

NexCen Brands, Inc.  
Form S-3  
February 04, 2008

As filed with the Securities and Exchange Commission on February 1, 2008

No. 333-\_\_\_\_\_

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

**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**NEXCEN BRANDS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

**20-2783217**

(State or other jurisdiction of incorporation or  
organization)

(I.R.S. Employer Identification Number)

**1330 Avenue of the Americas, 34<sup>th</sup> Floor  
New York, NY 10019  
(212) 277-1100**

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

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**David B. Meister  
Senior Vice President, Chief Financial Officer, Treasurer and Assistant Secretary**

**1330 Avenue of the Americas, 34<sup>th</sup> Floor  
New York, NY 10019  
(212) 277-1100**

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

*Copies of all communications, including communications sent to agent for service, should be sent to:*

**Mark D. Director, Esq.  
Andrew M. Herman, Esq.  
Kirkland & Ellis LLP  
655 15<sup>th</sup> Street, N.W.  
Washington, DC 20005  
(202) 879-5000**

Approximate date of commencement of proposed sale to the public: From time to time on or 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. "

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

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

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the 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 431(b) under the Securities Act, check the following box.

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**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Common Stock, par value \$0.01 per share	3,697,671 (2)	\$4.06	\$15,012,544	\$600

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended (the “Securities Act”), the fee is based on the average of the high and low prices of the common stock quoted on the Nasdaq Global Market on January 28, 2008 (within five business days prior to the filing of this Registration Statement).

(2) Of these shares, 200,000 shares are currently unissued shares to be offered for resale by a selling stockholder following issuance upon exercise of an outstanding warrant.

Pursuant to Rule 416 under the Securities Act, there are also being registered such additional number of shares as may be issuable as a result of stock splits, dividends, reclassifications and similar adjustment provisions applicable to the securities being registered.

**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.**

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. The prospectus is not an offer to sell these securities nor a solicitation of an offer to buy these securities in any jurisdiction where the offer and sale is not permitted.**

**SUBJECT TO COMPLETION, DATED FEBRUARY 1, 2008**

**PROSPECTUS**

**3,697,671 Shares  
Common Stock**

This prospectus covers the resale of up to 3,697,671 shares of our common stock, par value \$0.01 per share. The shares covered by this prospectus include 3,497,671 currently outstanding shares owned by some of our stockholders and 200,000 shares issuable upon the exercise of an outstanding warrant held by a stockholder. These shares were acquired by our stockholders in connection with our acquisitions of UCC Capital Corp., UCC Consulting Corp. and UCC Servicing, LLC, and in our acquisition of the assets of Pretzel Time Franchising, LLC, and Pretzelmaker Franchising, LLC, and in connection with the extension of our existing credit facility.

We will not receive any proceeds from the sale of shares by our selling stockholders, but we will incur expenses in connection with the offering. We will, however, receive the exercise price of the warrant if and when the warrant is exercised by the selling stockholder. The warrant has not been exercised as of the date of this prospectus.

Our common stock is traded on the Nasdaq Global Market under the symbol NEXC. On January 31, 2008, the last reported sale price of our common stock on the Nasdaq Global Market was \$4.24 per share.

Our registration of the shares of common stock covered by this prospectus does not mean that the selling stockholders will offer or sell any of the shares. The selling stockholders may sell the shares of common stock covered by this prospectus in a number of different ways and at varying prices. We provide more information about how the selling stockholders may sell the shares in the section entitled "Plan of Distribution" beginning on page 6.

**Investing in our common stock involves risks. See "Risk Factors" on page 2.**

**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.**

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**The date of this prospectus is February , 2008**

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You should rely only on the information contained in or incorporated by reference into this prospectus and any applicable prospectus supplements. We have not authorized anyone to provide you with different or additional information. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of common stock. This prospectus is not an offer to sell or solicitation of an offer to buy these shares of common stock in any circumstances under which the offer or solicitation is unlawful.

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### ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC under which the selling stockholders may offer from time to time up to an aggregate of 3,697,671 shares of our common stock in one or more offerings. If required, each time a selling stockholder offers common stock, in addition to this prospectus, we will provide you with a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. To the extent that any statement that we make in a prospectus supplement is inconsistent with statements made in this prospectus, the statements made in this prospectus will be deemed modified or superseded by those made in a prospectus supplement. You should read this prospectus and any prospectus supplement as well as additional information described under "Where You Can Find More Information" and "Incorporation of Documents by Reference."

