

NEW YORK MORTGAGE TRUST INC
 Form 424B5
 June 27, 2011
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The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities, and they are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion
 Preliminary Prospectus Supplement dated June 27, 2011

PROSPECTUS SUPPLEMENT
 (To prospectus dated December 11, 2009)

2,000,000 Shares

Common Stock

We are selling 2,000,000 shares of common stock as described in this prospectus supplement and the accompanying prospectus. Our common stock is listed on The Nasdaq Capital Market, or Nasdaq, under the symbol “NYMT.” On June 24, 2011, the last reported sale price of our common stock on Nasdaq was \$7.93 per share.

To preserve our status as a real estate investment trust, or REIT, for U.S. federal income tax purposes, we impose restrictions on the ownership and transfer of our common stock. See “Description of Capital Stock—Restrictions on Ownership and Transfer” in the accompanying prospectus.

Investing in our common stock involves risks. You should carefully consider the risks described under “Risk Factors” in this prospectus supplement and in our Annual Report on Form 10-K for the year ended December 31, 2010 and our Quarterly Report on Form 10-Q for the period ended March 31, 2011 before making an investment decision.

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

	Price to Public	Underwriting Discounts and Commissions	Proceeds to Us (1)
Per Share	\$	\$	\$
Total	\$	\$	\$

(1) Before deducting approximately \$0.2 million in expenses payable by us.

We have granted the underwriter an option to purchase a maximum of 300,000 additional shares from us at the public offering price, less the underwriting discount, within 30 days after the date of this prospectus supplement to cover over-allotments, if any.

We are offering the shares of common stock for sale on a firm commitment basis. The underwriter expects to deliver the shares of common stock to investors in this offering on or about July , 2011.

Ladenburg Thalmann & Co. Inc.

The date of this prospectus supplement is June , 2011

TABLE OF CONTENTS

Prospectus Supplement

ABOUT THIS PROSPECTUS SUPPLEMENT	ii
FORWARD-LOOKING STATEMENTS	ii
INFORMATION INCORPORATED BY REFERENCE	iii
PROSPECTUS SUPPLEMENT SUMMARY	S-1
THE OFFERING	S-3
RISK FACTORS	S-4
USE OF PROCEEDS	S-4
CAPITALIZATION	S-5
ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS	S-6
UNDERWRITING	S-8
EXPERTS	S-10
LEGAL MATTERS	S-10

TABLE OF CONTENTS

Prospectus

ABOUT THIS PROSPECTUS	ii
CERTAIN DEFINITIONS	ii
RISK FACTORS	1
FORWARD-LOOKING INFORMATION	1
OUR COMPANY	3
USE OF PROCEEDS	4
DESCRIPTION OF CAPITAL STOCK	4
CERTAIN PROVISIONS OF MARYLAND LAW AND OUR CHARTER BYLAWS	14
FEDERAL INCOME TAX CONSEQUENCES OF OUR STATUS AS A REIT	19
PLAN OF DISTRIBUTION	38
CERTAIN LEGAL MATTERS	41
EXPERTS	41
WHERE YOU CAN FIND MORE INFORMATION	41
INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC	41

You should rely only on the information contained in this prospectus supplement and the accompanying prospectus or incorporated by reference in these documents. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained or incorporated by reference in this prospectus supplement or the accompanying prospectus. If anyone provides you with different, inconsistent or unauthorized information or representations, you must not rely on them. This prospectus supplement and the accompanying prospectus are an offer to sell only the securities offered by these documents, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus supplement and the accompanying prospectus or incorporated by reference in these documents is current only as of the respective dates of those documents or the dates that are specified therein.

ABOUT THIS PROSPECTUS SUPPLEMENT

This document consists of two parts. The first part is this prospectus supplement, which describes the specific terms of the offering of common stock and also adds to and updates information contained in the accompanying prospectus. The second part is the accompanying prospectus, which gives more general information. If the information set forth in this prospectus supplement differs in any way from the information set forth in the accompanying prospectus, you should rely on the information set forth in this prospectus supplement.

This prospectus supplement does not contain all of the information that is important to you. You should read the accompanying prospectus as well as the documents incorporated by reference in this prospectus supplement and the accompanying prospectus. See “Where You Can Find More Information” in the accompanying prospectus. Unless the context otherwise requires, in this prospectus supplement, the terms the “Company,” “we,” “our,” “us” or similar references refer to New York Mortgage Trust, Inc., a Maryland corporation. Unless expressly stated otherwise, the information set forth throughout this prospectus supplement assumes no exercise of the underwriter’s over-allotment option. See “Underwriting.”

FORWARD-LOOKING STATEMENTS

When used in this prospectus supplement, the accompanying prospectus, in future filings with the Securities and Exchange Commission, or the SEC, or in press releases or other written or oral communications, statements which are not historical in nature, including those containing words such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “goal,” “objective,” “potential,” “project,” “should,” “will” and “would” or the negative of these terms or other comparable terminology, are intended to identify “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and, as such, may involve known and unknown risks, uncertainties and assumptions. These forward-looking statements may relate to, among other things, our expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts.

The forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account information currently in our possession. These beliefs, assumptions and expectations may change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, the performance of our portfolio and our business, financial condition, liquidity and results of operations may vary materially from those expressed, anticipated or contemplated in our forward-looking statements. You should carefully consider these risks, along with the following factors that could cause actual results to vary from our forward-looking statements, before making an investment in our securities:

- changes in our business and strategies;
- our ability to successfully diversify our investment portfolio and identify suitable assets to invest in;
- the effect of the Federal Reserve’s and the U.S. Treasury’s actions and programs, including future purchases or sales by the Federal Reserve or U.S. Treasury of residential mortgage-backed securities, or RMBS, that are issued or guaranteed by a federally chartered corporation, such as the Federal National Mortgage Association, or Fannie Mae, or the Federal Home Loan Mortgage Corporation, or Freddie Mac, or an agency of the U.S. government, such as the Government National Mortgage Association, or Ginnie Mae, which we refer to collectively as “Agency RMBS”, on the liquidity of the capital markets and the impact and timing of any further programs or regulations implemented by the U.S. Government or its agencies;
- any changes in laws and regulations affecting the relationship between Fannie Mae, Freddie Mac or Ginnie Mae and the U.S. Government;
 - increased prepayments of the mortgages and other loans underlying our investment securities;
 - the volatility of the markets for our targeted assets;
 - increased rates of default and/or decreased recovery rates on our assets;

- mortgage loan modification programs and future legislative action;
- the degree to which our hedging strategies may or may not protect us from, or expose us to, credit, prepayment or interest rate risk;
 - changes in the availability, terms and deployment of capital;
 - changes in interest rates and interest rate mismatches between our assets and related borrowings;
- our ability to maintain existing financing agreements, obtain future financing arrangements and the terms of such arrangements;

- changes in economic conditions generally and the mortgage, real estate and debt securities markets specifically;
 - legislative or regulatory changes;
 - changes to United States generally accepted accounting principles, or GAAP; and
- the other important factors identified, or incorporated by reference in this prospectus supplement or the accompanying prospectus, including, but not limited to those under the captions “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Quantitative and Qualitative Disclosures about Market Risk” in our Annual Report on Form 10-K for the year ended December 31, 2010 and Quarterly Report on Form 10-Q for the period ended March 31, 2011, and those described under the caption “Risk Factors” in this prospectus supplement and in our Annual Report on Form 10-K for the year ended December 31, 2010 and Quarterly Report on Form 10-Q for the period ended March 31, 2011.

We cannot guarantee future results, levels of activity, performance or achievements. You should not place undue reliance on forward-looking statements, which apply only as of the date on which they are made. Except as obligated by law, we do not intend and disclaim any duty or obligation to update or revise any industry information or forward-looking statements set forth or incorporated by reference in this prospectus supplement or the accompanying prospectus to reflect new information, future events or otherwise.

INFORMATION INCORPORATED BY REFERENCE

This prospectus supplement and the accompanying prospectus are part of a registration statement that we have filed with the SEC. The SEC allows us to “incorporate by reference” the information that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus supplement and the accompanying prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus supplement and before the date that the offering of the securities by means of this prospectus supplement and accompanying prospectus is terminated will automatically update and, where applicable, supersede any information contained or incorporated by reference in this prospectus supplement and accompanying prospectus. We incorporate by reference into this prospectus supplement and the accompanying prospectus the following documents or information filed with the SEC (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

- Our Annual Report on Form 10-K for the year ended December 31, 2010;
- Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2011;
- Our Current Reports on Form 8-K filed with the SEC on March 4, 2011, March 18, 2011, May 13, 2011 and May 31, 2011;
- Our Definitive Proxy Statement on Schedule 14A filed on March 29, 2011; and
 - Our Form 8-A filed on June 3, 2008.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus supplement and the accompanying prospectus are delivered, upon his or her written or oral request, a copy of any or all documents referred to above that have been or may be incorporated by reference into this prospectus supplement and the accompanying prospectus, excluding exhibits to those documents unless they are specifically incorporated by

reference into those documents. You may request those documents from us by contacting: Corporate Secretary, New York Mortgage Trust, Inc., 52 Vanderbilt Avenue, Suite 403, New York, New York 10017, telephone: (212) 792-0107.

PROSPECTUS SUPPLEMENT SUMMARY

The following summary is qualified in its entirety by the more detailed information included elsewhere or incorporated by reference into this prospectus supplement and the accompanying prospectus. Because this is a summary, it may not contain all of the information that is important to you. You should read the entire prospectus supplement and the accompanying prospectus, including the section entitled “Risk Factors” and the documents incorporated by reference herein before making an investment decision.

Our Company

We are a real estate investment trust, or REIT, in the business of acquiring, investing in, financing and managing primarily mortgage-related assets. Our principal business objective is to generate net income for distribution to our stockholders resulting from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance our leveraged assets and our operating costs, which we refer to as our net interest income. We intend to achieve this objective by investing in a broad class of mortgage-related and financial assets that in aggregate will generate what we believe are attractive risk-adjusted total returns for our stockholders. Our targeted assets currently include:

- Agency RMBS;
- RMBS backed by prime jumbo and Alternative A-paper mortgage loans, which we sometimes refer to as non-Agency RMBS;
- prime adjustable-rate mortgage, or ARM, loans held in securitization trusts; and
- commercial mortgage-backed securities, or CMBS, commercial mortgage loans and other commercial real estate-related debt investments.

We also may opportunistically invest in various other types of mortgage-related and financial assets that we believe will compensate us appropriately for the risks associated with them, including, among other things, certain non-rated residential mortgage assets, collateralized loan obligations and certain mortgage-related derivatives. Subject to maintaining our qualification as a REIT, we also may invest in corporate debt or equity securities that may or may not be related to real estate.

Prior to 2009, our investment portfolio was primarily comprised of Agency RMBS, certain non-Agency RMBS originally rated in the highest rating category by two rating agencies and prime ARM loans held in securitization trusts. The prime ARM loans held in our four securitization trusts were purchased from third parties or originated by us through our wholly-owned taxable REIT subsidiary, Hypotheca Capital, LLC, or Hypotheca. In early 2009, we commenced a repositioning of our investment portfolio to transition the portfolio from one primarily focused on leveraged Agency RMBS and prime ARM loans held in securitization trusts, which primarily involve interest rate risk, to a more diversified portfolio that includes elements of credit risk with reduced leverage. We believe this strategy will enable us to construct a diversified investment portfolio designed to provide attractive risk-adjusted returns across a variety of market conditions and economic cycles. We further believe that this approach, together with our Midway Residential Mortgage Portfolio strategy and commercial mortgage portfolio strategy, will better position us to capitalize on attractive investment opportunities created by market dislocations for these assets. See “Recent Developments” below. We expect that certain of these targeted assets may permit us to potentially utilize part of a significant net operating loss carry-forward held by Hypotheca, subject to certain limitations under the Internal Revenue Code of 1986, as amended, or Internal Revenue Code.

