debt Security of such series when the same becomes due and payable at maturity, upon acceleration, redemption, mandatory repurchase or otherwise; (b) the Company defaults in the payment of interest on any Debt Security of such series when the same becomes due and payable, and such default continues for a period of 30 days; (c) the Company defaults in the performance of or breaches any other covenant or agreement of the Company in the Indenture with respect to the Debt Securities of such series and such default or breach continues for a period of 30 consecutive days after written notice to the Company by the Trustee or to the Company and the Trustee by the Holders (as defined in the Indenture) of 25% or more in aggregate principal amount of the Debt Securities of such series; (d) an involuntary case or other proceeding shall be commenced against the Company with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against the Company under the federal bankruptcy laws as now or hereafter in effect; (e) the Company (i) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (ii) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for all or substantially all of the property and assets of the Company or (iii) effects any general assignment for the benefit of creditors; or (f) any other Events of Default set forth in the applicable Prospectus Supplement occurs. (Section 6.1)

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The Indenture provides that if an Event of Default described in clauses (a), (b), (c) or (f) above (if such Event of Default under clause (c) or (f) is with respect to one or more but not all series of Debt Securities then outstanding) occurs and is continuing, then, and in each and every such case, except for any series of Debt Securities the principal of which shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Debt Securities of each such series then outstanding under the Indenture (each such series voting as a separate class) by notice in writing to the Company (and to the Trustee if given by Holders), may declare the entire principal (or, if the Debt Securities of any such series are Original Issue Discount Securities (as defined in the Indenture), such portion of the principal amount as may be specified in the terms of such series and set forth in the applicable Prospectus Supplement) of all Debt Securities of all such series, and the interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable. If an Event of Default described in clause (c) or (f) occurs and is continuing with respect to all series of Debt Securities then outstanding, then and in each and every such case, unless the principal of all the Debt Securities shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of all the Debt Securities then outstanding under the Indenture (treated as one class), by notice in writing to the Company (and to the Trustee if given by Holders), may declare the entire principal (or, if any Debt Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof and set forth in the applicable Prospectus Supplement) of all the Debt Securities then outstanding and interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable. If an Event of Default described in clause (d) or (e) occurs and is continuing, then the principal amount (or, if any Debt Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof and set forth in the applicable Prospectus Supplement) of all the Debt Securities then outstanding and interest accrued thereon, if any shall be and become immediately due and payable, without any notice or other action by any Holder or the Trustee, to the full extent permitted by applicable law.

The provisions described in the paragraph above, however, are subject to the condition that if, at any time after the principal (or, if the Debt Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof and set forth in the applicable Prospectus Supplement) of the Debt Securities of any series (or of all the Debt Securities, as the case may be) shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company will pay or will deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Debt Securities of each such series (or of all the Debt Securities, as the case may be) and the principal of any and all Debt Securities of each such series (or of all the Debt Securities, as the case may be) which shall have become due otherwise than by acceleration (with interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest or yield to maturity (in the case of Original Issue Discount Securities) specified in the Debt Securities of each such series and set forth in the applicable Prospectus Supplement to the date of such payment or deposit) and such amount as shall be sufficient to cover reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith, and if any and all Events of Default under the Indenture, other than the non-payment of the principal of Debt Securities which shall have become due by acceleration, shall have been cured, waived or otherwise remedied as provided in the Indenture, then and in every such case the Holders of a majority in aggregate principal amount of all the Debt Securities of each such series, or of all the Debt Securities, in each case voting as a single class, then outstanding, by written notice to the Company and to the Trustee, may waive all defaults with respect to each such series (or with respect to all the Debt Securities, as the case may be) and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment will extend to or shall affect any subsequent default or shall impair any right consequent thereon. For all purposes under the Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared due and payable pursuant to the provisions described above, then, from and after such declaration, unless such declaration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities will be deemed, for all purposes under the Indenture, to be such portion of the principal

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thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities. (Section 6.2)

The Indenture contains a provision under which, subject to the duty of the Trustee during a default to act with the standard of care required by law, (i) the Trustee may rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper person, and the Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; (ii) before the Trustee acts or refrains from acting, it may require an officers certificate or an opinion of counsel, and the Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion; (iii) the Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care; (iv) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request or direction of any of the Holders, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction; (v) the Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers or for any action it takes or omits to take in accordance with the direction of the Holders of a majority in principal amount of the outstanding Debt Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under the Indenture; and (vi) the Trustee may consult with counsel and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. (Section 7.2)