The terms "NexCen," "we," "us," and "our" as used in this prospectus refer to NexCen Brands, Inc. and its subsidiaries. The phrase "this prospectus" refers to this prospectus and any applicable prospectus supplement, unless the context otherwise requires.

All trademarks, tradenames and service names referred to in this prospectus or incorporated by reference into this prospectus are property of their respective owners.

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## OUR COMPANY

*Because this is a summary, it does not contain all the information about us that may be important to you. You should read the more detailed information and the financial statements and related notes which are incorporated by reference in this prospectus.*

NexCen engages in the acquisition and management of established consumer brands in intellectual property-centric industries. NexCen's goal is to be a world leader in brand management for the 21st century. Our business is focused on acquiring, managing and developing intellectual property, which we refer to as IP and IP-centric businesses. IP that we have acquired and expect to acquire in the future includes trademarks, trade names, copyrights, franchise rights, patents, trade secrets, know-how and other similar, valuable property, primarily used in the retail and consumer branded products and franchise businesses. In building our IP business, we focus on three segments: retail franchising, consumer branded products and quick service restaurant franchising (which we refer to as "QSR" franchising).

We commenced our IP business in June 2006, when we acquired UCC Capital Corp., UCC Consulting Corp. and UCC Servicing, LLC, which we refer to, collectively, as UCC. In November 2006, we entered the retail franchising business by acquiring Athlete's Foot Brands, LLC, ("TAF" or "The Athlete's Foot") along with an affiliated company and certain related assets. As a result of this acquisition, we are now the owner of The Athlete's Foot brand and related marks. The Athlete's Foot is an athletic footwear and apparel franchisor with 639 stores in 40 countries.

In February 2007, we entered the consumer branded products business by acquiring Bill Blass Holding Co., Inc. and two affiliated businesses ("Blass"). The Bill Blass label represents timeless modern American style and is an American legacy brand in the fashion industry.

Also, in February 2007, we acquired MaggieMoo's International, LLC ("MaggieMoo's") and the assets of Marble Slab Creamery, Inc. ("Marble Slab"), two well known and established brands within the hand-mixed premium ice cream category. These acquisitions mark our entry into the QSR franchising sector. Together, MaggieMoo's and Marble Slab have 583 stores throughout the United States, Canada, Puerto Rico and the United Arab Emirates.

In May 2007, we expanded our presence in the consumer branded products business when we acquired the Waverly brand from F. Schumacher & Co. Waverly is a home décor lifestyle brand for harmonious and tasteful decorating.

In August 2007, we acquired the Pretzel Time and Pretzelmaker brands from Mrs. Fields Famous Brands, LLC ("MFFB"). Pretzel Time and Pretzelmaker are established brands in the freshly made, soft baked hot pretzel category. Together, the Pretzel Time and Pretzelmaker have 384 stores throughout the United States.

In January 2008, we expanded our QSR operations when we acquired the Great American Cookies brand from MFFB. Great American Cookies is an established brand in the fresh-baked cookie category. Great American Cookies has 295 franchised or licensed units primarily located in the continental United States.

We are actively in discussions to acquire additional IP-centric businesses. Our operating strategy is to generate revenue from licensing and other commercial arrangements with third parties who want to use the IP that we acquire. These third parties will pay us licensing and other contractual fees and royalties for the right to use our IP on either an exclusive or non-exclusive basis. Our contractual arrangements may apply to a specific product market, a specific geographic market or to multiple markets.

More detailed information about The Athlete's Foot, Blass, MaggieMoo's, Marble Slab, Waverly, Pretzel Time, Pretzelmaker, and Great American Cookies acquisitions can be found in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2007 and in our Current Report on Form 8-K filed on January 29, 2008, which are incorporated by reference into this prospectus.

NexCen is a Delaware corporation. Our principal executive offices are located at 1330 Avenue of the Americas, 34<sup>th</sup> Floor, New York, NY 10019, and our telephone number is (212) 277-1100. Our website address is [www.nexcenbrands.com](http://www.nexcenbrands.com). Information on our website should not be construed as being incorporated by reference into, or considered a part of, this prospectus.

