

NEW YORK MORTGAGE TRUST INC  
 Form 424B5  
 August 10, 2018

Use these links to rapidly review the document

[TABLE OF CONTENTS](#)

[TABLE OF CONTENTS](#)

[Table of Contents](#)

Filed Pursuant to Rule 424(b)(5)  
 Registration No. 333-226726

**CALCULATION OF REGISTRATION FEE**

| Title of Each Class of Securities<br>to be Registered | Maximum<br>Aggregate<br>Offering Price | Amount of<br>Registration Fee <sup>(1)(2)</sup> |
|---|--|---|
| Common Stock, par value \$0.01 per share              | \$88,550,000                           | \$11,024.48                                     |

(1) Calculated in accordance with Rules 457(o) and 457(r) of the Securities Act of 1933, as amended (the "Securities Act"). Payment of the registration fee at the time of filing of the registrant's registration statement on Form S-3, filed with the Securities and Exchange Commission on August 9, 2018 (File No. 333-226726) (the "Registration Statement"), was deferred pursuant to Rules 456(b) and 457(r) under the Securities Act. This paragraph shall be deemed to update the "Calculation of Registration Fee" table in the Registration Statement.

(2) Pursuant to Rule 457(p) under the Securities Act, the registrant is offsetting the registration fee of \$11,024.48 due under this Registration Statement by \$11,024.48 of the \$37,350 registration fee that was previously paid with respect to securities of the registrant with a maximum aggregate offering price of \$300,000,000 that were previously registered pursuant to the registrant's registration statement on Form S-3ASR (File No. 333-213316), originally filed with the Securities and Exchange Commission on August 25, 2016 and amended on February 26, 2018, of which an aggregate offering price of \$223,272,882.54 was not sold.

Table of Contents

**PROSPECTUS SUPPLEMENT**  
(To Prospectus dated August 9, 2018)

*12,500,000 Shares*

Common Stock

*This is a public offering of shares of common stock, par value \$0.01 per share, of New York Mortgage Trust, Inc., a Maryland corporation. We are selling 12,500,000 shares of our common stock. Our common stock is listed on The Nasdaq Global Select Market, or Nasdaq, under the symbol "NYMT." On August 9, 2018, the last reported sale price of our common stock was \$6.32 per share.*

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

*Investing in our common stock involves a high degree of risk. See "Risk Factors" beginning on page S-9 of this prospectus supplement, as well as those described in our Annual Report on Form 10-K for the year ended December 31, 2017 before making an investment decision.*

|                  | <i>Price to<br/>Public</i> | <i>Underwriting<br/>Discount and<br/>Commission</i> | <i>Proceeds<br/>to Us<sup>(1)</sup></i> |
|------------------|----------------------------|---|---|
| <i>Per Share</i> | \$6.16                     | \$0.16  | \$6.00                                  |
| <i>Total</i>     | \$77,000,000.00            | \$2,000,000.00                                      | \$75,000,000.00                         |

(1) *Before deducting approximately \$270,000 in expenses payable by us.*

*We have granted the underwriters an option to purchase a maximum of 1,875,000 additional shares of common stock from us at the public offering price, less the underwriting discount, within 30 days after the date of this prospectus supplement.*

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

*We expect to deliver the shares on or about August 14, 2018 through the book-entry facilities of The Depository Trust Company.*

Joint Book-Running Managers

*Morgan Stanley*  
*Barclays*

*Credit Suisse*

*Deutsche Bank Securities*

*J.P. Morgan*

*Keefe Bruyette & Woods*

*A Stifel Company*

*RBC Capital Markets*

*UBS Investment Bank*

*The date of this prospectus supplement is August 9, 2018*

---

Table of Contents

**TABLE OF CONTENTS**

**Prospectus Supplement**

|   | <b>Page</b> |
|---|-------------|
| <u>ABOUT THIS PROSPECTUS SUPPLEMENT</u>                             | <u>S-1</u>  |
| <u>CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>         | <u>S-3</u>  |
| <u>WHERE YOU CAN FIND MORE INFORMATION</u>                          | <u>S-4</u>  |
| <u>INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC</u> | <u>S-4</u>  |
| <u>PROSPECTUS SUPPLEMENT SUMMARY</u>                                | <u>S-6</u>  |
| <u>THE OFFERING</u>   | <u>S-8</u>  |
| <u>RISK FACTORS</u>   | <u>S-9</u>  |
| <u>USE OF PROCEEDS</u>  | <u>S-10</u> |
| <u>CAPITALIZATION</u>   | <u>S-11</u> |
| <u>UNDERWRITING</u>   | <u>S-12</u> |
| <u>LEGAL MATTERS</u>  | <u>S-16</u> |
| <u>EXPERTS</u>  | <u>S-16</u> |

**Prospectus**

|   | <b>Page</b> |
|---|-------------|
| <u>ABOUT THIS PROSPECTUS</u>  | <u>ii</u>   |
| <u>CAUTIONARY NOTE REGARDING FORWARD-LOOKING INFORMATION</u>  | <u>1</u>    |
| <u>OUR COMPANY</u>  | <u>2</u>    |
| <u>RISK FACTORS</u>   | <u>3</u>    |
| <u>RATIO OF EARNINGS TO FIXED CHARGES AND OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS</u> | <u>4</u>    |
| <u>USE OF PROCEEDS</u>  | <u>5</u>    |
| <u>DESCRIPTION OF THE SECURITIES WE MAY OFFER</u>   | <u>6</u>    |
| <u>DESCRIPTION OF COMMON STOCK</u>  | <u>7</u>    |
| <u>DESCRIPTION OF PREFERRED STOCK</u>   | <u>12</u>   |
| <u>DESCRIPTION OF DEBT SECURITIES</u>   | <u>18</u>   |
| <u>GLOBAL SECURITIES</u>  | <u>31</u>   |
| <u>CERTAIN PROVISIONS OF MARYLAND LAW AND OUR CHARTER AND BYLAWS</u>  | <u>32</u>   |
| <u>MATERIAL FEDERAL INCOME TAX CONSIDERATIONS</u>   | <u>38</u>   |
| <u>PLAN OF DISTRIBUTION</u>   | <u>69</u>   |
| <u>CERTAIN LEGAL MATTERS</u>  | <u>72</u>   |
| <u>EXPERTS</u>  | <u>72</u>   |
| <u>WHERE YOU CAN FIND MORE INFORMATION</u>  | <u>72</u>   |
| <u>INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC</u>   | <u>72</u>   |

You should rely only on the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus and any applicable free writing prospectus in making a decision about whether to invest in our common stock. We have not, and the underwriters have not, authorized anyone to provide you with additional or different information. If anyone provides you with different or additional information, you should not rely on it.

We are not, and the underwriters are not, making an offer of the common stock covered by this prospectus supplement and the accompanying prospectus in any jurisdiction where the offer is not permitted.

**You should assume that the information contained in or incorporated by reference in this prospectus supplement, the accompanying prospectus and any applicable free writing prospectus is accurate only as of their respective dates or on the date or dates that are specified in such documents. Our business, financial condition, results of operations and prospects may have changed since those dates.**

Table of Contents

**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document consists of two parts. The first part is the prospectus supplement, which describes the specific terms of this offering and our common stock. The second part is the accompanying prospectus, which describes more general information, some of which may not apply to this offering. Before you buy any shares of our common stock, it is important for you to read and consider the information contained in this prospectus supplement and the accompanying prospectus together with additional information described under the headings "Incorporation by Reference of Information Filed with the SEC" and "Where You Can Find More Information" in this prospectus supplement.

To the extent the information set forth in this prospectus supplement differs in any way from the information set forth in the accompanying prospectus or the documents incorporated by reference in this prospectus supplement or the accompanying prospectus from a filing we made with the Securities and Exchange Commission, or the SEC, under the Securities Exchange Act of 1934, as amended, or the Exchange Act, prior to the date of this prospectus supplement, the information in this prospectus supplement will supersede such information. In addition, to the extent any information incorporated by reference in this prospectus supplement or the accompanying prospectus from a filing we make with the SEC after the date of this prospectus supplement adds to, updates or changes information contained in this prospectus supplement, the accompanying prospectus or an earlier filing we made with the SEC that is incorporated by reference in this prospectus supplement or the accompanying prospectus, the information in such later filing shall be deemed to modify, update and, where applicable, supersede such information in this prospectus supplement, the accompanying prospectus or the earlier filing with the SEC.

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

"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 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, or Fannie Mae, or the Federal Home Loan Mortgage Corporation, or Freddie Mac and, together with Fannie Mae, the GSEs, or an agency of the U.S. government, such as the Government National Mortgage Association, or 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;

"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 POs and certain IOs and mezzanine securities and that we consolidate in our financial statements in accordance with U.S. GAAP;

"distressed residential loans" refers to pools of performing and 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;



Table of Contents

"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 residential mortgage loans, including performing, re-performing and non-performing mortgage loans;

"non-QM loans" refers to residential mortgage loans that are not deemed "qualified mortgage," or "QM," loans under the rules of the Consumer Financial Protection Bureau;

"POs" refers to mortgage-backed securities that represent the right to the principal component of the cash flow from a pool of mortgage loans;

"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" refer to liens on residential properties that are subordinate to more senior mortgages or loans.

Table of Contents

**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

When used in this prospectus supplement and in the accompanying prospectus and in the documents incorporated herein and therein by reference, in future 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, are intended to identify "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the 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; our ability to maintain our qualification as a REIT for U.S. federal tax purposes; our ability to maintain our exemption from registration under the Investment Company Act of 1940, as amended, or 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 Annual Report on Form 10-K for the year ended December 31, 2017, as updated by 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.

Table of Contents

**WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational requirements of the Exchange Act, and, in accordance with those requirements, file reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information, as well as the registration statement and the exhibits and schedules thereto, can be inspected at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. Copies of such materials may be obtained from the SEC at prescribed rates. Information about the operation of the public reference facilities may be obtained by calling the SEC at 1-800-SEC-0330. The SEC also maintains a website that contains reports, proxy statements and other information regarding registrants, including us, that file such information electronically with the SEC. The address of the SEC's website is [www.sec.gov](http://www.sec.gov). Our common stock is listed on NASDAQ and our corporate website is located at [www.nymtrust.com](http://www.nymtrust.com). Our corporate website and the information contained therein or connected thereto do not constitute a part of this prospectus supplement, the accompanying prospectus or any amendment or supplement thereto.

We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the securities offered by this prospectus supplement and the accompanying prospectus. This prospectus supplement and the accompanying prospectus, which form a part of the registration statement, do not contain all of the information set forth in the registration statement and its exhibits and schedules, certain parts of which are omitted in accordance with the SEC's rules and regulations. For further information about us and our common stock, we refer you to the registration statement and to such exhibits and schedules. Statements contained in this prospectus supplement and the accompanying prospectus concerning the provisions of any document filed as an exhibit to the registration statement or otherwise filed with the SEC are not necessarily complete, and in each instance reference is made to the copy of such document so filed. Each such statement is qualified in its entirety by such reference.

**INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC**

The SEC allows us to "incorporate by reference" into this prospectus supplement and the accompanying prospectus the information we file with the SEC, which means that we can disclose important business, financial and other information to you by referring you to other documents separately filed with the SEC. The information incorporated by reference is deemed to be part of this prospectus supplement, except to the extent superseded by information contained herein or by information contained in documents filed with the SEC after the date of this prospectus supplement.

We incorporate by reference the following documents or information filed with the SEC and any subsequent filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement and prior to completion of the offering of our common stock described in this prospectus supplement and the accompanying prospectus (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

our Annual Report on Form 10-K for the fiscal year ended December 31, 2017;

our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2018 and June 30, 2018;

our Current Reports on Form 8-K and Form 8-K/A, as applicable, filed on February 2, 2018, March 12, 2018, March 15, 2018, March 19, 2018, April 20, 2018, June 6, 2018, June 6, 2018, June 7, 2018, June 18, 2018 and August 2, 2018;

the information specifically incorporated by reference into our Annual Report on Form 10-K for the year ended December 31, 2017 from our definitive proxy statement on Schedule 14A filed on April 20, 2018; and

Table of Contents

the description of our common stock in our Registration Statement on Form 8-A filed on June 3, 2008.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus supplement and the accompanying prospectus are delivered, upon his or her written or oral request, a copy of any or all documents referred to above that have been or may be incorporated by reference into this prospectus supplement and the accompanying prospectus, excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You may request those documents from us by contacting: Corporate Secretary, New York Mortgage Trust, Inc., 275 Madison Avenue, New York, New York 10016, telephone: (212) 792-0107.

S-5

---

Table of Contents

**PROSPECTUS SUPPLEMENT SUMMARY**

*The following summary is qualified in its entirety by the more detailed information and consolidated financial statements and notes thereto appearing elsewhere in, or incorporated by reference into, this prospectus supplement and the accompanying prospectus. Because this is a summary, it does not contain all of the information that is important to you. You should read the entire prospectus supplement and the accompanying prospectus, including the section entitled "Risk Factors" and the documents incorporated by reference into this prospectus supplement and the accompanying prospectus, before making an investment decision.*

**Our Company**

We are a REIT for U.S. 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 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 markets 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, non-QM loans, collateralized mortgage obligations and securities issued by newly originated residential securitizations, including credit sensitive securities from these securitizations.

We intend to maintain our focus on residential and multi-family credit assets, which we believe will benefit from improving credit metrics. Consistent with this approach to capital allocation, we acquired an additional \$139.8 million of residential and multi-family credit assets during the six months ended June 30, 2018. In periods where we have working capital in excess of our short-term liquidity needs, we may invest the excess in more liquid assets, such as Agency RMBS, until such time as we are able to re-invest that capital in credit assets that meet our underwriting requirements. Our investment and capital allocation decisions depend on prevailing market conditions, among other factors, and may change over time in response to opportunities available in different economic and capital market environments.

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 borrowings 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 certain distressed residential loans that are managed by Headlands Asset Management, LLC, or Headlands, pursuant to a management agreement. As part of our investment strategy, we may, from time to time, utilize one or more external investment managers to manage specific asset types that we target or own.

We have elected to be taxed as a REIT for U.S. 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, or the Code, with respect thereto. Accordingly, we do not expect to be subject to U.S. federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income,

Table of Contents

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 U.S. federal, state and local taxes on our income generated in our TRSs.

Our principal executive offices are located at 275 Madison Avenue, New York, New York 10016, and our telephone number is (212) 792-0107. Our corporate website is [www.nymtrust.com](http://www.nymtrust.com). Our corporate website and the information contained therein or connected thereto do not constitute a part of this prospectus supplement, the accompanying prospectus or any amendment or supplement thereto.

**Recent Developments**

*Internalization of Distressed Residential Loan Strategy*

On August 2, 2018, we announced that we had begun the process to internalize the management of our distressed residential loan strategy as part of an effort to expand our capabilities in self managing, sourcing and creating single family residential credit assets. We have recently hired ten investment professionals to build and expand our single family residential credit asset platform. We expect that the single family residential credit team will ultimately be comprised of 15 to 20 professionals in total. We believe the internalization of the management of our distressed residential loans, as well as expanded capabilities in sourcing and originating, will strengthen our ability to capitalize on future credit investment opportunities.

In connection with the internalization, we also announced that we provided Headlands with written notice that we will not renew our management agreement with Headlands (the "Management Agreement") at the end of that agreement's current term, which is set to expire on June 30, 2019. Headlands has provided investment management services to us with respect to our investments in distressed residential loans since 2010. Pursuant to the terms of the Management Agreement, Headlands will continue to manage the loans sourced by it and currently owned by us (the "Headlands Loans") and will be entitled to continue to receive a base management fee, incentive fees (to the extent earned) and certain ancillary fees on such assets until such assets have been liquidated. In addition, in accordance with the Management Agreement, Headlands has an exclusive right of first refusal on an ongoing basis to purchase or arrange for purchase any of the Headlands Loans. The Company anticipates working directly with Headlands in future months to finalize the details around the transition of its services to the Company. As of June 30, 2018, Headlands managed approximately \$404.4 million of our Assets (as defined in the Management Agreement) and approximately \$218.1 million of our Equity (as defined in the Management Agreement).

The internalization represents a continuation of steps taken in recent years by us to fully internalize our investment management operations. In May 2016, we announced the internalization of our multi-family credit investment platform through the acquisition of RiverBanc LLC. During the second quarter of 2018, we completely exited out of our Agency IO strategy, which had been managed externally prior to January 1, 2018.

*Common Equity Issuance*

Subsequent to June 30, 2018, we issued 289,585 shares of our common stock at an average gross sales price of \$6.12 per share for net proceeds of \$1.7 million, after deducting placement fees, pursuant to our "at-the-market" equity offering program.