We have elected to be taxed as a REIT and have complied, and intend to continue to comply, with the provisions of

the Internal Revenue Code with respect thereto. Accordingly, we do not expect to be subject to federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income and ownership tests and recordkeeping requirements are fulfilled. However, even if we maintain our qualification as a REIT, we may be subject to some federal, state and local taxes on our income generated in our taxable REIT subsidiary.

Our principal executive offices are located at 52 Vanderbilt Avenue, Suite 403, New York, New York 10017, and our telephone number is (212) 792-0107. Our website is www.nymtrust.com. The information on our website is not, and should not be interpreted to be, part of this prospectus supplement or the accompanying prospectus.

S-1

Recent Developments

Second Quarter 2011 Common Stock Dividend

On May 31, 2011, our Board of Directors declared a cash dividend of \$0.22 per share of common stock for the quarter ending June 30, 2011, which is payable on June 27, 2011, to stockholders of record as of June 10, 2011. Purchasers of common stock in this offering will not receive the cash dividend payable on June 27, 2011. This second quarter of 2011 common stock dividend represents an increase of \$0.04 per share over the common stock dividend paid by us for the first quarter of 2011.

Initial Funding of Midway Residential Mortgage Portfolio Managed by The Midway Group

On February 11, 2011, we entered into an investment management agreement with The Midway Group, L.P., or Midway, pursuant to which Midway serves as investment manager of a separate account established and owned by us. We refer to this separate account as the Midway Residential Mortgage Portfolio and to our investment strategy related to this account as our Midway Residential Mortgage Portfolio strategy.

On February 28, 2011, we provided \$24.5 million of initial funding to the Midway Residential Mortgage Portfolio. As of May 5, 2011, we had provided an additional \$10.0 million of funding to the Midway Residential Mortgage Portfolio and we expect to contribute additional capital to the Midway Residential Mortgage Portfolio in the future, subject to various conditions. For more information regarding our Midway Residential Mortgage Portfolio strategy, including our investment, financing and hedging strategies for this portfolio, see “Item 1 — Business” in our Annual Report on Form 10-K for the year ended December 31, 2010 and the information included in our periodic reports and other documents that are incorporated by reference into this prospectus supplement.

Commercial Mortgage Portfolio Strategy

On April 11, 2011, we announced that one of our wholly-owned subsidiaries, RB Commercial Mortgage LLC, or RBCM, had entered into a multi-year investment management agreement with RiverBanc LLC, or RiverBanc. Under the terms of this investment management agreement, RiverBanc will source, structure and manage investments secured by commercial real estate that will be funded by RBCM on a flow basis. The investment program is expected to provide both mezzanine loans and preferred equity for all commercial property types on a nationwide basis. RiverBanc will focus on middle market opportunities and pursue on behalf of RBCM transactions in amounts as low as \$2 million secured by properties valued at \$10 million or greater. RBCM will also participate in structured investments such as the acquisition of seasoned or distressed loan portfolios, net leased properties or subordinate CMBS. For more information regarding our commercial mortgage portfolio strategy, see “Item 2 — Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Quarterly Report on Form 10-Q for the period ended March 31, 2011.

THE OFFERING

Common stock offered	2,000,000 shares
Shares outstanding after the offering (1)	11,450,599 shares
Use of proceeds	<p>We expect to use the net proceeds of this offering to acquire certain of our target assets, including commercial mortgage loans, CMBS and Agency RMBS. With respect to the net proceeds that will be used to acquire Agency RMBS, we expect then to borrow against the Agency RMBS through repurchase agreements and to use the proceeds of the borrowings to acquire additional Agency RMBS. We may also use net proceeds for general working capital purposes. See “Use of Proceeds” below.</p>
Listing	<p>Our common stock is listed on The Nasdaq Capital Market under the symbol “NYMT.”</p>
Dividend Policy	<p>We intend to pay quarterly dividends and to make distributions to our common stockholders in amounts such that all or substantially all of our REIT taxable income in each year, subject to certain adjustments, is distributed. We have not, however, established a minimum dividend payment level for shares of our common stock. All distributions to holders of our common stock will be made at the discretion of our Board of Directors and will depend on our earnings, our financial condition, maintenance of our REIT status and such other factors as our Board of Directors may deem relevant from time to time. There are no assurances of our ability to pay dividends in the future at the current rate or at all. See “Risk Factors.” Purchasers of common stock in this offering will not receive the cash dividend payable by us on June 27, 2011.</p>
Ownership Restrictions	<p>Our charter provides that generally no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code,</p>

either (i) more than 5.0% in value of our outstanding shares of capital stock or (ii) more than 5.0% in value or in number of shares, whichever is more restrictive, of our outstanding common stock. Our Board of Directors has discretion to grant exemptions from the 5.0% ownership limitation, subject to such terms and conditions as it deems appropriate. These restrictions on ownership of our common stock and capital stock are intended to preserve our qualification as a REIT for U.S. federal income tax purposes. See “Description of Capital Stock — Restrictions on Ownership and Transfer” and “Federal Income Tax Consequences of Our Status as a REIT” in the accompanying prospectus.

Risk factors

An investment in our common stock is subject to risks. Please refer to “Risk Factors” and other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before investing in shares of our common stock.

(1) Does not include 300,000 additional shares of common stock reserved for issuance under our 2010 Stock Incentive Plan.

RISK FACTORS

Investing in our shares of common stock involves a high degree of risk. Please see the risk factors beginning on page 20 of our Annual Report on Form 10-K for the year ended December 31, 2010 and on page 56 of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, which are incorporated by reference into this prospectus supplement. Such risks are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect us. The risks described could affect our business, financial condition or results of operations. In such a case, you may lose all or part of your original investment. You should carefully consider the risks described in these reports, as well as other information and data set forth in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein before making an investment decision with respect to the shares of common stock.

