

TOMPKINS FINANCIAL CORP  
Form S-3  
July 24, 2017

As filed with the Securities and Exchange Commission on July 24, 2017

Registration Statement No. 333-\_\_\_\_\_

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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**Form S-3**

Registration Statement

Under

The Securities Act of 1933

**TOMPKINS FINANCIAL CORPORATION**

(Exact name of registrant as specified in its charter)

**NEW YORK**

(State or other jurisdiction of incorporation or organization)

**16-1482357**

(IRS Employer Identification Number.)

**The Commons, P.O. Box 460**

**Ithaca, New York 14851**

**(607) 273-3210**

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

**Francis M. Fetsko**

**Executive Vice President, Chief Operating Officer and  
Chief Financial Officer**

**Tompkins Financial Corporation**

**The Commons, P.O. Box 460**

**Ithaca, New York 14851**

**(607) 273-3210**

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

**with a copy to:**

**Alyssa Hochberg Fontaine, Esq.**

**General Counsel and Executive Vice President**

**Tompkins Financial Corporation**

**The Commons, P.O. Box 460**

**Ithaca, New York 14851**

**(607) 273-3210**

Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective.

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

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

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, 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 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act. (Check one):

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

**CALCULATION OF REGISTRATION FEE**

<b>Title of each class of securities to be registered:</b>	<b>Amount to be registered<sup>(1)(3)</sup></b>	<b>Proposed maximum offering price per unit<sup>(1)</sup></b>	<b>Proposed maximum aggregate offering price<sup>(1) (2)</sup></b>	<b>Amount of registration fee <sup>(4)</sup></b>
Common Stock, par value \$0.10 per share				
Preferred Stock, par value \$0.01 per share				
<b>TOTAL</b>			\$85,000,000	\$9,851.50

Pursuant to Rule 457(o) under the Securities Act of 1933, as amended (the "Securities Act"), which permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed, and General Instruction II.D. to Form S-3, the table does not specify by each class information as to the amount to be registered, proposed maximum offering price per unit or proposed maximum aggregate offering price.

(1) This amount has been estimated solely for the purpose of calculating the registration fee and is exclusive of accrued distributions and dividends, if any.

(2) Includes such indeterminate number of shares of common stock and preferred stock as may be issued from time to time by the Registrant at indeterminate prices. The securities registered hereunder may be sold separately, together (3) or as units with other securities registered hereunder. The securities registered hereunder also include such indeterminate number of shares of common stock which may be issued upon conversion or exchange of preferred stock or pursuant to the anti-dilution provisions of any such securities.

In connection with the filing of the Registrant's Form S-3, File No. 333-194630, filed by the Registrant with the Commission on March 17, 2014, as amended by Pre-Effective Amendment No. 1, filed by the Registrant with the Commission on July 10, 2014 and declared effective on July 15, 2014 (the "Prior Registration Statement"), registration fees of \$9,016 were paid. In accordance with Rule 457(p), the Registrant is carrying forward all of the (4) unused registration fees paid in connection with the Prior Registration Statement to offset all but \$835.50 of the current registration fee due for the securities registered pursuant to this Registration Statement. All of the securities covered by the Prior Registration Statement are included in this Registration Statement on Form S-3. Since the amount of the registration fees being carried forward exceeds the current registration fee due under this Registration Statement, no additional fees are being paid herewith.

**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. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED \_\_\_\_\_, 2017**

## **Prospectus**

**\$85,000,000**

## **Tompkins Financial Corporation**

### **Common Stock and Preferred Stock**

We may offer common stock and preferred stock from time to time, and this prospectus describes the general terms of these securities and the general manner in which we will offer the securities. The aggregate initial offering price of all securities we sell under this prospectus will not exceed \$85,000,000.

We will offer the securities in amounts, at prices and on terms to be determined by market conditions at the time of the offering. We will provide the specific terms of these securities and the terms of their sale in one or more supplements to this prospectus. You should read this prospectus and any prospectus supplement together with the additional information described in the section of this prospectus entitled “Where You Can Find More Information” and “Documents Incorporated by Reference” carefully before you invest.

Our principal executive offices are located at The Commons, Ithaca, New York, 14851, and our telephone number is (607) 273-3210. Our common stock is traded on the NYSE MKT LLC under the symbol “TMP.”