Subject to such provisions in the Indenture for the indemnification of the Trustee and certain other limitations, the Holders of at least a majority in aggregate principal amount of the outstanding Debt Securities of each series affected (each such series voting as a separate class) may 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; provided, that the Trustee may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction; and provided further, that the Trustee may take any other action it deems proper that is not inconsistent with any directions received from Holders of Debt Securities pursuant to this Paragraph. (Section 6.5)

The Indenture provides that no Holder of any Debt Security of any series may institute any proceeding, judicial or otherwise, with respect to the Indenture or the Debt Securities of such series, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture, unless: (i) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the Debt Securities of such series; (ii) the Holders of at least 25% in aggregate principal amount of outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee under the Indenture; (iii) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against any costs, liabilities or expenses to be incurred in compliance with such request; (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and (v) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Debt Securities of such series have not given the Trustee a direction that is inconsistent with such written request. A Holder may not use the Indenture to prejudice the rights of another Holder or to obtain a preference or priority over such other Holder. (Section 6.6)

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The Indenture contains a covenant that the Company will file annually, not more than 90 days after the end of its fiscal year, with the Trustee a certification from the principal executive officer, principal financial officer or principal accounting officer that a review has been conducted of the activities of the Company and its Subsidiaries and the Company s and its Subsidiaries performance under the Indenture and that the Company has complied with all conditions and covenants under the Indenture. (Section 4.6)

Discharge, Defeasance and Covenant Defeasance

The Indenture provides that, except as provided below, the Company may terminate its obligations under the Debt Securities of any series and the Indenture with respect to Debt Securities of such series if: (i) all Debt Securities of such series previously authenticated and delivered (other than destroyed, lost or stolen Debt Securities of such series that have been replaced or Debt Securities of such series that are fully repaid or Debt Securities of such series for whose payment money or Securities have theretofore been held in trust and thereafter repaid to the Company, as provided in the Indenture) have been delivered to the Trustee for cancellation and the Company has paid all sums payable by it hereunder; or (ii) (A) the Debt Securities of such series mature within one year or all of them are to be called for redemption within one year under arrangements satisfactory to the Trustee for giving the notice of redemption, (B) the Company irrevocably deposits in trust with the Trustee, as trust funds solely for the benefit of the Holders of such Securities for that purpose, money or U.S. Government Obligations or a combination thereof sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee), without consideration of any reinvestment, to pay principal of and interest on the Debt Securities of such series to maturity or redemption, as the case may be, and to pay all other sums payable by it under the Indenture, (C) no default with respect to the Debt Securities of such series has occurred and is continuing on the date of such deposit, (D) such deposit does not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company is a party or by which it is bound and (E) the Company delivers to the Trustee an officers certificate and an opinion of counsel, in each case stating that all conditions precedent provided for in the Indenture relating to the satisfaction and discharge of the Indenture have been complied with. With respect to the foregoing clause (i), only the Company s obligations under Section 7.7 of the Indenture in respect of the Debt Securities of such series shall survive. With respect to the foregoing clause (ii), only the Company s obligations in Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.11, 4.2, 7.7, 7.8, 8.5 and 8.6 of the Indenture in respect of the Debt Securities of such series shall survive until the Debt Securities are no longer outstanding. Thereafter, only the Company s obligations in Sections 7.7, 8.5 and 8.6 of the Indenture in respect of the Debt Securities of such series shall survive. After any such irrevocable deposit, the Trustee upon request shall acknowledge in writing the discharge of the Company s obligations under the Debt Securities of such series and this Indenture with respect to the Debt Securities of such series except for those surviving obligations specified above. (Section 8.1)

The Indenture provides that, except as provided below, the Company will be deemed to have paid and will be discharged from any and all obligations in respect of the Debt Securities of any series after the period specified in clause (D)(2)(z) of this paragraph, and the provisions of the Indenture will no longer be in effect with respect to the Debt Securities of such series, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same; provided that the following conditions shall have been satisfied: (A) the Company has irrevocably deposited in trust with the Trustee as trust funds solely for the benefit of the Holders for payment of the principal of and interest on the Debt Securities of such series, money or U.S. Government Obligations or a combination thereof sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee) without consideration of any reinvestment and after payment of all federal, state and local taxes or other charges and assessments in respect thereof payable by the Trustee, to pay and discharge the principal of and accrued interest on the outstanding Debt Securities of such series to maturity or earlier redemption (irrevocably provided for under arrangements satisfactory to the Trustee), as the case may be; (B) such deposit will not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company is a party or by which it is bound; (C) no Default with respect to the Debt Securities of such series shall