Table of Contents

**THE OFFERING**

|  |  |
|--|--|
| Common Stock Offered                                 | 12,500,000 shares  |
| Shares Outstanding After the Offering <sup>(1)</sup> | 137,185,626 shares   |
| Use of Proceeds                                      | We expect to use the net proceeds of this offering for general business purposes, which may include, among other things, acquiring our targeted assets, including both single-family residential and multi-family credit investments, and various other types of mortgage-related and residential housing-related assets that we may target from time to time and general working capital purposes. See "Use of Proceeds."   |
| Listing  | Our common stock is listed on Nasdaq under the symbol "NYMT."  |
| Ownership Restrictions                               | Our charter provides that generally no person may own, or be deemed to own by virtue of the attribution provisions of the Code, either (i) more than 9.9% in value of the aggregate of our outstanding shares of capital stock or (ii) more than 9.9% in value or in number of shares, whichever is more restrictive, of the aggregate of our outstanding shares of common stock. Our Board of Directors has discretion to grant exemptions from the 9.9% ownership limitations, subject to such terms and conditions as it deems appropriate. These restrictions on ownership of our common stock and capital stock are intended to, among other purposes, preserve our qualification as a REIT for U.S. federal income tax purposes. See "Description of Common Stock Restrictions on Ownership and Transfer" and "Material Federal Income Tax Considerations" in the accompanying prospectus. |
| Risk Factors   | An investment in our common stock is subject to a high degree of risk. Please refer to "Risk Factors" and other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before investing in shares of our common stock.  |

---

(1) Assumes no exercise of the underwriters' option to purchase 1,875,000 additional shares of common stock. Based on 124,685,626 shares of common stock outstanding as of August 8, 2018.

Table of Contents

**RISK FACTORS**

*Investing in shares of our common stock involves a high degree of risk. Please see the risks described below in addition to the risk factors included in our most recent Annual Report on Form 10-K. Such risks are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect us and the market value of our common stock. The risks described could affect our business, financial condition, liquidity, results of operations, prospects and the market value of our common stock. In such a case, you may lose all or part of your original investment. You should consider carefully the risks described below and in these reports, as well as other information and data set forth in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein before making an investment decision with respect to the shares of our common stock.*

***Our management team has broad discretion in the use of proceeds of this offering and, despite our efforts, we may invest or spend the proceeds of this offering in ways with which you may not agree or in ways which may not yield a significant return.***

Our management will have broad discretion over the use of proceeds from this offering. The net proceeds from this offering will be used for general business purposes, which may include, among other things, acquiring our targeted assets, including both single-family residential and multi-family credit investments, and various other types of mortgage-related and residential housing-related assets that we may target from time to time and general working capital purposes. Our management will have considerable discretion in the application of the net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. As a result, the net proceeds from this offering may be used for general business purposes that do not increase our operating results or enhance the value of our common stock.

***The market price of our common stock could be substantially affected by various factors.***

The market price of our common stock depends on many factors, which may change from time to time, including:

prevailing interest rates, changes in which may have an adverse effect on the market price of our common stock;

trading prices of common and preferred equity securities issued by REITs and other similar companies;

the yield from dividends on our common stock as compared to yields on other financial instruments;

general economic and financial market conditions;

government action or regulation;

the financial condition, performance and prospects of us and our competitors;

changes in financial estimates or recommendations by securities analysts with respect to us, our competitors or our industry;

our issuance of additional equity or debt securities; and

actual or anticipated variations in quarterly operating results of us and our competitors.

## Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

Many of the factors listed above are beyond our control. These factors may cause the market price of shares of our common stock to decline, regardless of our financial condition, results of operations, business or prospects. It is impossible to assure you that the market price of shares of our common stock will not fall in the future.

S-9

---

Table of Contents

**USE OF PROCEEDS**

We estimate that the net proceeds of this offering will be approximately \$74.7 million (or approximately \$86.0 million if the underwriters exercise their option to purchase additional shares in full), in each case, after deducting the underwriting discount and commission, as well as estimated offering expenses of approximately \$270,000 payable by us.

We expect to use the net proceeds of this offering for general business purposes, which may include, among other things, acquiring our targeted assets, including both single-family residential and multi-family credit investments, and various other types of mortgage-related and residential housing-related assets that we may target from time to time and general working capital purposes.

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

The underwriters and/or their affiliates currently provide, and in the future may continue to provide, to us master repurchase agreement financing. To the extent that we use the net proceeds from this offering to repay amounts we have borrowed or may borrow or re-borrow in the future under these financing agreements, the underwriters and/or their affiliates will receive their pro rata portion of any of the proceeds from this offering that we use to repay any such amounts. See "Underwriting."

Table of Contents**CAPITALIZATION**

The following table sets forth our cash and cash equivalents and total capitalization as of June 30, 2018 (1) on an actual basis and (2) on an as adjusted basis to give effect to the consummation of this offering. This table should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our condensed consolidated financial statements and the notes thereto incorporated by reference in this prospectus supplement.

|   | As of June 30, 2018    |                            |
|---|------------------------|----------------------------|
|   | (unaudited)            |                            |
|   | Actual                 | As Adjusted <sup>(1)</sup> |
|   | (Dollars in thousands) |                            |
| <b>Cash and cash equivalents</b>  | \$ 84,717              | \$ 159,447                 |
| <b>Debt:</b>  |                        |                            |
| Financing arrangements, portfolio investments   | \$ 1,179,961           | \$ 1,179,961               |
| Financing arrangements, residential mortgage loans  | 192,233                | 192,233                    |
| Securitized debt  | 61,026                 | 61,026                     |
| Subordinated debentures   | 45,000                 | 45,000                     |
| Convertible notes   | 129,738                | 129,738                    |
| <b>Total debt<sup>(2)</sup></b>   | \$ 1,607,958           | \$ 1,607,958               |
| <b>Non-controlling interest in consolidated variable interest entities</b>  | \$ 234                 | 234                        |
| <b>Stockholders' equity</b>   |                        |                            |
| Preferred stock, \$0.01 par value, 7.75% Series B cumulative redeemable, \$25 liquidation preference per share, 6,000,000 shares authorized, 3,000,000 shares issued and outstanding actual and as adjusted                           | \$ 72,397              | \$ 72,397                  |
| Preferred stock, \$0.01 par value, 7.875% Series C cumulative redeemable, \$25 liquidation preference per share, 4,140,000 shares authorized, 3,600,000 shares issued and outstanding actual and as adjusted                          | 86,862                 | 86,862                     |
| Preferred stock, \$0.01 par value, 8.00% Series D Fixed-to-Floating Rate cumulative redeemable, \$25 liquidation preference per share, 5,750,000 shares authorized and 5,400,000 shares issued and outstanding actual and as adjusted | 130,496                | 130,496                    |
| Common stock, \$0.01 par value, 400,000,000 shares authorized, 124,312,846 shares issued and outstanding actual and 136,812,846 shares issued and outstanding as adjusted   | 1,243                  | 1,368                      |
| Additional paid-in capital  | 825,960                | 900,565                    |
| Accumulated other comprehensive loss  | (25,450)               | (25,450)                   |
| Accumulated deficit   | (75,541)               | (75,541)                   |
| <b>Company's stockholders' equity</b>   | \$ 1,015,967           | \$ 1,090,697               |
| <b>Total capitalization<sup>(3)</sup></b>   | \$ 2,623,925           | \$ 2,698,655               |

(1)

The as adjusted amount reflects the net proceeds to us from the sale of 12,500,000 shares of our common stock in this offering at a net price of \$6.00 per share and the receipt of the total estimated net proceeds of approximately \$74.7 million, after deducting the underwriting discount and commission and estimated offering expenses payable by us (assuming no exercise of the underwriters' option to purchase additional shares).

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

- (2) Excludes our residential collateralized debt obligations, or Residential CDOs, and 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. The Residential CDOs permanently finance our residential mortgage loans held in securitization trusts and are non-recourse to us. We do not have any claims to the assets (other than those securities represented by our first loss and mezzanine securities) or obligations for the liabilities of the Consolidated K-Series.
- (3) Total capitalization does not include non-controlling interest in consolidated variable interest entities.

S-11

---

Table of Contents**UNDERWRITING**

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus supplement, the underwriters named below, for whom Morgan Stanley & Co. LLC and Credit Suisse Securities (USA) LLC are acting as representatives, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

| <b>Name</b>                        | <b>Number of Shares</b> |
|------------------------------------|-------------------------|
| Morgan Stanley & Co. LLC           | 3,250,000               |
| Credit Suisse Securities (USA) LLC | 1,750,000               |
| Barclays Capital Inc.              | 1,250,000               |
| Deutsche Bank Securities Inc.      | 1,250,000               |
| J.P. Morgan Securities, LLC        | 1,250,000               |
| Keefe, Bruyette & Woods, Inc.      | 1,250,000               |
| RBC Capital Markets, LLC           | 1,250,000               |
| UBS Securities LLC                 | 1,250,000               |
| <b>Total:</b>                      | <b>12,500,000</b>       |

The underwriters and the representatives are collectively referred to as the "underwriters" and the "representatives," respectively. The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus supplement are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus supplement if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' option to purchase additional shares described below.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the offering price listed on the cover page of this prospectus supplement and part to certain dealers at a price that represents a concession not in excess of \$0.10 per share under the public offering price. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives.

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus supplement, to purchase up to 1,875,000 additional shares of common stock at the public offering price listed on the cover page of this prospectus supplement, less underwriting discounts and commissions. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional shares of common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table.

The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us. These amounts are shown assuming both no exercise

Table of Contents

and full exercise of the underwriters' option to purchase up to an additional 1,875,000 shares of common stock.

|   | Per<br>Share | No<br>Exercise   | Total            | Full<br>Exercise |
|---|--------------|------------------|------------------|------------------|
| Public offering price                                   | \$ 6.16      | \$ 77,000,000.00 | \$ 88,550,000.00 | \$ 88,550,000.00 |
| Underwriting discounts and commissions to be paid by us | \$ 0.16      | \$ 2,000,000.00  | \$ 2,300,000.00  | \$ 2,300,000.00  |
| Proceeds, before expenses, to us                        | \$ 6.00      | \$ 75,000,000.00 | \$ 86,250,000.00 | \$ 86,250,000.00 |

The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately \$270,000. Our common stock has been approved for quotation on Nasdaq under the trading symbol "NYMT".

We have agreed that, except for the common stock to be issued hereunder, we will not without the prior written consent of Morgan Stanley & Co. LLC and Credit Suisse Securities (USA) LLC on behalf of the underwriters, (which consent may be withheld in the representatives' sole discretion), directly or indirectly, issue, sell, offer, agree to sell, contract or grant any option to sell (including, without limitation, pursuant to any short sale), pledge, make any short sale of, maintain any short position with respect to, transfer, establish or maintain an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, enter into any swap, derivative transaction or other arrangement (whether such transaction is to be settled by delivery of common stock, other securities, cash or other consideration) that transfers to another, in whole or in part, any of the economic consequences of ownership, or otherwise dispose of any shares of common stock, options or warrants to acquire shares thereof, or securities exchangeable or exercisable for or convertible into shares thereof, or publicly announce an intention to do any of the foregoing, for a period commencing on the date hereof and continuing through the close of trading on the date 30 days after the date of this prospectus supplement.

All of our directors and executive officers have agreed that, for a period of 60 days after the date of this prospectus supplement, or the restricted period, subject to certain limited exceptions (including the issuance of the shares in this offering), they will not directly or indirectly, without the prior consent of Morgan Stanley & Co. LLC and Credit Suisse Securities (USA) LLC on behalf of the underwriters, (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of our common stock (including, without limitation, shares of our common stock that may be deemed to be beneficially owned by us or them in accordance with the rules and regulations of the SEC and shares of our common stock that may be issued upon exercise of any options or warrants) or securities convertible into or exercisable or exchangeable for our common stock (other than our stock and shares issued pursuant to employee benefit plans, qualified stock option plans, or other employee compensation plans existing on the date of this prospectus supplement), or sell or grant options, rights or warrants with respect to any shares of our common stock or securities convertible into or exchangeable for our common stock (other than the grant of options pursuant to option plans existing on the date of this prospectus supplement), (2) enter into any swap or other derivatives transaction described in clause (1) or this clause (2) that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of our common stock, whether any such transaction described in clause (1) or this clause (2) is to be settled by delivery of common stock or other securities, in cash or otherwise, (3) make any demand for or exercise any right or file or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any shares of our common stock or securities convertible, exercisable or exchangeable into our common stock (other than any registration statement on Form S-8), or (4) publicly disclose the intention to do any of the foregoing.

Table of Contents

Notwithstanding the foregoing limitations, our directors and executive officers will be permitted to transfer any shares of our common stock or securities convertible into or exchangeable for our common stock, either during their lifetime or on their death, by gift, will or intestate succession, or by judicial decree, provided that (i) such transfer does not involve a disposition for value, (ii) the transferee agrees to be bound in writing by the restrictions set forth in the immediately preceding paragraph for the remainder of the restricted period and (iii) no filing by the transferor or transferee under the Exchange Act is required or voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the restricted period). In addition, notwithstanding anything to the contrary contained in the lock-up agreements described above, our directors and executive officers may, without the approval of Morgan Stanley & Co. LLC and Credit Suisse Securities (USA) LLC, exchange with our company or have our company withhold any shares of our common stock or any securities convertible into or exchangeable or exercisable for our common stock to satisfy the tax withholding obligations related to the vesting of shares of our common stock issued pursuant to stock option plans, stock purchase or other equity incentive plans or any dividend reinvestment plan as those plans are in effect on the date of the lock-up agreements.

Morgan Stanley & Co. LLC and Credit Suisse Securities (USA) LLC in their sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time. When determining whether or not to release common stock and other securities from lock-up agreements, Morgan Stanley & Co. LLC and Credit Suisse Securities (USA) LLC will consider, among other factors, the holder's reasons for requesting the release, the number of shares of common stock and other securities for which the release is being requested and market conditions at the time.

In order to facilitate the offering of the common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the option. The underwriters can close out a covered short sale by exercising the option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the option. The underwriters may also sell shares in excess of the option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time.

We and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus supplement in electronic format may be made available on websites maintained by one or more underwriters, or selling group members, if any, participating in this offering. The representatives may agree to allocate a number of shares of common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters that may make Internet distributions on the same basis as other allocations.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage

Table of Contents

activities. Certain of the underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for us, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments. More specifically, the underwriters and/or certain of their affiliates have been, may be, or are counterparties under one or more of our repurchase agreements. The underwriters and their respective affiliates may also make investment recommendations or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long or short positions in such securities and instruments.

We are a party to master repurchase agreements with each of Barclays Capital Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., J.P. Morgan Securities, LLC, Morgan Stanley & Co. LLC and RBC Capital Markets, LLC or their affiliates pursuant to which each of Barclays Capital Inc., Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., J.P. Morgan Securities, LLC, Morgan Stanley & Co. LLC and RBC Capital Markets, LLC or their affiliates may receive customary fees and expenses. As of June 30, 2018, we had approximately \$355.1 million, \$113.5 million and \$115.0 million of borrowings outstanding under master repurchase agreements with Deutsche Bank Securities Inc., J.P. Morgan Securities, LLC and RBC Capital Markets, LLC or their respective affiliates, respectively.

Table of Contents

**LEGAL MATTERS**

Certain legal matters will be passed upon for us by Vinson & Elkins L.L.P. The underwriters are being represented in connection with this offering by Skadden, Arps, Slate, Meagher & Flom LLP. Select legal matters relating to Maryland law, including the validity of our common stock being offered in this prospectus supplement and the accompanying prospectus, will be passed upon for us by Venable LLP.

**EXPERTS**

The audited consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting incorporated by reference in this prospectus and elsewhere in the registration statement have been so incorporated by reference in reliance upon the reports of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in accounting and auditing.

S-16

---

Table of Contents

**PROSPECTUS**

## **Common Stock Preferred Stock Debt Securities**

---

We may offer and sell, from time to time, in one or more offerings, 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 August 8, 2018, was \$6.33 per share. Our shares of 7.75% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share, are listed on Nasdaq under the symbol "NYMTP." Our shares of 7.875% Series C Cumulative Redeemable Preferred Stock, par value \$0.01 per share, are listed on Nasdaq under the symbol "NYMTO." Our shares of 8.00% Series D Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock, par value \$0.01 per share, 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 August 9, 2018.**

---

Table of Contents

**TABLE OF CONTENTS**

|   | <b>Page</b> |
|---|-------------|
| <u>ABOUT THIS PROSPECTUS</u>  | ii          |
| <u>CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>   | 1           |
| <u>OUR COMPANY</u>  | 2           |
| <u>RISK FACTORS</u>   | 3           |
| <u>RATIO OF EARNINGS TO FIXED CHARGES AND OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS</u> | 4           |
| <u>USE OF PROCEEDS</u>  | 5           |
| <u>DESCRIPTION OF THE SECURITIES WE MAY OFFER</u>   | 6           |
| <u>DESCRIPTION OF COMMON STOCK</u>  | 7           |
| <u>DESCRIPTION OF PREFERRED STOCK</u>   | 12          |
| <u>DESCRIPTION OF DEBT SECURITIES</u>   | 18          |
| <u>GLOBAL SECURITIES</u>  | 31          |
| <u>CERTAIN PROVISIONS OF MARYLAND LAW AND OUR CHARTER AND BYLAWS</u>  | 32          |
| <u>MATERIAL FEDERAL INCOME TAX CONSIDERATIONS</u>   | 38          |
| <u>PLAN OF DISTRIBUTION</u>   | 69          |
| <u>CERTAIN LEGAL MATTERS</u>  | 72          |
| <u>EXPERTS</u>  | 72          |
| <u>WHERE YOU CAN FIND MORE INFORMATION</u>  | 72          |
| <u>INCORPORATION BY REFERENCE OF INFORMATION FILED WITH THE SEC</u>   | 72          |

Table of Contents

**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, you should carefully read both this prospectus, any accompanying prospectus supplement and 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, where applicable, 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 fixed-rate" refers to Agency RMBS comprised of fixed-rate RMBS;

"Agency IOs" refers to Agency RMBS comprised of IO RMBS;

"Agency RMBS" refers to RMBS representing interests in or obligations backed by pools of mortgage loans issued or guaranteed by a government sponsored enterprise ("GSE"), such as the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"), 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;

Table of Contents

"CDO" refers to collateralized debt obligation;

"CLO" refers to collateralized loan obligation;

"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;

"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 POs and certain IOs and mezzanine securities and that we consolidate into our financial statements in accordance with U.S. GAAP;

"Consolidated VIEs" refers to VIEs where the Company is the primary beneficiary, as it has both the power to direct the activities that most significantly impact the economic performance of the VIE and a right to receive benefits or absorb losses of the entity that could be potentially significant to the VIE;

"distressed residential loans" refers to pools of performing and 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;

"IO RMBS" refers to RMBS comprised of IOs;

"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;

"non-QM loans" refers to residential mortgage loans that are not deemed "qualified mortgage," or "QM," loans under the rules of the Consumer Financial Protection Bureau;

"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;

## Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

"second mortgages" and "second mortgage loans" each refers to liens on residential properties that are subordinate to more senior mortgages or loans; and

"Variable Interest Entity" or "VIE" refers to an entity in which equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties.