## RISK FACTORS

Our business is subject to significant risks. You should carefully consider the risks and uncertainties described in this prospectus and the documents incorporated by reference herein, including the risks and uncertainties described in our consolidated financial statements and the notes to those financial statements and the risks and uncertainties described under the caption “Risk Factors” included in Part I, Item 1A of our Annual Report on Form 10-K/A for the year ended December 31, 2006 and in Part II, Item IA of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2007, which are incorporated by reference in this prospectus. The risks and uncertainties described in this prospectus and the documents incorporated by reference herein are not the only ones facing us. Additional risks and uncertainties that we do not presently know about or that we currently believe are not material may also adversely affect our business. If any of the risks and uncertainties described in this prospectus or the documents incorporated by reference herein actually occur, our business, financial condition and results of operations could be adversely affected in a material way. This could cause the trading price of our common stock to decline, perhaps significantly, and you may lose part or all of your investment.

In addition to the foregoing, you should also consider the following risk factor:

***Our stock price may be volatile, and the market price of our common stock may decline.***

The stock market in general, and the market for stocks of companies similar to ours, has been highly volatile. As a result, the market price of our common stock is likely to be similarly volatile, and investors in our common stock may experience a decrease, which could be substantial, in the value of their stock, including decreases unrelated to our operating performance or prospects, and could lose part or all of their investment. The price of our common stock could be subject to wide fluctuations in response to a number of factors, including those described elsewhere in this prospectus or the documents incorporated by reference herein and others such as:

- variations in our operating performance and the performance of our competitors;
- actual or anticipated fluctuations in our quarterly or annual operating results;
- publication of research reports by securities analysts about us or our competitors or our industry;
- our failure or the failure of our competitors to meet analysts’ projections or guidance that we or our competitors may give to the market;
- additions and departures of key personnel;
- strategic decisions by us or our competitors, such as acquisitions, strategic investments or changes in business strategy;
- speculation in the press or investment community;
- changes in accounting principles;
- terrorist acts, acts of war or periods of widespread civil unrest;
- changes in general market and economic conditions; and
- the factors discussed in the bullet points under “Forward-Looking Statements” below.



In the past, securities class action litigation has often been initiated against companies following periods of volatility in their stock price. This type of litigation could result in substantial costs and divert our management's attention and resources, and could also require us to make substantial payments to satisfy judgments or to settle litigation.



forward-looking statement to reflect events or circumstances after the date on which the statement was made or to reflect the occurrence of unanticipated events.

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## SELLING STOCKHOLDERS

The shares to be offered by the selling stockholders are "restricted" securities under applicable federal and state securities laws and are being registered under the Securities Act to give the selling stockholders the opportunity to sell these shares publicly. The registration of these shares does not require that any of the shares be offered or sold by the selling stockholders. The selling stockholders may from time to time offer and sell all or a portion of their shares indicated below in privately negotiated transactions or on the Nasdaq Global Market or any other market on which our common stock may subsequently be listed.

The registered shares may be sold directly or through brokers or dealers, or in a distribution by one or more underwriters on a firm commitment or best effort basis. To the extent required, the names of any agent or broker-dealer and applicable commissions or discounts and any other required information with respect to any particular offer will be set forth in a prospectus supplement. See "Plan of Distribution," beginning on page 6. The selling stockholders and any agents or broker-dealers that participate with the selling stockholders in the distribution of registered shares may be deemed to be "underwriters" within the meaning of the Securities Act, and any commissions received by them and any profit on the resale of the registered shares may be deemed to be underwriting commissions or discounts under the Securities Act.

No estimate can be given as to the amount or percentage of our common stock that will be held by the selling stockholders after any sales made pursuant to this prospectus because the selling stockholders are not required to sell any of the shares being registered under this prospectus. The following table assumes that the selling stockholders will sell all of the shares listed in this prospectus.

The following table sets forth information with respect to the beneficial ownership of our common stock held, as of February 1, 2008, by the selling stockholders and the number of shares being offered hereby and information with respect to shares to be beneficially owned by the selling stockholders after completion of this offering. The percentages in the following table reflect the shares beneficially owned by the selling stockholders as a percentage of the total number of shares of our common stock outstanding as of December 31, 2007.

Name	Shares Beneficially Owned Prior to the Offering (1)		Shares Offered Hereby Number	Shares Beneficially Owned After the Offering (2)	
	Number	Percentage		Number	Percentage
Robert W. D'Loren (3) (7)	6,352,850	11.3%	425,692	4,601,798	8.2%
D'Loren Realty LLC (7)	1,775,193	3.2%	1,325,360	449,833	1%
Robert D'Loren Family Trust (7)	537,308	*	268,654	268,654	*
Barry J. Levien (7)	399,490	*	226,545	172,945	*
James F. Haran (7)	507,499	*	253,749	253,750	*
Pretzel Time Franchising, LLC (4)	606,584	1.1%	606,584	0	*
Pretzelmaker Franchising, LLC (5)	391,087	*	391,087	0	*
BTMU Capital Corporation (6)	200,000	*	200,000	0	*

\* Less than one percent.