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have occurred and be continuing on the date of such deposit or at any time during the period specified in clause (D)(2)(z) below; (D) the Company shall have delivered to the Trustee (1) either (x) a ruling directed to the Trustee received from the Internal Revenue Service to the effect that the Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of the Company s exercise of its option under this provision of the Indenture and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised or (y) an opinion of counsel to the same affect as the ruling described in clause (x) above and based on a change in law and (2) an opinion of counsel to the effect that (x) the creation of the defeasance trust does not violate the Investment Company Act of 1940, as amended, (y) the Holders of the Securities of such series have a valid first priority security interest in the trust funds, and (z) after the passage of 123 days following the deposit (except after one year following the deposit, with respect to any trust funds for the account of any Holder of the Securities of such series who may be deemed to be an insider as to an obligor on the Securities of such series for purposes of the United States Bankruptcy Code), the trust funds will not be subject to the effect of Section 547 of the United States Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law in a case commenced by or against the Company under either such statute, and either (I) the trust funds will no longer remain the property of the Company (and therefore will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors rights generally) or (II) if a court were to rule under any such law in any case or proceeding that the trust funds remained in the possession of the Company, to the extent not paid to such Holders, the Trustee will hold, for the benefit of such Holders, a valid and perfected first priority security interest in such trust funds that is not avoidable in bankruptcy or otherwise (except for the effect of Section 552(b) of the United States Bankruptcy Code on interest on the trust funds accruing after the commencement of a case under such statute and the Holders of the Securities of such series will be entitled to receive adequate protection of their interests in such trust funds if such trust funds are used in such case or proceeding; (E) if the Debt Securities of such series are then listed on a national securities exchange, the Company shall have delivered to the Trustee an opinion of counsel to the effect that the defeasance contemplated by this provision of the Indenture of the Debt Securities of such series will not cause the Debt Securities of such series to be delisted; and (F) the Company has delivered to the Trustee an officers, certificate and an opinion of counsel, in each case stating that all conditions precedent provided for in the Indenture relating to the defeasance contemplated by this provision of the Indenture of the Debt Securities of such series have been complied with. Notwithstanding the foregoing, prior to the end of the 123-day (or one year) period referred to in clause (D)(2)(z) of this paragraph, none of the Company s obligations under the Indenture with respect to such series shall be discharged. Subsequent to the end of such 123-day (or one year) period, the Company s obligations in Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.11, 4.1, 4.2, 7.7, 7.8, 8.5 and 8.6 of the Indenture with respect to the Debt Securities of such series shall survive until such Debt Securities are no longer outstanding. Thereafter, only the Company s obligations in Sections 7.7, 8.5 and 8.6 of the Indenture with respect to the Debt Securities of such series shall survive. If and when a ruling from the Internal Revenue Service or an opinion of counsel referred to in clause (D)(1) of this paragraph is able to be provided specifically without regard to, and not in reliance upon, the continuance of the Company s obligations under Section 4.1 of the Indenture, then the Company s obligations under such Section 4.1 of the Indenture shall cease upon delivery to the Trustee of such ruling or opinion of counsel and compliance with the other conditions precedent provided for in this provision of the Indenture relating to the defeasance contemplated by this provision of the Indenture. (Section 8.2)

The Indenture provides that the Company may omit to comply with any term, provision or condition described under Certain Covenants, and such omission shall be deemed not to be an Event of Default, with respect to the outstanding Debt Securities of any series if: (i) the Company has irrevocably deposited in trust with the Trustee as trust funds solely for the benefit of the Holders of the Securities of such series for payment of the principal of and interest, if any, on the Debt Securities of such series money or U.S. Government Obligations or a combination thereof in an amount sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee) without consideration of any reinvestment and after payment of all federal, state and local taxes or other charges and assessments in respect thereof payable by the Trustee, to pay and discharge the principal of and interest on the outstanding Debt Securities of such series to maturity or earlier redemption (irrevocably provided for under arrangements