Table of Contents

**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, are intended to 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; 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.

Table of Contents

**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 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 markets 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, non-QM loans, 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 borrowings 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 certain distressed residential loans that are managed by Headlands Asset Management, LLC pursuant to a management agreement. As part of our investment strategy, we may, from time to time, utilize one or more external investment managers 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, 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](http://www.nymtrust.com). Our website and the information contained at or connected to our website do not constitute a part of this prospectus or any accompanying prospectus supplement.

Table of Contents

**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 presently deemed material by us, 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 each of the last five fiscal years.

|   | Six Months Ended |      | Year Ended December 31, |      |      |      |
|---|------------------|------|-------------------------|------|------|------|
|   | June 30, 2018    | 2017 | 2016                    | 2015 | 2014 | 2013 |
| Ratio of earnings to fixed charges  | 2.84             | 2.96 | 3.03                    | 3.89 | 6.59 | 4.32 |
| Ratio of earnings to combined fixed charges and preferred stock dividends | 2.04             | 2.21 | 2.16                    | 2.79 | 5.35 | 3.69 |

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 June 30, 2018, 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 June 30, 2018, 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. For the period October 13, 2017 to June 30, 2018, 5,400,000 shares of our 8.00% Series D Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock, \$0.01 par value per share, or our Series D Preferred Stock, were issued and outstanding.

Table of Contents

**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.

Table of Contents

**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.

Table of Contents

**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 August 8, 2018, 124,685,626 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.

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.

Table of Contents

**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 these actions provides us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. The additional classes or series, as well as our common stock, are available for issuance without further action by our stockholders, unless stockholder action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our board of directors has no intention at the present time of doing so, it could authorize us to issue a class or series that could, depending upon the terms of such class or series, delay, defer or prevent a transaction or a change in control of us that might involve a premium price for our common stock or otherwise be in the best interest of holders of our common stock.

**Restrictions on Ownership and Transfer**

In order to qualify as a REIT under the Internal Revenue Code, our shares of stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year, other than our first REIT taxable year. Also, no more than 50% of the value of our outstanding shares of capital stock may be owned, directly or constructively, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of any taxable year. In addition, if certain "disqualified organizations" hold our stock, although the law on the matter is unclear, a tax might be imposed on us if a portion of our assets is treated as a taxable mortgage pool ("TMP"). In addition, a tax will be imposed on us if certain disqualified organizations hold our stock and we hold a residual interest in a real estate mortgage investment conduit, or REMIC.

To help us to qualify as a REIT, among other purposes, our charter, subject to certain exceptions, contains restrictions on the number of shares of our capital stock that a person may own and prohibits certain entities from owning our stock. As amended, our charter provides that generally no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, either (i) more than 9.9% in value of the aggregate of our outstanding shares of capital stock or (ii) more than 9.9% in value or number of shares, whichever is more restrictive, of the outstanding shares of our common stock. Our board of directors is permitted under our charter to increase or decrease the common stock ownership limit and the aggregate stock ownership limit from time to time, and to waive these ownership limits (prospectively or retroactively) on a case by case basis so long as the waiver will not allow five or fewer individuals to beneficially own more than 49.9% in value of our outstanding capital stock or otherwise cause us to fail to comply with applicable REIT ownership requirements under the Internal Revenue Code. Our charter prohibits the following "disqualified organizations" from owning our stock: the U.S.; any state or political subdivision of the U.S.; any foreign government; any international organization; any agency or instrumentality of any of the foregoing; any other tax-exempt organization, other than a farmer's cooperative described in Section 521 of the Internal Revenue Code, that is exempt from both income taxation and from taxation under the unrelated business taxable income provisions of the Internal Revenue Code and any rural electrical or telephone cooperative.

Our charter also prohibits any person from (a) beneficially or constructively owning shares of our capital stock that would result in our being "closely held" within the meaning of Section 856(h) of the Internal Revenue Code (without regard to whether the ownership interest is held in the last half of the taxable year) and (b) transferring shares of our capital stock if such transfer would result in our capital

Table of Contents

stock being beneficially owned by fewer than 100 persons. Any person who acquires or attempts or intends to acquire beneficial ownership of shares of our capital stock that will or may violate any of the foregoing restrictions on transferability and ownership will be required to give notice immediately to us or, in the case of a proposed or attempted transaction, give at least 15 days prior written notice, and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT. The foregoing restrictions on transfer and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

Our board of directors, in its sole discretion, may exempt (prospectively or retroactively) a person from the above ownership limits and any of the restrictions described in the first sentence of the paragraph directly above. However, our board of directors will grant an exemption to any person only if it obtains such representations, covenants and undertakings as our board of directors may deem appropriate in order to determine that granting the exemption would not result in our losing our status as a REIT. As a condition of granting the exemption, our board of directors may require a ruling from the Internal Revenue Service, or the IRS, or an opinion of counsel, in either case in form and substance satisfactory to the board of directors, in its sole discretion, in order to determine or ensure our status as a REIT.

Any transfer that results in our shares of stock being owned by fewer than 100 persons will be void. However, if any transfer of our shares of stock occurs which, if effective, would result in any person beneficially or constructively owning shares of stock in excess or in violation of the above transfer or ownership limitations, known as a prohibited owner, then that number of shares of stock, the beneficial or constructive ownership of which otherwise would cause such person to violate the transfer or ownership limitations (rounded up to the nearest whole share), will be automatically transferred to a charitable trust for the exclusive benefit of a charitable beneficiary, and the prohibited owner will not acquire any rights in such shares. This automatic transfer will be considered effective as of the close of business on the business day before the violative transfer. If the transfer to the charitable trust would not be effective for any reason to prevent the violation of the above transfer or ownership limitations, then the transfer of that number of shares of stock that otherwise would cause any person to violate the above limitations will be void. Shares of stock held in the charitable trust will continue to constitute issued and outstanding shares of our stock. The prohibited owner will not benefit economically from ownership of any shares of stock held in the charitable trust, will have no rights to dividends or other distributions and will not possess any rights to vote or other rights attributable to the shares of stock held in the charitable trust. The trustee of the charitable trust will be appointed by us and must be unaffiliated with us or any prohibited owner and will have all voting rights and rights to dividends or other distributions with respect to shares of stock held in the charitable trust, and these rights will be exercised for the exclusive benefit of the trust's charitable beneficiary. Any dividend or other distribution paid to a prohibited owner before our discovery that shares of stock have been transferred to the trustee will be paid by the prohibited owner to the trustee upon demand, and any dividend or other distribution authorized but unpaid will be paid when due to the trustee. Any dividend or other distribution so paid to the trustee will be held in trust for the trust's charitable beneficiary. Subject to Maryland law, effective as of the date that such shares of stock have been transferred to the trustee, the trustee, in its sole discretion, will have the authority to:

rescind as void any vote cast by a prohibited owner prior to our discovery that such shares have been transferred to the trustee; and

recast such vote in accordance with the desires of the trustee acting for the benefit of the trust's beneficiary.

However, if we have already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast such vote.

Table of Contents

Within 20 days of receiving notice from us that shares of stock have been transferred to the charitable trust, and unless we buy the shares first as described below, the trustee will sell the shares of stock held in the charitable trust to a person, designated by the trustee, whose ownership of the shares will not violate the ownership limitations in our charter. Upon the sale, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the prohibited owner and to the charitable beneficiary. The prohibited owner will receive the lesser of:

the price paid by the prohibited owner for the shares or, if the prohibited owner did not give value for the shares in connection with the event causing the shares to be held in the charitable trust (for example, in the case of a gift or devise), the market price of the shares on the day of the event causing the shares to be held in the charitable trust; and

the price per share received by the trustee from the sale or other disposition of the shares held in the charitable trust (less any commission and other expenses of a sale).

The trustee may reduce the amount payable to the prohibited owner by the amount of dividends and distributions paid to the prohibited owner that are owed by the prohibited owner to the trustee. Any net sale proceeds in excess of the amount payable to the prohibited owner will be paid immediately to the charitable beneficiary. If, before our discovery that shares of stock have been transferred to the charitable trust, such shares are sold by a prohibited owner, then:

such shares will be deemed to have been sold on behalf of the charitable trust; and

to the extent that the prohibited owner received an amount for such shares that exceeds the amount that the prohibited owner was entitled to receive as described above, the excess must be paid to the trustee upon demand.

In addition, shares of stock held in the charitable trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of:

the price per share in the transaction that resulted in such transfer to the charitable trust (or, in the case of a gift or devise, the market price at the time of the gift or devise); and

the market price on the date we, or our designee, accepts such offer.

We may reduce the amount payable to the prohibited owner by the amount of dividends and other distributions paid to the prohibited owner that are owed by the prohibited owner to the trustee. We may pay the amount of such reduction to the trustee for the benefit of the charitable beneficiary. We will have the right to accept the offer until the trustee has sold the shares of stock held in the charitable trust. Upon such a sale to us, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the prohibited owner and any dividends or other distributions held by the trustee will be paid to the charitable beneficiary.

All certificates representing shares of our capital stock will bear a legend referring to the restrictions described above.

Every holder of more than 5% (or such lower percentage as required by the Internal Revenue Code or the regulations promulgated thereunder) in value of all classes or series of our capital stock, including shares of common stock, within 30 days after the end of each taxable year, will be required to give written notice to us stating the name and address of such holder, the number of shares of each class and series of shares of our stock that the holder beneficially owns and a description of the manner in which the shares are held. Each holder shall provide to us such additional information as we may request in order to determine the effect, if any, of the holder's beneficial ownership on our status as a REIT and to ensure compliance with our ownership limitations. In addition, each beneficial or constructive owner of our capital stock (including the stockholder of record) shall upon demand be

Table of Contents

required to provide to us such information as we may request, in good faith, in order to determine our status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance and ensure compliance with our ownership limits.

Our ownership limitations could delay, defer or prevent a transaction or a change in control of us that might involve a premium price for holders of our common stock or might otherwise be in the best interest of our stockholders.

**Transfer Agent and Registrar**

The transfer agent and registrar for our shares of common stock is American Stock Transfer & Trust Company, LLC.

Table of Contents

**DESCRIPTION OF PREFERRED STOCK**

*The following summary description of our preferred 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 authorizes our board of directors to issue 200,000,000 shares of preferred stock, \$0.01 par value per share, in one or more series and with rights, preferences, privileges and restrictions that our board of directors may fix or designate without any further vote or action by our stockholders. As of August 8, 2018, 3,000,000 shares of our Series B Preferred Stock, 3,600,000 shares of our Series C Preferred Stock and 5,400,000 shares of our 8.00% Series D Fixed-to-Floating Rate Cumulative Redeemable Preferred Stock (our "Series D Preferred Stock") were issued and outstanding.

**Power to Issue Additional Shares of Preferred Stock**

Our charter authorizes our board of directors to reclassify any unissued shares of common stock into preferred stock, to classify any unissued shares of preferred stock and to reclassify any previously classified but unissued shares of any series of preferred stock previously authorized by our board of directors. We believe that the power of our board of directors to take these actions provides us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. Prior to issuance of shares of each class or series of preferred stock, our board of directors is required by Maryland law and our charter to set the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series. The additional classes or series, as well as our common stock, are available for issuance without further action by our stockholders, unless stockholder action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our board of directors has no intention at the present time of doing so, it could authorize us to issue a class or series that could, depending upon the terms of such class or series, delay, defer or prevent a transaction or a change in control of us that might involve a premium price for our preferred stock or otherwise be in the best interest of holders of our preferred stock.

**Terms**

When we issue preferred stock, it will be fully paid and nonassessable.

Articles supplementary that will become part of our charter will reflect the specific terms of any new class or series of preferred stock offered. A prospectus supplement will describe these specific terms, including:

the title and stated value;

the number of shares, liquidation preference and offering price;

the dividend rate, dividend periods and payment dates;

the date on which dividends begin to accrue or accumulate;

any auction and remarketing procedures;

any retirement or sinking fund requirement;

the price and the terms and conditions of any redemption right;



Table of Contents

any listing on any securities exchange;

the price and the terms and conditions of any conversion or exchange right;

any voting rights;

the relative ranking and preferences as to dividends, liquidation, dissolution or winding up;

any limitations on issuing any series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividends, liquidation, dissolution or winding up;

any limitations or restrictions on direct or beneficial ownership and restrictions on transfer; and

any other specific terms, preferences, rights, limitations or restrictions.

**Series B Preferred Stock**

Our Series B Preferred Stock generally provides for the following rights, preferences and obligations:

*Ranking.* Our Series B Preferred Stock ranks, with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up:

senior to all classes or series of our common stock and to all other equity securities issued by us other than equity securities referred to immediately below;

on a parity with all equity securities issued by us with terms specifically providing that those equity securities rank on a parity with our Series B Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, including our Series C Preferred Stock and our Series D Preferred Stock;

junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to our Series B Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up; and

effectively junior to all of our existing and future indebtedness (including indebtedness convertible into our common stock or preferred stock) and to the indebtedness of our existing and future subsidiaries.

*Dividend Rights.* Shares of our Series B Preferred Stock accrue cumulative cash dividends at an annual rate of 7.75% on the \$25.00 per share liquidation preference, equivalent to an annual amount of \$1.9375 per share per year.

*Liquidation Rights.* In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series B Preferred Stock will be entitled to be paid out of the assets we have legally available for distribution to our stockholders, subject to the preferential rights of the holders of any class or series of our equity securities ranking senior to

## Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

our Series B Preferred Stock with respect to the distribution of assets upon liquidation, dissolution or winding up, a liquidation preference of \$25.00 per share, plus an amount equal to any accumulated and unpaid dividends (whether or not earned or declared) to, but not including, the date of payment, before any distribution of assets is made to holders of our common stock or any other class or series of our equity securities we may issue that ranks junior to our Series B Preferred Stock as to liquidation rights.

*Redemption Provisions.* Shares of our Series B Preferred Stock are not redeemable by us prior to June 4, 2018, except in certain limited circumstances. We may, at our option, upon not less than 30 nor more than 60 days' written notice, redeem the Series B Preferred Stock, in whole or in

Table of Contents

part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus any accumulated and unpaid dividends thereon to, but not including, the date fixed for redemption. Shares of our Series B Preferred Stock have no stated maturity and are not subject to any sinking fund or mandatory redemption provisions.

*Voting Rights.* Holders of our Series B Preferred Stock will generally have no voting rights. However, if we do not pay dividends on our Series B Preferred Stock for six or more quarterly dividend periods (whether or not consecutive), the holders of our Series B Preferred Stock, voting together as a single class with the holders of all other classes or series of our preferred stock upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with our Series B Preferred Stock in the election referred to below, including our Series C Preferred Stock and our Series D Preferred Stock, will be entitled to vote for the election of two additional directors to serve on our board of directors until we pay, or declare and set apart funds for the payment of, all dividends accumulated on our Series B Preferred Stock for all past dividend periods and the then current dividend period. In addition, the affirmative vote of the holders of at least two-thirds of the outstanding shares of our Series B Preferred Stock, voting together as a single class with the holders of all other classes of our preferred stock we may issue upon which like voting rights have been conferred and are exercisable, including our Series C Preferred Stock and our Series D Preferred Stock, is required for us (a) to authorize or issue shares of any class or series of stock ranking senior to our Series B Preferred Stock with respect to the payment of dividends or the distribution of assets on liquidation, dissolution or winding up, or (b) to amend any provision of our charter, whether by merger or otherwise, so as to materially and adversely affect any rights of our Series B Preferred Stock or to take certain other actions.