USE OF PROCEEDS

We estimate that the net proceeds we will receive from the sale of 2,000,000 shares of our common stock in this offering will be approximately \$14.9 million (or approximately \$17.1 million if the underwriter fully exercises the over-allotment option) after deducting underwriting discounts and commissions of approximately \$0.8 million (or approximately \$0.9 million if the underwriter fully exercises the over-allotment option), and estimated offering expenses of approximately \$0.2 million payable by us, assuming an offering price of \$7.93 per share, the closing sale price for our common stock on Nasdaq on June 24, 2011.

We expect to use the net proceeds of this offering to acquire certain of our target assets, including commercial mortgage loans, CMBS and Agency RMBS. With respect to the net proceeds that will be used to acquire Agency RMBS, we expect then to borrow against the Agency RMBS through repurchase agreements and to use the proceeds of the borrowings to acquire additional Agency RMBS. We may also use net proceeds for general working capital purposes.

Pending these uses, we intend to maintain the net offering proceeds in interest-bearing, short-term, marketable investment grade securities or money market accounts or (interest or non-interest bearing) checking (or escrow) accounts that are consistent with our intention to qualify as a REIT. These investments may include, for example, government securities other than agency securities, certificates of deposit and interest-bearing bank deposits. These investments are expected to provide a lower net return than we will seek to achieve from our target assets.

CAPITALIZATION

The following table shows our cash and cash equivalents and capitalization as of March 31, 2011:

	• on an actual basis; and	
	• on an as adjusted basis, after giving effect to the sale of 2,000,000 shares of common stock in this offering at an assumed offering price of \$7.93 per share, which was the last reported sale price of our common stock on Nasdaq on June 24, 2011, and the receipt of the total net proceeds of approximately \$14.9 million from this offering (assuming no exercise of the underwriter's over-allotment option).	
	As of March 31, 2011	
	Actual	As Adjusted (1)
	(Dollars in thousands) unaudited	
Cash and cash equivalents	\$8,436	\$23,288
Debt:		
Financing arrangements, portfolio investments	\$46,563	\$46,563
Securities sold short, at fair value	81,918	81,918
Collateralized debt obligations	215,260	215,260
Subordinated debentures	45,000	45,000
Total debt	388,741	388,741
Stockholders' equity		
Common stock, \$0.01 par value, 400,000,000 shares authorized, 9,442,537 shares issued and outstanding actual and 11,442,537 shares issued and outstanding as adjusted (2)	94	114
Additional paid-in capital	133,668	148,500
Accumulated other comprehensive income	19,574	19,574
Accumulated deficit	(82,125)	(82,125)
Total stockholders' equity	71,211	86,063
Total capitalization	\$459,952	\$474,804

(1) Does not reflect (i) the payment in April 2011 of our quarterly dividend relating to the quarter ended March 31, 2011 or (ii) the quarterly dividend relating to the quarter ending June 30, 2011 that is payable on June 27, 2011.

(2) The as adjusted amount excludes 8,062 shares of common stock issued to our independent directors subsequent to March 31, 2011.

ADDITIONAL FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain additional federal income tax considerations with respect to the ownership of our common stock. This summary supplements and should be read together with “Federal Income Tax Consequences of Our Status as a REIT” beginning on page 19 of the accompanying prospectus.

In connection with this offering, Hunton & Williams LLP is rendering an opinion that we qualified to be taxed as a REIT for our taxable years ended December 31, 2004 through December 31, 2010, and our organization and current and proposed method of operation will enable us to continue to meet the requirements for qualification and taxation as a REIT for our taxable year ending December 31, 2011 and subsequent taxable years. Investors should be aware that Hunton & Williams LLP’s opinion is based upon customary assumptions, is conditioned upon certain representations made by us as to factual matters, including representations regarding the nature of our assets and the conduct of our business, and is not binding upon the Internal Revenue Service (“IRS”) or any court. In addition, Hunton & Williams LLP’s opinion is based on existing U.S. federal income tax law governing qualification as a REIT, which is subject to change either prospectively or retroactively. Moreover, our qualification and taxation as a REIT depend upon our ability to meet on a continuing basis, through actual annual operating results, certain qualification tests set forth in the federal tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that falls within specified categories, the diversity of our stock ownership, and the percentage of our earnings that we distribute. Hunton & Williams LLP will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given that our actual results of operations for any particular taxable year will satisfy such requirements. For a discussion of the tax consequences of our failure to qualify as a REIT, see “Federal Income Tax Consequences of Our Status as a REIT—Failure to Qualify”.

Recently Enacted Legislation

On March 18, 2010, the President signed into law the Hiring Incentives to Restore Employment Act of 2010, or the HIRE Act. On March 30, 2010, the President signed into law the Health Care and Education Reconciliation Act of 2010, or the Reconciliation Act. Finally, on December 17, 2010, the President signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, or the Jobs Creation Act. The descriptions below describe the impact of the HIRE Act, the Reconciliation Act and the Jobs Creation Act on certain U.S. and Non-U.S. holders of our common stock.

Taxation of Taxable U.S. Stockholders

Pursuant to the HIRE Act, for taxable years beginning after December 31, 2012, a U.S. withholding tax at a 30% rate will be imposed on dividends and proceeds of sale in respect of our common stock received by U.S. stockholders who own their common stock through foreign accounts or foreign intermediaries if certain disclosure requirements related to U.S. accounts or ownership are not satisfied. We will not pay any additional amounts in respect of any amounts withheld.

Pursuant to the Reconciliation Act, for taxable years beginning after December 31, 2012, certain U.S. stockholders who are individuals, estates or trusts will be required to pay a 3.8% Medicare tax on dividends on, and capital gains from the sale or other disposition of, our common stock, subject to certain exceptions. U.S. stockholders should consult their tax advisors regarding the effect, if any, of the Reconciliation Act on their ownership and disposition of our common stock.

