

NEW YORK MORTGAGE TRUST INC
Form POSASR
February 26, 2018
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As filed with the Securities and Exchange Commission on February 26, 2018

Registration No. 333-213316

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1 TO

FORM S-3

REGISTRATION STATEMENT

UNDER
THE SECURITIES ACT OF 1933

New York Mortgage Trust, Inc.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

47-0934168
(I.R.S. employer
identification number)

275 Madison Avenue

New York, New York 10016

(212) 792-0107

(Address, including Zip Code, and Telephone Number,
including Area Code, of Registrant's Principal Executive Offices)

Steven R. Mumma

Chief Executive Officer

New York Mortgage Trust, Inc.

275 Madison Avenue

New York, New York 10016

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(212) 792-0107

(732) 559-8250 (Telecopy)

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

Copies to:

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(202) 639-6500

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a
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 the Securities Act.

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CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per security(2)	Proposed maximum aggregate offering price(3)	Amount of registration fee(4)
Common Stock, \$0.01 par value per share				
Preferred Stock, \$0.01 par value per share				
Debt Securities				
Total(1)			\$ 300,000,000	\$ 37,350

(1) Subject to footnote (3), there is being registered hereunder such indeterminate number or amount of securities of each identified class of securities of New York Mortgage Trust, Inc. as may from time to time be issued or sold at indeterminate prices, with an aggregate initial public offering price not to exceed \$300,000,000. Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall be deemed to cover any additional number of securities as may be offered or issued from time to time upon stock splits, stock dividends, recapitalizations or similar transactions. No additional consideration will be received for such securities and, therefore, no registration fee is required pursuant to Rule 457(i) under the Securities Act. For debt securities issued with an original issue discount, the amount to be registered is calculated as the initial accreted value of such debt securities.

(2) Not required to be included in accordance with General Instruction II.D of Form S-3 under the Securities Act.

(3) No separate consideration will be received for shares of common stock as may, from time to time, be issued upon conversion of shares of preferred stock or debt securities registered hereunder. No separate consideration will be received for shares of preferred stock as may, from time to time, be issued upon conversion, exchange or exercise of securities registered hereunder to the extent any such securities are, by their terms, convertible into, or exchangeable or exercisable for, preferred stock.

(4) The registration fee has been calculated in accordance with Rule 457(o) under the Securities Act. Pursuant to Rule 457(p) under the Securities Act, the registrant is offsetting the registration fee of \$37,350 due under this registration statement by \$11,548.82 of the \$11,590.00 registration fee that was previously paid with respect to common stock of the registrant with a maximum aggregate offering price of \$100,000,000 that were previously registered pursuant to this registration statement, of which an aggregate offering price of \$99,644,718.48 was not sold.

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EXPLANATORY NOTE

This Post-Effective Amendment No. 1 (the "Post-Effective Amendment") to the Registration Statement on Form S-3 (Registration No. 333-213316) of New York Mortgage Trust, Inc. (the "Company") is being filed because the Company expects that it will no longer be a well-known seasoned issuer (as such term is defined in Rule 405 under the Securities Act of 1933, as amended) upon the filing of its Annual Report on Form 10-K for the year ended December 31, 2017 because the worldwide market value of its outstanding common stock held by non-affiliates is expected to be less than \$700 million during the 60-day period preceding the date of such filing. Accordingly, the Company is filing this Post-Effective Amendment for the purpose of, among other things, including disclosure required for a registrant other than a well-known seasoned issuer, registering a specific amount of securities and paying the associated filing fee.

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PROSPECTUS

**Common Stock
Preferred Stock
Debt Securities**

We may offer and sell, from time to time, in one or more offerings, up to an aggregate of \$300,000,000 of the common stock, preferred stock and debt securities described in this prospectus. We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

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

Our shares of common stock are listed on The Nasdaq Global Select Market, or Nasdaq, under the symbol NYMT. The last reported sale price of our common stock on Nasdaq on February 23, 2018, was \$5.70 per share. Our shares of 7.75% Series B Cumulative Redeemable Preferred Stock are listed on Nasdaq under the symbol NYMTP. Our shares of 7.875% Series C Cumulative Redeemable Preferred Stock are listed on Nasdaq under the symbol NYMTO. Our shares of 8.00% Series D Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock are listed on Nasdaq under the symbol NYMTN.

