

# ALEXANDERS INC

## FORM S-3/A

(Securities Registration Statement (simplified form))

Filed 01/20/09

Address	888 SEVENTH AVENUE NEW YORK, NY 10019
Telephone	2128947000
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Sector	Services
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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## AMENDMENT NO. 2 TO FORM S-3

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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### ALEXANDERS, INC.

(Exact name of registrant as specified in its charter)

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

**51-01-00517**  
(I.R.S. Employer  
Identification No.)

**210 Route 4 East**  
**Paramus, New Jersey 07652**  
**(201) 587-8541**

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

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**Joseph Macnow**  
**Chief Financial Officer**  
**Alexanders, Inc.**  
**888 Seventh Avenue**  
**New York, New York 10019**  
**(212) 894-7000**

(Name, address, and telephone number  
of agent for service)  
Copies to:

**Danielle Carbone, Esq.**  
**Shearman & Sterling LLP**  
**599 Lexington Avenue**  
**New York, New York 10022**

**Alan Rice, Esq.**  
**Secretary**  
**Alexanders, Inc.**  
**888 Seventh Avenue**  
**New York, New York 10019**

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

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

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

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

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

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

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

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

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

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.



**CALCULATION OF REGISTRATION FEE**

<b>TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED</b>	<b>AMOUNT TO BE REGISTERED(1)(2)</b>	<b>PROPOSED MAXIMUM OFFERING PRICE PER] UNIT (4)</b>	<b>PROPOSED MAXIMUM AGGREGATE OFFERING PRICE(1)(2)(3)</b>	<b>AMOUNT OF REGISTRATION FEE(2)</b>
Common stock, par value \$1.00 per share				
Preferred stock, par value \$1.00 per share				
Depository shares representing preferred stock(5)				
Debt securities				
Debt warrants(6)				
<b>Total.</b>	<b>\$1,500,000,000</b>	<b>(4)</b>	<b>(1)(2)(3)</b>	<b>(2)</b>

(1) An indeterminate aggregate initial offering price or number of the common stock, preferred stock, depository shares, debt securities and debt warrants is being registered as may from time to time be issued at indeterminate prices in an aggregate amount not to exceed \$1,500,000,000 or the equivalent of that amount in one or more other currencies, currency units or composite currencies.

(2) A filing fee of \$121,350 was previously paid for the \$1,500,000,000 aggregate initial offering price of securities registered under Registration Statement Nos. 333-110673 and 33-62779. Pursuant to Rule 415(a)(6) under the Securities Act, the associated filing fee of \$121,350 will be applied to the unsold \$1,500,000,000 aggregate initial offering price of common stock, preferred stock, depository shares representing preferred stock, debt securities and debt warrants of Alexander's, Inc. registered under Registration Statement Nos. 333-110673 and 33-62779 and the offering of such unsold securities will be deemed terminated as of the date of effectiveness of this Registration Statement.

(3) Estimated for the sole purpose of computing the registration fee in accordance with Rule 457(o) under the Securities Act. Separate consideration may not be received for registered securities that are issuable on conversion or exchange of other securities or represented by depository shares.

(4) Omitted in accordance with General Instruction II.D of Form S-3 under the Securities Act.

(5) Each depository share will be issued under a deposit agreement, will represent an interest in a fractional preferred share and will be evidenced by a depository receipt.

(6) Debt warrants may be sold separately or with other securities.

### **EXPLANATORY NOTE**

This Amendment No. 2 to the Registration Statement on Form S-3 (Registration No. 333-155727) is being filed solely for the purpose of filing with the Securities and Exchange Commission a replacement Exhibit 5.1 to the Registration Statement. Amendment No. 2 does not modify any provision of the prospectus that forms a part of the Registration Statement, and accordingly, such prospectus has not been included herein.

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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following is a statement of expenses (all of which are estimated other than the SEC registration fee) in connection with the issuance and distribution of the securities being registered, other than underwriting compensation:

SEC registration fee	\$	121,350
Printing and engraving expense		*
Legal fees and disbursements		*
Accounting fees and disbursements		*
Transfer agent's, depository's and trustee's fees and disbursements		*
Blue sky fees and expenses		*
Miscellaneous (including listing and rating agency fees)		*
Total	\$	*

\* Not presently known

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

Section 145 of the Delaware General Corporation Law empowers a corporation to indemnify its directors and officers or former directors and officers and to purchase insurance with respect to liability arising out of their capacity or status as directors and officers under certain circumstances. Such law provides further that the indemnification permitted thereunder shall not be deemed exclusive of any other rights to which the directors and officers may be entitled under a corporation's certificate of incorporation, by-laws, agreement or otherwise.