Taxation of Non-U.S. Stockholders

Pursuant to the HIRE Act, for taxable years beginning after December 31, 2012, a U.S. withholding tax at a 30% rate will be imposed on dividends and proceeds of sale in respect of our common stock received by certain non-U.S. stockholders if certain disclosure requirements related to U.S. accounts or ownership are not satisfied. If payment of withholding taxes is required, non-U.S. stockholders that are otherwise eligible for an exemption from, or reduction of, U.S. withholding taxes with respect to such dividends and proceeds will be required to seek a refund from the IRS to obtain the benefit or such exemption or reduction. We will not pay any additional amounts in respect of any amounts withheld.

S-6

Sunset of Reduced Tax Rate Provisions

Several of the tax considerations described in the accompanying prospectus are subject to a sunset provision. The Jobs Creation Act prevented an expiration of current federal income tax rates on December 31, 2010 by amending the sunset provisions such that they will take effect on December 31, 2012. The amended sunset provisions generally provide that for taxable years beginning after December 31, 2012, certain provisions that are currently in the Internal Revenue Code will revert back to a prior version of those provisions. These provisions include provisions related to the reduced maximum income tax rate for long-term capital gains of 15% (rather than 20%) for taxpayers taxed at individual rates, the application of the 15% tax rate to qualified dividend income, and certain other tax rate provisions in the accompanying prospectus. Prospective stockholders are urged to consult their tax advisors regarding the effect of sunset provisions on an investment in our common stock.

S-7

UNDERWRITING

In accordance with the terms and conditions contained in the underwriting agreement, we have agreed to sell to each of the underwriters named below, and each of the underwriters, for which Ladenburg Thalmann & Co. Inc. is acting as the representative, has, severally, and not jointly, agreed to purchase from us, on a firm commitment basis the shares offered in this offering set forth opposite their respective names below:

Underwriters	Number of Shares
Ladenburg Thalmann & Co. Inc.	
Total	2,000,000

A copy of the underwriting agreement will be filed as an exhibit to the registration statement of which this prospectus forms a part.

We have been advised by the representative of the underwriters that the underwriters propose to offer the shares directly to the public at the public offering price set forth on the cover page of this prospectus supplement. Any shares sold by the underwriters to securities dealers will be sold at the public offering price less a selling concession not in excess of \$ per share.

The underwriting agreement provides that the underwriters' obligations to purchase the shares are subject to conditions contained in the underwriting agreement. The underwriters are obligated to purchase and pay for all of the shares offered by this prospectus other than those covered by the over-allotment option, if any of these securities are purchased.

Underwriting Discount

The following table summarizes the underwriting discount to be paid to the underwriters by us.

	Total, Without Over-allotment	Total, With Over-allotment
Underwriting discount to be paid to the underwriters by us for the shares (5.0% of gross proceeds)	\$	\$

The expenses of the offering, exclusive of the underwriting discount, are estimated at approximately \$215,000 and payable by us. We have agreed to reimburse Ladenburg Thalmann & Co. Inc. up to \$75,000 for all reasonable out-of-pocket expenses actually incurred by Ladenburg Thalmann & Co. Inc., including the reasonable fees of its counsel, in connection with this offering. This amount is included in our estimated total expenses of the offering set forth above.

We are not under any contractual obligation to engage any of the underwriters to provide investment banking, lending, asset management or financial advisory services to us in the future. If any of the underwriters provide such services to us after this offering, we may pay such underwriter fair and reasonable fees that would be determined at that time in an arm's length negotiation. However, we will not enter into any agreement with any of the underwriters, nor will we pay any fees for such services to any of the underwriters, prior to the date which is 90 days after the date of this offering, unless the Financial Industry Regulatory Authority, Inc. determines that such payment would not be deemed underwriters' compensation in connection with the offering.

S-8

Over-allotment Option

We have granted to the underwriters an option, exercisable not later than 30 days after the date of this prospectus, to purchase up to 300,000 shares at the public offering price, less the underwriting discount, set forth on the cover page of this prospectus supplement. The representative may exercise the option solely to cover over-allotments, if any, made in connection with this offering. If any additional shares are purchased pursuant to the over-allotment option, the underwriters will offer these additional shares on the same terms as those on which the other shares are being offered hereby.

Lock-Ups

We have agreed that we will not directly or indirectly, issue, sell, offer, agree to sell, contract or grant any option to sell (including, without limitation, pursuant to any short sale), pledge, make any short sale of, maintain any short position with respect to, transfer, establish or maintain an open “put equivalent position” within the meaning of Rule 16a-1(h) under the Exchange Act, enter into any swap, derivative transaction or other arrangement (whether such transaction is to be settled by delivery of our common stock, other securities, cash or other consideration) that transfers to another, in whole or in part, any of the economic consequences of ownership, or otherwise dispose of any shares of our common stock, options or warrants to acquire shares of our common stock, or securities exchangeable or exercisable for or convertible into shares of our common stock, or publicly disclose the intention to take any such action, without, in each case, the prior written consent of Ladenburg Thalmann & Co. Inc. for a period of 30 days after the date of this prospectus. However, we may, during this 30-day “lock-up” period, (a) grant common stock-based awards to our directors under our existing 2010 Stock Incentive Plan and (b) file any amendments to the registration statement of which this prospectus supplement forms a part.

Each of our directors and executive officers has agreed that they will not sell or offer or contract to sell or offer, grant any option or warrant for the sale of, assign, transfer, pledge, hypothecate, or otherwise encumber or dispose of any legal or beneficial interest in any shares of our common stock, enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of our common stock or other securities, in cash or otherwise, or publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of Ladenburg Thalmann & Co. Inc. for a period of 30 days after the date of this prospectus. However, each of our directors and executive officers may transfer or dispose of our shares during this 30-day “lock-up” period, provided, that (i) such transfer shall not involve a disposition for value, (ii) the transferee agrees to be bound in writing by the restrictions set forth in this paragraph for the remainder of the 30-day “lock-up” period prior to such transfer, and (iii) no filing by the transferor or transferee under the Exchange Act is required or voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the 30-day “lock-up” period).

