

UNITED COMMUNITY BANKS INC
Form S-8
August 01, 2007

As filed with the Securities and Exchange Commission on
August 1, 2007

File No. 333-_____

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

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

UNITED COMMUNITY BANKS, INC.

(Exact Name of Registrant as Specified in its Charter)

Georgia

*(State or Other Jurisdiction of
Incorporation or Organization)*

58-1807304

*(I.R.S. Employer
Identification Number)*

**P.O. Box 398
63 Highway 515
Blairsville, Georgia 30512**

(Address of Issuer's Principal Executive Offices)

Amended and Restated 2000 Key Employee Stock Option Plan

(Full Title of the Plan)

**Mr. Jimmy C. Tallent
President and Chief Executive Officer**

**P.O. Box 398
63 Highway 515
Blairsville, Georgia 30512
(706)785-2265**

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

**Mr. James W. Stevens
Kilpatrick Stockton LLP
1100 Peachtree Street, N.E., Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500**

(404) 815-6555 (fax)

**Calculation of Registration
Fee**

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$1.00 per Share	1,650,000 ⁽¹⁾	\$23.71 ⁽²⁾	\$39,121,500	\$1,201.03

(1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

(2) In addition, pursuant to Rule 416 of the Securities Act of 1933, this Registration Statement also relates to such indeterminate number of additional shares of Common Stock of the Registrant as may be issuable in the event of a stock dividend, stock split, recapitalization, or other similar changes in the capital structure, merger, consolidation, spin-off, split-off, spin-out, split-up, reorganization, partial or complete liquidation, or other distribution of assets, issuance of rights or warrants to purchase securities, or any other corporate transaction or event having an effect similar to any of the foregoing.

(3) Determined in accordance with Rule 457(c) and (h) of the Securities Act of 1933. The proposed maximum aggregate offering price and amount of registration fee are based on \$23.71, the average of the high and low price on Nasdaq on July 30, 2007.

United Community Banks, Inc. (the “Company”) files this Registration Statement on Form S-8 in connection with the United Community Banks, Inc. Amended and Restated 2000 Key Employee Stock Option Plan (the “Plan”) to increase the number of shares of common stock that may be issued under the Plan. The shares authorized under the Plan have been increased by 1,650,000. The Company previously filed a registration statement on Form S-8 (File No. 333-120623) (the “Prior Registration Statement”) covering 1,650,000 shares of the Company’s common stock authorized for issuance under the Plan and a registration statement on Form S-8 (File No. 333-99849) (the “Initial Registration Statement”) covering 1,954,500 shares (or 1,303,000 shares adjusted for a 3 for 2 stock dividend) of the Company’s common stock initially authorized for issuance under the Plan. The Prior Registration Statement and Initial Registration Statement continues and remains effective as to those shares registered thereunder.

INCORPORATION OF PRIOR REGISTRATION STATEMENT BY REFERENCE

Pursuant to Instruction E to Form S-8, the Company hereby incorporates by reference into this Registration Statement the contents of the Prior Registration Statement and Initial Registration Statement, including all amendments, attachments and exhibits thereto.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 8. EXHIBITS.

The exhibits included as part of this Registration Statement are as follows:

Exhibit

Number Description

- | | |
|------|---|
| 4.4 | United Community Banks, Inc.’s Amended and Restated 2000 Key Employee Stock Option Plan (incorporated herein by reference to Exhibit 10.1 to United Community Banks, Inc.’s Form 8-K dated April 30, 2007, File No. 0-21656, filed with the Commission on May 1, 2007). |
| 4.5 | Amendment No. 1 to United Community Banks, Inc.’s Amended and Restated 2000 Key Employee Stock Option Plan (incorporated herein by reference to Exhibit 10.1 to United Community Banks, Inc.’s Form 8-K dated April 13, 2007, File No. 0-21656, filed with the Commission on April 13, 2007). |
| 5 | Opinion of Kilpatrick Stockton LLP. |
| 23.1 | Consent of Porter Keadle Moore, LLP. |
| 23.2 | Consent of Kilpatrick Stockton LLP (included in Exhibit 5). |
| 24 | Power of Attorney (included on the signature page of this Registration Statement). |

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Blairsville, State of Georgia, on August 1, 2007.

UNITED COMMUNITY BANKS, INC.