**Investing in our securities involves a high degree of risk. See the section entitled “Risk Factors” that may be included in a prospectus supplement and in the documents we file with the Securities and Exchange**

**Commission that are incorporated in this prospectus by reference for certain risks and uncertainties you should consider.**

**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.**

**These securities will not be savings accounts, deposits or other obligations of any bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation, the Deposit Insurance Fund or any other governmental agency or instrumentality.**

The date of this prospectus is \_\_\_\_\_, \_\_\_\_.

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## About This Prospectus

Unless the context requires otherwise, in this prospectus, we use the terms “we,” “us,” “our,” “Tompkins” and the “Company” refer to Tompkins Financial Corporation and its subsidiaries.

This prospectus is part of a registration statement we filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration process. Under the shelf registration process, using this prospectus, together with a prospectus supplement, we may sell, from time to time, in one or more offerings, any combination of the securities described in this prospectus in a dollar amount that does not exceed \$85,000,000, in the aggregate. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement containing specific information about the terms of that offering. You should read this prospectus, the prospectus supplement, and the information incorporated by reference in this prospectus before making an investment in our securities. See “Where You Can Find More Information” for more information. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in the prospectus supplement.

Our SEC registration statement containing this prospectus, including exhibits, provides additional information about us and the securities offered under this prospectus. The registration statement can be read at the SEC’s web site or at the SEC’s offices. The SEC’s web site and street addresses are provided under the heading “Where You Can Find More Information.”

You should rely only on the information contained in or incorporated by reference in this prospectus or a supplement to this prospectus. We have not authorized anyone to provide you with different information. This document may be used only in jurisdictions where offers and sales of these securities are permitted. You should not assume that information contained in this prospectus, in any supplement to this prospectus, or in any document incorporated by reference is accurate as of any date other than the date on the front page of the document that contains the information, regardless of when this prospectus is delivered or when any sale of our securities occurs.

We may sell our securities to underwriters who will in turn sell the securities to the public on terms fixed at the time of sale. In addition, the securities may be sold by us directly or through dealers or agents which we may designate from time to time. If we, directly or through agents, solicit offers to purchase the securities, we reserve the sole right to accept and, together with our agents, to reject, in whole or in part, any of those offers.

A prospectus supplement will contain the names of the underwriters, dealers or agents, if any, together with the terms of offering, the compensation of those underwriters and the net proceeds to be received by Tompkins. Any underwriters, dealers or agents participating in the offering may be deemed “underwriters” within the meaning of the



Securities Act of 1933, as amended (the “Securities Act”).

### **Where You Can Find More Information**

This prospectus is a part of a registration statement on Form S-3 that we filed with the SEC under the Securities Act. This prospectus does not contain all the information set forth in the registration statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the securities offered by this prospectus, reference is made to the registration statement, including the exhibits to the registration statement and the documents incorporated by reference.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our filings are available to the public over the Internet at the SEC’s web site at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at its Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You can also obtain copies of the documents at prescribed rates by writing to the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. Our SEC filings are also available at no cost on our web site, <http://www.tompkinsfinancial.com>, through the “SEC Filings” link, as soon as reasonably practicable after we file such documents with the SEC. Except for the SEC filings we expressly incorporate by reference into this prospectus as described below, none of the other information on our web site is part of this prospectus.

## **Documents Incorporated by Reference**

We incorporate by reference into this prospectus the information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus.

Some information contained in this prospectus updates and supersedes the information incorporated by reference and some information that we file subsequently with the SEC will automatically update this prospectus. We incorporate by reference the documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), after the filing date of the initial registration statement and prior to the date of effectiveness of the registration statement of which this prospectus is a part, and on or after the date of this prospectus and before the termination of this offering (excluding, unless otherwise provided herein or therein, information furnished pursuant to Item 2.02 and Item 7.01, or any Exhibit referenced in such items, of any Current Report on Form 8-K):

our Annual Report on Form 10-K for the fiscal year ended December 31, 2016, as filed with the SEC on February 28, 2017;

our Quarterly Report on Form 10-Q for the quarter ended March 31, 2017, as filed with the SEC on May 10, 2017;

our Current Reports on Form 8-K filed with the SEC on January 2, 2017, April 28, 2017, May 11, 2017, and July 21, 2017; and

the description of our common stock contained in our Registration Statement on Form 8-A (No. 1-12709) filed with the SEC on January 30, 1997, including any amendment(s) or report(s) filed for the purposes of updating such description.