Stabilization, Short Positions and Penalty Bids

The underwriters may engage in over-allotment, syndicate covering transactions, stabilizing transactions and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of our common stock:

- Over-allotment involves sales by the underwriters of shares and/or warrants in excess of the number of shares and warrants the underwriters are obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares and/or warrants over-allotted by an underwriter is not greater than the number of shares and/or warrants that it may purchase in the over-allotment option. In a naked short position, the number of shares and/or warrants involved is greater than the number of shares and/or warrants in the over-allotment option. An underwriter may close out any short position by exercising its over-allotment option, in whole or in part, or purchasing shares and/or warrants in

the open market.

- Syndicate covering transactions involve purchases of securities in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of securities needed to close out the short position, the representative will consider, among other things, the price of the securities available for purchase in the open market as compared to the price at which it may purchase the securities through the over-allotment option. If the underwriters sell more securities than could be covered by the over-allotment option, a naked short position, the position can

S-9

only be closed out by buying securities in the open market. A naked short position is more likely to be created if the representative is concerned that there could be downward pressure on the price of the securities in the open market after pricing that could adversely affect investors who purchase in the offering.

- Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specific maximum.
- Penalty bids permit the representative to reclaim a selling concession from a syndicate member when the securities originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These syndicate covering transactions, stabilizing transactions and penalty bids may have the effect of raising or maintaining the market prices of our securities or preventing or retarding a decline in the market prices of our securities. As a result, the price of our common stock and warrants may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the Nasdaq, in the over-the-counter market or on any trading market and, if commenced, may be discontinued at any time.

Neither we nor the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the prices of our securities. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these stabilizing transactions or that any transactions, once commenced, will not be discontinued without notice.

Indemnification

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make with respect to any of these liabilities.

This prospectus supplement and the accompanying prospectus in electronic format may be made available on websites maintained by the underwriter as selling group member, and the underwriter or selling group member may distribute the prospectus supplement and accompanying prospectus electronically.

EXPERTS

The audited consolidated financial statements incorporated by reference in this prospectus supplement and elsewhere in the registration statement have been so incorporated by reference in reliance upon the report of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in giving said report.

LEGAL MATTERS

Certain legal matters will be passed upon for us by Hunton & Williams LLP, and for the underwriters by Graubard Miller.

PROSPECTUS

\$50,000,000

Common Stock

We may offer and sell, from time to time, in one or more offerings, shares of common stock described in this prospectus. The aggregate initial offering price of the common stock that we offer will not exceed \$50,000,000. We may offer and sell these shares of common stock to or through one or more underwriters, dealers and agents, or directly, on a continuous or delayed basis.

The specific terms of any shares of common stock to be offered, and the specific manner in which they may be offered, will be described in one or more supplements to this prospectus. This prospectus may not be used to sell any of the shares of common stock unless it is accompanied by a prospectus supplement. Before investing, you should carefully read this prospectus and any related prospectus supplement.

Our shares of common stock are listed on the NASDAQ Capital Market under the symbol "NYMT." The last reported sale price of our common stock on the NASDAQ Capital Market on December 3, 2009, was \$6.95 per share.

The aggregate market value of our outstanding common stock held by non-affiliates is approximately \$54.4 million based on the last reported sale price of our common stock on the NASDAQ Capital Market on December 3, 2009. We have not offered any of our common stock pursuant to General Instruction I.B.6 of Form S-3 during the 12 calendar months prior to and including the date of this prospectus.

To assist us in qualifying as a real estate investment trust, or REIT, for federal income tax purposes, ownership of our capital stock by any person is generally limited to 5.0% in value or in number of shares, whichever is more restrictive, of any class or series of the outstanding shares of our capital stock. In addition, our charter contains various other restrictions on the ownership and transfer of our common stock, see "Description of Capital Stock—Restrictions on Ownership and Transfer."

Investing in our common stock involves substantial risks. See "Risk Factors" in our most recent Annual Report on Form 10-K, which is incorporated by reference herein, as updated and supplemented by our periodic reports and other information that we file with the Securities and Exchange Commission.

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

The date of this prospectus is December 11, 2009.

TABLE OF CONTENTS

	Page
ABOUT THIS PROSPECTUS	ii
CERTAIN DEFINITIONS	ii
RISK FACTORS	1
FORWARD-LOOKING INFORMATION	1
OUR COMPANY	3
USE OF PROCEEDS	4
DESCRIPTION OF CAPITAL STOCK	4
CERTAIN PROVISIONS OF MARYLAND LAW AND OUR CHARTER AND BYLAWS	14
FEDERAL INCOME TAX CONSEQUENCES OF OUR STATUS AS A REIT	19
PLAN OF DISTRIBUTION	38
CERTAIN LEGAL MATTERS	41
EXPERTS	41
WHERE YOU CAN FIND MORE INFORMATION	41
INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC	41

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission, or the SEC, utilizing a “shelf” registration process. This prospectus provides you with a general description of the common stock we may issue and sell and the manner in which we may offer these securities. Each time we issue and sell shares of common stock from the registration statement of which this prospectus forms a part, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may add, update or change information in this prospectus. If there is any inconsistency between the information in this prospectus and the prospectus supplement, you should rely solely on the information in the prospectus supplement. You should read both this prospectus and the prospectus supplement applicable to any offering, together with the additional information described under the heading “Incorporation by Reference of Information Filed With the SEC” below.

You should rely only on the information contained or incorporated by reference in this prospectus and any prospectus supplement. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We will not make an offer to sell our common stock in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus, as well as information we previously filed with the SEC and have incorporated by reference, is accurate as of the date on the front cover of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.

CERTAIN DEFINITIONS

References in this prospectus to “we,” “our,” “us” and “our company” refer to New York Mortgage Trust, Inc., including, as the context requires, our direct and indirect subsidiaries.