By: /s/ Jimmy C. Tallent
 Jimmy C. Tallent
 President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Jimmy C. Tallent and Robert L. Head, Jr., and each of them acting alone, his true and lawful attorney-in-fact with full power of substitution, for him in any and all capacities, to execute any and all amendments and post-effective amendments to this Registration Statement and to cause the same to be filed, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby granting to said attorneys-in-fact and agents full power and authority to do so and perform each and every act and thing whatsoever requisite or desirable to be done in and about the premises, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all acts and things that said attorneys-in-fact, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on August 1, 2007.

<u>/ s / J i m m y C .</u>	
<u>Tallent</u>	President, Chief Executive Officer, and Director
Jimmy C. Tallent	(Principal Executive Officer)
<u>/ s / R e x S .</u>	
<u>Schuette</u>	Executive Vice President and Chief Financial Officer
Rex S. Schuette	(Principal Financial Officer)
<u>/ s / A l a n H .</u>	
<u>Kumler</u>	Senior Vice President, Controller and Chief Accounting Officer
Alan H. Kumler	(Principal Accounting Officer)
<u>/ s / R o b e r t L . H e a d ,</u>	
<u>Jr.</u>	
Robert L. Head, Jr.	Chairman of the Board
<u>/ s / W . C . N e l s o n ,</u>	
<u>Jr.</u>	
W.C. Nelson, Jr.	Vice Chairman of the Board
<u>/ s / A . W i l l i a m</u>	
<u>Bennett</u>	
A. William Bennett	Director

/ s / T h o m a s C .
Gilliland
Thomas C. Gilliland Director

/ s / C h a r l e s
Hill
Charles Hill Director

/ s / H o y t O .
Holloway
Hoyt O. Holloway Director

/ s / J o h n D .
Stephens
John D. Stephens Director

/ s / C l a r e n c e W . M a s o n .
Sr.
Clarence W. Mason, Sr. Director

/ s / T i m
Wallis
Tim Wallis Director

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
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"), relating to the common stock, par value \$0.01 per share ("Common Stock"), of Century Aluminum Company (the "Company"), amends and restates the Schedule 13D. This Amendment No. 16 reflects changes to Items 2, 4, 5 and 6 and the addition of a new joint filing agreement among the Reporting Persons to Item 7 of the Schedule 13D. The primary purpose of this Amendment No. 16 is to remove Glencore Holding AG as a Reporting Person and to add Glencore International plc as a Reporting Person as a result of the reorganization of Glencore International AG's shareholding structure pursuant to which Glencore International plc became the immediate holding company of Glencore International AG.

Item 1. Security and Issuer

This statement on Schedule 13D relates to the common stock, par value \$0.01 per share, of Century Aluminum Company, a Delaware corporation.

The Company's principal executive office is located at 2511 Garden Road, Building A, Suite 200, Monterey, California 93940.

Item 2. Identity and Background

(a) — (c) and (f) This statement on Schedule 13D is being filed by Glencore International plc ("Glencore plc"), Glencore International AG ("Glencore International") and Glencore AG ("Glencore AG" and together with Glencore plc and Glencore International, the "Reporting Persons"). Glencore plc is a company organized under the laws of Jersey. Each of Glencore International and Glencore AG is a company organized under the laws of Switzerland. The business address for each of the Reporting Persons is Baarermattstrasse 3, CH-6341, Baar, Switzerland. Glencore plc is a public company with its ordinary shares listed on the London Stock Exchange and on the Hong Kong Stock Exchange. Glencore plc is the parent company of Glencore International which, together with its subsidiaries, including Glencore AG, is a leading integrated producer and marketer of commodities, with worldwide activities in the marketing of metals and minerals, energy products and agricultural products and the production, refinement, processing, storage and transport of these products. Glencore AG is a direct wholly-owned subsidiary of Glencore International. The name, address, citizenship and present principal occupation or employment of each of the directors and executive officers of each Reporting Person, as well as the names, principal businesses and addresses of any corporations and other organizations in which such employment is conducted, are set forth on Schedule 1 hereto, which Schedule 1 is incorporated herein by reference.