Alexander's, Inc.'s certificate of incorporation provides that our officers and directors will be indemnified to the fullest extent permitted by Delaware law. The directors shall be liable to us or the stockholders for monetary damages for breach of the director's fiduciary duty. Such provision does not limit a director's liability to us or our stockholders resulting from: (i) any breach of the director's duty of loyalty to us or our stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law or (iv) any transaction from which the director derived an improper personal benefit.

Alexander's, Inc.'s certificate of incorporation provides that we shall pay the expenses incurred by our officers or directors in defending a civil or criminal action, suit, or proceeding involving such person's acts or omissions as an officer or a director of ours if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of us or our stockholders and, with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. Unless ordered by a court, indemnification of an officer shall be made by us only as authorized in a specific case upon the determination that indemnification of the officer or director is proper under the circumstances because he or she has met the applicable standard of conduct. Such determination shall be made (i) by majority vote of our directors who are not parties to the action, suit or proceeding, (ii) by independent legal counsel in a written opinion, or (iii) by our stockholders. Alexander's, Inc.'s certificate of incorporation authorizes us to pay the expenses incurred by an officer or a director in defending a civil or criminal action, suit, or proceeding in advance of the final disposition thereof, upon receipt of an undertaking by or on behalf of such person to repay the expenses if it is ultimately determined that the person is not entitled to be indemnified by us.

We have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent or is liable as our director, or is or was serving, at our request, as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, regardless of whether we would have power to indemnify him against such liability.

We have purchased a policy of directors' and officers' insurance that insures both us and our officers and directors against expenses and liabilities of the type normally insured against under such policies, including the expense of the indemnifications described above.

Pursuant to the form of Underwriting Agreement, to be filed by amendment hereto or by Form 8-K, the underwriters will agree, subject to certain conditions, to indemnify Alexander's, Inc., its directors, certain of its officers and persons who control Alexander's, Inc. within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), against certain liabilities.

## **ITEM 16. EXHIBITS**

See the Exhibit Index which is incorporated herein by reference.

## **ITEM 17. UNDERTAKINGS**

(a) The undersigned registrant hereby undertakes:

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

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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

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

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule

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415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's Annual Report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's Annual Report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Alexander's, Inc. certifies that it has reasonable grounds to believe that it meets all of the requirements for filing and has duly caused this registration statement on Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in The City of New York and State of New York, on January 20, 2009.

### ALEXANDER'S, INC.

By: /s/ JOSEPH MACNOW

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Joseph Macnow  
Executive Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

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

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
* _____ Steven Roth	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	January 20, 2009
* _____ Michael D. Fascitelli	President and Director	January 20, 2009
/s/ Joseph Macnow _____ Joseph Macnow	Executive Vice President Chief Financial Officer (Principal Financial and Accounting Officer)	January 20, 2009
* _____ Thomas R. DiBenedetto	Director	January 20, 2009
* _____ David Mandelbaum	Director	January 20, 2009
* _____ Arthur I. Sonnenblick	Director	January 20, 2009
* _____ Neil Underberg	Director	January 20, 2009
* _____ Richard West	Director	January 20, 2009

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Russell B. Wight, Jr.