Any statement contained in a document incorporated by reference in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, or in any other document filed later which is also incorporated in this prospectus by reference, modifies or supersedes the statement. Any statement so modified or superseded shall not be deemed to constitute a part of this prospectus except as so modified or superseded. The information contained in this prospectus should be read together with the information in the documents incorporated in this prospectus by reference.

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You may obtain any of these incorporated documents from us without charge, excluding any exhibits to these documents unless the exhibit is specifically incorporated by reference in such document, by requesting them from us in writing or by telephone at the following address:

Corporate Secretary  
Tompkins Financial Corporation  
P.O. Box 460  
Ithaca, NY 14851  
(888) 503-5753

These incorporated documents may also be available on our web site at [www.tompkinsfinancial.com](http://www.tompkinsfinancial.com). Except for incorporated documents, information contained on our web site is not a prospectus and does not constitute part of this prospectus.

### **Note of Caution Regarding Forward-Looking Statements**

We make certain forward-looking statements in this prospectus, any prospectus supplement, and in the documents incorporated by reference into this prospectus that are based upon our current expectations and projections about current events. You should not rely on forward-looking statements in this prospectus, any prospectus supplement, or the documents incorporated by reference. We intend these forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, and we are including this statement for purposes of these safe harbor provisions. You can identify these statements from our use of the words “may,” “will,” “should,” “could,” “would,” “plan,” “potential,” “estimate,” “project,” “believe,” “intend,” “anticipate,” “expect,” “target” and similar expressions. Examples of forward-looking statements include, but are not limited to, estimates with respect to the financial condition, expected or anticipated revenue, results of operations and business of the Company that are subject to various factors which could cause actual results to differ materially from these estimates. These factors include, but are not limited to, general economic conditions, changes in interest rates, deposit flows, loan demand, real estate values, and competition; changes in accounting principles, policies, or guidelines; changes in legislation or regulations; and other economic, competitive, governmental, regulatory, and technological factors affecting the Company’s operations, pricing, products and services.

You should also consider carefully the statements under “Risk Factors” and other sections of this prospectus, any prospectus supplement, and the documents we incorporate by reference, which address additional facts that could cause our actual results to differ from those set forth in the forward-looking statements. We caution investors not to place significant reliance on the forward-looking statements contained in this prospectus, any prospectus supplement, and the documents we incorporate by reference.

Because of these and other uncertainties, our actual future results, performance or achievements, or industry results, may be materially different from the results contemplated by these forward-looking statements. In addition, our past results of operations do not necessarily indicate our future results. You should not place undue reliance on any forward-looking statements, which speak only as of the date they were made. We do not intend to update these forward-looking statements, even though our situation may change in the future, unless we are obligated to do so under the federal securities laws. We qualify all of our forward-looking statements by these cautionary statements.

### **About Tompkins Financial Corporation**

Tompkins Financial Corporation is a financial holding company. Our business is primarily owning, supervising and controlling our banking, insurance agency and financial services subsidiaries. We are the parent company of Tompkins Trust Company, The Bank of Castile, Mahopac Bank, VIST Bank, and Tompkins Insurance Agencies, Inc., which are wholly-owned subsidiaries. Tompkins Trust Company, The Bank of Castile and Mahopac Bank provide community-banking services to their local market areas in New York State and VIST Bank provides

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community-banking services to its local market area in the State of Pennsylvania. Tompkins Insurance Agencies, Inc. offers property and casualty insurance to individuals and businesses in New York and Pennsylvania, as well as group insurance for businesses, employee and group benefit plans, and life insurance. The trust division of Tompkins Trust Company provides services under the Tompkins Financial Advisors name, including investment management, trust and estate administration, financial and tax planning as well as life, disability and long-term care insurance services.