(d) — (e) None of the Reporting Persons nor, to the best of their knowledge, any of the persons listed on Schedule 1 hereto has during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors). None of the Reporting Persons nor, to the best of their knowledge, any of the persons listed on Schedule 1 hereto has during the last five years, been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration

Since the Company's initial public offering of Common Stock and the registration of Common Stock under Section 12 of the Securities Exchange Act of 1934, as amended, in April 1996, the Reporting Persons have purchased an aggregate of 19,174,968 additional shares of Common Stock (not including shares of Common Stock issued or issuable upon conversion of preferred stock owned by the Reporting Persons or pursuant to options or other compensatory grants issued to Mr. Willy R. Strothotte, a director of the Company, who holds such options or other grants as nominee for the Reporting Persons) in registered public offerings by the Company and in open market transactions, 500,000 shares of Cumulative Convertible Preferred Stock, par value \$0.01 per share, from the Company in a private transaction in April 2001 (all of which were converted into 1,395,089 shares of Common Stock in May 2004), and 160,000 shares of Series A Preferred Stock, par value \$0.01 per share (the "Preferred Shares"), from the Company in a private transaction in July 2008 (of which 78,744.54 shares have since been converted into 7,874,454 shares of Common Stock).

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The consideration paid by the Reporting Persons for the 19,174,968 shares of Common Stock, the 500,000 shares of Cumulative Convertible Preferred Stock and the 160,000 shares of Series A Preferred Stock was \$354,954,264, \$25,000,000 and \$1,090,259,200, respectively, in cash, all of which was obtained from the Reporting Persons' internal working capital.

Item 4. Purpose of the Transaction

Since the Company's initial public offering, in which the Reporting Persons sold approximately 60% of their Common Stock, the Reporting Persons have held Common Stock, and have acquired additional securities of the Company, for investment purposes.

On April 5, 2011, Glencore International and Glencore AG entered into a letter agreement with the Company (the "2011 Agreement"). Pursuant to the terms of the 2011 Agreement, the Company agreed to cause the slate of nominees standing for election to the Company's Board of Directors (the "Board") at the Company's 2011 Annual Meeting of Stockholders (the "2011 Annual Meeting") to be Steven Blumgart, Steven Kalmin and Terence Wilkinson (each, a "Nominee" and collectively, the "Nominees"), each of whom shall be nominated as Class III directors of the Company with a term expiring at the Company's 2014 Annual Meeting of Stockholders. Mr. Blumgart, the Co-director of the Alumina/Aluminum division of Glencore International, and Mr. Kalmin, Chief Financial Officer of Glencore International, are also referred to as the "Glencore Designees" and Mr. Wilkinson is also referred to as the "Independent Designee."

The Company has further agreed that (i) if at any time prior to the 2011 Annual Meeting, any of the Glencore Designees cease for any reason to be a nominee of the Board to stand for election as a Class III director at the 2011 Annual Meeting, or (ii) after having been elected to the Board, either of the Glencore Designees ceases to be a member of the Board for any reason at or prior to the Company's 2014 Annual Meeting of Stockholders, Glencore International and Glencore AG will have the ability to designate a substitute reasonably acceptable to the Company to replace such Glencore Designee(s), as nominee(s) or as director(s) (as the case may be), with such determination regarding acceptability to be made by the Company in good faith and reasonably promptly. Any such substitute nominee or director (as the case may be) will be nominated or appointed (as the case may be) by the Board no later than one business day after such determination.

In addition, the Company has agreed that if at any time prior to the 2011 Annual Meeting, the Independent Designee ceases for any reason to be a nominee of the Board to stand for election as a Class III director at the 2011 Annual Meeting, Glencore International and Glencore AG will have the ability to designate a substitute, who meets applicable director independence standards, reasonably acceptable to the Company to replace such Independent Designee, as nominee, with such determination regarding acceptability to be made by the Company in good faith and reasonably promptly. Any such substitute nominee will be nominated by the Board no later than one business day after such determination.

The 2011 Agreement further provides that Glencore International and Glencore AG, for so long as the Nominees (or any substitute nominee as described above) are nominees of the Board to stand for election at the 2011 Annual Meeting, will vote in favor of such Nominees at the 2011 Annual Meeting, and in accordance with the recommendation of the Board with respect to the ratification of the Company's independent registered public accounting firm, the advisory vote on advisory executive compensation, the frequency of the advisory vote on executive compensation and any other item of business (other than matters proposed by the Board) that lawfully comes before the 2011 Annual Meeting.

The foregoing summary of the 2011 Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the 2011 Agreement, a copy of which was previously filed with the Securities and Exchange Commission as an exhibit to the Schedule 13D, and is hereby incorporated by reference into this Item 4 as if set out herein in full.