(1)

Includes 3,497,671 shares of common stock issued and outstanding as of the date of this prospectus and 200,000 shares of common stock issuable upon exercise of an outstanding warrant. The warrant held by BTMU Capital Corporation is currently exercisable at any time prior to January 29, 2018.

- (2) Assumes that the selling stockholders dispose of all the shares of common stock covered by this prospectus, and do not acquire beneficial ownership of any additional shares. The registration of these shares does not necessarily mean that the selling stockholders will sell all or any portion of the shares covered by this prospectus.
- (3) Includes (i) 1,001,384 shares owned directly by Mr. D'Loren, (ii) 1,775,193 shares owned by D'Loren Realty LLC, which is solely owned and managed by Mr. D'Loren, (iii) 875,526 shares owned by D'Loren 2008 Retained Annuity Trust, (iv) immediately exercisable warrants to purchase 41,666 shares, (v) immediately exercisable options to purchase 745,658 shares, and (vi) 1,913,423 shares over which Mr. D'Loren exercises voting control pursuant to the terms of two voting agreements entered into in connection with NexCen's acquisition of The Athlete's Foot in November 2006. The shares held by Mr. D'Loren exclude 537,308 shares held by the Robert D'Loren Family Trust Dated March 29, 2002 (the "Family Trust"), the beneficiaries of which are two minor children of Mr. D'Loren. The Family Trust is irrevocable, the trustee is not a member of Mr. D'Loren's immediate family, and the trustee has independent authority to vote and dispose of the shares held by the Family Trust. As a result, Mr. D'Loren disclaims any beneficial ownership of the shares held by the Family Trust. Beneficial ownership after the offering reflects the sale of 1,325,360 shares by D'Loren Realty LLC.

- (4) Includes 241,450 shares held in escrow until May 8, 2008 and 136,054 shares held in escrow until November 8, 2008 to secure indemnification obligations under the Asset Purchase Agreement, dated August 7, 2007, by and among NexCen Brands, Inc., NexCen Asset Acquisition, LLC, Pretzel Time Franchising, LLC, Pretzelmaker Franchising, LLC, and Mrs. Fields Famous Brands, LLC ("Pretzel Purchase Agreement"). The number of shares held in escrow until May 8, 2008 has been reduced by 1,972 shares which will be returned to us in satisfaction of a purchase price adjustment.
- (5) Includes 155,671 shares held in escrow until May 8, 2008 to secure indemnification obligations under the Pretzel Purchase Agreement. The number of shares held in escrow until May 8, 2008 has been reduced by 1,272 shares which will be returned to us in satisfaction of a purchase price adjustment.
- (6) Consists of shares issuable upon exercise of a currently exercisable warrant to purchase shares of common stock.
- (7) The shares being registered for resale were issued to the former UCC securityholders on September 5, 2007 as additional merger consideration upon satisfaction of an earn-out associated with the acquisition of UCC in June 2006. These shares are being registered pursuant to a registration rights agreement entered into in connection with the acquisition of UCC. More detailed information about the earn-out can be found in our Current Report on Form 8-K filed on September 6, 2007, which is incorporated by reference into this prospectus.

#### **Summary of Resale Restrictions**

The shares to be offered hereby are owned by or issuable to the selling stockholders in connection with the UCC, Pretzel Time and Pretzelmaker acquisitions. In the UCC, Pretzel Time and Pretzelmaker acquisitions, we entered into a registration rights agreement with the selling stockholders under which we agreed to register shares of our common stock held by or issuable to the selling stockholders. Additionally, the selling stockholders who received their shares in the Pretzel Time and Pretzelmaker acquisition agreed to certain resale restrictions which will continue to restrict the resale of the shares registered by this prospectus.

The warrant held by BTMU was issued in connection with the extension of our existing credit facility on January 29, 2008. Under the terms of the warrant, we agreed to register the shares issuable upon exercise of the warrant.