Director

January 20, 2009

\*By: /s/ JOSEPH MACNOW  
Joseph Macnow

Power of Attorney

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## EXHIBIT INDEX

<u>NUMBER</u>	<u>DESCRIPTION</u>
1.1**	Form of Underwriting Agreement (for Common Stock)
1.2**	Form of Underwriting Agreement (for Preferred Stock)
1.3**	Form of Underwriting Agreement (for Debt Securities)
3.1*	Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to the Company's Registration Statement on Form S-3 (No. 033-62779) filed September 20, 1995)
3.2*	By-laws of the Company (incorporated by reference to the Company's Quarterly Report on Form 10-Q (No. 001-06064) filed May 9, 2000)
4.1*	Specimen Common Stock Certificate
4.2**	Form of Preferred Stock Certificate of Designation
4.3*	Form of Indenture for Senior Debt Securities (incorporated by reference to the Company's Registration Statement on Form S-3 (No. 333-110673))
4.4*	Form of Senior Debt Security (included in Exhibit 4.1, incorporated by reference to the Company's Registration Statement on Form S-3 (No. 333-110673))
4.5*	Form of Indenture for Subordinated Debt Securities (incorporated by reference to the Company's Registration Statement on Form S-3 (No. 333-110673))
4.6*	Form of Subordinated Debt Security (included in Exhibit 4.3, incorporated by reference to the Company's Registration Statement on Form S-3 (No. 333-110673))
4.7*	Form of Deposit Agreement (incorporated by reference to the Company's Registration Statement on Form S-3 (No. 333-110673))
4.8*	Form of Depositary Receipt (included in Exhibit 4.5, incorporated by reference to the Company's Registration Statement on Form S-3 (No. 333-110673))
4.9**	Form of Warrant Agreement
4.10**	Form of Warrant (included in Exhibit 4.9)
5.1	Opinion of Shearman & Sterling LLP
8.1*	Tax Opinion of Shearman & Sterling LLP
12.1*	Statement Regarding Computation of Consolidated Ratios of Earnings to Fixed Charges
15.1*	Letter Regarding Unaudited Interim Financial Information
23.1*	Consent of Deloitte & Touche LLP
23.2	Consent of Shearman & Sterling LLP (included in Exhibit 5.1)
23.3*	Consent of Shearman & Sterling LLP (included in Exhibit 8.1)

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- 24.1\* Power of Attorney
  - 25.1\* Statement of Eligibility of Senior Trustee on Form T-1
  - 25.2\* Statement of Eligibility of Subordinated Trustee on Form T-1
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\* Filed previously.

\*\* To be filed by amendment or on a Form 8-K.

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[Letterhead of Shearman &amp; Sterling LLP]

January 20, 2009

Alexander's, Inc.  
210 Route 4 East  
Paramus, New Jersey 07652

Alexander's, Inc.

Ladies and Gentlemen:

We have acted as counsel to Alexander's, Inc. a Delaware corporation (the "Company"), in connection with the preparation and filing by the Company of a registration statement on Form S-3 (the "Registration Statement") with the Securities and Exchange Commission relating to the offering from time to time, pursuant to Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of (i) the Company's debt securities (the "Debt Securities"), (ii) warrants to purchase the Company's debt securities (the "Debt Warrants"), (iii) shares of the Company's preferred stock, par value \$1.00 per share (the "Preferred Stock"), (iv) shares of the Company's preferred stock represented by depositary shares (the "Depositary Shares") and (v) shares of the Company's common stock, par value \$1.00 per share. The Debt Securities, the Debt Warrants, the Preferred Stock, the Depositary Shares and the Common Stock are collectively referred to as the "Securities." The offering of the Securities will be as set forth in the prospectus contained in the Registration Statement (the "Prospectus"), as supplemented by one or more supplements to the Prospectus (each, a "Prospectus Supplement").

The Debt Securities will be issued in one or more series and may be either senior debt securities ("Senior Debt Securities") of the Company pursuant to an indenture to be executed between the Company and The Bank of New York Mellon, as trustee (the "Senior Trustee"), in substantially the form included in the Registration Statement as Exhibit 4.3 (the "Senior Indenture") or subordinated debt securities ("Subordinated Debt Securities") of the Company pursuant to an indenture to be executed between the Company and The Bank of New York Mellon, as trustee (the "Subordinated Trustee"), in substantially the form included in the Registration Statement as Exhibit 4.5 (the "Subordinated Indenture"). The Debt Warrants will be issued under one or more debt warrant agreements (each, a "Warrant Agreement") to be entered into between the Company and a financial institution identified therein as warrant agent (each, a "Warrant Agent"). The Preferred Stock will be issued in one or more series and the relative powers, designations, preferences, rights and qualifications, limitations or restrictions of such Preferred Stock will be set forth in one or more certificates of designations (each, a "Certificate of Designations"). The Depositary Shares will be issued under one or more deposit agreements (each, a "Deposit Agreement"), each to be entered into between the Company and a financial institution identified therein as the depositary (the "Depositary"), in substantially the form included in the Registration Statement as Exhibit 4.7. Each Warrant Agreement and Certificate of Designations will be in a form to be filed as an exhibit to a post-effective

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amendment to the Registration Statement or a Current Report on Form 8-K incorporated in the Registration Statement by reference. The Senior Indenture, the Subordinated Indenture, the Deposit Agreements and the Warrant Agreements are hereinafter referred to as the “Opinion Documents.”