The Reporting Persons may purchase additional shares of Common Stock. Such acquisitions could be in the open market and/or in privately negotiated or structured transactions, provided that any such acquisitions would be on terms deemed favorable by the Reporting Persons. In addition, the Reporting Persons may formulate plans or proposals for, hold discussions with the Company's management, the Board, the Company's stockholders and other parties about, and reserve the right to explore, or make plans or proposals relating to, transactions, discussions or actions which relate to or would result in any of the matters specified in clauses (a) through (j) of Item 4 of Schedule 13D. The Reporting Persons' consideration or discussion of any action would be based on their own assessment of various relevant considerations and any subsequent developments affecting the Company and its prospects.

Glencore International and Glencore AG are party to a Standstill and Governance Agreement and a Letter Agreement with the Company. The descriptions of the Standstill and Governance Agreement and the Letter Agreement set forth in Item 6 below are incorporated herein by reference.

Item 5. Interest in Securities of the Issuer

(a) Each of the Reporting Persons beneficially owns, directly or indirectly, 36,393,058 shares of Common Stock, or 39.1% of the outstanding Common Stock. The shares of Common Stock beneficially owned by the Reporting Persons (other than shares subject to options issued to Mr. Strothotte as further described below) are held directly by Glencore AG. The shares reported as beneficially owned by the Reporting Persons: (i) do not include the 8,125,546 shares of Common Stock issuable upon conversion of the 81,255.46 Preferred Shares held directly by Glencore AG that are convertible only (a) upon the occurrence of events that have not transpired, or (b) in circumstances that would not result in an increase in the percentage of shares of Common Stock beneficially owned by the Reporting Persons, and (ii) include 19,000 shares subject to presently exercisable options held directly by Mr. Willy R. Strothotte, who holds such options as nominee for the Reporting Persons. The aggregate number and percentage of shares of Common Stock beneficially owned by each person (other than the Reporting Persons) listed in Schedule 1 hereto is set forth opposite his or her name on Schedule 1 hereto. The beneficial ownership percentages reported herein are based upon (i) the 93,094,226 shares of Common Stock outstanding as of April 30, 2011, as reported in the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2011, as filed with the Securities and Exchange Commission on May 10, 2011, plus (ii) 19,000 shares which are subject to presently exercisable options which are held directly by Mr. Strothotte as nominee for the Reporting Persons. Reference is made to the discussion of the terms of the Certificate of Designation for the Series A Preferred Stock in Item 6 below.

(b) The Reporting Persons share the power to vote or to direct the vote and dispose or to direct the disposition of 36,393,058 shares of Common Stock. To the best knowledge of the Reporting Persons, each person (other than the Reporting Persons and any person holding shares as nominee for the Reporting Persons) named in Item 2 has the sole power to vote or to direct the vote and dispose or to direct the disposition of the number of shares of Common Stock set forth opposite his or her name on Schedule 1 hereto.

(c) None of the Reporting Persons nor, to their knowledge, any of the persons named in Item 2 have engaged in any transaction in Common Stock since the filing of the last amendment to this Schedule 13D.

(d) None.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

On July 7, 2008 the Company entered into a Stock Purchase Agreement with Glencore Investment Pty Ltd. ("Glencore Investment Pty") pursuant to which Glencore Investment Pty purchased the Preferred Shares. The following represents a summary of the terms of the agreements and instruments relating to the July 7, 2008 purchase of the Preferred Shares that remain in effect:

Certificate of Designation: The rights and privileges of the Series A Preferred Stock are set forth in a Certificate of Designation filed with the Secretary of State of the State of Delaware on July 7, 2008 (the "Certificate of Designation"). The following summarizes the material terms of the Series A Preferred Stock, as reflected in the Certificate of Designation:

Dividends. Dividends will be declared and paid on the Series A Preferred Stock when, as and if, and in the same amounts (on an as-converted basis), declared and paid on the Common Stock.

Voting. The Series A Preferred Stock has no voting rights, except to vote as a separate class on any proposal to or that would amend, alter or repeal or otherwise change any provision of the Company's Certificate of Incorporation or the Certificate of Designation if such amendment would increase or decrease the number of authorized shares of Series A Preferred Stock, increase or decrease the par value of the Series A Preferred Stock or alter or change the powers, preferences or special rights of the shares of the Series A Preferred Stock.

Liquidation Preference. Upon liquidation, dissolution or winding up of the Company, holders of Series A Preferred Stock are entitled to a liquidation preference of \$0.01 per share, and thereafter are entitled to share ratably (on an as-converted basis) with the Common Stock in the distribution of any remaining assets (net of an amount equivalent to the aggregate amount of the liquidation preference).