#### ***Pretzel Time and Pretzelmaker Acquisition***

Pursuant to the Pretzel Purchase Agreement, at the closing, we issued 1,000,915 shares of our common stock to Pretzel Time Franchising, LLC and Pretzelmaker Franchising, LLC. The shares issued at the closing include 533,175 shares held in escrow to secure indemnification obligations under the Pretzel Purchase Agreement of which 397,121 shares will be released on May 8, 2008 and 136,054 shares will be released on November 8, 2008 if no claims have been made prior to such dates. The number of shares registered under this prospectus excludes 3,244 shares issued to Pretzel Time Franchising, LLC and Pretzelmaker Franchising, LLC that will be returned to us in satisfaction of a purchase price adjustment. As part of the acquisition, Pretzel Time Franchising, LLC and Pretzelmaker Franchising, LLC agreed to the following restrictions on the timing of selling the shares we issued to them in the acquisition, even though the shares are registered and eligible for resale under this prospectus, as follows:

<b>Selling Stockholder</b>	<b>Total Shares Registered by this Prospectus Due to the Pretzel Time and Pretzelmaker Acquisition</b>	<b>Shares Eligible for Resale as of August 7, 2008</b>	<b>Total Shares Eligible for Resale as of November 8, 2008</b>	<b>Total Shares Eligible for Resale as of February 8, 2009</b>	<b>Total Shares Eligible for Resale as of May 8, 2009</b>
Pretzel Time Franchising, LLC	606,584	151,646	303,292	454,938	606,584
Pretzelmaker Franchising, LLC	391,087	97,772	195,544	293,315	391,087

### USE OF PROCEEDS

We will not receive any proceeds from the sale of the common stock by the selling stockholders pursuant to this prospectus. However, we will pay the expenses of registration of all of the shares that are offered pursuant to this prospectus, including legal and accounting fees. We will receive the exercise price of the warrant from the selling stockholder upon the exercise of the warrant. If the warrant is fully exercised, we will receive net proceeds of approximately \$2,000. We expect to use the proceeds received from the exercise of the warrant for general corporate purposes. General corporate purposes may include capital expenditures, the repayment of debt, investments in our subsidiaries, working capital, repurchases of stock, or the financing of possible acquisitions or business opportunities.

### PLAN OF DISTRIBUTION

We are registering 3,697,671 shares of our common stock for possible sale by the selling stockholders. Unless the context otherwise requires, as used in this prospectus, "selling stockholders" includes the selling stockholders named in the table above and donees, pledgees, transferees or other successors-in-interest selling shares received from the selling stockholders as a gift, pledge, partnership distribution or other transfer after the date of this prospectus. Upon being notified by a selling stockholder that a donee, pledge, transferee or other successor-in-interest intends to sell more than 500 shares, we will, to the extent required, promptly file a supplement to this prospectus to name specifically such person as a selling stockholder.

The selling stockholders may offer and sell all or a portion of the shares covered by this prospectus from time to time, in one or more or any combination of the following transactions:

- on the Nasdaq Global Market, in the over-the-counter market or on any other national securities exchange on which our shares are listed or traded;
- in privately negotiated transactions;
- in underwritten transactions;
- in a block trade in which a broker-dealer will attempt to sell the offered shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;

through purchases by a broker-dealer as principal and resale by the broker-dealer for its account pursuant to this prospectus;

- in ordinary brokerage transactions and transactions in which the broker solicits purchasers; and
- through the writing of options (including put or call options), whether the options are listed on an options exchange or otherwise.

The selling stockholders may sell the shares at prices then prevailing or related to the then current market price or at negotiated prices. The offering price of the shares from time to time will be determined by the selling stockholders and, at the time of the determination, may be higher or lower than the market price of our common stock on the Nasdaq Global Market or any other exchange or market.



The shares may be sold directly or through broker-dealers acting as principal or agent, or pursuant to a distribution by one or more underwriters on a firm commitment or best-efforts basis. The selling stockholders may also enter into hedging transactions with broker-dealers. In connection with such transactions, broker-dealers of other financial institutions may engage in short sales of our common stock in the course of hedging the positions they assume with the selling stockholders. The selling stockholders may also enter into options or other transactions with broker-dealers or other financial institutions which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction). In connection with an underwritten offering, underwriters or agents may receive compensation in the form of discounts, concessions or commissions from the selling stockholders or from purchasers of the offered shares for whom they may act as agents. In addition, underwriters may sell the shares to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. In connection with any particular offering pursuant to this shelf registration statement, an underwriter may engage in stabilizing transactions, short sales, syndicate covering transactions and penalty bids. The selling stockholders and any underwriters, dealers or agents participating in a distribution of the shares may be deemed to be "underwriters" within the meaning of the Securities Act, and any profit on the sale of the shares by the selling stockholders and any commissions received by broker-dealers may be deemed to be underwriting commissions under the Securities Act. Agents, underwriters, dealers or their affiliates, may be customers of, engage in transactions with or perform services for us, in the ordinary course of business.