*Conversion and Preemptive Rights.* Except in connection with certain changes in control of our company, shares of our Series B Preferred Stock are not convertible or exchangeable for any of our other securities or property, and holders of our Series B Preferred Stock have no preemptive rights to subscribe for any securities of our company.

For additional information regarding our Series B Preferred Stock, see our Registration Statement on Form 8-A filed with the SEC on May 31, 2013. See "Where You Can Obtain More Information."

**Series C Preferred Stock**

Our Series C Preferred Stock generally provides for the following rights, preferences and obligations:

*Ranking.* Our Series C Preferred Stock ranks, with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up:

senior to all classes or series of our common stock and to all other equity securities issued by us other than equity securities referred to immediately below;

on a parity with all equity securities issued by us with terms specifically providing that those equity securities rank on a parity with our Series C Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, including our Series B Preferred Stock and our Series D Preferred Stock;

junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to our Series C Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up; and

Table of Contents

effectively junior to all of our existing and future indebtedness (including indebtedness convertible into our common stock or preferred stock) and to the indebtedness of our existing and future subsidiaries.

*Dividend Rights.* Shares of our Series C Preferred Stock accrue cumulative cash dividends at an annual rate of 7.875% on the \$25.00 per share liquidation preference, equivalent to an annual amount of \$1.96875 per share per year.

*Liquidation Rights.* In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series C Preferred Stock will be entitled to be paid out of the assets we have legally available for distribution to our stockholders, subject to the preferential rights of the holders of any class or series of our equity securities ranking senior to our Series C Preferred Stock with respect to the distribution of assets upon liquidation, dissolution or winding up, a liquidation preference of \$25.00 per share, plus an amount equal to any accumulated and unpaid dividends (whether or not earned or declared) to, but not including, the date of payment, before any distribution of assets is made to holders of our common stock or any other class or series of our equity securities we may issue that ranks junior to our Series C Preferred Stock as to liquidation rights.

*Redemption Provisions.* Shares of our Series C Preferred Stock are not redeemable by us prior to April 22, 2020, except in certain limited circumstances. On and after April 22, 2020, we may, at our option, upon not less than 30 nor more than 60 days' written notice, redeem the Series C Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus any accumulated and unpaid dividends thereon to, but not including, the date fixed for redemption. Shares of our Series C Preferred Stock have no stated maturity and are not subject to any sinking fund or mandatory redemption provisions.

*Voting Rights.* Holders of our Series C Preferred Stock will generally have no voting rights. However, if we do not pay dividends on our Series C Preferred Stock for six or more quarterly dividend periods (whether or not consecutive), the holders of our Series C Preferred Stock, voting together as a single class with the holders of all other classes or series of our preferred stock upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with our Series C Preferred Stock in the election referred to below, including our Series B Preferred Stock and our Series D Preferred Stock, will be entitled to vote for the election of two additional directors to serve on our board of directors until we pay, or declare and set apart funds for the payment of, all dividends accumulated on our Series C Preferred Stock for all past dividend periods and the then current dividend period. In addition, the affirmative vote of the holders of at least two-thirds of the outstanding shares of our Series C Preferred Stock, voting together as a single class with the holders of all other classes of our preferred stock we may issue upon which like voting rights have been conferred and are exercisable, including our Series B Preferred Stock our Series D Preferred Stock, is required for us (a) to authorize or issue shares of any class or series of stock ranking senior to our Series C Preferred Stock with respect to the payment of dividends or the distribution of assets on liquidation, dissolution or winding up, or (b) to amend any provision of our charter, whether by merger or otherwise, so as to materially and adversely affect any rights of our Series C Preferred Stock or to take certain other actions.

*Conversion and Preemptive Rights.* Except in connection with certain changes in control of our company, shares of our Series C Preferred Stock are not convertible or exchangeable for any of our other securities or property, and holders of our Series C Preferred Stock have no preemptive rights to subscribe for any securities of our company.

For additional information regarding our Series C Preferred Stock, see our Registration Statement on Form 8-A filed with the SEC on April 21, 2015. See "Where You Can Obtain More Information."

Table of Contents

**Series D Preferred Stock**

Our Series D Preferred Stock generally provides for the following rights, preferences and obligations:

*Ranking.* Our Series D Preferred Stock ranks, with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up:

senior to all classes or series of our common stock and to all other equity securities issued by us other than equity securities referred to immediately below;

on a parity with all equity securities issued by us with terms specifically providing that those equity securities rank on a parity with our Series D Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, including our Series B Preferred Stock and our Series C Preferred Stock;

junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to our Series D Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up; and

effectively junior to all of our existing and future indebtedness (including indebtedness convertible into our common stock or preferred stock) and to the indebtedness of our existing and future subsidiaries.

*Dividend Rights.* Shares of our Series D Preferred Stock accrue cumulative cash dividends at (i) a fixed annual rate of 8.00% on the \$25.00 per share liquidation preference, equivalent to an annual amount of \$2.00 per share per year to, but excluding, October 15, 2027 and (ii) at a floating rate equal to three-month LIBOR as calculated on each dividend determination date plus a spread of 5.695% per annum of the \$25.00 per share liquidation preference from and including October 15, 2027.

*Liquidation Rights.* In the event of our voluntary or involuntary liquidation, dissolution or winding up, the holders of our Series D Preferred Stock will be entitled to be paid out of the assets we have legally available for distribution to our stockholders, subject to the preferential rights of the holders of any class or series of our equity securities ranking senior to our Series D Preferred Stock with respect to the distribution of assets upon liquidation, dissolution or winding up, a liquidation preference of \$25.00 per share, plus an amount equal to any accumulated and unpaid dividends (whether or not earned or declared) to, but not including, the date of payment, without interest, before any distribution of assets is made to holders of our common stock or any other class or series of our equity securities we may issue that ranks junior to our Series D Preferred Stock as to liquidation rights.

*Redemption Provisions.* Shares of our Series D Preferred Stock are not redeemable by us prior to October 15, 2027, except in certain limited circumstances. On and after October 15, 2027, we may, at our option, upon not less than 30 nor more than 60 days' written notice, redeem the Series D Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus any accumulated and unpaid dividends thereon to, but not including, the date fixed for redemption. Shares of our Series D Preferred Stock have no stated maturity and are not subject to any sinking fund or mandatory redemption provisions.

*Voting Rights.* Holders of our Series D Preferred Stock will generally have no voting rights. However, if we do not pay dividends on our Series D Preferred Stock for six or more quarterly dividend periods (whether or not consecutive), the holders of our Series D Preferred Stock, voting together as a single class with the holders of all other classes or series of our preferred stock upon which like voting rights have been conferred and are exercisable and which are



Table of Contents

entitled to vote as a class with our Series D Preferred Stock in the election referred to below, including our Series B Preferred Stock and our Series C Preferred Stock, will be entitled to vote for the election of two additional directors to serve on our board of directors until we pay, or declare and set apart funds for the payment of, all dividends accumulated on our Series D Preferred Stock for all past dividend periods and the then current dividend period. In addition, the affirmative vote of the holders of at least two-thirds of the outstanding shares of our Series D Preferred Stock, voting together as a single class with the holders of all other classes of our preferred stock we may issue upon which like voting rights have been conferred and are exercisable, including our Series B Preferred Stock and our Series C Preferred Stock, is required for us (a) to authorize or issue shares of any class or series of stock ranking senior to our Series D Preferred Stock with respect to the payment of dividends or the distribution of assets on liquidation, dissolution or winding up, or (b) to amend any provision of our charter, whether by merger or otherwise, so as to materially and adversely affect any rights of our Series D Preferred Stock or to take certain other actions.

*Conversion and Preemptive Rights.* Except in connection with certain changes in control of our company, shares of our Series D Preferred Stock are not convertible or exchangeable for any of our other securities or property, and holders of our Series D Preferred Stock have no preemptive rights to subscribe for any securities of our company.

For additional information regarding our Series D Preferred Stock, see our Registration Statement on Form 8-A filed with the SEC on October 10, 2017. See "Where You Can Obtain More Information."

**Restrictions on Ownership and Transfer; Change of Control Provisions**

As discussed above under "Description of Common Stock Restrictions on Ownership and Transfer," our charter contains restrictions on ownership and transfers of our capital stock. In addition, the articles supplementary designating the terms of a series of our preferred stock may also contain additional provisions restricting the ownership and transfer of such series. The applicable prospectus supplement will specify any additional ownership limitation relating to a series of preferred stock.

For a discussion of provisions in our charter that may have the effect of delaying, deferring or preventing a change of control, see "Certain Provisions of Maryland Law and Our Charter and Bylaws."

**Transfer Agent**

The transfer agent and registrar for each series of our preferred stock will be American Stock Transfer & Trust Company, LLC unless a different transfer agent is named in the applicable prospectus supplement. The transfer agent and registrar for our Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock is American Stock Transfer & Trust Company, LLC.

Table of Contents

**DESCRIPTION OF DEBT SECURITIES**

**General**

The debt securities offered by this prospectus will be our direct unsecured general obligations. This prospectus describes certain general terms of the debt securities offered through this prospectus. In the following discussion, we refer to any of our direct unsecured general obligations as the "Debt Securities." When we offer to sell a particular series of Debt Securities, we will describe the specific terms of that series in a prospectus supplement or any free writing prospectus. We will issue senior Debt Securities under the indenture, dated January 23, 2017, between us and U.S. Bank National Association, as trustee (the "Debt Securities Indenture"), which is incorporated by reference into the registration statement of which this prospectus is a part and is filed as an exhibit to the registration statement. We refer to the trustee under any Debt Securities Indenture as the "Debt Securities Trustee."

The prospectus supplement or any free writing prospectus applicable to a particular series of Debt Securities may state that a particular series of Debt Securities will be our subordinated obligations. Unless the applicable prospectus supplement or any free writing prospectus provides otherwise, Debt Securities that will be our subordinated obligations will be issued under a separate Debt Securities Indenture in the form of an open-ended Indenture (for [Subordinated] Debt Securities) between us and a trustee to be selected by us at or about the time we offer our Debt Securities (the "Subordinated Debt Securities Indenture"). The form of Subordinated Debt Securities Indenture is incorporated by reference into the registration statement of which this prospectus is a part and is filed as an exhibit to the registration statement. In the following discussion, we refer to any of our subordinated obligations as the "Subordinated Debt Securities." Our Debt Securities Indenture is, and any supplement thereto will be, qualified under the Trust Indenture Act of 1939, as amended, or the Trust Indenture Act, and any Subordinated Debt Securities Indenture that we enter into with respect to Subordinated Debt Securities will be qualified under the Trust Indenture Act. You should refer to the Trust Indenture Act for the provisions that apply to the Debt Securities.

We have summarized selected provisions of the Debt Securities Indenture below. Each Debt Securities Indenture will be independent of any other Debt Securities Indenture unless otherwise stated in a prospectus supplement or any free writing prospectus. The Subordinated Debt Securities Indenture will be substantially identical to the Debt Securities Indenture, except for provisions relating to Subordination. The summary that follows is not complete and the summary is qualified in its entirety by reference to the provisions of the applicable Debt Securities Indenture. You should consult the applicable Debt Securities, Debt Securities Indenture, any supplemental indentures, officers' certificates and other related documents for more complete information on the Debt Securities. These documents appear as exhibits to, or are incorporated by reference into, the registration statement of which this prospectus is a part, or will appear as exhibits to other documents that we will file with the SEC, which will be incorporated by reference into this prospectus. In the summary below, we have included references to applicable section numbers of the Debt Securities Indenture so that you can easily locate these provisions.

**Ranking**

Our Debt Securities that are not designated Subordinated Debt Securities will be effectively subordinated to all secured indebtedness that we have outstanding from time to time to the extent of the value of the collateral securing such secured indebtedness and will be structurally subordinated to the indebtedness and other liabilities of our subsidiaries. Our Debt Securities that are designated Subordinated Debt Securities will be subordinate to all outstanding secured indebtedness as well as Debt Securities that are not designated Subordinated Debt Securities. We incur indebtedness from time to time to finance many of our assets pursuant to repurchase agreements and certain other structured

Table of Contents

finance instruments, such as the trust preferred securities issued by our subsidiary, Hypotheca Capital, LLC, or Hypotheca, pursuant to which we guarantee the payment of notes by Hypotheca that back the trust preferred securities issued by it. This indebtedness is deemed to be secured indebtedness. As a result, we have a significant amount of secured indebtedness at any given time in relation to our total assets. The Debt Securities Indenture does not limit the amount of secured indebtedness that we may issue or incur.

Our ability to meet our financial obligations with respect to any future Debt Securities, and cash needs generally, is dependent on our operating cash flow, our ability to access various sources of short- and long-term liquidity, including repurchase agreements, financing and the capital markets. Holders of our Debt Securities will effectively have a junior position to claims of our creditors, including trade creditors, debt holders, secured creditors, taxing authorities and guarantee holders.

**Provisions of a Particular Series**

The Debt Securities may from time to time be issued in one or more series. You should consult the prospectus supplement or free writing prospectus relating to any particular series of Debt Securities for the following information:

the title of the Debt Securities;

any limit on the aggregate principal amount of the Debt Securities of the series of which they are a part;

the date(s), or method for determining the date(s), on which the principal of the Debt Securities will be payable;

the rate, including the method of determination, if applicable, at which the Debt Securities will bear interest, if any, and:

the date from which the interest will accrue;

the dates on which we will pay interest;

to whom the interest is payable, if other than the registered holder;

our ability, if any, to defer interest payments and any related restrictions during any interest deferral period; and

the record date for any interest payable on any interest payment date;

the place where:

the principal of, premium, if any, and interest on the Debt Securities will be payable;

you may register the transfer of the Debt Securities;

you may exchange the Debt Securities; and

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

you may serve notices and demands upon us regarding the Debt Securities;

the security registrar for the Debt Securities and whether the principal of the Debt Securities is payable without presentment or surrender of them;

the terms and conditions upon which we may elect to redeem any Debt Securities, including any replacement capital or similar covenants limiting our ability to redeem any Subordinated Debt Securities;

the denominations in which we may issue Debt Securities, if other than \$1,000 and integral multiples of \$1,000;

Table of Contents

the terms and conditions upon which the Debt Securities must be redeemed or purchased due to our obligations pursuant to any sinking fund or other mandatory redemption or tender provisions, or at the holder's option, including any applicable exceptions to notice requirements;

the currency, if other than U.S. currency, in which payments on the Debt Securities will be payable;

the terms according to which elections can be made by us or the holder regarding payments on the Debt Securities in currency other than the currency in which the Debt Securities are stated to be payable;

if any Debt Securities are denominated in a currency other than U.S. dollars or in a composite currency, the obligations or instruments that will be considered eligible obligations with respect to such Debt Securities and any additional provisions for the reimbursement of our company's indebtedness with respect to such Debt Securities after the satisfaction or discharge thereof;

if payments are to be made on the Debt Securities in securities or other property, the type and amount of the securities and other property or the method by which the amount shall be determined;

the manner in which we will determine any amounts payable on the Debt Securities that are to be determined with reference to an index or other fact or event ascertainable outside of the applicable indenture;

if other than the entire principal amount, the portion of the principal amount of the Debt Securities payable upon declaration of acceleration of their maturity;

any addition to the events of default applicable to any Debt Securities and any addition to our covenants for the benefit of the holders of the Debt Securities;

the terms applicable to any rights to convert Debt Securities into or exchange them for other of our securities or those of any other entity;

whether we are issuing Debt Securities as global securities, and if so:

the terms and conditions upon which the global securities may be exchanged for certificated Debt Securities;

the depositary for the global securities; and

the form of legend to be set forth on the global securities;

whether we are issuing the Debt Securities as bearer certificates;

any limitations on transfer or exchange of Debt Securities or the right to obtain registration of their transfer, and the terms and amount of any service charge required for registration of transfer or exchange;

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

any exceptions to the provisions governing payments due on legal holidays, or any variations in the definition of business day with respect to the Debt Securities;

any collateral security, assurance, guarantee or other credit enhancement applicable to the Debt Securities;

any other terms of the Debt Securities not in conflict with the provisions of the applicable Debt Securities Indenture; and

the material federal income tax consequences applicable to the Debt Securities.

For more information, see Section 3.01 of the applicable Debt Securities Indenture.

Table of Contents

Debt Securities may be sold at a substantial discount below their principal amount. You should consult the applicable prospectus supplement or free writing prospectus for a description of certain material federal income tax considerations that may apply to Debt Securities sold at an original issue discount or denominated in a currency other than U.S. dollars.

Unless the applicable prospectus supplement or free writing prospectus states otherwise, the covenants contained in the applicable indenture will not afford holders of Debt Securities protection in the event we have a change in control or are involved in a highly-leveraged transaction.

**Subordination**

The applicable prospectus supplement or free writing prospectus may provide that a series of Debt Securities will be Subordinated Debt Securities, subordinate and junior in right of payment to all of our Senior Indebtedness, as defined below. If so, we will issue these securities under a separate Debt Securities Indenture for Subordinated Debt Securities. For more information, see Article XV of the form of Debt Securities Indenture.