In that connection, we have reviewed originals or copies of the following documents:

- (a) The form of Senior Indenture.
- (b) The form of Subordinated Indenture.
- (c) The form of Deposit Agreement.
- (d) The Registration Statement.
- (e) The Prospectus.
- (f) The amended and restated certificate of incorporation of the Company.
- (g) The by-laws of the Company.
- (h) The resolutions of the Board of Directors of the Company authorizing the Senior Indenture, the Subordinated Indenture and the Deposit Agreements and the issuance, offering and sale of the Securities (the “Resolutions”).
- (i) Such other corporate records of the Company, certificates of public officials and of officers of the Company and agreements and other documents as we have deemed necessary as a basis for the opinions expressed below.

In our review of the Opinion Documents and other documents, we have assumed:

- (a) The genuineness of all signatures.
  - (b) The authenticity of the originals of the documents submitted to us.
  - (c) The conformity to authentic originals of any documents submitted to us as copies.
  - (d) As to matters of fact, the truthfulness of the representations made in certificates of public officials and officers of the Company.
  - (e) That each of the Opinion Documents will be the legal, valid and binding obligation of each party thereto, other than the Company, enforceable against each such party in accordance with its terms.
  - (f) That:
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(i) The execution, delivery and performance by the Company of the Opinion Documents to which it is a party will be duly authorized by all necessary action (corporate or otherwise) and will not:

- (A) contravene its certificate or articles of incorporation, bylaws or other organizational documents;
- (B) violate any law, rule or regulation applicable to it; or
- (C) result in any conflict with or breach of any agreement or document binding on it of which any addressee hereof has knowledge, has received notice or has reason to know.

(ii) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or (to the extent the same is required under any agreement or document binding on it of which the Company has knowledge, has received notice or has reason to know) any other third party is required for the due execution, delivery or performance by the Company of any Opinion Document to which it is a party or, if any such authorization, approval, consent, action, notice or filing is required, it has been or will be duly obtained, taken, given or made and is or will be in full force and effect.

We have not independently established the validity of the foregoing assumptions.

“Generally Applicable Law” means the federal law of the United States of America, and the law of the State of New York (including the rules or regulations promulgated thereunder or pursuant thereto), that a New York lawyer exercising customary professional diligence would reasonably be expected to recognize as being applicable to the Company, the Opinion Documents or the transactions governed by the Opinion Documents, and for purposes of assumption paragraph (f) above and our opinions in paragraphs 1, 2, 8, 9, 10 and 11 below, the General Corporation Law of the State of Delaware. Without limiting the generality of the foregoing definition of Generally Applicable Law, the term “Generally Applicable Law” does not include any law, rule or regulation that is applicable to the Company, the Opinion Documents or such transactions solely because such law, rule or regulation is part of a regulatory regime applicable to any party to any of the Opinion Documents or any of its affiliates due to the specific assets or business of such party or such affiliate.

Based upon the foregoing and upon such other investigation as we have deemed necessary and subject to the qualifications set forth below, we are of the opinion that:

1. The Company is a corporation duly incorporated, validly existing and in good standing under the law of the State of Delaware with corporate power and authority under such law to conduct its business as described in the Registration Statement and the documents incorporated by reference therein.
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2. The Company (i) has the corporate power to execute, deliver and perform each Opinion Document to which it is a party and (ii) has taken all corporate action necessary to authorize the execution, delivery and performance of each Opinion Document to which it is a party.