We and the selling stockholders may agree to indemnify an underwriter, broker-dealer or agent against certain liabilities related to the selling of the common stock, including liabilities arising under the Securities Act. Under the registration rights agreements, we have agreed to indemnify the selling stockholders against certain liabilities related to the sale of the common stock, including liabilities arising under the Securities Act. Under the registration rights agreements, we have also agreed to pay the costs, expenses and fees of registering the shares of common stock; however, the selling stockholders will pay any underwriting discounts or commissions relating to the sale of the shares of common stock in any underwritten offering.

We are not aware that any selling stockholders have entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of its shares. Upon our notification by the selling stockholders that any material arrangement has been entered into with an underwriter or broker-dealer for the sale of shares through a block trade, special offering, exchange distribution, secondary distribution or a purchase by an underwriter or broker-dealer, we will file a supplement to this prospectus, if required, pursuant to Rule 424(b) under the Securities Act, disclosing certain material information, including:

- the name of the selling stockholders;
- the number of shares being offered;
- the terms of the offering;
- the names of the participating underwriters, broker-dealers or agents;
- any discounts, commissions or other compensation paid to underwriters or broker-dealers and any discounts, commissions or concessions allowed or reallocated or paid by any underwriters to dealers;
- the public offering price; and
- other material terms of the offering.

The selling stockholders are subject to the applicable provisions of the Exchange Act and the rules and regulations under the Exchange Act, including Regulation M. This regulation may limit the timing of purchases and sales of any of the shares of common stock offered in this prospectus by the selling stockholders. The anti-manipulation rules under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. Furthermore, Regulation M may restrict the ability of any person engaged in the distribution of the shares to engage in market-making activities for the particular securities being distributed for a period of up to five business days before the distribution. The restrictions may affect the marketability of the shares and the ability of any person or entity to engage in market-making activities for the shares.

To the extent required, this prospectus may be amended and/or supplemented from time to time to describe a specific plan of distribution. Instead of selling the shares of common stock under this prospectus, the selling stockholders may sell the shares of common stock in compliance with the provisions of Rule 144 under the Securities Act, if available, or pursuant to other available exemptions from the registration requirements of the Securities Act.

### **LEGAL MATTERS**

The validity of the shares of common stock offered pursuant to this prospectus will be passed upon by Kirkland & Ellis LLP. One of the partners of Kirkland & Ellis LLP is a director of NexCen.

### **EXPERTS**

The consolidated financial statements of NexCen Brands, Inc. and subsidiaries (formerly, Aether Holdings, Inc.) as of December 31, 2006 and 2005, and for each of the years in the three-year period ended December 31, 2006, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2006 have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The Statement of Revenues and Direct Expenses of Pretzel Time and Pretzelmaker for the year ended December 30, 2006 has been incorporated by reference herein in reliance upon the report of KPMG LLP independent public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The Statement of Revenues and Direct Expenses of Waverly, Gramercy and Village Brands for the year ended December 31, 2006 has been incorporated by reference herein in reliance upon the report of KPMG LLP independent public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The balance sheets of Marble Slab Creamery, Inc. as of December 31, 2006 and 2005 and the related statements of income, changes in stockholders' deficit and cash flows for the years ended December 31, 2006, 2005 and 2004 have been incorporated by reference herein in reliance upon the report of Harper & Pearson Company P.C. independent public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated balance sheets of Bill Blass Holding Co, Inc. and subsidiaries as of December 31, 2006 and 2005, and the related consolidated statements of operations, changes in shareholders' equity, and cash flows for the years then ended have been incorporated by reference herein in reliance upon the report of UHY LLP independent public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

### **WHERE YOU CAN FIND MORE INFORMATION**

**Filings.** We are currently subject to the information requirements of the Exchange Act and in accordance therewith file periodic reports, proxy statements and other information with the Securities and Exchange Commission. You may read and copy (at prescribed rates) any such reports, proxy statements and other information at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. For further information concerning the SEC's Public Reference Room, you may call the SEC at 1-800-SEC-0330. Some of this information may also be accessed on the World Wide Web through the SEC's Internet address at [www.sec.gov](http://www.sec.gov), or on our Internet address at [www.nexcenbrands.com](http://www.nexcenbrands.com).