Unless the applicable prospectus supplement or free writing prospectus states otherwise, in the event:

there occur certain acts of bankruptcy, insolvency, liquidation, dissolution or other winding up of our company;

any Senior Indebtedness is not paid when due;

any applicable grace period with respect to other defaults with respect to any Senior Indebtedness has ended, the default has not been cured or waived and the maturity of such Senior Indebtedness has been accelerated because of the default; or

the maturity of the Subordinated Debt Securities of any series has been accelerated because of a default and Senior Indebtedness is then outstanding;

then no payment of principal of, including redemption and sinking fund payments, or any premium or interest on, the Subordinated Debt Securities may be made until all amounts due to holders of Senior Indebtedness have been paid in full.

Upon any distribution of our assets to creditors upon any dissolution, winding up, liquidation or reorganization, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all principal of, and any premium and interest due or to become due on, all outstanding Senior Indebtedness must be paid in full before the holders of the Subordinated Debt Securities are entitled to payment. For more information, see Section 15.02 of the applicable Debt Securities Indenture. The rights of the holders of the Subordinated Debt Securities will be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions applicable to Senior Indebtedness until all amounts owing on the Subordinated Debt Securities are paid in full. For more information, see Section 15.04 of the applicable Debt Securities Indenture.

Unless the applicable prospectus supplement or free writing prospectus states otherwise, the term "Senior Indebtedness" means all:

obligations (other than non-recourse obligations and the indebtedness issued under the applicable Subordinated Debt Securities Indenture) of, or guaranteed or assumed by, us:

for borrowed money (including both senior and subordinated indebtedness for borrowed money, but excluding the Subordinated Debt Securities); or

for the payment of money relating to any lease that is capitalized on our consolidated balance sheet in accordance with generally accepted accounting principles;



Table of Contents

indebtedness evidenced by bonds, debentures, notes or other similar instruments;

obligations with respect to letters of credit, bankers' acceptances or similar facilities issued for our account;

obligations issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable or accrued liabilities arising in the ordinary course);

obligations for claims, as defined in section 101(5) of the United States Bankruptcy Code of 1978, as amended, in respect of derivative products such as interest and foreign exchange rate contracts, commodity contracts and similar arrangements; and

obligations of another person for which we have guaranteed or assumed direct or indirect responsibility or liability.

In the case of any such indebtedness or obligations, Senior Indebtedness includes amendments, renewals, extensions, modifications and refundings, whether existing as of the date of the Subordinated Debt Securities Indenture or subsequently incurred by us.

The Subordinated Debt Securities Indenture does not limit the aggregate amount of Senior Indebtedness we may issue.

**Form, Exchange and Transfer**

Unless the applicable prospectus supplement or free writing prospectus states otherwise, we will issue Debt Securities only in fully registered form without coupons and in denominations of \$1,000 and integral multiples of that amount. For more information, see Sections 2.01 and 3.02 of the applicable Debt Securities Indenture.

Holders may present Debt Securities for exchange or for registration of transfer, duly endorsed or accompanied by a duly executed instrument of transfer, at the office of the security registrar or at the office of any transfer agent we may designate. Exchanges and transfers are subject to the terms of the applicable indenture and applicable limitations for global securities. We may designate ourselves the security registrar.

No charge will be made for any registration of transfer or exchange of Debt Securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge that the holder must pay in connection with the transaction. Any transfer or exchange will become effective upon the security registrar or transfer agent, as the case may be, being satisfied with the documents of title and identity of the person making the request. For more information, see Section 3.05 of the applicable Debt Securities Indenture.

The applicable prospectus supplement or free writing prospectus will state the name of any transfer agent, in addition to the security registrar initially designated by us, for any Debt Securities. We may at any time designate additional transfer agents or withdraw the designation of any transfer agent or make a change in the office through which any transfer agent acts. We must, however, maintain a transfer agent in each place of payment for the Debt Securities of each series. For more information, see Section 6.02 of the applicable Debt Securities Indenture.

We will not be required to issue, register the transfer of, or exchange any:

Debt Securities or any tranche of any Debt Securities during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any Debt Securities called for redemption and ending at the close of business on the day of mailing; or

Debt Securities selected for redemption except the unredeemed portion of any Debt Securities being partially redeemed.

Table of Contents

For more information, see Section 3.05 of the applicable Debt Securities Indenture.

**Payment and Paying Agents**

Unless the applicable prospectus supplement or free writing prospectus states otherwise, we will pay interest on a Debt Security on any interest payment date to the person in whose name the Debt Security is registered at the close of business on the regular record date for the interest payment. For more information, see Section 3.07 of the applicable Debt Securities Indenture.

Unless the applicable prospectus supplement or free writing prospectus provides otherwise, we will pay principal and any premium and interest on Debt Securities at the office of the paying agent whom we will designate for this purpose. Unless the applicable prospectus supplement or free writing prospectus states otherwise, the corporate trust office of the Debt Securities Trustee in New York City will be designated as our sole paying agent for payments with respect to Debt Securities of each series. Any other paying agents initially designated by us for the Debt Securities of a particular series will be named in the applicable prospectus supplement or free writing prospectus. We may at any time add or delete paying agents or change the office through which any paying agent acts. We must, however, maintain a paying agent in each place of payment for the Debt Securities of a particular series. For more information, see Section 6.02 of the applicable Debt Securities Indenture.

All money we pay to a paying agent for the payment of the principal and any premium or interest on any Debt Security that remains unclaimed at the end of two years after payment is due will be repaid to us. After that date, the holder of that Debt Security shall be deemed an unsecured general creditor and may look only to us for these payments. For more information, see Section 6.03 of the applicable Debt Securities Indenture.

**Redemption**

You should consult the applicable prospectus supplement or free writing prospectus for any terms regarding optional or mandatory redemption of Debt Securities. Except for any provisions in the applicable prospectus supplement or free writing prospectus regarding Debt Securities redeemable at the holder's option, Debt Securities may be redeemed only upon notice by mail not less than 30 nor more than 60 days prior to the redemption date. Further, if less than all of the Debt Securities of a series, or any tranche of a series, are to be redeemed, the Debt Securities to be redeemed will be selected by the Debt Securities Trustee by the method provided for the particular series. In the absence of a selection provision, the Debt Securities Trustee will select a fair and appropriate method of selection. For more information, see Sections 4.02, 4.03 and 4.04 of the applicable Debt Securities Indenture.

A notice of redemption we provide may state:

that redemption is conditioned upon receipt by the paying agent on or before the redemption date of money sufficient to pay the principal of and any premium and interest on the Debt Securities; and

that if the money has not been received, the notice will be ineffective and we will not be required to redeem the Debt Securities.

For more information, see Section 4.04 of the applicable Debt Securities Indenture.

Table of Contents

**Consolidation, Merger and Sale of Assets**

We may not consolidate with or merge into any other corporation, nor may we transfer or lease substantially all of our assets and property to any other person, unless:

the corporation formed by the consolidation or into which we are merged, or the person that acquires by conveyance or transfer, or that leases, substantially all of our property and assets:

is organized and validly existing under the laws of any domestic jurisdiction; and

expressly assumes by supplemental indenture our obligations on the Debt Securities and under the applicable indentures;

immediately after giving effect to the transaction, no event of default, and no event that (after notice or lapse of time or both) would become an event of default, has occurred and is continuing; and

we have delivered to the Debt Securities Trustee an officer's certificate and opinion of counsel as provided in the applicable indentures.

For more information, see Section 11.01 of the applicable Debt Securities Indenture.

**Events of Default**

Unless the applicable prospectus supplement or free writing prospectus states otherwise, "event of default" under the applicable indenture with respect to Debt Securities of any series means any of the following:

failure to pay any interest due on any Debt Security of that series within 30 days after it becomes due;

failure to pay principal or premium, if any, when due on any Debt Security of that series;

failure to make any required sinking fund payment when due on any Debt Securities of that series;

breach of or failure to perform any other covenant or warranty in the applicable indenture with respect to Debt Securities of that series for 60 days (subject to extension under certain circumstances for another 120 days) after we receive notice from the Debt Securities Trustee, or we and the Debt Securities Trustee receive notice from the holders of at least 33% in principal amount of the Debt Securities of that series outstanding under the applicable indenture according to the provisions of the applicable indenture;

certain events of bankruptcy, insolvency or reorganization; and

any other event of default set forth in the applicable prospectus supplement or free writing prospectus.

For more information, see Section 8.01 of the applicable Debt Securities Indenture.

## Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

An event of default with respect to a particular series of Debt Securities does not necessarily constitute an event of default with respect to the Debt Securities of any other series issued under the applicable indenture.

If an event of default with respect to a particular series of Debt Securities occurs and is continuing, either the Debt Securities Trustee or the holders of at least 33% in principal amount of the outstanding Debt Securities of that series may declare the principal amount of all of the Debt Securities of that series to be due and payable immediately. If the Debt Securities of that series are discount Debt Securities or similar Debt Securities, only the portion of the principal amount as

Table of Contents

specified in the applicable prospectus supplement or free writing prospectus may be immediately due and payable. If an event of default occurs and is continuing with respect to all series of Debt Securities issued under a Debt Securities Indenture, including all events of default relating to bankruptcy, insolvency or reorganization, the Debt Securities Trustee or the holders of at least 33% in principal amount of the outstanding Debt Securities of all series issued under that Debt Securities Indenture, considered together, may declare an acceleration of the principal amount of all series of Debt Securities issued under that Debt Securities Indenture. There is no automatic acceleration, even in the event of our bankruptcy or insolvency.

The applicable prospectus supplement or free writing prospectus may provide, with respect to a series of Debt Securities to which a credit enhancement is applicable, that the provider of the credit enhancement may, if a default has occurred and is continuing with respect to the series, have all or any part of the rights with respect to remedies that would otherwise have been exercisable by the holder of that series.

At any time after a declaration of acceleration with respect to the Debt Securities of a particular series, and before a judgment or decree for payment of the money due has been obtained, the event of default giving rise to the declaration of acceleration will, without further action, be deemed to have been waived, and the declaration and its consequences will be deemed to have been rescinded and annulled, if:

we have paid or deposited with the Debt Securities Trustee a sum sufficient to pay:

all overdue interest on all Debt Securities of the particular series;

the principal of and any premium on any Debt Securities of that series that have become due otherwise than by the declaration of acceleration and any interest at the rate prescribed in the Debt Securities;

interest upon overdue interest at the rate prescribed in the Debt Securities, to the extent payment is lawful; and

all amounts due to the Debt Securities Trustee under the applicable Debt Securities Indenture; and

any other event of default with respect to the Debt Securities of the particular series, other than the failure to pay the principal of the Debt Securities of that series that has become due solely by the declaration of acceleration, has been cured or waived as provided in the applicable indenture.

For more information, see Section 8.02 of the applicable Debt Securities Indenture.

The applicable Debt Securities Indenture includes provisions as to the duties of the Debt Securities Trustee in case an event of default occurs and is continuing. Consistent with these provisions, the Debt Securities Trustee will be under no obligation to exercise any of its rights or powers at the request or direction of any of the holders unless those holders have offered to the Debt Securities Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction. For more information, see Section 9.03 of the applicable Debt Securities Indenture. Subject to these provisions for indemnification, the holders of a majority in principal amount of the outstanding Debt Securities of any series may direct the time, method and place of conducting any proceeding for any remedy available to the Debt Securities Trustee, or exercising any trust or power conferred on the Debt Securities Trustee, with respect to the Debt Securities of that series. For more information, see Section 8.12 of the applicable Debt Securities Indenture.

Table of Contents

No holder of Debt Securities may institute any proceeding regarding the applicable indenture, or for the appointment of a receiver or a trustee, or for any other remedy under the applicable indenture unless:

the holder has previously given to the Debt Securities Trustee written notice of a continuing event of default of that particular series;

the holders of at least a majority in principal amount of the outstanding Debt Securities of all series with respect to which an event of default has occurred and is continuing have made a written request to the Debt Securities Trustee, and have offered reasonable indemnity to the Debt Securities Trustee, to institute the proceeding as trustee; and

the Debt Securities Trustee has failed to institute the proceeding, and has not received from the holders of a majority in principal amount of the outstanding Debt Securities of that series a direction inconsistent with the request, within 60 days after notice, request and offer of reasonable indemnity.

For more information, see Section 8.07 of the applicable Debt Securities Indenture.

The preceding limitations do not apply, however, to a suit instituted by a holder of a Debt Security for the enforcement of payment of the principal of or any premium or interest on the Debt Securities on or after the applicable due date stated in the Debt Securities. For more information, see Section 8.08 of the applicable Debt Securities Indenture.

We must furnish annually to the Debt Securities Trustee a statement by an appropriate officer as to that officer's knowledge of our compliance with all conditions and covenants under each of the indentures for Debt Securities. Our compliance is to be determined without regard to any grace period or notice requirement under the respective indenture. For more information, see Sections 6.05 and 6.06 of the applicable Debt Securities Indenture.

**Modification and Waiver**

We and the Debt Securities Trustee, without the consent of the holders of the Debt Securities, may enter into one or more supplemental indentures for any of the following purposes:

to evidence the assumption by any permitted successor of our covenants in the applicable indenture and the Debt Securities;

to add one or more covenants or other provisions for the benefit of the holders of outstanding Debt Securities or to surrender any right or power conferred upon us by the applicable indenture;

to add any additional events of default;

to change or eliminate any provision of the applicable indenture or add any new provision to it, but if this action would adversely affect the interests of the holders of any particular series of Debt Securities in any material respect, the action will not become effective with respect to that series while any Debt Securities of that series remain outstanding under the applicable indenture;

to provide collateral security for the Debt Securities;

to establish the form or terms of Debt Securities according to the provisions of the applicable indenture;

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

to provide for the authentication and delivery of bearer securities (and coupons representing any interest thereon) and for procedures for the registration, exchange and replacement of such

## Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

### Table of Contents

bearer securities and for the giving of notice to, and the solicitation of the vote or consent of, the holders of such bearer securities, and for all related incidental matters;

to evidence the acceptance of appointment of a successor Debt Securities Trustee under the applicable indenture with respect to one or more series of the Debt Securities and to add to or change any of the provisions of the applicable indenture as necessary to provide for trust administration under the applicable indenture by more than one trustee;

to provide for the procedures required to permit the use of a non-certificated system of registration for any series of Debt Securities;

to change any place where:

the principal of and any premium and interest on any Debt Securities are payable;

any Debt Securities may be surrendered for registration of transfer or exchange; or

notices and demands to or upon us regarding Debt Securities and the applicable indentures may be served; or

to cure any ambiguity or inconsistency, but only by means of changes or additions that will not adversely affect the interests of the holders of Debt Securities of any series in any material respect.

For more information, see Section 12.01 of the applicable Debt Securities Indenture.

The holders of at least a majority in aggregate principal amount of the outstanding Debt Securities of any series may waive:

compliance by us with certain provisions of the applicable indenture (see Section 6.06 of the applicable Debt Securities Indenture); and

any past default under the applicable indenture, except a default in the payment of principal, premium or interest and certain covenants and provisions of the applicable indenture that cannot be modified or amended without consent of the holder of each outstanding Debt Security of the series affected (see Section 8.13 of the applicable Debt Securities Indenture).

The Trust Indenture Act of 1939 may be amended after the date of the applicable indenture to require changes to the indenture. In this event, the indenture will be deemed to have been amended so as to effect the changes, and we and the Debt Securities Trustee may, without the consent of any holders, enter into one or more supplemental indentures to evidence or effect the amendment. For more information, see Section 12.01 of the applicable Debt Securities Indenture.

Except as provided in this section, the consent of the holders of a majority in aggregate principal amount of the outstanding Debt Securities of all series issued pursuant to a Debt Securities Indenture, considered as one class, is required to change in any manner the applicable indenture pursuant to one or more supplemental indentures. If there are Debt Securities of more than one series outstanding under a Debt Securities Indenture and less than all of such series are directly affected by a proposed supplemental indenture, however, only the consent of the holders of a majority in aggregate principal amount of the outstanding Debt Securities of all series directly affected, considered as one class, will be required. Furthermore, if the Debt Securities of any series have been issued in more than one tranche and if the proposed supplemental indenture directly affects the rights of the holders of one or more, but not all, tranches, only the consent of the holders of a majority in aggregate principal amount of the



Table of Contents

outstanding Debt Securities of all tranches directly affected, considered as one class, will be required. In addition, an amendment or modification:

may not, without the consent of the holder of each outstanding Debt Security affected:

change the maturity of the principal of, or any installment of principal of or interest on, any Debt Securities;

reduce the principal amount or the rate of interest, or the amount of any installment of interest, or change the method of calculating the rate of interest;

reduce any premium payable upon the redemption of the Debt Securities;

reduce the amount of the principal of any Debt Security originally issued at a discount from the stated principal amount that would be due and payable upon a declaration of acceleration of maturity;

change the currency or other property in which a Debt Security or premium or interest on a Debt Security is payable; or

impair the right to institute suit for the enforcement of any payment on or after the stated maturity, or in the case of redemption, on or after the redemption date, of any Debt Securities;

may not reduce the percentage of principal amount requirement for consent of the holders for any supplemental indenture, or for any waiver of compliance with any provision of or any default under the applicable indenture, or reduce the requirements for quorum or voting, without the consent of the holder of each outstanding Debt Security of each series or tranche affected; and

may not modify provisions of the applicable indenture relating to supplemental indentures, waivers of certain covenants and waivers of past defaults with respect to the Debt Securities of any series, or any tranche of a series, without the consent of the holder of each outstanding Debt Security affected.