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satisfactory to the Trustee), as the case may be; (ii) such deposit will not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company is a party or by which it is bound; (iii) no Default with respect to the Debt Securities of such series shall have occurred and be continuing on the date of such deposit; (iv) the Company has delivered to the Trustee an opinion of counsel to the effect that (A) the creation of the defeasance trust does not violate the Investment Company Act of 1940, as amended (B) the Holders of the Debt Securities of such series have a valid first-priority security interest in the trust funds, (C) such Holders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and covenant defeasance and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred and (D) after the passage of 123 days following the deposit (except, with respect to any trust funds for the account of any Holder of the Debt Securities of such series who may be deemed to be an insider as to an obligor on the Debt Securities of such series for purposes of the United States Bankruptcy Code, the trust funds will not be subject to the effect of Section 547 of the United States Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law in a case commenced by or against the Company under either such statute, and either (1) the trust funds will no longer remain the property of the Company (and therefore will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors, rights generally) or (2) if a court were to rule under any such law in any case or proceeding that the trust funds remained property of the Company, to the extent not paid to such Holders, the Trustee will hold, for the benefit of such Holders, a valid and perfected first priority security interest in such trust funds that is not avoidable in bankruptcy or otherwise (except for the effect of Section 552(b) of the United States Bankruptcy Code on interest on the trust funds accruing after the commencement of a case under such statute), and the Holders of the Debt Securities of such series entitled to receive adequate protection of their interests in such trust funds if such trust funds are used in such case or proceeding; (v) if the Debt Securities of such series are then listed on a national securities exchange, the Company shall have delivered to the Trustee an opinion of counsel to the effect that the covenant defeasance contemplated by this provision of the Indenture of the Debt Securities of such series will not cause the Debt Securities of such series to be delisted; and (vi) the Company has delivered to the Trustee an officers certificate and an opinion of counsel, in each case stating that all conditions precedent provided for in the Indenture relating to the covenant defeasance contemplated by this provision of the Indenture of the Debt Securities of such series have been complied with. (Section 8.3)

Modification of the Indenture

The Indenture provides that the Company and the Trustee may amend or supplement the Indenture or the Debt Securities of any series without notice to or the consent of any Holder: (1) to cure any ambiguity, defect or inconsistency in the Indenture; provided that such amendments or supplements shall not adversely affect the interests of the Holders in any material respect; (2) to comply with Article 5 of the Indenture; (3) to comply with any requirements of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act of 1939, as amended; (4) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee; (5) to establish the form or forms or terms of Debt Securities of any series or of the coupons appertaining to such Debt Securities as permitted by the Indenture; (6) to provide for uncertificated Debt Securities and to make all appropriate changes for such purpose; and (7) to make any change that does not materially and adversely affect the rights of any Holder. (Section 9.1)

The Indenture also provides that, without prior notice to any Holders, the Company and the Trustee may amend the Indenture and the Debt Securities of any series outstanding thereunder with the written consent of the Holders of a majority in principal amount of the outstanding Debt Securities of all series affected by such supplemental indenture (all such series voting as one class), and the Holders of a majority in principal amount of the outstanding Debt Securities of all series affected thereby (all such series voting as one class) by written notice to the Trustee may waive future compliance by the Company with any provision of the Indenture or the Debt Securities of such series. Notwithstanding the foregoing provision, without the consent of each Holder of the Debt Securities of each series affected each thereby, an amendment or waiver, including a waiver pursuant to Section 6.4 of the Indenture, may not: (i) extend the stated maturity of the principal of, or any installment of interest on, such Holder s