**Registration Statement.** We have filed with the SEC a registration statement on Form S-3 with respect to the shares of common stock offered hereby. This prospectus does not contain all the information set forth in the registration statement, parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the common stock offered hereby, reference is made to the registration statement.

**Incorporation by Reference.** The SEC allows us to “incorporate by reference” information into this prospectus, which means that we can disclose important information about us by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this prospectus. This prospectus incorporates by reference the documents and reports listed below (other than portions of these documents that are either (1) described in paragraphs (i), (k) and (l) of Item 402 of Regulation S-K promulgated by the SEC or (2) furnished under Item 2.02 or Item 7.01 of a Current Report on Form 8-K):

- our Annual Report on Form 10-K/A for the fiscal year ended December 31, 2006;
- our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2007, June 30, 2007 and September 30, 2007;
- our Current Reports on Form 8-K or Form 8-K/A filed on February 21, 2007 (with respect to Items 1.01, 8.01 and 9.01 only), February 21, 2007, March 6, 2007, May 3, 2007, May 8, 2007, May 8, 2007, May 10, 2007, July 18, 2007, August 8, 2007, September 6, 2007, October 23, 2007, and January 29, 2008;

- the description of our common stock, par value \$0.01 per share, that is contained in our registration statement on Form 8-A filed on October 19, 1999, including exhibits, as amended, and as may be further amended from time to time; and
- all our filings pursuant to the Exchange Act after the date of filing of the initial registration statement and prior to the effectiveness of the registration statement.

The description of our common stock to which we refer was filed in connection with our initial public offering when we were known as Aether Systems, Inc. Subsequently, in July 2005, our stockholders approved a holding company reorganization as the result of which our name changed to Aether Holdings, Inc. In connection with that reorganization, our stockholders also approved an amendment to our certificate of incorporation that imposed restrictions on certain transfers of our common stock the purpose of which was to reduce the risk that we would experience an ownership change for tax purposes. Specifically, the transfer restrictions restrict any person from buying or selling our stock (or any interest in our stock) if the transfer would result in a stockholder (or several stockholders, in the aggregate, who hold their stock as a “group” under the federal securities laws) owning 5% or more of our stock. A description of these restrictions is set forth in our Form S-4 (No. 333-124633) filed with the SEC on May 4, 2005, as amended, which is incorporated herein by reference. Subsequently, at our annual meeting of stockholders held on October 31, 2006, we changed our name to NexCen Brands, Inc. as part of the change in our long-term strategy that focuses on acquiring or licensing, for sale, licensing or sublicensing (or other commercial exploitation) intellectual property.

We also incorporate by reference the information contained in all other documents we file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than portions of these documents that are either (1) described in paragraphs (i), (k) and (l) of Item 402 of Regulation S-K promulgated by the SEC or (2) furnished under Item 2.02 or Item 7.01 of a Current Report on Form 8-K, unless otherwise indicated therein) after the date of this prospectus and prior to the termination of this offering. The information contained in any such document will be considered part of this prospectus from the date the document is filed with the SEC.

Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus will be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference in this prospectus modifies or supersedes that statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We undertake to provide without charge to any person, including any beneficial owner, to whom a copy of this prospectus is delivered, upon oral or written request of such person, a copy of any or all of the documents that have been incorporated by reference in this prospectus, other than exhibits to such other documents (unless such exhibits are specifically incorporated by reference therein). We will furnish any exhibit upon the payment of a specified reasonable fee, which fee will be limited to our reasonable expenses in furnishing such exhibit. Requests for such copies should be directed to David B. Meister, NexCen Brands, Inc., 1330 Avenue of the Americas, 34<sup>th</sup> Floor, New York, NY 10019, (212) 277-1100.

**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The following is a statement of estimated expenses, to be paid solely by the NexCen Brands, Inc. (the "Company"), of the issuance and distribution of the securities being registered hereby:

Securities and Exchange Commission registration fee	\$	600
Printing expenses (1)		10,000
Accounting fees and expenses (1)		40,000
Legal fees and expenses (1)		50,000
Miscellaneous expenses (1)		4,000
Total	\$	104,600

(1) Does not include any fees or expenses in connection with any subsequent underwritten offering and any prospectus supplements prepared in connection therewith.

**Item 15. Indemnification of Directors and Officers.*****Delaware General Corporation Law***

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the person's conduct was unlawful. Section 145 of the DGCL further provides that a corporation similarly may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or such other court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Section 145 of the DGCL also provides that a corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such

capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

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### ***Certificate of Incorporation***

Article X of the Company's Certificate of Incorporation, as amended, provides that, to the fullest extent permitted by the DGCL, as the same exists or may be amended, a director of the Company is not liable to the Company or its stockholders for monetary damages for a breach of fiduciary duty as a director.