RISK FACTORS

Investing in our common stock involves substantial risks, including the risk that you might lose your entire investment. Any one of the risk factors discussed, or other factors, could cause actual results to differ materially from expectations and could adversely affect our business, financial condition and results of operations. These risks are interrelated, and you should treat them as a whole. The risks described are not the only risks that may affect us. Additional risks and uncertainties not presently known to us or not identified, may also materially and adversely affect our business, financial condition and results of operations. Before making an investment decision, you should carefully consider the risk factors incorporated by reference to our most recent Annual Report on Form 10-K, as updated and supplemented by any risk factors in our other SEC filings incorporated by reference herein, in addition to the other information contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. In connection with the forward-looking statements that appear in this prospectus, you should also carefully review the cautionary statements referred to in “Forward-Looking Information” below.

FORWARD-LOOKING INFORMATION

This prospectus and the information incorporated by reference into it contains certain “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or Exchange Act, including, without limitation, statements containing the words “believes,” “anticipates,” “expects,” “estimates,” “intends,” “plans,” “projects,” “may,” “will” and words import. Any projection of revenues, earnings or losses, capital expenditures, distributions, capital structure or other financial terms is a forward-looking statement. Certain statements regarding the following particularly are forward-looking in nature:

- our business strategy;
- future performance, developments, market forecasts or projected dividends;
- projected investments, rates of return, acquisitions or joint ventures; and
- projected capital expenditures.

It is important to note that the description of our business is a statement about our operations as of a specific point in time. It is not meant to be construed as an investment policy, and the types of assets we hold, the amount of leverage we use, the liabilities we incur and other characteristics of our assets and liabilities are subject to reevaluation and change without notice.

Our forward-looking statements are based upon our management’s beliefs, assumptions and expectations of our future operations and economic performance, taking into account the information currently available to us. Forward-looking statements involve risks and uncertainties, some of which are not currently known to us, that might cause our actual results, performance or financial condition to be materially different from the expectations of future results, performance or financial condition we express or imply in any forward-looking statements. Some of the important factors that could cause our actual results, performance or financial condition to differ materially from expectations are:

- our portfolio and operating strategy may be changed or modified by our management without advance notice to you, and we may suffer losses as a result of such modifications or changes;

our ability to successfully implement and grow our alternative investment strategy and to identify suitable alternative investments;

· market changes in the terms and availability of repurchase agreements used to finance our investment portfolio activities;

· interest rate mismatches between our interest-earning assets and our borrowings used to fund those assets;

· changes in interest rates and mortgage prepayment rates;

1

- changes in the financial markets and economy generally, including the continued or accelerated deterioration of the U.S. economy;
 - effects of interest rate caps on our adjustable-rate or hybrid adjustable-rate RMBS;
 - the degree to which our hedging strategies may or may not protect us from interest rate volatility;
 - potential impacts of our leveraging policies on our net income and cash available for distribution;
- our board's ability to change our operating policies and strategies without notice to you or stockholder approval;
- our ability to manage, minimize or eliminate liabilities stemming from our discontinued mortgage origination business;
- actions taken by the U.S. and foreign governments, central banks and other governmental and regulatory bodies for the purpose of stabilizing the financial credit and housing markets, and economy generally, including loan modification programs;
- changes to the nature of the guarantees provided by the Federal National Mortgage Association, or Fannie Mae, and the Federal Home Loan Mortgage Corporation, or Freddie Mac; and
- the other important factors described in this prospectus under the caption "Risk Factors," and in Part I, Item 1A of our most recent Annual Report on Form 10-K, as updated and supplemented by the various other factors identified in or incorporated by reference into this prospectus and any other documents filed by us with the SEC.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. In light of these risks, uncertainties and assumptions, the events described by our forward-looking events might not occur. We qualify any and all of our forward-looking statements by these cautionary factors. In addition, you should carefully review the risk factors described in other documents we file from time to time with the SEC. See "Where You Can Find More Information" below.

OUR COMPANY

General

We are a self-advised REIT that is in the business of acquiring and managing primarily real estate-related assets, including residential adjustable-rate, hybrid adjustable-rate and fixed-rate mortgage-backed securities, or RMBS, for which the principal and interest payments are guaranteed by a U.S. Government agency, such as the Government National Mortgage Association, or Ginnie Mae, or a U.S. Government-sponsored entity, such as the Federal National Mortgage Association, or Fannie Mae, or the Federal Home Loan Mortgage Corporation, or Freddie Mac, which we refer to as “Agency RMBS,” and prime credit quality residential adjustable-rate mortgage loans, or “prime ARM loans.” We also acquire and manage, although to a lesser extent, certain alternative real estate-related and financial assets that present greater credit risk and less interest rate risk than our investments in Agency RMBS and prime ARM loans, such as non-Agency RMBS and certain non-rated residential mortgage assets, commercial mortgage-backed securities, commercial real estate loans, collateralized loan obligations and other similar investments. We sometimes refer to our acquisition and management of Agency RMBS, prime ARM loans and certain legacy non-Agency RMBS as our “principal investment strategy” and investments in certain alternative real estate-related and financial assets that present greater credit risk as our “alternative investment strategy” and such assets as our “alternative assets.” Our alternative investment strategy is currently managed by Harvest Capital Strategies LLC, or HCS (formerly known as JMP Asset Management LLC), an affiliate of JMP Group Inc., pursuant to an advisory agreement between our company and HCS. We elected to be taxed as a REIT for federal income tax purposes commencing with our taxable year ended December 31, 2004.

Our principal business objective is to generate net income for distribution to our stockholders resulting from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance these assets, which we refer to as our net interest income. We intend to achieve this objective by investing in a broad class of real estate-related and financial assets to construct an investment portfolio that is designed to achieve attractive risk-adjusted returns and that is structured to comply with the various federal income tax requirements for REIT status and to maintain our exemption from registration under the Investment Company Act of 1940, as amended, or Investment Company Act. Because we intend to continue to qualify as a REIT and to maintain our exemption from registration under the Investment Company Act, we will be required to invest a substantial majority of our assets in qualifying real estate assets, such as Agency RMBS, mortgage loans and other liens on and interests in real estate.