**Corporate Headquarters:** Tompkins Financial Corporation  
The Commons, P. O. Box 460  
Ithaca, New York 14851  
Main telephone number: 607-273-3210

**Web Site:** [www.tompkinsfinancial.com](http://www.tompkinsfinancial.com) (information on our website does not constitute part of this prospectus)

**Stock Listing:** Our common stock is listed on the NYSE MKT LLC under the symbol - **TMP**.

For additional information regarding our business, see our filings with the SEC, which are incorporated by reference into this prospectus. Copies of these filings may be obtained as described above under “Where You Can Find More Information”. Among other things, our Annual Report on Form 10-K, as filed with the SEC on February 28, 2017, contains beginning at page 14 a discussion of business, regulatory and other risks to which we are subject.

## **Prospectus Summary**

This summary contains a general description of the securities we may offer. This summary is not complete and does not contain all of the information that may be important to you. For a more complete understanding of us and the terms of the securities we will offer, you should read carefully this entire prospectus, including the “Risk Factors” section of any prospectus supplement for the securities and the other documents we refer to and incorporate by reference in this prospectus. In particular, we incorporate important business and financial information into this prospectus by reference.

## ***The Securities We May Offer***

We may use this prospectus to offer securities in an aggregate amount of up to \$85,000,000 in one or more offerings. A prospectus supplement, which we will provide each time we offer securities, will describe the amounts, prices and detailed terms of the securities and may describe risks associated with an investment in the securities. We will also include in the prospectus supplement, where applicable, information about material United States federal income tax considerations relating to the securities. Terms used in this prospectus will have the meanings described in this prospectus unless otherwise specified.

We may sell the securities to or through underwriters, dealers or agents or directly to purchasers. We, as well as any agents acting on our behalf, reserve the sole right to accept or to reject in whole or in part any proposed purchase of our securities. Each prospectus supplement will set forth the names of any underwriters, dealers or agents involved in the sale of our securities described in that prospectus supplement and any applicable fee, commission or discount arrangements with them.

## ***Common Stock***

We may sell our common stock, with a par value of \$0.10 per share. In a prospectus supplement, we will describe the aggregate number of shares offered and the offering price or prices of the shares.

*Preferred Stock*

We may sell shares of our preferred stock in one or more series. In a prospectus supplement, we will describe the specific designation, the aggregate number of shares offered, the dividend rate or manner of calculating the dividend rate, the dividend periods or manner of calculating the dividend periods, the ranking of the shares of the series with respect to dividends, liquidation and dissolution, the stated value of the shares of the series, the voting rights of the shares of the series, if any, whether and on what terms the shares of the series will be convertible or exchangeable, and whether and on what terms we can redeem the shares of the series.

**Risk Factors**

Before making an investment decision, you should carefully consider the risks described under “Risk Factors” in the applicable prospectus supplement and in our most recent Annual Report on Form 10-K, and in our updates to those risk factors in our Quarterly Reports on Form 10-Q, together with all of the other information appearing in this prospectus or incorporated by reference into this prospectus and any applicable prospectus supplement, in light of your particular investment objectives and financial circumstances. Our business, financial condition or results of operations could be materially adversely affected by any of these risks. The trading price of our securities could decline due to any of these risks, and you may lose all or part of your investment.

## Use of Proceeds

We expect to use the net proceeds from the sale of any securities for general corporate purposes, which may include:

investing in, or extending credit to, our operating subsidiaries;

investments at the holding company level;

reducing or refinancing existing debt;

possible acquisitions;

stock repurchases; and

other purposes as described in any prospectus supplement.

Pending such use, we may temporarily invest the net proceeds of any offering. The precise amounts and timing of the application of proceeds will depend upon our funding requirements and the availability of other funds. Except as indicated in a prospectus supplement, allocations of the proceeds to specific purposes will not have been made at the date of that prospectus supplement.

## Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends

The following table sets forth our consolidated ratio of earnings to combined fixed charges and preferred dividends for the periods presented. You should read these ratios in connection with our consolidated financial statements, including the notes to those statements, incorporated by reference in this prospectus.

	For the Fiscal Years Ended December 31,				
	2016	2015	2014	2013	2012
Ratio of earnings to fixed charges <sup>(1)</sup>					
Including deposit interest	4.83	5.20	4.66	3.94	2.73
Excluding deposit interest	8.27	9.41	8.69	7.14	4.45



For purposes of calculating the ratio of earnings to fixed charges, fixed charges are the sum of:

interest cost, including interest on deposits; and

that portion of rent expense estimated to be representative of the interest factor.