3. The Senior Indenture has been duly authorized and, when duly executed and delivered by the Company and duly authorized, executed and delivered by the Senior Trustee, the Senior Indenture will constitute a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

4. The Subordinated Indenture has been duly authorized and, when duly executed and delivered by the Company and duly authorized, executed and delivered by the Subordinated Trustee, the Subordinated Indenture will constitute a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

5. The Senior Debt Securities have been duly authorized and, when (i) the Senior Indenture has been duly executed and delivered by the Company and the Senior Trustee, (ii) the final terms of the Senior Debt Securities have been duly established and approved and (iii) the Senior Debt Securities have been duly executed by the Company, in each case pursuant to the authority granted in the Resolutions, and authenticated by the Senior Trustee in accordance with the Senior Indenture and delivered to the purchasers thereof against payment of the consideration therefor duly approved by the Company, such Senior Debt Securities will constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Senior Indenture.

6. The Subordinated Debt Securities have been duly authorized and, when (i) the Subordinated Indenture has been duly executed and delivered by the Company and the Subordinated Trustee, (ii) the final terms of the Subordinated Debt Securities have been duly established and approved and (iii) the Subordinated Debt Securities have been duly executed by the Company, in each case pursuant to the authority granted in the Resolutions, and authenticated by the Subordinated Trustee in accordance with the Subordinated Indenture and delivered to the purchasers thereof against payment of the consideration therefor duly approved by the Company, such Subordinated Debt Securities will constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Subordinated Indenture.

7. The Debt Warrants have been duly authorized.

8. The shares of Preferred Stock have been duly authorized and, when the final terms thereof have been duly established and approved by the Company in conformity with the Company's certificate of incorporation, and certificates representing such shares have been duly executed by the Company, in each case pursuant to the authority granted in the Resolutions, and delivered to the purchasers thereof against

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payment of the consideration therefor duly approved by the Company (which shall not be less than the par value of the Preferred Stock), and when all corporate action necessary for the issuance of such shares has been taken, including the adoption and filing of a Certificate of Designations, such shares of Preferred Stock will be validly issued, fully paid and non-assessable.

9. The Depositary Shares have been duly authorized and, when the applicable Deposit Agreement has been duly executed and delivered by the Company and the Depositary and the final terms of the Depositary Shares to be issued pursuant thereto have been duly established and approved, in each case pursuant to the authority granted in the Resolutions, and when the depositary receipts representing the Depositary Shares (the “Depositary Receipts”) have been duly executed by the Company and duly executed and countersigned by the Depositary in accordance with the terms of such Deposit Agreement, and delivered to the purchasers thereof against payment of the consideration therefor duly approved by the Company, and when all corporate action necessary for issuance of Depositary Shares and the underlying shares of Preferred Stock has been taken, such Depositary Shares will be validly issued and will entitle the holders thereof to the rights specified in the Depositary Receipts and the applicable Deposit Agreement.

10. The shares of Common Stock have been duly authorized and, when the terms of the issuance and sale of the applicable shares of Common Stock have been duly approved by the Company in conformity with the Company’s certificate of incorporation and pursuant to the authority granted in the Resolutions, and when such shares of Common Stock are issued and delivered to the purchasers thereof against payment of the consideration therefor duly approved by the Company (which shall not be less than the par value of the Common Stock), will be validly issued, fully paid and non-assessable.

11. The shares of Common Stock issuable upon conversion of any issue of convertible Debt Securities or Preferred Stock have been duly authorized and, when the terms of conversion of such convertible Debt Securities or Preferred Stock have been duly approved by the Company pursuant to the authority granted in the Resolutions, and when such shares of Common Stock are issued and delivered to the purchasers thereof against payment of the consideration therefor duly approved by the Company (which shall not be less than the par value of the Common Stock), will be validly issued, fully paid and non-assessable.

Our opinions expressed above are subject to (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally (including without limitation all laws relating to fraudulent transfers), (ii) the effect of general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law) and (iii) Generally Applicable Law, and we do not express any opinion herein concerning any other law. Further, with respect to Securities denominated in a currency other than United States dollars, if any, we express no opinion as to whether a court would award a judgment in a currency other than United States dollars.

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This opinion letter speaks only as of the date hereof. We expressly disclaim any responsibility to advise you of any development or circumstance of any kind, including any change of law or fact, that may occur after the date of this opinion letter that might affect the opinions expressed herein.

We understand that this opinion is to be used in connection with the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name in the Prospectus under the caption "Validity of the Securities." In giving this consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

Shearman & Sterling LLP

BC/MFM/ME/JSG  
DC

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