Automatic Conversion. The Series A Preferred Stock shall be automatically converted into shares of Common Stock at a conversion ratio of 100 shares of Common Stock for each share of Series A Preferred Stock (the "Conversion Ratio") upon the occurrence of the following events: (i) any event that would dilute the Reporting Persons' percentage ownership of Common Stock, to the extent necessary to maintain the same percentage ownership as immediately prior to the diluting event; (ii) the sale or other transfer of Series A Preferred Stock to non-affiliates of the Reporting Persons, and (iii) upon the consummation of any merger or business combination transaction involving the Company or the sale of all or substantially all of the property or assets of the Company and its subsidiaries, unless the consideration in the transaction is other than cash or marketable securities and the Reporting Persons have voted their Common Stock against the transaction (in which case, the Series A Preferred Stock will be redeemed as described below).

Optional Conversion. At the option of each holder, the Series A Preferred Stock may be converted into Common Stock at the Conversion Ratio and tendered into a tender or exchange offer in which a majority of the outstanding shares of Common Stock have been tendered.

Mandatory Redemption. If (i) the Company proposes (x) to engage in a merger or business combination transaction involving the Company or to sell all or substantially all of the property or assets of the Company and its subsidiaries in a transaction where the consideration payable to the holders of Common Stock is other than cash, marketable securities or shares of the Company's subsidiaries, or (y) to dissolve and wind up (other than as part of a transaction contemplated by (x)) and assets other than cash, marketable securities or shares of the Company's subsidiaries will be distributed to the Company's stockholders, and (ii) the Reporting Persons vote any and all of their Common Stock against the proposal, the Company must redeem all of the Series A Preferred Stock at a redemption price equivalent to the average of the closing price for the Common Stock on Nasdaq for twenty (20) trading days starting twenty-two (22) trading days before the first public announcement of the Company's proposal.

Preemptive Rights. If the Company proposes to issue or sell, in a transaction directed to holders of Common Stock, any Common Stock or other stock ranking on parity with the Common Stock (or any securities convertible or exchangeable for, or any options, warrants or other rights to subscribe for, such stock) (but excluding issuances to employees and issuances triggered under a stockholders rights plan by acquisitions by the Reporting Persons) at a price below the average of the closing price for the Common Stock on Nasdaq for twenty (20) trading days starting twenty-two (22) trading days before the Board of Directors authorizes such issuance or sale, the holders of Series A Preferred Stock must be given the opportunity to participate in such issuance on an as-converted basis.

Transfer Restrictions. Except for transfers to pledgees (subject to certain conditions), the Series A Preferred Stock may be transferred only in widely-distributed public offerings or in transactions that comply with Rule 144 under the Securities Act of 1933, as amended, and following any such transfer, will automatically convert to Common Stock.

Standstill and Governance Agreement: In connection with the Stock Purchase Agreement, on July 7, 2008 Glencore AG and the Company entered into a Standstill and Governance Agreement (the "Governance Agreement"). Certain standstill obligations of Glencore AG and its affiliates under the Governance Agreement expired on each of April 8, 2009 and January 7, 2010. No standstill obligations under the Governance Agreement are currently binding on Glencore AG or any of its affiliates. The following is a summary of the material terms of the Governance Agreement that remain in effect today:

Board Representation. The Reporting Persons will have the right to designate a nominee for election to the Board of Directors, subject to the consent of the nominating committee. This right will terminate if the Reporting Persons (and their affiliates) beneficially own less than 10% of the Common Stock for a period of three continuous months.

Registration Rights Agreement: On July 7, 2008, Glencore Investment Pty and the Company entered into a Registration Rights Agreement, containing customary terms and conditions (the "Registration Rights Agreement"), pursuant to which the Company has agreed to register the Preferred Shares for resale by the Reporting Persons and their affiliates and any of their respective pledgees. Sales under the Registration Rights Agreement must be made in open market transactions that comply with Rule 144 under the Securities Act of 1933, as amended, or in widely distributed public offerings. The Reporting Persons, their affiliates and any of their respective pledgees are entitled to demand up to six registrations from and after November 5, 2008 and subject to certain customary restrictions, may at any time participate in registered offerings initiated by the Company for its own account or the account of other stockholders. Under the Certificate of Designation, Preferred Shares sold under the Registration Rights Agreement will automatically convert to shares of Common Stock upon such sale. Subject to the restriction on the number of demand registrations, the registration rights will continue until the Common Stock issued upon conversion of the Preferred Shares are sold under an effective registration statement or the Preferred Shares are no longer outstanding. The Company will be responsible for all fees and expenses relating to any registration of the Preferred Shares, except that the Reporting Persons will be responsible for any underwriters commissions and any fees and expenses of their legal counsel and any other advisors retained by them (including underwriters' counsel in the case of demand registrations).