Currently, we have no shares of preferred stock outstanding and have not paid any dividends on preferred stock in (1) the periods presented. Therefore, the ratio of earnings to combined fixed charges and preferred stock dividends is identical to the ratio of earnings to fixed charges.

### **Description of Capital Stock**

The authorized capital stock of Tompkins consists of 25,000,000 shares of common stock, par value \$0.10 per share, and 3,000,000 shares of preferred stock, par value \$0.01 per share, which may be issued in series with such powers, designations and rights as may be established from time to time by our Board of Directors. As of July 19, 2017, there were 15,191,707 shares of common stock issued and outstanding and no shares of preferred stock issued and outstanding.

## *Description of Common Stock*

### **General**

Each share of our common stock has the same relative rights as, and is identical in all respects to, each other share of our common stock. Our common stock is traded on the NYSE MKT under the symbol “TMP.” All of the outstanding shares of common stock are, and any common stock issued and sold under this prospectus will be, fully paid and nonassessable.

The transfer agent and registrar for our common stock is American Stock Transfer & Transfer Company, 59 Maiden Lane, Plaza Level, New York, New York 10038.

### **Dividends**

The holders of Tompkins common stock are entitled to share ratably in dividends when and as declared by the Board of Directors out of legally available funds therefor. The Company’s Certificate of Incorporation permits the Board of Directors to issue preferred stock with terms set by the Board, which terms may include the right to receive dividends ahead of the holders of common stock. Tompkins has no shares of preferred stock presently outstanding.

Cash dividends on Tompkins common stock were paid on February 17, May 15, August 17 and November 16, 2015; and on February 16, May 16, August 15 and November 15, 2016. The Company’s ability to pay dividends is generally limited to earnings from the prior year, although retained earnings and dividends from its subsidiaries may also be used to pay dividends under certain circumstances. The Federal Reserve Board generally prohibits holding companies from paying dividends except out of operating earnings, and the prospective rate of earnings retention appears consistent with the holding company’s capital needs, asset quality and overall financial condition. The Company’s primary source of funds to pay for shareholder dividends is receipt of dividends from its subsidiaries. Future dividend payments to the Company by its subsidiaries will be dependent on a number of factors, including the earnings and financial condition of each subsidiary, and are subject to the regulatory limitations discussed in “Note 20 – Regulations and Supervision” in the Notes to Consolidated Financial Statements in Part II, Item 8 of the Company’s Annual Report on Form 10-K for fiscal year 2016.

### **Liquidation Rights**

In the event of any liquidation, dissolution, or winding up of Tompkins, the holders of shares of Tompkins common stock will be entitled to receive, after payment of all the Company's debts and liabilities and after satisfaction of all liquidation preferences applicable to the preferred stock, all remaining assets of the Company available for distribution in cash or in kind.

### **Voting Rights**

The holders of the Company's common stock have one vote for each share held on any matter presented for consideration at a shareholder meeting. The holders of Tompkins common stock are not entitled to cumulative voting in the election of directors.

### **No Preemptive Rights; Redemption and Assessment**

Holders of shares of our common stock will not be entitled to preemptive rights with respect to any shares that may be issued. Our common stock is not subject to redemption or any sinking fund and the outstanding shares are fully paid and non-assessable.

### **Securities Are Not Insured by the FDIC**

Investments in our securities will not qualify as deposits or savings accounts and will not be insured or guaranteed by the FDIC or any other governmental agency and are subject to investment risk, including the possible loss of principal.

### **Material Provisions of our Certificate of Incorporation and Bylaws and New York Law**

*General.* Our Certificate of Incorporation and Bylaws contain certain provisions designed to enhance the ability of our Board of Directors to deal with attempts to acquire control of the Company. These provisions and the ability to set the voting rights, preferences and other terms of any series of preferred stock that may be issued, may be deemed to have an anti-takeover effect and may discourage takeovers (which certain stockholders may deem to be in their best interest). To the extent that such takeover attempts are discouraged, temporary fluctuations in the market price of our common stock resulting from actual or rumored takeover attempts may be inhibited. These provisions also could discourage or make more difficult a merger, tender offer or proxy contest, even though such transaction may be favorable to the interests of stockholders, and could potentially adversely affect the market price of our common stock.