To preserve our qualification as a real estate investment trust for federal income tax purposes, among other purposes, we impose certain restrictions on the ownership and transfer of our capital stock. See Description of Common Stock Restrictions on Ownership and Transfer and Description of Preferred Stock Restrictions on Ownership and Transfer; Change of Control Provisions.

Investing in our securities involves substantial risks. You should carefully read and consider the information under Risk Factors on page 3 of this prospectus and any prospectus supplement before making a decision to purchase these securities.

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

The date of this prospectus is February 26, 2018.

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ABOUT THIS PROSPECTUS

This prospectus is part of a shelf registration statement that we have filed with the Securities and Exchange Commission (SEC). Under this shelf registration statement, we may offer and sell any combination of our common stock, preferred stock and debt securities in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we offer to sell securities under this shelf registration statement, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may add, update or change information contained in or incorporated by reference into this prospectus. Before you buy any of our securities, it is important for you to consider the information contained in or incorporated by reference into this prospectus and any accompanying prospectus supplement together with additional information described under the headings Incorporation by Reference of Information Filed with the SEC and Where You Can Find More Information.

The SEC allows us to incorporate by reference information that we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. You should rely only on the information contained in or incorporated by reference into this prospectus, any accompanying prospectus supplement or any applicable free writing prospectus. We have not authorized anyone to provide you with information different from that contained in this prospectus. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in or incorporated by reference into this prospectus, any accompanying prospectus supplement or any applicable free writing prospectus. If anyone provides you with different, inconsistent or unauthorized information or representations, you must not rely on them. This prospectus and the accompanying prospectus supplement are an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information appearing in this prospectus or any accompanying prospectus supplement is accurate as of the date on its respective cover, and that any information incorporated by reference into this prospectus or any accompanying prospectus supplement is accurate only as of the date of the document incorporated by reference, unless we indicate otherwise. Our business, financial condition, results of operations and prospects may have changed since that date.

In this prospectus, we refer to New York Mortgage Trust, Inc., together with its consolidated subsidiaries, as we, us, our company or our, unless we specifically state otherwise or the context indicates otherwise, and refer to our wholly-owned taxable REIT subsidiaries as TRSs and our wholly-owned qualified REIT subsidiaries as QRSs. In addition, the following defines certain of the commonly used terms in this prospectus.

- Agency ARMs refers to Agency RMBS comprised of adjustable-rate and hybrid adjustable-rate RMBS;
- Agency IOs refers to IOs that represent the right to the interest components of the cash flow from a pool of residential mortgage loans issued or guaranteed by a GSE or an agency of the United States (U.S.) government;
- Agency RMBS refers to RMBS representing interests in or obligations backed by pools of residential mortgage loans issued or guaranteed by a federally chartered corporation, such as the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac and together with Fannie Mae, the GSEs), or an agency of the U.S. government, such as the Government National Mortgage Association (Ginnie Mae);

- ARMs refers to adjustable-rate residential mortgage loans;
- CMBS refers to commercial mortgage-backed securities comprised of commercial mortgage pass-through securities, as well as IO or PO securities that represent the right to a specific component of the cash flow from a pool of commercial mortgage loans;
- CLO refers to collateralized loan obligation;

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- Consolidated K-Series refers to Freddie Mac- sponsored multi-family loan K-Series securitizations, of which we, or one of our special purpose entities, or SPEs, own the first loss PO securities and certain IO securities;
- distressed residential loans refers to pools of performing, re-performing fixed-rate and adjustable-rate, fully amortizing, interest-only and balloon, seasoned mortgage loans secured by first liens on one- to four-family properties;
- IOs refers collectively to interest only and inverse interest only mortgage-backed securities that represent the right to the interest component of the cash flow from a pool of mortgage loans;
- multi-family CMBS refers to CMBS backed by commercial mortgage loans on multi-family properties;
- non-Agency RMBS refers to RMBS backed by prime jumbo mortgage loans, including re-performing and non-performing loans;
- POs refers to mortgage-backed securities that represent the right to the principal component of the cash flow from a pool of mortgage loans;
- prime ARM loans and residential securitized loans each refer to prime credit quality residential ARM loans held in securitization trusts;
- RMBS refers to residential mortgage-backed securities that are adjustable-rate, hybrid adjustable-rate, fixed-rate, interest only and inverse interest only, or principal only securities; and
- second mortgages and second mortgage loans refers to a lien on a residential property which is subordinate to a more senior mortgage or loan.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

When used in this prospectus and in any accompanying prospectus supplement, in filings with the SEC or in press releases or other written or oral communications issued or made by us, statements which are not historical in nature, including those containing words such as believe, expect, anticipate, estimate, plan, continue, intend, should, would, could, goal, objective, will, may or similar expressions, identify forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act), and, as such, may involve known and unknown risks, uncertainties and assumptions.

Forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations are subject to risks and uncertainties and can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. The following factors are examples of those that could cause actual results to vary from our forward-looking statements: changes in interest rates and the market value of our securities; changes in credit spreads; the impact of a downgrade of the long-term credit ratings of the U.S., Fannie Mae, Freddie Mac, or Ginnie Mae; market volatility; changes in the prepayment rates on the mortgage loans underlying our investment securities; increased rates of default and/or decreased recovery rates on our assets; delays in identifying and acquiring our targeted assets; our ability to borrow to finance our assets and the terms thereof; changes in governmental laws, regulations, or policies affecting our business; changes to our relationship with Headlands Asset Management, LLC (Headlands); our ability to maintain our qualification as a real estate investment trust (REIT) for federal tax purposes; our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended (the Investment Company Act); and risks associated with investing in real estate assets, including changes in business conditions and the general economy. These and other risks, uncertainties and factors, including the risk factors described below and in Item 1A of our most recently filed Annual Report on Form 10-K, as updated by those risk factors included in our subsequent filings with the SEC under the Exchange Act, could cause our actual results to differ materially from those projected in any forward-looking statements we make. All forward-looking statements speak only as of the date on which they are made. New risks and uncertainties arise over time and it is not possible to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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OUR COMPANY

General

We are a REIT for federal income tax purposes, in the business of acquiring, investing in, financing and managing mortgage-related and residential housing-related assets. Our objective is to deliver long-term stable distributions to our stockholders over changing economic conditions through a combination of net interest margin and net realized capital gains from a diversified investment portfolio. Our investment portfolio includes credit sensitive assets and investments sourced from distressed markets in recent years that create the potential for capital gains, as well as more traditional types of mortgage-related investments that generate interest income.

Our investment portfolio includes (i) structured multi-family property investments such as multi-family CMBS and preferred equity in, and mezzanine loans to, owners of multi-family properties, (ii) distressed residential assets such as residential mortgage loans sourced from distressed market and non-Agency RMBS, (iii) second mortgages, (iv) Agency RMBS and (v) certain other mortgage-related and residential housing-related assets. Subject to maintaining our qualification as a REIT and the maintenance of our exclusion from registration as an investment company under the Investment Company Act, we also may opportunistically acquire and manage various other types of mortgage-related and residential housing-related assets that we believe will compensate us appropriately for the risks associated with them, including, without limitation, collateralized mortgage obligations and securities issued by newly originated residential securitizations, including credit sensitive securities from these securitizations.

We seek to achieve a balanced and diverse funding mix to finance our assets and operations. We currently rely primarily on a combination of short-term borrowings, such as repurchase agreements with terms typically of 30 days, longer term repurchase agreement borrowing with terms between one year and 18 months and longer term financings, such as securitizations and convertible notes with terms longer than one year.

We internally manage the assets in our investment portfolio, with the exception of distressed residential loans for which we have engaged Headlands to provide investment management services. As part of our investment strategy, we may, from time to time, utilize one or more external investment managers, similar to Headlands, to manage specific asset types that we target or own.

We have elected to be taxed as a REIT for federal income tax purposes and have complied, and intend to continue to comply, with the provisions of the Internal Revenue Code of 1986, as amended (the Internal Revenue Code), with respect thereto. Accordingly, we do not expect to be subject to federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income, distribution and ownership tests and record keeping requirements are fulfilled. Even if we maintain our qualification as a REIT, we expect to be subject to some federal, state and local taxes on our income generated in our TRSs.

Corporate Offices

We are a Maryland corporation that was formed in 2003. Our principal executive offices are located at 275 Madison Avenue, Suite 3200, New York, New York 10016, and our telephone number is (212) 792-0107. Our website address is www.nymtrust.com. Our website and the

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information contained at or connected to our website do not constitute a part of this prospectus or any accompanying prospectus supplement.