Support Agreement: The Company disclosed in its notice of Annual Meeting of Stockholders held on May 27, 2009 and related proxy statement a management proposal to amend the Company's Restated Certificate of Incorporation to increase the number of authorized shares of Common Stock. Following filing of the proxy statement, Glencore AG and the Company engaged in discussions relating to the proposed increase in the Company's authorized capital. The Company determined to amend the proposal to provide for an increase in the number of authorized shares of Common Stock from 100,000,000 to 195,000,000, and on May 4, 2009, the Company and Glencore AG entered into a Support Agreement (the "Support Agreement") whereby (a) Glencore AG agreed to vote for the amended proposal to increase authorized capital and the other matters being proposed by the Company for approval at the May 27, 2009 stockholders meeting, and (b) except for certain limited and strategic transactions and other customary exceptions, the Company agreed to give the Reporting Persons the right to maintain their equity percentage ownership in the Company by purchasing (i) their pro rata portion of additional shares of Common Stock and other securities or interests convertible into or exchangeable or exercisable for Common Stock (including cash settled derivatives) issued by the Company and its affiliates in cash offerings and (ii) additional shares of Common Stock and other securities or interests convertible into or exchangeable or exercisable for Common Stock (including cash settled derivatives) issued by the Company and its affiliates in any debt exchange offers if and to the extent the aggregate cumulative number of shares of Common Stock or their equivalent issued in debt exchanges in any twelve month period prior to November 4, 2010 would equal or exceed 30 million shares. The right to acquire securities will terminate if the Reporting Persons beneficially own less than 10% of the Common Stock for a period of three continuous months.

Letter Agreement: On April 6, 2010, Glencore International and Glencore AG entered into a letter agreement with the Company (the "Letter Agreement"). Pursuant to the terms of the Letter Agreement, the Company agreed to increase the size of its Board of Directors to 11 members prior to the Company's 2010 Annual Meeting of Stockholders (the "2010 Annual Meeting") and to cause the slate of nominees standing for election to the Board of Directors at the 2010 Annual Meeting to include (i) Ivan Glasenberg, Andrew Michelmore, John O'Brien and Peter Jones, each of whom were nominated as Class II directors of the Company with a term expiring at the Company's 2013 Annual Meeting of Stockholders, and (ii) John Fontaine, who was nominated as a Class I director of the Company with a term expiring at the Company's 2012 Annual Meeting of Stockholders. At the 2010 Annual Meeting held on June 8, 2010, Messrs. Glasenberg, Michelmore, O'Brien, Jones and Fontaine were elected to the Board of Directors.

As part of the Letter Agreement, the Company has further agreed that if, after having been elected to the Board of Directors, Mr. Glasenberg ceases to be a member of the Board of Directors for any reason at or prior to the Company's 2013 Annual Meeting of Stockholders, the Reporting Persons will have the ability to designate a substitute reasonably acceptable to the Company to replace Mr. Glasenberg as a director, with such determination regarding acceptability to be made by the Company in good faith and reasonably promptly. Any such substitute director will be appointed by the Board of Directors no later than one business day after such determination.

On January 31, 2011, Mr. Glasenberg resigned from the Board of Directors. In accordance with the terms of the Letter Agreement, Glencore International and Glencore AG designated Daniel Goldberg to replace Mr. Glasenberg as a director of the Company. On January 31, 2011, the Board of Directors of the Company appointed Mr. Goldberg, as a replacement for Mr. Glasenberg, as a Class II director of the Company with a term expiring at the Company's 2013 Annual Meeting of Stockholders.

Swaps: On July 2, 2010, Glencore International entered into a Master Terms and Conditions for Swap Transactions agreement (the "Swap Agreement") with Citigroup Global Markets Inc. ("Citi"). Pursuant to the Swap Agreement, Glencore International AG and Citi may, from time to time, enter into certain cash-settled total return swaps (the "Swaps") with respect to the Common Stock. Among other things, the Swap Agreement provides that all transactions thereunder will not reference more than 9.9% of the outstanding Common Stock. In connection with establishing and

maintaining any hedging positions with respect to the Swaps, the Swap Agreement provides that Citi must establish and maintain such hedging positions in transactions consisting of cash-settled swaps, cash-settled options or other equivalent cash-settled "synthetic" positions.