A supplemental indenture will be deemed not to affect the rights under the applicable indenture of the holders of any series or tranche of the Debt Securities if the supplemental indenture:

changes or eliminates any covenant or other provision of the applicable indenture expressly included solely for the benefit of one or more other particular series of Debt Securities or tranches thereof; or

modifies the rights of the holders of Debt Securities of any other series or tranches with respect to any covenant or other provision.

For more information, see Section 12.02 of the applicable Debt Securities Indenture.

If we solicit from holders of the Debt Securities any type of action, we may at our option by board resolution fix in advance a record date for the determination of the holders entitled to vote on the action. We shall have no obligation, however, to do so. If we fix a record date, the action may be taken before or after the record date, but only the holders of record at the close of business on the record date shall be deemed to be holders for the purposes of determining whether holders of the requisite proportion of the outstanding Debt Securities have authorized the action. For that purpose, the outstanding Debt Securities shall be computed as of the record date. Any holder action shall bind every future

holder of the same security and the holder of every security issued upon the registration of transfer of or in exchange for or in lieu of the security in respect of anything done or permitted by the Debt Securities Trustee or us in reliance on that action, whether or not notation of the action is made upon the security. For more information, see Section 1.04 of the applicable Debt Securities Indenture.

Table of Contents

**Defeasance**

Unless the applicable prospectus supplement or free writing prospectus provides otherwise, any Debt Security, or portion of the principal amount of a Debt Security, will be deemed to have been paid for purposes of the applicable indenture, and, at our election, our entire indebtedness in respect of the Debt Security, or portion thereof, will be deemed to have been satisfied and discharged, if we have irrevocably deposited with the Debt Securities Trustee or any paying agent other than us, in trust money, certain eligible obligations, as defined in the applicable indenture, or a combination of the two, sufficient to pay principal of and any premium and interest due and to become due on the Debt Security or portion thereof, and other required documentation. Included among the documentation we are required to deliver to be deemed to have our indebtedness deemed satisfied and discharged with respect to a Debt Security pursuant to the preceding sentence is an opinion of counsel to the effect that, as a result of a change in law occurring after the date of the applicable Debt Security Indenture, the holders of such Debt Security, or portions thereof, will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the satisfaction and discharge of our indebtedness in respect thereof and will be subject to U.S. federal income tax on the same amounts, at the same times and in the same manner as if such satisfaction and discharge had not been effected. For more information, see Section 7.01 of the applicable Debt Securities Indenture. For this purpose, unless the applicable prospectus supplement or free writing prospectus provides otherwise, eligible obligations include direct obligations of, or obligations unconditionally guaranteed by, the U.S., entitled to the benefit of full faith and credit of the U.S., and certificates, depositary receipts or other instruments that evidence a direct ownership interest in those obligations or in any specific interest or principal payments due in respect of those obligations.

**Resignation, Removal of Debt Securities Trustee; Appointment of Successor**

The Debt Securities Trustee may resign at any time by giving written notice to us or may be removed at any time by an action of the holders of a majority in principal amount of outstanding Debt Securities delivered to the Debt Securities Trustee and us. No resignation or removal of the Debt Securities Trustee and no appointment of a successor trustee will become effective until a successor trustee accepts appointment in accordance with the requirements of the applicable indenture. So long as no event of default or event that would become an event of default (after notice or lapse of time or both) has occurred and is continuing, and except with respect to a Debt Securities Trustee appointed by an action of the holders, if we have delivered to the Debt Securities Trustee a resolution of our board of directors appointing a successor trustee and the successor trustee has accepted the appointment in accordance with the terms of the applicable indenture, the Debt Securities Trustee will be deemed to have resigned and the successor trustee will be deemed to have been appointed as trustee in accordance with the applicable indenture. For more information, see Section 9.10 of the applicable Debt Securities Indenture.

**Notices**

We will give notices to holders of Debt Securities by mail to their addresses as they appear in the Debt Security Register. For more information, see Section 1.06 of the applicable Debt Securities Indenture.

**Title**

The Debt Securities Trustee and its agents, and we and our agents, may treat the person in whose name a Debt Security is registered as the absolute owner of that Debt Security, whether or not that Debt Security may be overdue, for the purpose of making payment and for all other purposes. For more information, see Section 3.08 of the applicable Debt Securities Indenture.

Table of Contents

**Governing Law**

The Debt Securities Indentures and the Debt Securities, including any Subordinated Debt Securities Indentures and Subordinated Debt Securities, will be governed by, and construed in accordance with, the law of the State of New York. For more information, see Section 1.12 of the applicable Debt Securities Indenture.

Table of Contents

**GLOBAL SECURITIES**

We may issue some or all of our securities of any series as global securities. We will register each global security in the name of a depositary identified in the applicable prospectus supplement. The global securities will be deposited with a depositary or nominee or custodian for the depositary and will bear a legend regarding restrictions on exchanges and registration of transfer as discussed below and any other matters to be provided pursuant to the indenture.

As long as the depositary or its nominee is the registered holder of a global security, that person will be considered the sole owner and holder of the global security and the securities represented by it for all purposes under the securities and the indenture. Except in limited circumstances, owners of a beneficial interest in a global security:

will not be entitled to have the global security or any securities represented by it registered in their names;

will not receive or be entitled to receive physical delivery of certificated securities in exchange for the global security; and

will not be considered to be the owners or holders of the global security or any securities represented by it for any purposes under the securities or the indenture.

We will make all payments of principal and any premium and interest on a global security to the depositary or its nominee as the holder of the global security. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

Ownership of beneficial interests in a global security will be limited to institutions having accounts with the depositary or its nominee, called "participants" for purposes of this discussion, and to persons that hold beneficial interests through participants. When a global security is issued, the depositary will credit on its book-entry, registration and transfer system the principal amounts of securities represented by the global security to the accounts of its participants. Ownership of beneficial interests in a global security will be shown only on, and the transfer of those ownership interests will be effected only through, records maintained by:

the depositary, with respect to participants' interests; or

any participant, with respect to interests of persons held by the participants on their behalf.

Payments by participants to owners of beneficial interests held through the participants will be the responsibility of the participants. The depositary may from time to time adopt various policies and procedures governing payments, transfers, exchanges and other matters relating to beneficial interests in a global security. None of the following will have any responsibility or liability for any aspect of the depositary's or any participant's records relating to, or for payments made on account of, beneficial interests in a global security, or for maintaining, supervising or reviewing any records relating to those beneficial interests:

us or our affiliates;

the trustee under any indenture; or

any agent of any of the above.

Table of Contents

**CERTAIN PROVISIONS OF MARYLAND LAW AND OUR CHARTER AND BYLAWS**

*The following description of certain provisions of Maryland law and our charter and bylaws is only a summary. For a complete description, we refer you to the applicable Maryland law, our charter and our bylaws. Our charter and bylaws are filed as exhibits to the registration statement of which this prospectus is a part. See "Where You Can Find More Information."*

**Number of Directors; Vacancies**

Our charter and bylaws provide that the number of our directors may only be increased or decreased by a vote of a majority of the members of our entire board of directors. Our board of directors is currently comprised of six directors. Our charter provides that any vacancy, including a vacancy created by an increase in the number of directors, may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum.

**Removal of Directors**

Subject to the rights of holders of our preferred stock to elect or remove directors, our charter provides that a director may be removed at any time upon the affirmative vote of at least two-thirds of the votes entitled to be cast generally in the election of directors. Absent removal of all of our directors, this provision, when coupled with the provision in our charter authorizing our board of directors to fill vacant directorships, may preclude stockholders from removing incumbent directors and filling the vacancies created by such removal with their own nominees.

**Amendment to the Charter**

Generally, our charter may be amended only by the affirmative vote of the holders a majority of all of the votes entitled to be cast on the matter. However, provisions in our charter related to (1) removal of directors, (2) the power of our board of directors to classify and cause us to issue additional shares of common and preferred stock, (3) except as set forth in the sentence immediately below, the restrictions on transfer and ownership and (4) the provisions setting forth the vote requirement to amend the sections discussed in clauses (1), (2) and (3), may only be amended by the affirmative vote of the holders of two-thirds of all of the votes entitled to be cast on the matter. In addition, our board of directors may from time to time increase or decrease the common stock ownership limit and the aggregate stock ownership limit without stockholder approval.

**Dissolution**

Our dissolution must be approved by the affirmative vote of the holders of not less than a majority of all of the votes entitled to be cast on the matter.

**Business Combinations**

Maryland law prohibits "business combinations" between us and an interested stockholder or an affiliate of an interested stockholder for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange, or, in circumstances specified under Maryland law, an asset transfer or issuance or reclassification of equity securities. Maryland law defines an interested stockholder as:

any person or entity who beneficially owns, directly or indirectly, 10% or more of the voting power of our stock; or

an affiliate or associate of ours who, at any time within the two year period prior to the date in question, was the beneficial owner, directly or indirectly, of 10% or more of the voting power of our then outstanding voting stock.

Table of Contents

A person is not an interested stockholder if our board of directors approves in advance the transaction by which the person otherwise would have become an interested stockholder. However, in approving a transaction, our board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by our board of directors.

After the five-year prohibition, any business combination between us and an interested stockholder generally must be recommended by our board of directors and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of our then-outstanding shares of voting stock; and

two-thirds of the votes entitled to be cast by holders of our voting stock other than stock held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or stock held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if our common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its stock.

The statute permits various exemptions from its provisions, including business combinations that are approved by our board of directors before the time that the interested stockholder becomes an interested stockholder.

As permitted by the Maryland General Corporation Law, our board of directors has adopted a resolution that the business combination provisions of the Maryland General Corporation Law will not apply to us. There is no assurance that our board of directors will not amend or repeal this resolution in the future.

**Control Share Acquisitions**

Maryland law provides that "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights unless approved by the affirmative vote of at least two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquiror or by officers or directors who are our employees are excluded from the shares entitled to vote on the matter. "Control shares" are voting shares that, if aggregated with all other shares currently owned by the acquiring person, or in respect of which the acquiring person is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiring person to exercise voting power in electing directors within one of the following ranges of voting power:

one-tenth or more but less than one-third;

one-third or more but less than a majority; or

a majority or more of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval or shares acquired directly from the corporation. A "control share acquisition" means the acquisition of issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition may compel our board of directors to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, we may present the question at any stockholders meeting.

Table of Contents

If voting rights are not approved at the stockholders meeting or if the acquiring person does not deliver an acquiring person statement required by Maryland law, then, subject to certain conditions and limitations, we may redeem any or all of the control shares, except those for which voting rights have previously been approved, for fair value. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or if any meeting of stockholders is held at which the voting rights of the shares were considered and not approved, as of the date of such meeting. If voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares for purposes of these appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition. The control share acquisition statute does not apply to shares acquired in a merger, consolidation or share exchange if we are a party to the transaction, nor does it apply to acquisitions approved by or exempted by our charter or bylaws.

Our bylaws contain a provision exempting any and all acquisitions of our shares of stock from the control shares provisions of Maryland law. Nothing prevents our board of directors from amending or repealing this provision in the future.

**Limitation of Liability and Indemnification**

Maryland law permits a corporation to include in its charter a provision eliminating the liability of its directors and officers to the corporation and its stockholders for money damages, except for liability resulting from:

actual receipt of an improper benefit or profit in money, property or services; or

a final judgment based upon a finding of active and deliberate dishonesty by the director or officer that was material to the cause of action adjudicated.

Our charter contains such a provision that eliminates such liability to the maximum extent permitted by Maryland law.

Our charter authorizes us to obligate ourselves, and our bylaws obligate us, to the maximum extent permitted by Maryland law, to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a final proceeding to, any of our present or former directors or officers or any individual who, while a director or officer and at our request, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee. The indemnification covers any claim or liability arising from such status against the person.

Maryland law requires a corporation (unless its charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he is made a party by reason of his service in that capacity.

Maryland law permits us to indemnify our present and former directors and officers against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that:

the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty;

the director or officer actually received an improper personal benefit of money, property or services; or

Table of Contents

in the case of a criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, Maryland law prohibits us from indemnifying our present and former directors and officers for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received unless in either case a court orders indemnification and then only for expenses. Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of:

a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification; and

a written undertaking by him or her, or on his or her behalf, to repay the amount paid or reimbursed by us if it is ultimately determined that the standard of conduct is not met.

Our charter and bylaws also permit us to indemnify and advance expenses to any person who served a predecessor of ours in any capacity described above and to any of our or our predecessors' employees or agents.

In addition, indemnification could reduce the legal remedies available to us and our stockholders against our officers and directors. The SEC takes the position that indemnification against liabilities arising under the Securities Act is against public policy and unenforceable. Indemnification of our directors and officers may not be allowed for liabilities arising from or out of a violation of state or federal securities laws, unless one or more of the following conditions are met:

there has been a adjudication on the merits in favor of the director or officer on each count involving alleged securities law violations;

all claims against the director or officer have been dismissed with prejudice on the merits by a court of competent jurisdiction; or

a court of competent jurisdiction approves a settlement of the claims against the director or officer and finds that indemnification with respect to the settlement and the related costs should be allowed after being advised of the position of the SEC and of the published position of any state securities regulatory authority in which the securities were offered as to indemnification for violations of securities laws.

**Meetings of Stockholders**

Special meetings of stockholders may be called only by our board of directors, the chairman of our board of directors, our chief executive officer and our president. Further, our secretary is required to call a special meeting of stockholders upon the written request of the holders of common stock entitled to cast not less than a majority of all votes entitled to be cast at such meeting. Only matters set forth in the notice of the special meeting may be considered and acted upon at such a meeting.

**Advance Notice of Director Nominations and New Business**

Our bylaws provide that, with respect to an annual meeting of stockholders, nominations of individuals for election to our board of directors and the proposal of business to be considered by stockholders at the annual meeting may be made only:

pursuant to our notice of the meeting;

by or at the direction of our board of directors; or



Table of Contents

by a stockholder who was a stockholder of record both at the time of the giving of notice by the stockholder and at the time of the meeting, who is entitled to vote at the meeting and has complied with the advance notice procedures set forth in our bylaws.

With respect to special meetings of stockholders, only the business specified in our notice of meeting may be brought before the meeting of stockholders, and nominations of individuals for election to our board of directors may be made only:

pursuant to our notice of the meeting;

by our board of directors; or

provided that our board of directors has determined that directors shall be elected at such meeting, by a stockholder who was a stockholder of record both at the time of the provision of notice and at the time of the meeting who is entitled to vote at the meeting and has complied with the advance notice provisions set forth in our bylaws.

The purpose of requiring stockholders to give advance notice of nominations and other proposals is to afford our board of directors the opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposals and, to the extent considered necessary by our board of directors, to inform stockholders and make recommendations regarding the nominations or other proposals. The advance notice procedures also permit a more orderly procedure for conducting our stockholder meetings. Although our bylaws do not give our board of directors the power to disapprove timely stockholder nominations and proposals, they may have the effect of precluding a contest for the election of directors or proposals for other action if the proper procedures are not followed, and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors to our board of directors or to approve its own proposal.

**Possible Anti-Takeover Effect of Certain Provisions of Maryland Law and of Our Charter and Bylaws**

Subtitle 8 of Title 3 of the Maryland General Corporation Law permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in its charter or bylaws, to any or all of five of the following provisions:

a classified board of directors, meaning that the directors may be divided into up to three classes with only one class standing for election in any year;

a director may be removed only by a two-thirds vote of the stockholders;

a requirement that the number of directors be fixed only by vote of the directors;

a requirement that a vacancy on the board of directors be filled only by the remaining directors and for the new director to serve the remainder of the full term of the class of directors in which the vacancy occurred; and

a requirement that stockholder-called special meetings of stockholders may only be called by stockholders holding a majority of the outstanding stock entitled to vote at the meeting.

Pursuant to our charter, we have elected to be subject to the provisions of Subtitle 8 requiring vacancies on our board may be filled only by the remaining directors, even if such directors are less than a quorum, and for the full term of the directorship in which the vacancy occurred. Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (a) require a two-thirds vote for the removal of any director from our board, (b) vest in our board of directors the exclusive power to fix the number of directorships and (c) require that stockholder-called special meetings of stockholders may only be called by stockholders holding a majority of our outstanding stock entitled to



Subsidiary  
Other  
Consolidating  
Parent  
Issuer  
Subsidiaries  
Adjustments  
Consolidated

Cash flows from continuing operating activities:

Net income (loss).....

\$ 262  
\$ (301)  
\$ 863  
\$ (562)  
\$ 262

Income from discontinued operations.....