The following briefly summarizes protective provisions that are contained in our Certificate of Incorporation and Bylaws. This summary is necessarily general and is not intended to be a complete description of all the features and consequences of those provisions, and is qualified in its entirety by reference to our Certificate of Incorporation and Bylaws.

*Certificate of Incorporation.* Our Certificate of Incorporation provides that any business combination that would result in the disposition of all or substantially all of our assets requires the affirmative vote of 80% of our outstanding common shares in the case of a business combination involving a person that is the beneficial owner of at least 20% of our common shares, unless (1) such business combination has been approved by a majority of the disinterested directors, or (2) a fair price is offered for the Company's shares, the calculation of which is described in greater detail in Article VII of our Certificate of Incorporation. The foregoing provisions may not be amended, altered, changed or repealed without the affirmative vote of at least 80% of the outstanding capital stock entitled to vote.

*Statutory Restrictions.* New York's Business Corporation Law (the "BCL") restricts certain business combinations. The statute prohibits certain New York corporations from engaging in a merger or other business combination with a holder of 20% or more of the corporation's outstanding voting stock ("interested shareholder") for a period of five years following acquisition of the stock unless the merger or other business combination, or the acquisition of the stock, is

approved by the corporation's board of directors prior to the date of the stock acquisition. If the combination was not previously approved, the interested shareholder may effect a combination after the five-year period only if a majority of the shares not owned by the 20% shareholder vote in favor of the combination or the aggregate amount of the offer meets certain fair price criteria. The provisions of Section 912 of the BCL apply if and for so long as a New York corporation has a class of securities registered under Section 12 of the Exchange Act. We have not elected to opt out of these provisions of the BCL.

*Omission of Cumulative Voting.* The omission of cumulative voting from the Company's Certificate of Incorporation may be considered anti-takeover in nature. Cumulative voting entitles each stockholder to as many votes as equal the number of shares owned by him or her multiplied by the number of directors to be elected. A stockholder may cast all these votes for one candidate or distribute them among any two or more candidates. Cumulative voting is optional under the BCL.

*Advance Notice; Preferred Stock.* The Company's Bylaws contain restrictions that may discourage other persons from attempting to acquire control of the Company, including, without limitation, prohibitions on shareholder action by written consent and advance notice requirements with respect to matters to be voted upon at all shareholders' meetings. In addition, the Company's Certificate of Incorporation authorizes the issuance of up to 3,000,000 shares of preferred stock. The rights and preferences for any series of preferred stock may be set by the Board of Directors, in its sole discretion and without stockholder approval, and the rights and preferences of any such preferred stock may be superior to those of the common stock and thus may adversely affect the rights of holders of the common stock.

The overall effect of the Certificate of Incorporation and Bylaw provisions described above may be to deter a future tender offer or other takeover attempt that some stockholders might view to be in their best interests as the offer might include a premium over the market price of the Company's common stock at that time. In addition, these provisions may have the effect of assisting the Company's current management in retaining its position and place it in a better position to resist changes which some shareholders may want to make if dissatisfied with the conduct of the Company's business. In addition, the existence of Supplemental Executive Retirement Plans for certain executive officers (which plans include change in control provisions) could add to the cost of a takeover of the Company. There are no other anti-takeover provisions in the Certificate of Incorporation or Bylaws, and there are no present plans to adopt other anti-takeover provisions.

### *Description of Preferred Stock*

#### **General**

As of the date of this prospectus, 3,000,000 shares of preferred stock, par value \$0.01 per share, are authorized, of which none are issued and outstanding. Our Board of Directors may authorize the issuance of one or more additional series of preferred stock and may establish and designate series and the number of shares and the relative rights, preferences and limitations of the respective series of the preferred stock offered by this prospectus and the applicable prospectus supplement. The shares of preferred stock, when issued and sold, will be fully paid and nonassessable.

The number of shares and all of the relative rights, preferences and limitations of the respective future series of preferred stock authorized by the Board of Directors will be described in the applicable prospectus supplement. The terms of particular series of preferred stock may differ, among other things, in:

designation;

number of shares that constitute the series;

dividends (which may be cumulative or noncumulative), the dividend rate, or the method of calculating the dividend rate;

dividend periods, or the method of calculating the dividend periods;

redemption provisions, including whether, on what terms and at what prices the shares will be subject to redemption at our option and whether a sinking fund will be established;