Corporate Offices

We are a Maryland corporation that was formed in 2003. Our principal offices are located at 52 Vanderbilt Avenue, Suite 403, New York, New York 10017 and our telephone number is (212) 792-0107. Our web site address is <http://www.nymtrust.com>. The information at or connected to our web site does not constitute a part of this prospectus.

USE OF PROCEEDS

Unless otherwise indicated in the applicable prospectus supplement to this prospectus used for a specific offering of common stock, we intend to use the net proceeds from the sale of common stock offered by this prospectus to finance the acquisition of Agency RMBS, non-Agency RMBS and other alternative assets, subject to maintaining our REIT qualification and our Investment Company Act exemption.

We may also use the net proceeds for other general corporate purposes such as repayment of outstanding indebtedness (including indebtedness to our affiliates), working capital, and for liquidity needs. Pending any such uses, we may invest the net proceeds from the sale of any securities in interest-bearing short-term investments, including money market accounts that are consistent with our treatment as a REIT, or may use them to reduce short term indebtedness.

DESCRIPTION OF CAPITAL STOCK

The following summary description of our capital stock does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law, our charter and our bylaws, copies of which are filed as exhibits to the registration statement of which this prospectus is a part. See “Where You Can Find More Information” above.

General

Our charter provides that we may issue up to 400,000,000 shares of common stock, par value \$0.01 per share, and 200,000,000 shares of preferred stock, par value \$0.01 per share, including up to 2,000,000 shares of our Series A Preferred Stock. As of September 30, 2009, 9,419,094 shares of common stock and 1,000,000 shares of Series A Preferred Stock were issued and outstanding. Under Maryland law, our stockholders are not generally liable for our debts or obligations. Our charter authorizes our board of directors to amend our charter to increase or decrease the aggregate number of shares of capital stock of any class or series that we have the authority to issue, without your approval.

Voting Rights of Common Stock

Subject to the provisions of our charter regarding restrictions on the transfer and ownership of shares of common stock, each outstanding share of common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors, and, except as provided with respect to any other class or series of shares of our stock, the holders of our common stock possess the exclusive voting power. There is no cumulative voting in the election of directors, which means that the holders of a majority of the sum of our outstanding shares of common stock and outstanding shares of Series A Preferred Stock, on an “as-converted” basis, voting together as a single class, can elect all of the directors then standing for election. Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, or engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders holding at least two-thirds of the shares entitled to vote on the matter, unless a lesser percentage (but not less than a majority of all the votes entitled to be cast on the matter) is set forth in the corporation’s charter. Our charter provides for approval by a majority of all the votes entitled to be cast on the matter for the matters described in the preceding sentence.

Dividends, Liquidation and Other Rights

All of our outstanding shares of common stock are duly authorized, fully paid and nonassessable. Holders of our shares of common stock are entitled to receive dividends when authorized by our board of directors and declared by us out of assets legally available for the payment of dividends. They also are entitled to share ratably in our assets legally

available for distribution to our stockholders in the event of our liquidation, dissolution or winding up, after payment of or adequate provision for all of our known debts and liabilities. These rights are subject to the preferential rights of any other class or series of our stock and to the provisions of our charter regarding restrictions on transfer and ownership of our stock.

Holders of our shares of common stock have no appraisal, preference, conversion, exchange, sinking fund or redemption rights and have no preemptive rights to subscribe for any of our securities. Subject to the restrictions on transfer of capital stock contained in our charter and to the ability of the board of directors to create shares of common stock with differing voting rights, all shares of common stock have equal dividend, liquidation and other rights.

Our charter also authorizes our board of directors to classify and reclassify any unissued shares of our common stock and preferred stock into any other classes or series of classes of our stock, as discussed below, to establish the number of shares in each class or series and to set the terms, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each such class or series. Thus, our board of directors could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for you or otherwise be in your best interest.

Preferred Stock

Our charter authorizes our board of directors to reclassify any unissued shares of common stock into preferred stock, to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series of preferred stock previously authorized by our board of directors. Prior to issuance of shares of each class or series of preferred stock, our board of directors is required by Maryland law and our charter to fix, subject to our charter restrictions on transfer and ownership, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, our board could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for you or otherwise be in your best interest.

In connection with our issuance and sale of 1,000,000 shares of our Series A Preferred Stock on January 18, 2008, we filed Articles Supplementary to our charter designating the terms of the Series A Preferred Stock with the Maryland State Department of Assessment and Taxation. On May 27, 2008, we completed a one-for-two reverse stock split on shares of our common stock. The following summary describes the terms of the Series A Preferred Stock after giving effect to the completion of the one-for-two reverse stock split on shares of our common stock. The following summary of the terms of our Series A Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the Articles Supplementary to our charter, which is filed as an exhibit to this registration statement.

Series A Preferred Stock

Rank

The Series A Preferred Stock, with respect to dividend rights and rights upon liquidation, dissolution or winding up of our company, ranks: (a) prior or senior to any class or series of common stock of our company and any other class or series of equity securities of our company, if the holders of Series A Preferred Stock shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up in preference or priority to the holders of shares of such class or series, or junior stock; (b) on a parity with any class or series of equity securities of our company if, pursuant to the specific terms of such class or series of equity securities, the holders of such class or series of equity securities and the Series A Preferred Stock shall be entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority one over the other, or parity stock; (c) junior to any class or series of equity securities of our company if, pursuant to the specific terms of such class or series, the holders of such class or series shall be entitled to the receipt of dividends or amounts distributable upon liquidation, dissolution or winding up in preference or priority to the holders of the Series A Preferred Stock, or

senior stock; and (d) junior to all existing and future indebtedness of our company. The term “equity securities” does not include convertible debt securities, which will rank senior to the Series A Preferred Stock prior to conversion.

Dividends

Holders of shares of Series A Preferred Stock are entitled to receive, when and as authorized by the board of directors
an