### ***By-laws***

Article VII of the By-laws of the Company (the "By-laws") provides, among other things, that each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, or a person of whom he is the legal representative, is or was a director or officer of the Company or is or was serving at the request of the Company as a director, officer, employee, fiduciary, or agent of another corporation or of a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the Company to the fullest extent which it is empowered to do so unless prohibited from doing so by the DGCL against all expense, liability and loss (including attorneys' fees actually and reasonably incurred by such person in connection with such proceeding) and such indemnification inures to the benefit of the person's heirs, executors and administrators; provided, however, that, subject to certain exceptions, the Company shall indemnify any such person seeking indemnification in connection with a proceeding initiated by such person only if such proceeding was authorized by the board of directors of the Company. The right to indemnification conferred in Article VII is a contract right and, subject to certain exceptions, includes the right to be paid by the Company the expenses incurred in defending any such proceeding in advance of its final disposition.

Article VII of the By-laws also provides that the Company may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary, or agent of the Company or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, whether or not the Company would have the power to indemnify such person against such liability under Article VII of the By-laws.

### ***Insurance***

Our directors and officers are covered under directors' and officers' liability insurance policies maintained by us.

### **Item 16. Exhibits.**

Reference is made to the attached Exhibit Index.

### **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 to 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 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

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(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), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission 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, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of 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) If the registrant is relying on Rule 430B:

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

(B) 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 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; or

(ii) If the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as a part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance of Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *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 first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in such document immediately prior to such date of first use.

(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 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:

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- (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.
- (d) The undersigned registrant hereby undertakes that:
- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
  - (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York on the 1st of February, 2008.

**NEXCEN BRANDS, INC.**

By: /s/ David B. Meister  
David B. Meister  
Chief Financial Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Robert W. D’Loren and David B. Meister and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this registration statement (and any registration statement filed pursuant to Rule 462(b) under the Securities Act, as amended, for the offering which this Registration Statement relates), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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Pursuant to the requirements of the Securities Act of 1933, this registration statement and Power of Attorney have been signed by the following persons in the capacities and on the dates indicated:

<b>Signatures</b>	<b>Capacity</b>	<b>Date</b>
/s/ Robert W. D’Loren Robert W. D’Loren	Chief Executive Officer, President and Director (Principal Executive Officer)	February 1, 2008
/s/ David B. Meister David B. Meister	Chief Financial Officer (Principal Financial and Accounting Officer)	February 1, 2008
/s/ David S. Oros David S. Oros	Chairman of the Board	February 1, 2008
/s/ Jack Rovner Jack Rovner	Director	February 1, 2008
/s/ James T. Brady James T. Brady	Director	February 1, 2008

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/s/ George P. Stamas George P. Stamas	Director	February 1, 2008
/s/ Jack B. Dunn, IV Jack B. Dunn, aIV	Director	February 1, 2008
/s/ Edward J. Mathias Edward J. Mathias	Director	February 1, 2008
/s/ Paul Caine Paul Caine	Director	February 1, 2008
/s/ Marvin Traub Marvin Traub	Director	February 1, 2008

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**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
1.1	Form of Underwriting Agreement.*
4.1	Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Form 10-Q as filed with the Commission on August 5, 2005).
4.2	Certificate of Amendment of Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K as filed with the Commission on November 1, 2006).
4.3	By-laws of the Company (incorporated by reference to Exhibit 3.2 to the Company's Form 10-Q as filed with the Commission on August 5, 2005).
4.4	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.3 to the Company's Form S-8 (File No. 333-139078) as filed with the Commission on December 1, 2006).
5.1	Opinion of Kirkland & Ellis LLP.
23.1	Consent of Kirkland & Ellis LLP (included in Exhibit 5.1).
23.2	Consent of KPMG LLP.
23.3	Consent of KPMG LLP.
23.4	Consent of KPMG LLP.
23.5	Consent of UHY LLP.
23.6	Consent of Harper & Pearson Company, P.C.
24.1	Powers of Attorney (included in Part II to the Registration Statement).

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\*To be filed, if necessary, subsequent to the effectiveness of this registration statement by an amendment to the registration statement or incorporated by reference to a Current Report on Form 8-K filed in connection with an underwritten offering of the shares offered hereunder.

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