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Debt Security, or reduce the principal amount thereof or the rate of interest thereon (including any amount in respect of original issue discount), or any premium payable with respect thereto, or adversely affect the rights of such Holder under any mandatory repurchase provision or any right of repurchase at the option of such Holder, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the maturity thereof pursuant to the Indenture or the amount thereof provable in bankruptcy, or change any place of payment where, or the currency in which, any Debt Security of such series 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 or, in the case of mandatory repurchase, the date therefor); (ii) reduce the percentage in principal amount of outstanding Debt Security of such series the consent of whose Holders is required for any such supplemental indenture, for any waiver of compliance with certain provisions of the Indenture or certain Defaults and their consequences provided for in the Indenture; (iii) waive a Default in the payment of principal of or interest on, any Debt Security of such series; (iv) cause any Debt Security of such series to be subordinated in right of payment to any obligation of the Company; (v) modify any of the provisions of this section of the Indenture, except to increase any such 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 any series affected thereby. A supplemental indenture which changes or eliminates any covenant or other provision of the Indenture which has expressly been included solely for the benefit of one or more particular series of Debt Securities, or which modifies the rights of Holders of Debt Security of such series with respect to such covenant or provision, shall be deemed not to affect the rights under the Indenture of the Holders of Debt Securities of any other series or of the coupons appertaining to such Debt Securities. It shall not be necessary for the consent of the Holders under this section of the Indenture to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof. After an amendment, supplement or waiver under this section of the Indenture becomes effective, the Company shall give to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. The Company will mail supplemental indentures to Holders upon request. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver. (Section 9.2)

Governing Law

The Indenture and the Debt Securities will be governed by the laws of the State of New York.

Concerning the Trustee

The Company and its subsidiaries maintain ordinary banking relationships with The Chase Manhattan Bank and its affiliates and a number of other banks. The Chase Manhattan Bank, and its affiliates along with a number of other banks have extended credit facilities to the Company and its subsidiaries.

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PLAN OF DISTRIBUTION

The Company may sell Debt Securities to or through one or more underwriters and also may sell Debt Securities directly to other purchasers or through agents or dealers, or the Company may sell Debt Securities through a combination of any such methods.

The distribution of the Debt Securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices. Underwriters may sell Debt Securities to or through dealers.

In connection with the sales of Debt Securities, underwriters may receive compensation from the Company in the form of discounts, concessions or commissions. Underwriters, dealers and agents that participate in the distribution of Debt Securities may be deemed to be underwriters, and any discounts or commissions received by them and any profit on the resale of Debt Securities by them may be deemed to be underwriting discounts and commissions under the Securities Act. Any such underwriter or agent will be identified, and any such compensation will be described in the Prospectus Supplement.

Pursuant to agreements into which the Company may enter, underwriters, dealers and agents who participate in the distribution of Debt Securities may be entitled to indemnification by the Company against certain liabilities, including liabilities under the Securities Act.

Unless otherwise indicated in the Prospectus Supplement, the Company does not intend to list any of the Debt Securities on a national securities exchange. In the event the Debt Securities are not listed on a national securities exchange, certain broker-dealers may make a market in the Debt Securities, but will not be obligated to do so and may discontinue any market making at any time without notice. No assurance can be given that any broker- dealer will make a market in the Debt Securities or as to the liquidity of the trading market for the Debt Securities, whether or not the Debt Securities are listed on a national securities exchange. The Prospectus Supplement with respect to the Debt Securities will state, if known, whether or not any broker-dealer intends to make a market in the Debt Securities. If no such determination has been made, the Prospectus Supplement will so state.

The place and time of delivery for the Offered Securities in respect of which this Prospectus is delivered will be set forth in the Prospectus Supplement.

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LEGAL MATTERS

The validity of the issuance of the Debt Securities offered hereby will be passed upon for the Company by Kutak Rock, Little Rock, Arkansas, and for any underwriters or agents by Davis Polk & Wardwell, New York, New York.

EXPERTS

The consolidated financial statements of Tyson Foods, Inc. incorporated by reference and the financial statement schedule included in the Company s Annual Report (Form 10K) for the year ended September 27, 1997, have been audited by Ernst & Young LLP, independent auditors, as set forth in their reports thereon included or incorporated by reference therein and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given upon the authority of such firm as experts in accounting and auditing.

The consolidated balance sheets of Hudson Foods, Inc. as of September 27, 1997 and September 28, 1996 and the consolidated statements of income, stockholders equity, and cash flows for each of the three years in the period ended September 27, 1997, incorporated by reference in this prospectus, have been incorporated herein in reliance on the report of Coopers & Lybrand, L.L.P., independent accountants, given on the authority of that firm as experts in accounting and auditing.

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PROSPECTUS SUPPLEMENT

Merrill Lynch & Co.

Barclays Capital

JP Morgan

Rabo Securities USA

Scotia Capital

Stephens Inc.

SunTrust Robinson Humphrey

March , 2006