Under the terms of the Swaps, generally, (i) Glencore International will be obligated to post cash collateral to Citi, pay to Citi certain fees and commissions and make a cash payment to Citi with respect to any depreciation in the volume weighted average price of the Common Stock from the initial averaging period for a Swap to a final valuation period preceding the termination of the Swap, and (ii) Citi will be obligated to pay to Glencore International an amount in cash equal to any dividends that would have been paid by the Company on the Common Stock referenced by each Swap and make a cash payment to Glencore International with respect to any appreciation in the volume weighted average price of the Common Stock from the initial averaging period for a Swap to the final valuation period preceding the termination of the Swap. The overall effect of the Swap parties' cash payments based on the price of the Common Stock referenced in the Swaps is to provide Glencore International with economic exposure to price movements in the number of shares of Common Stock referenced in the Swaps during the relevant time periods.

The Swaps will not give the Reporting Persons direct or indirect voting, investment or dispositive control over any securities of the Company and will not require Citi to acquire, hold, vote or dispose of any securities of the Company. Accordingly, the Reporting Persons disclaim any beneficial ownership of any shares of Common Stock that may be referenced in the Swaps or shares of Common Stock or other securities or financial instruments of the Company that may be held from time to time by Citi.

In connection with entry into the Swaps, the Company and Glencore International have agreed that the Swaps and the transactions contemplated thereby would (i) not result in the Glencore International or Citi, or any of their respective affiliates or associates, being deemed to be a "Beneficial Owner" of, or to "beneficially own" any, shares of Common Stock, or constitute an "Acquiring Person" for purposes of the Company's Tax Benefit Preservation Plan, dated as of September 29, 2009 (the "Rights Plan"), and (ii) be deemed to constitute "Exempt Transactions" pursuant to, and in accordance with, Section 35 of the Rights Agreement. Capitalized terms used in the preceding sentence and not otherwise defined in the Schedule 13D shall have the meaning ascribed to them in the Rights Plan. The Rights Plan expired by its terms on September 29, 2010.

Pursuant to the Swap Agreement, on September 15, 2010 Glencore International received economic exposure to 4,729,302 notional shares of Common Stock, or approximately 5.08% of the outstanding Common Stock based on the number of outstanding shares set forth in Item 5, at a reference price of \$9.71927 per notional share of Common Stock, under a swap that expires on September 17, 2012.

Pursuant to the Swap Agreement, on March 11, 2011 Glencore International received economic exposure to 4,400,000 notional shares of Common Stock, or approximately 4.73% of the outstanding Common Stock based on the number of outstanding shares set forth in Item 5, at a reference price of \$16.6582 per notional share of Common Stock, under a swap that expires on March 11, 2013.

See Item 4 for a description of the 2011 Agreement.

The foregoing descriptions of the Certificate of Designation, Governance Agreement, Registration Rights Agreement, Support Agreement, Letter Agreement and Swap Agreement are subject to, and qualified in their entirety by reference to, the full text of such documents and agreements, which were previously filed with the Securities and Exchange Commission as exhibits to the Schedule 13D, and are hereby incorporated herein by reference.

Except for terms of the Certificate of Designation and the agreements described above in this Item 6, to the best knowledge of the Reporting Persons, there exists no contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the Company, including but not limited to the transfer or voting of any securities of the Company, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

Item 7. Material to Be Filed as Exhibits

1. Joint Filing Agreement (filed herewith).
2. Certificate of Designation of the Series A Preferred Stock (Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 8, 2008).
- 3.

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Standstill and Governance Agreement (Incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 8, 2008).

4. Registration Rights Agreement (Incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 8, 2008).

5. Support Agreement (Incorporated by reference to Exhibit 10.01 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 4, 2009).