-

|   |       |
|---|-------|
|   | -     |
|   | -     |
|   | (34)  |
|   | (34)  |
| Gains on the sale of accounts receivable... |       |
|   | -     |
|   | -     |
|   | (191) |
|   | -     |
|   | (191) |
| May integrations costs.....                 |       |
|   | -     |
|   | 258   |
|   | 256   |
|   | (63)  |
|   | 451   |
| Equity in earnings of subsidiaries.....     |       |
|   | (177) |
|   | (385) |
|   | -     |
|   | 562   |
|   | -     |
| Dividends received from subsidiaries.....   |       |
|   | 512   |
|   | -     |
|   | -     |
|   | 79    |

|   |       |
|---|-------|
|   | (512) |
|   | -     |
| Depreciation and amortization.....                                | 1     |
|   | 498   |
|   | 446   |
|   | -     |
|   | 945   |
| Stock-based compensation expense....                              | -     |
|   | 37    |
|   | 36    |
|   | -     |
|   | 73    |
| Proceeds from the sale of proprietary<br>accounts receivable..... | -     |
|   | -     |
|   | 1,860 |
|   | -     |
|   | 1,860 |
| (Increase) decrease in working capital....                        | 18    |
|   | (889) |
|   | 80    |

|  |              |
|--|--------------|
|  | (469)        |
|  | 15           |
|  | (1,325)      |
| Other, net .....   |              |
|  | <u>15</u>    |
|  | <u>8</u>     |
|  | <u>(96)</u>  |
|  | <u>3</u>     |
|  | <u>(70)</u>  |
| Net cash provided by continuing<br>operating activities.....             |              |
|  | <u>631</u>   |
|  | <u>(774)</u> |
|  | <u>2,705</u> |
|  | <u>(591)</u> |
|  | <u>1,971</u> |
| Cash flows from continuing investing activities:                         |              |
| Purchase of property and equipment<br>and capitalized software, net..... |              |
|  | -            |
|  | 95           |
|  | (537)        |
|  | 81           |

|   |              |
|---|--------------|
|   | 78           |
|   | (364)        |
| Proceeds from the disposition of<br>discontinued operations.....  | -            |
|   | 882          |
|   | 165          |
|   | -            |
|   | 1,047        |
| Repurchase of accounts receivable.....                            | -            |
|   | -            |
|   | (1,141)      |
|   | -            |
|   | (1,141)      |
| Proceeds from the sale of repurchased<br>accounts receivable..... | —            |
|   | —            |
|   | <u>1,323</u> |
|   | —            |
|   | 82           |

|   |              |
|---|--------------|
|   | <u>1,323</u> |
| Net cash provided (used) by<br>continuing investing activities..... | <u>977</u>   |
|   | -            |
|   | <u>(190)</u> |
|   | <u>78</u>    |
|   | <u>865</u>   |
| Cash flows from continuing financing<br>activities:                 |              |
| Debt repaid, net of debt issued...                                  | -            |
|   | (1,473)      |
|   | (3)          |
|   | 1            |
|   | (1,475)      |
| Dividends paid.....   | (208)        |
|   | -            |
|   | (512)        |
|   | 512          |
|   | (208)        |

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

Acquisition of common stock, net  
of common stock issued.....

(766)

-

-

-

(766)

Intercompany activity, net.....

645

1,882

(2,621)

94

-

Other, net.....

184

(574)

494

-

104

Net cash provided (used) by  
continuing financing activities.....

(145)

(165)

|  |                |
|--|----------------|
|  | <u>(2,642)</u> |
|  | <u>607</u>     |
|  | <u>(2,345)</u> |
| Net cash provided (used) by continuing operations.....     |                |
|  | 486            |
|  | 38             |
|  | (127)          |
|  | 94             |
|  | 491            |
| Net cash provided by discontinued operations               |                |
|  | <u>-</u>       |
|  | <u>-</u>       |
|  | <u>-</u>       |
|  | <u>32</u>      |
|  | <u>32</u>      |
| Net increase (decrease) in cash and cash equivalents ..... |                |
|  | 486            |
|  | 38             |
|  | (127)          |
|  | 85             |

|  |                |
|--|----------------|
|  | 126            |
|  | 523            |
| Cash and cash equivalents at beginning<br>of period..... | <u>17</u>      |
|  | <u>33</u>      |
|  | <u>342</u>     |
|  | <u>(144)</u>   |
|  | <u>248</u>     |
| Cash and cash equivalents at end of period...            | <u>\$ 503</u>  |
|  | <u>\$ 71</u>   |
|  | <u>\$ 215</u>  |
|  | <u>\$ (18)</u> |
|  | <u>\$ 771</u>  |

(continued)

**FEDERATED DEPARTMENT STORES, INC.****Condensed Consolidating Balance Sheet****As of October 29, 2005****(unaudited)****(millions)**

|  | Parent   | Subsidiary<br>Issuer | Other<br>Subsidiaries | Consolidating<br>Adjustments | Consolidated |
|--|----------|----------------------|-----------------------|------------------------------|--------------|
| <b>ASSETS:</b>                                   |          |                      |                       |                              |              |
| Current Assets:                                  |          |                      |                       |                              |              |
| Cash and cash equivalents.....                   | \$ 14    | \$ 11                | \$ 496                | \$ (252)                     | \$ 269       |
| Accounts receivable.....                         | -        | 64                   | 2,316                 | (138)                        | 2,242        |
| Merchandise inventories.....                     | -        | 3,634                | 4,227                 | (454)                        | 7,407        |
| Supplies and prepaid expenses.....               | -        | 89                   | 156                   | (38)                         | 207          |
| Income taxes.....                                | 384      | 136                  | -                     | (520)                        | -            |
| Deferred income tax assets.....                  | -        | -                    | 22                    | (22)                         | -            |
| Assets of discontinued operations....            | -        | -                    | -                     | 1,823                        | 1,823        |
| Total Current Assets.....                        | 398      | 3,934                | 7,217                 | 399                          | 11,948       |
| Property and Equipment - net.....                | 2        | 6,575                | 6,000                 | (679)                        | 11,898       |
| Goodwill.....                                    | -        | 9,281                | 637                   | (378)                        | 9,540        |
| Other Intangible Assets - net.....               | -        | 114                  | 535                   | (156)                        | 493          |
| Other Assets.....                                | -        | 86                   | 682                   | (7)                          | 761          |
| Deferred Income Tax Assets.....                  | 10       | 274                  | -                     | (284)                        | -            |
| Intercompany Receivable.....                     | 81       | 3,828                | 5,546                 | (9,455)                      | -            |
| Investment in Subsidiaries.....                  | 12,682   | 8,965                | -                     | (21,647)                     | -            |
| Total Assets.....                                | \$13,173 | \$33,057             | \$20,617              | \$(32,207)                   | \$34,640     |
| <b>LIABILITIES AND SHAREHOLDERS'<br/>EQUITY:</b> |          |                      |                       |                              |              |
| Current Liabilities:                             |          |                      |                       |                              |              |
| Short-term debt.....                             | \$ -     | \$ 2,735             | \$ 4                  | \$ (1)                       | \$ 2,738     |
| Accounts payable and accrued<br>liabilities..... | 182      | 2,513                | 4,013                 | (564)                        | 6,144        |
| Income taxes.....                                | -        | 1                    | 662                   | (582)                        | 81           |
| Deferred income taxes.....                       | -        | 148                  | 123                   | (4)                          | 267          |
| Liabilities of discontinued operations           | -        | -                    | -                     | 507                          | 507          |
| Total Current Liabilities.....                   | 182      | 5,397                | 4,802                 | (644)                        | 9,737        |
| Long-Term Debt.....                              | -        | 8,828                | 42                    | (2)                          | 8,868        |
| Intercompany Payable.....                        | -        | 9,455                | -                     | (9,455)                      | -            |
| Deferred Income Taxes.....                       | -        | 735                  | 1,292                 | (446)                        | 1,581        |
| Other Liabilities.....                           | 5        | 869                  | 607                   | (13)                         | 1,468        |
| Minority Interest *.....                         | -        | -                    | 519                   | (519)                        | -            |
| Shareholders' Equity.....                        | 12,986   | 7,773                | 13,355                | (21,128)                     | 12,986       |

|   |          |          |          |            |          |
|---|----------|----------|----------|------------|----------|
| Total Liabilities and Shareholders' Equity..... | \$13,173 | \$33,057 | \$20,617 | \$(32,207) | \$34,640 |
|---|----------|----------|----------|------------|----------|

\* Parent's minority interest in a subsidiary which is wholly-owned on a consolidated basis.

(continued)

**FEDERATED DEPARTMENT STORES, INC.**  
**Condensed Consolidating Statement of Income**  
**For the 13 Weeks Ended October 29, 2005**  
**(Unaudited)**

(millions)

|  | Parent        | Subsidiary<br>Issuer | Other<br>Subsidiaries | Consolidating<br>Adjustments | Consolidated  |
|--|---------------|----------------------|-----------------------|------------------------------|---------------|
| Net Sales.....                               | \$ -          | \$2,247              | \$ 4,048              | \$ (740)                     | \$ 5,555      |
| Cost of sales.....                           | -             | (1,354)              | (2,445)               | 487                          | (3,312)       |
| Gross margin.....                            | -             | 893                  | 1,603                 | (253)                        | 2,243         |
| Selling, general and administrative expense  | (2)           | (945)                | (1,259)               | 233                          | (1,973)       |
| May integration costs.....                   | -             | -                    | (63)                  | -                            | (63)          |
| Gain on the sale of accounts receivable...   | -             | 140                  | 340                   | -                            | 480           |
| Operating income (loss).....                 | (2)           | 88                   | 621                   | (20)                         | 687           |
| Interest (expense) income, net:              |               |                      |                       |                              |               |
| External.....                                | (10)          | (121)                | (14)                  | -                            | (145)         |
| Intercompany.....                            | 26            | (43)                 | 17                    | -                            | -             |
| Equity in earnings of subsidiaries.....      | 427           | 105                  | -                     | (532)                        | -             |
| Income from continuing operations            |               |                      |                       |                              |               |
| before income taxes.....                     | 441           | 29                   | 624                   | (552)                        | 542           |
| Federal, state and local income taxes.....   | (5)           | 8                    | (126)                 | 5                            | (118)         |
| Income from continuing operations ....       | 436           | 37                   | 498                   | (547)                        | 424           |
| Discontinued operations, net of income taxes | -             | -                    | -                     | 12                           | 12            |
| Net income.....                              | <u>\$ 436</u> | <u>\$ 37</u>         | <u>\$ 498</u>         | <u>\$ (535)</u>              | <u>\$ 436</u> |

(continued)

**FEDERATED DEPARTMENT STORES, INC.**  
**Condensed Consolidating Statement of Income**  
**For the 39 Weeks Ended October 29, 2005**  
**(Unaudited)**

(millions)

|   | Parent        | Subsidiary<br>Issuer | Other<br>Subsidiaries | Consolidating<br>Adjustments | Consolidated   |
|---|---------------|----------------------|-----------------------|------------------------------|----------------|
| Net Sales.....  | \$ -          | \$2,247              | \$11,312              | \$ (740)                     | \$12,819       |
| Cost of sales.....  | -             | <u>(1,354)</u>       | <u>(6,747)</u>        | <u>487</u>                   | <u>(7,614)</u> |
| Gross margin.....   | -             | 893                  | 4,565                 | (253)                        | 5,205          |
| Selling, general and administrative expenses..                | (6)           | (945)                | (3,674)               | 233                          | (4,392)        |
| May integration costs.....                                    | -             | -                    | (63)                  | -                            | (63)           |
| Gain on the sale of accounts receivable.....                  | -             | <u>140</u>           | <u>340</u>            | <u>-</u>                     | <u>480</u>     |
| Operating income (loss).....                                  | (6)           | 88                   | 1,168                 | (20)                         | 1,230          |
| Interest (expense) income, net:                               |               |                      |                       |                              |                |
| External.....   | (90)          | (121)                | (42)                  | -                            | (253)          |
| Intercompany.....   | 144           | (43)                 | (101)                 | -                            | -              |
| Equity in earnings of subsidiaries.....                       | <u>677</u>    | <u>105</u>           | <u>-</u>              | <u>(782)</u>                 | <u>-</u>       |
| Income from continuing operations<br>before income taxes..... | 725           | 29                   | 1,025                 | (802)                        | 977            |
| Federal, state and local income taxes.....                    | <u>(18)</u>   | <u>8</u>             | <u>(277)</u>          | <u>5</u>                     | <u>(282)</u>   |
| Income from continuing operations.....                        | 707           | 37                   | 748                   | (797)                        | 695            |
| Discontinued operations, net of income taxes                  | <u>-</u>      | <u>-</u>             | <u>-</u>              | <u>12</u>                    | <u>12</u>      |
| Net income.....   | <u>\$ 707</u> | <u>\$ 37</u>         | <u>\$ 748</u>         | <u>\$ (785)</u>              | <u>\$ 707</u>  |

(continued)

**FEDERATED DEPARTMENT STORES, INC.**  
**Condensed Consolidating Statement of Cash Flows**  
**For the 39 Weeks Ended October 29, 2005**  
**(Unaudited)**

(millions)

|  | Parent       | Subsidiary<br>Issuer | Other<br>Subsidiaries | Consolidating<br>Adjustments | Consolidated |
|--|--------------|----------------------|-----------------------|------------------------------|--------------|
| Cash flows from continuing operating activities:                                 |              |                      |                       |                              |              |
| Net income.....  | \$ 707       | \$ 37                | \$ 748                | \$ (785)                     | \$ 707       |
| Income from discontinued<br>operations.  | -            | -                    | -                     | (12)                         | (12)         |
| Gain on the sale of accounts<br>receivable                                       | -            | (94)                 | (386)                 | -                            | (480)        |
| May integration<br>costs.....  | -            | -                    | 63                    | -                            | 63           |
| Equity in earnings of<br>subsidiaries.....                                       | (677)        | (105)                | -                     | 782                          | -            |
| Depreciation and<br>amortization.....  | -            | 114                  | 530                   | (5)                          | 639          |
| Stock-based compensation<br>expense.   | 2            | -                    | 5                     | -                            | 7            |
| Proceeds from sale of<br>proprietary<br>accounts<br>receivable.....              | -            | 94                   | 2,101                 | -                            | 2,195        |
| (Increase) decrease in working<br>capital<br>not separately<br>identified.....   | (414)        | (481)                | 237                   | (61)                         | (719)        |
| Other,<br>net.....   | <u>101</u>   | <u>(122)</u>         | <u>(28)</u>           | <u>(35)</u>                  | <u>(84)</u>  |
| Net cash provided (used)<br>by<br>continuing operating<br>activities.....        | <u>(281)</u> | <u>(557)</u>         | <u>3,270</u>          | <u>(116)</u>                 | <u>2,316</u> |
| Cash flows from continuing investing activities:                                 |              |                      |                       |                              |              |
| Purchase of property and<br>equipment<br>and capitalized software,<br>net.....   | -            | (54)                 | (308)                 | (2)                          | (364)        |
| Acquisition of The May<br>Department<br>Stores Company, net of<br>cash acquired. | (5,339)      | -                    | -                     | -                            | (5,339)      |
| Proceeds from sale of<br>non-proprietary   | -            | -                    | 1,388                 | -                            | 1,388        |

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form 424B5

|  |                |                |                |                  |                |
|--|----------------|----------------|----------------|------------------|----------------|
| accounts receivable.....   |                |                |                |                  |                |
| Increase in non-proprietary<br>accounts receivable.....          | <u>      -</u> | <u>      -</u> | <u>  (131)</u> | <u>      -</u>   | <u>  (131)</u> |
| Net cash provided (used)   |                |                |                |                  |                |
| by   | <u>(5,339)</u> | <u>  (54)</u>  | <u>  949</u>   | <u>      (2)</u> | <u>(4,446)</u> |
| continuing investing<br>activities.....                          |                |                |                |                  |                |
| Cash flows from continuing financing activities:                 |                |                |                |                  |                |
| Debt issued, net of<br>repayments.....                           | 4,579          | (2,097)        | (1,240)        | -                | 1,242          |
| Dividends<br>paid.....   | (89)           | -              | -              | -                | (89)           |
| Issuance of common stock,<br>net.....                            | 243            | -              | -              | -                | 243            |
| Intercompany activity,<br>net.....                               | 204            | 2,640          | (2,665)        | (179)            | -              |
| Other, net.....  | <u>  11</u>    | <u>  79</u>    | <u>  (2)</u>   | <u>      -</u>   | <u>  88</u>    |
| Net cash provided (used)   |                |                |                |                  |                |
| by   | <u>4,948</u>   | <u>  622</u>   | <u>(3,907)</u> | <u>  (179)</u>   | <u>  1,484</u> |
| continuing financing<br>activities.....                          |                |                |                |                  |                |
| Net cash provided (used) by<br>continuing<br>operations.....     | (672)          | 11             | 312            | (297)            | (646)          |
| Net cash provided by<br>discontinued<br>operations               | <u>      -</u> | <u>      -</u> | <u>      -</u> | <u>  47</u>      | <u>  47</u>    |
| Net increase (decrease) in cash<br>and cash<br>equivalents ..... | (672)          | 11             | 312            | (250)            | (599)          |
| Cash and cash equivalents at<br>beginning<br>of<br>period.....   | <u>  686</u>   | <u>      -</u> | <u>  184</u>   | <u>  (2)</u>     | <u>  868</u>   |
| Cash and cash equivalents at end<br>of period<br>(continued)     | <u>\$  14</u>  | <u>\$  11</u>  | <u>\$  496</u> | <u>\$ (252)</u>  | <u>\$  269</u> |