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RISK FACTORS

Investing in our securities involves substantial risks, including the risk that you might lose your entire investment. Before making an investment decision, you should carefully read and consider all of the information contained in or incorporated by reference into this prospectus, including the risk factors described in our filings with the SEC that are incorporated by reference into this prospectus. For a description of the reports and documents incorporated by reference into this prospectus, and information about where you can find them, see [Where You Can Find More Information](#) and [Incorporation by Reference of Information Filed with the SEC](#) below. Any one of the risks discussed could cause actual results to differ materially from expectations and could adversely affect our business, financial condition and results of operations. Additional risks and uncertainties not presently known to us or not identified, may also materially and adversely affect our business, financial condition and results of operations.

Table of Contents**RATIO OF EARNINGS TO FIXED CHARGES AND OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table sets forth our consolidated ratios of earnings to fixed charges and of earnings to combined fixed charges and preferred stock dividends for the nine months ended September 30, 2017, and for each of the last five fiscal years.

	Nine Months Ended September 30, 2017	2016	2015	Year Ended December 31,		
				2014	2013	2012
Ratio of earnings to fixed charges	2.83	3.03	3.89	6.59	4.32	4.28
Ratio of earnings to combined fixed charges and preferred stock dividends	2.19	2.16	2.79	5.35	3.69	4.28

For each period, we computed the ratio of earnings to fixed charges by dividing earnings by fixed charges. For each period, we computed the ratio of earnings to combined fixed charges and preferred stock dividends by dividing earnings by the sum of fixed charges and dividends on then-outstanding shares of preferred stock. Fixed charges consist of interest costs, whether expensed or capitalized, and amortization of financing costs, but exclude interest expense on multi-family collateralized debt obligations of the Consolidated K-Series, which we are required to consolidate in our financial statements under generally accepted accounting principles in the U.S. We do not have any claim to the assets (other than the securities represented by our first loss pieces) or obligations for the liabilities of the Consolidated K-Series. For the period January 1, 2012 to June 4, 2013, no shares of preferred stock were outstanding. For the period June 4, 2013 to September 30, 2017, 3,000,000 shares of our 7.75% Series B Cumulative Redeemable Preferred Stock, \$0.01 par value per share, or our Series B Preferred Stock, were issued and outstanding. For the period April 22, 2015 to September 30, 2017, 3,600,000 shares of our 7.875% Series C Cumulative Redeemable Preferred Stock, \$0.01 par value per share, or our Series C Preferred Stock, were issued and outstanding.

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USE OF PROCEEDS

Unless otherwise set forth in a prospectus supplement, we will add the net proceeds from sales of securities to our general corporate funds, which we may use for new investments in accordance with our investment strategy in place at such time, to repay indebtedness or for other general corporate purposes. Any specific allocation of the net proceeds of an offering of securities to a specific purpose will be determined at the time of such offering and will be described in the related prospectus supplement.

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DESCRIPTION OF THE SECURITIES WE MAY OFFER

This prospectus contains a summary description of the common stock, preferred stock and debt securities that we may offer from time to time. As further described in this prospectus, these summary descriptions are not meant to be complete descriptions of each security. The particular terms of any security will be described in the accompanying prospectus supplement and other offering material. The accompanying prospectus supplement may update, change or add to the terms and conditions of the securities as described in this prospectus.

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DESCRIPTION OF COMMON STOCK

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

General

Our charter provides that we may issue up to 400,000,000 shares of common stock, \$0.01 par value per share. As of February 23, 2018, 111,909,909 shares of our common stock were issued and outstanding. Under Maryland law, our stockholders are not generally liable for our debts or obligations. Our charter also provides that a majority of our entire board of directors may amend our charter from time to time to increase or decrease the aggregate number of shares of capital stock of any class or series that we have the authority to issue, without stockholder approval.

Voting Rights of Common Stock

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

Dividends, Liquidation and Other Rights

All of our outstanding shares of common stock are duly authorized, fully paid and nonassessable. Holders of our shares of common stock are entitled to receive dividends when authorized by our board of directors and declared by us out of assets legally available for the payment of dividends. They also are entitled to share ratably in our assets legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up, after payment of or adequate provision for all of our known debts and liabilities. These rights are subject to the preferential rights of any other class or series of our stock and to the provisions of our charter regarding restrictions on ownership and transfer of our stock.

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

Power to Issue Additional Shares of Common Stock

Our charter also provides that a majority of our entire board of directors may amend our charter from time to time to increase or decrease the aggregate number of shares of capital stock of any class or series that we have the authority to issue, to reclassify any unissued shares of our common stock into any other classes or series of classes of our stock, to establish the number of shares in each class or series and to set the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each such class or series. We believe that the power of our board of directors to take

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