6. Letter Agreement (Incorporated by reference to Exhibit 6 to the Schedule 13D filed with the Securities and Exchange Commission on April 7, 2010).
 7. Master Terms and Conditions for Swap Transactions (Incorporated by reference to Exhibit 7 to the Schedule 13D filed with the Securities and Exchange Commission on July 6, 2010).
 8. Consent Under Rights Plan (Incorporated by reference to Exhibit 8 to the Schedule 13D filed with the Securities and Exchange Commission on July 6, 2010).
 9. 2011 Agreement (Incorporated by reference to Exhibit 9 to the Schedule 13D filed with the Securities and Exchange Commission on April 6, 2011).
-

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: June 1, 2011

Glencore AG

By: /s/ Andreas Hubmann

Name: Andreas Hubmann

Title: Director

By: /s/ Stefan Peter

Name: Stefan Peter

Title: Officer

Glencore International AG

By: /s/ Andreas Hubmann

Name: Andreas Hubmann

Title: Director

By: /s/ Gerda Schwindt

Name: Gerda Schwindt

Title: Officer

Glencore International plc

By: /s/ Steven Kalmin

Name: Steven Kalmin

Title: Director

SCHEDULE 1

Set forth below are the names, business addresses and present principal occupations of the directors and executive officers of Glencore International plc, Glencore International AG and Glencore AG. Each executive officer of each of Glencore International plc, Glencore International AG and Glencore AG is also a director of such company. Where no business address is given for a director, such director's principal employer is Glencore International plc or one of its subsidiaries, and the business address is Baarerstattstrasse 3, CH-6341, Baar, Switzerland. To the best knowledge of the Reporting Persons, none of the persons listed below beneficially owns any shares of Common Stock.

Directors of Glencore International plc:

Name	Principal Occupation	Business address	Share Ownership
Simon Murray (Citizen of United Kingdom)	Chairman, General Enterprise Management Services Ltd.	GEMS General Enterprise Management Services Ltd. 3601 Cheung Kong Center 2 Queen's Road Central Hong Kong	
Ivan Glasenberg (Citizen of Australia)	Chief Executive Officer		
Steven Kalmin (Citizen of Australia)	Chief Financial Officer		
Anthony Hayward (Citizen of United Kingdom)	Senior Independent Non-Executive Director.	3E Capital Limited 78 Brook Street London W1K 5EF Great Britain	
Peter Coates (Citizen of Australia)	Chairman, Santos Ltd.	Santos Level 31, The Chifley Tower, 2 Chifley Square Sydney 2000 Australia	
Leonhard Fischer (Citizen of Germany)	Chief Executive Officer, RHJ International S.A.	RHJ International Bahnhofstrasse 69a Zuerich 8001 Switzerland	
William Macaulay (Citizen of USA)	Chairman and Chief Executive Officer, First Reserve Corporation.	First Reserve Corporation One Lafayette Place Greenwich, CT 06830 USA	
Li Ning (Citizen of United Kingdom)	Executive Director, Henderson Land Development Co. Ltd. and Hong Kong Ferry	Henderson Land Development Co. Ltd & Hong Kong Ferry (Holdings) Co. Ltd	

(Holdings) Company Ltd. 71/F - 76/F, Two
International Finance
Center
8 Finance Street
Central Hong Kong

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Directors of Glencore International AG:

Name	Principal Occupation	Business address	Share Ownership
Ivan Glasenberg (Citizen of Australia)	Chief Executive Officer		
Steven Kalmin (Citizen of Australia)	Chief Financial Officer		
Andreas P. Hubmann (Citizen of Switzerland)	Accountant		

Directors of Glencore AG:

Name	Principal Occupation	Business address	Share Ownership
Ivan Glasenberg (Citizen of Australia)	Chief Executive Officer		
Steven F. Kalmin (Citizen of Australia)	Chief Financial Officer		
Andreas P. Hubmann (Citizen of Switzerland)	Accountant		
Aristotelis Mistakidis (Citizen of the United Kingdom)	Co-director zinc/copper/lead		

JOINT FILING AGREEMENT

Each of the undersigned hereby agrees that this Amendment No. 16 to the statement on Schedule 13D is being filed with the Securities and Exchange Commission on behalf of each of the undersigned pursuant to Rule 13d-1(k) under the Securities Exchange Act of 1934, as amended.

Dated: June 1, 2011

Glencore AG

By: /s/ Andreas Hubmann

Name: Andreas Hubmann

Title: Director

By: /s/ Stefan Peter

Name: Stefan Peter

Title: Officer

Glencore International AG

By: /s/ Andreas Hubmann

Name: Andreas Hubmann

Title: Director

By: /s/ Gerda Schwindt

Name: Gerda Schwindt

Title: Officer

Glencore International plc

By: /s/ Steven Kalmin

Name: Steven Kalmin

Title: Director