**FEDERATED DEPARTMENT STORES, INC.**  
**Notes to Consolidated Financial Statements**  
 unaudited)

**Condensed Consolidating Balance Sheet**  
 As of January 28, 2006

(millions)

|   | Parent   | Subsidiary<br>Issuer | Other<br>Subsidiaries | Consolidating<br>Adjustments | Consolidated |
|---|----------|----------------------|-----------------------|------------------------------|--------------|
| <b>ASSETS:</b>                                |          |                      |                       |                              |              |
| Current Assets:                               |          |                      |                       |                              |              |
| Cash and cash equivalents.....                | \$ 17    | \$ 33                | \$ 342                | \$ (144)                     | \$ 248       |
| Accounts receivable.....                      | -        | 94                   | 2,584                 | (156)                        | 2,522        |
| Merchandise inventories.....                  | -        | 3,049                | 2,829                 | (419)                        | 5,459        |
| Supplies and prepaid expenses....             | -        | 105                  | 133                   | (35)                         | 203          |
| Income taxes.....                             | 99       | -                    | -                     | (99)                         | -            |
| Deferred income tax assets.....               | 3        | 46                   | -                     | (49)                         | -            |
| Assets of discontinued operations             | -        | -                    | -                     | 1,713                        | 1,713        |
| Total Current Assets.....                     | 119      | 3,327                | 5,888                 | 811                          | 10,145       |
| Property and Equipment - net.....             | 2        | 6,979                | 5,680                 | (627)                        | 12,034       |
| Goodwill.....                                 | -        | 5,565                | 4,244                 | (289)                        | 9,520        |
| Other Intangible Assets - net.....            | -        | 527                  | 710                   | (157)                        | 1,080        |
| Other Assets.....                             | 4        | 129                  | 282                   | (26)                         | 389          |
| Intercompany Receivable.....                  | 1,805    | -                    | 4,755                 | (6,560)                      | -            |
| Investment in Subsidiaries.....               | 11,754   | 11,177               | -                     | (22,931)                     | -            |
| Total Assets.....                             | \$13,684 | \$27,704             | \$21,559              | \$(29,779)                   | \$33,168     |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY:</b>  |          |                      |                       |                              |              |
| Current Liabilities:                          |          |                      |                       |                              |              |
| Short-term debt.....                          | \$ -     | \$ 1,319             | \$ 5                  | \$ (1)                       | \$ 1,323     |
| Accounts payable and accrued liabilities..... | 114      | 2,804                | 2,785                 | (457)                        | 5,246        |
| Income taxes.....                             | -        | 170                  | 383                   | (99)                         | 454          |
| Deferred income taxes.....                    | -        | -                    | 225                   | (122)                        | 103          |
| Liabilities of discontinued operations.....   | -        | -                    | -                     | 464                          | 464          |
| Total Current Liabilities.....                | 114      | 4,293                | 3,398                 | (215)                        | 7,590        |
| Long-Term Debt.....                           | -        | 8,781                | 81                    | (2)                          | 8,860        |
| Intercompany Payable.....                     | -        | 6,560                | -                     | (6,560)                      | -            |
| Deferred Income Taxes.....                    | 45       | 415                  | 1,302                 | (58)                         | 1,704        |
| Other Liabilities.....                        | 6        | 867                  | 635                   | (13)                         | 1,495        |
| Minority Interest *.....                      | -        | -                    | 518                   | (518)                        | -            |
| Shareholders' Equity.....                     | 13,519   | 6,788                | 15,625                | (22,413)                     | 13,519       |

|   |          |          |          |            |          |
|---|----------|----------|----------|------------|----------|
| Total Liabilities and Shareholders' Equity..... | \$13,684 | \$27,704 | \$21,559 | \$(29,779) | \$33,168 |
|---|----------|----------|----------|------------|----------|

\* Parent's minority interest in a subsidiary which is wholly-owned on a consolidated basis.

(continued)

## FEDERATED DEPARTMENT STORES, INC.

### Notes to Consolidated Financial Statements Unaudited)

#### 11. Subsequent Event

On November 29, 2006, the Company issued \$1,100 million aggregate principal amount of 5.90% senior unsecured notes due 2016. On December 4, 2006, the Company used the net proceeds of the issuance of such notes, together with cash on hand, to repurchase approximately \$957 million aggregate principal amount of its outstanding senior unsecured notes, which had a net book value of approximately \$1,201 million. The repurchased outstanding senior unsecured notes had stated interest rates ranging from 7.60% to 10.25%, a weighted-average interest rate of 8.53% and had maturities from 2019 to 2036. In connection with the repurchase of the senior unsecured notes, on November 21, 2006, the Company entered into reverse Treasury lock agreements, which are derivative financial instruments, with an aggregate notional amount of \$900 million. These agreements were settled on December 4, 2006, with a net payment to the Company of approximately \$4 million. The derivative financial instruments were used to mitigate the Company's exposure to interest rate sensitivity during the period between the date on which the 5.90% senior unsecured notes were priced and the date on which the applicable consideration payable with respect to the cash repurchase of senior unsecured notes was finalized. As a result of these transactions, the Company expects to record a one-time pre-tax gain of approximately \$54 million in the fourth quarter of 2006.

## FEDERATED DEPARTMENT STORES, INC.

### Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

For purposes of the following discussion, all references to "third quarter of 2006" and "third quarter of 2005" are to the Company's 13-week fiscal periods ended October 28, 2006 and October 29, 2005, respectively, and all references to "2006" and "2005" are to the Company's 39-week fiscal periods ended October 28, 2006 and October 29, 2005, respectively.

The Company is a retail organization operating retail stores that sell a wide range of merchandise, including men's, women's and children's apparel and accessories, cosmetics, home furnishings and other consumer goods in 45 states, the District of Columbia, Puerto Rico and Guam. The Company operates coast-to-coast exclusively under two retail brands - Macy's and Bloomingdale's. The Company's operations are significantly impacted by competitive pressures from department stores, specialty stores, mass merchandisers and all other retail channels. The Company's operations are also significantly impacted by general consumer-spending levels, which are driven in part by consumer confidence and employment levels.

In 2003, the Company commenced the implementation of a strategy to more fully utilize its Macy's brand, converting all of the Company's regional store nameplates to the Macy's nameplate. This strategy allows the Company to magnify the impact of its marketing efforts on a nationwide basis, as well as to leverage major events such as the Macy's Thanksgiving Day Parade and Macy's 4<sup>th</sup> of July fireworks.

In early 2004, the Company announced a further step in reinventing its department stores - the creation of a centralized organization to be responsible for the overall strategy, merchandising and marketing of home-related categories of business in all of its Macy's-branded stores. While its benefits have taken longer to be realized, the centralized operation is still expected to accelerate future sales in these categories largely by improving and further differentiating the Company's home-related merchandise assortments.

Over the past several years, the Company focused on four key priorities for improving the business over the longer term: differentiating and editing merchandise assortments; simplifying pricing; improving the overall shopping experience; and communicating better with customers through more brand focused and effective marketing. The Company believes that its recent results indicate that these strategies are working and that the customer is responding in a favorable manner. In 2005, the Company launched a new nationwide Macy's customer loyalty program, called Star Rewards, in coordination with the launch of the Macy's nameplate in cities across the country. The program provides an enhanced level of offers and benefits to Macy's best credit card customers.

On August 30, 2005, the Company completed its acquisition of May (the "Merger"). The results of May's operations have been included in the Consolidated Financial Statements since that date. The aggregate purchase price for May was approximately \$11.7 billion, including approximately \$5.7 billion of cash and approximately 200 million shares of Company common stock and options to purchase an additional 18.8 million shares of Company common stock valued at approximately \$6.0 billion in the aggregate. In connection with the Merger, the Company also assumed approximately \$6.0 billion of May debt.

The Merger has had and is expected to continue to have a material effect on the Company's consolidated financial position, results of operations and cash flows. The Company continues to expect to realize approximately \$175 million of cost savings in 2006 and at least \$450 million of annual cost savings starting in 2007, resulting from the

consolidation of central functions, division integrations and the adoption of best practices across the combined company with respect to systems, logistics, store operations and credit management. The Merger is also expected to accelerate comparable store sales growth. The Company anticipates incurring approximately \$110 million of May integration costs (including inventory valuation adjustments) in the remaining quarter of fiscal 2006.

The Company added about 400 Macy's locations nationwide in 2006 as it converted the regional department store nameplates acquired through the Merger. In conjunction with the conversion process, the Company has identified approximately 80 locations to be divested, including approximately 40 current May stores having operated in 11 states under various nameplates, as well as approximately 40 Macy's stores having operated in 15 states. Locations identified for divestiture accounted for approximately \$2.2 billion of annual 2005 sales on a pro forma basis. As of December 7, 2006, the Company had sold or entered into agreements for the sale of 63 of these stores. The Company is continuing to study its store portfolio in light of the Merger and some plans may change.

On September 20, 2005 and January 12, 2006, the Company announced its intention to dispose of the acquired May bridal group business, which includes the operations of David's Bridal, After Hours Formalwear and Priscilla of Boston, and the acquired Lord & Taylor division of May, respectively. In October 2006, the Company completed the sale of its Lord & Taylor division to NRDC Equity Partners, LLC for \$1,047 million in cash and a long-term note receivable of approximately \$17 million. On November 17, 2006, the Company announced that it signed agreements to sell the bridal group business in two separate transactions totaling \$850 million in cash, subject to certain adjustments. An affiliate of Leonard Green & Partners, L.P. has agreed to purchase the David's Bridal and Priscilla of Boston businesses for approximately \$750 million. Men's Wearhouse has agreed to purchase the After Hours Formalwear business for approximately \$100 million. Both transactions are expected to close in the first quarter of 2007, subject to the satisfaction of customary conditions. As a result of the Company's decision to dispose of these businesses, these businesses are being reported as discontinued operations. Unless otherwise indicated, the following discussion relates to the Company's continuing operations.

In June 2005, the Company entered into a Purchase, Sale and Servicing Transfer Agreement (the "Purchase Agreement") with Citibank, N.A. pursuant to which the Company agreed to sell to Citibank (i) the proprietary and non-proprietary credit card accounts owned by the Company, together with related receivables balances, and the capital stock of Prime Receivables Corporation, a wholly owned subsidiary of the Company, which owned all of the Company's interest in the Prime Credit Card Master Trust (the "FDS Credit Assets"), (ii) the "Macy's" credit card accounts owned by GE Capital Consumer Card Co. ("GE Bank"), together with related receivables balances (the "GE/Macy's Credit Assets"), upon the termination of the Company's credit card program agreement with GE Bank, and (iii) the proprietary credit card accounts owned by May, together with related receivables balances (the "May Credit Assets"). The purchase by Citibank of the FDS Credit Assets was completed on October 24, 2005, the purchase by Citibank of the GE/Macy's Credit Assets was completed on May 1, 2006 and the purchase by Citibank of the May Credit Assets was completed on May 22, 2006 and July 17, 2006.

In connection with the Purchase Agreement, the Company and Citibank entered into a long-term marketing and servicing alliance pursuant to the terms of a Credit Card Program Agreement (the "Program Agreement") with an initial term of 10 years expiring on July 17, 2016 and, unless terminated by either party as of the expiration of the initial term, an additional renewal term of three years. The Program Agreement provides for, among other things, (i) the ownership by Citibank of the accounts purchased by Citibank pursuant to the Purchase Agreement, (ii) the ownership by Citibank of new accounts opened by the Company's customers, (iii) the provision of credit by Citibank to the holders of the credit cards associated with the foregoing accounts, (iv) the servicing of the foregoing accounts, and (v) the allocation between Citibank and the Company of the economic benefits and burdens associated with the foregoing and other aspects of the alliance.

The sales prices provided for in the Purchase Agreement equate to approximately 111.5% of the receivables included in the FDS Credit Assets, the GE/Macy's Credit Assets and the May Credit Assets, and the Company will receive ongoing payments under the Program Agreement. The transactions completed under the Purchase Agreement and

contemplated by the Program Agreement are expected to be accretive to the Company's earnings per share, particularly now that the sales of the GE/Macy's Credit Assets and the May Credit Assets have been completed.

The transactions under the Purchase Agreement have provided the Company with significant liquidity (i) through receipt of the purchase price (which included a premium) for the divested credit card accounts and related receivable balances and (ii) because the Company will no longer have to finance significant accounts receivable balances associated with the divested credit card accounts going forward, and will receive payments from Citibank immediately for sales under such credit card accounts. Although the Company's future cash flows will include payments to the Company under the Program Agreement, these payments will be less than the net cash flow that the Company would have derived from the finance charge income generated on the receivables balances, net of the interest expense associated with the Company's financing of these receivable balances.

The following discussion should be read in conjunction with our Consolidated Financial Statements and the related notes included elsewhere in this report. The following discussion contains forward looking statements that reflect the Company's plans, estimates and beliefs. The Company's actual results could materially differ from those discussed in these forward looking statements. Factors that could cause or contribute to those differences include, but are not limited to, those discussed below and elsewhere in this report, particularly in "Forward Looking Statements."

## Results of Operations

### Comparison of the 13 Weeks Ended October 28, 2006 and October 29, 2005

The net loss for the third quarter of 2006 was \$3 million compared to net income of \$436 million in the third quarter of 2005. The net loss for the third quarter of 2006 includes income from continuing operations of \$20 million and a loss from discontinued operations of \$23 million. The loss from discontinued operations includes the loss on disposal of the Lord & Taylor division of \$63 million on a pre-tax basis, or \$38 million after income taxes. The income from continuing operations in the third quarter of 2006 includes the impact of \$145 million of May integration costs and related inventory valuation adjustments. Net income for the third quarter of 2005 included income from continuing operations of \$424 million and income from discontinued operations of \$12 million. The income from continuing operations in the third quarter of 2005 included the impact of \$63 million of May integration costs and related inventory valuation adjustments and a \$480 million gain on the sale of accounts receivable.

Net sales for the third quarter of 2006 totaled \$5,886 million, compared to net sales of \$5,555 million for the third quarter of 2005, an increase of \$331 million or 6%. Net sales for the third quarter of 2006, compared to the third quarter of 2005, were negatively impacted by the exclusion of 77 duplicate store locations where clearance sales have been completed, which was partially offset by the additional month of reported sales of acquired May stores. Net sales for acquired May stores included in the Company's total net sales were \$2,111 million for the third quarter of 2006 compared to \$2,016 million for the third quarter of 2005. The weakness in the acquired May stores was focused in the home areas. On a comparable store basis (sales from Bloomingdale's and Macy's stores in operation throughout 2005 and 2006 and all Internet sales and mail order sales from continuing businesses), net sales for the third quarter of 2006 were up 5.9 percent compared to the third quarter of 2005. Sales in the third quarter of 2006 were strongest at Macy's Florida and Bloomingdale's. Macys.com also had strong sales in the third quarter of 2006, benefiting from the spread of the Macy's name and the national advertising. By family of business, sales in the legacy Macy's and Bloomingdale's branded stores during the third quarter of 2006 were strongest in women's apparel, handbags, hosiery, shoes, sleepwear and cosmetics and were weakest in the big ticket home related areas. Sales of the Company's private brand merchandise sold well across the store in the third quarter of 2006.

Cost of sales was \$3,513 million or 59.7% of net sales for the third quarter of 2006, compared to \$3,312 million or 59.6% of net sales for the third quarter of 2005, an increase of \$201 million. Cost of sales for September and October 2005 include the continuing operations of May, which represented \$1,192 million or 59.1% of May net sales. In addition, gross margin for the third quarter of 2006 reflects \$28 million of inventory valuation adjustments related to

the integration of May and Federated merchandise assortments. The valuation of merchandise inventories on the last-in, first-out basis did not impact cost of sales in either period.

Selling, general and administrative ("SG&A") expenses were \$2,094 million or 35.6% of net sales for the third quarter of 2006, compared to \$1,973 million or 35.5% of net sales for the third quarter of 2005, an increase of \$121 million. SG&A expenses for September and October 2005 include the continuing operations of May, which represented \$771 million or 38.3% of May net sales. The SG&A expense rate in the third quarter of 2006 was negatively impacted by higher depreciation and amortization expense and higher stock-based compensation expenses, including the expensing of stock options. Depreciation and amortization expense was \$315 million for the third quarter of 2006, compared to \$284 million for the third quarter of 2005. Stock-based compensation expense was \$30 million for the third quarter of 2006, compared to \$2 million of income for the third quarter of 2005.

May integration costs for the third quarter of 2006 amounted to \$117 million, primarily related to costs associated with the closing of duplicate store locations and the re-branding-related marketing and advertising costs. May integration costs for the third quarter of 2005 amounted to \$63 million, primarily related to impairment charges for certain Macy's stores to be closed and sold.

A pre-tax gain of \$480 million was recorded in the third quarter of 2005 in connection with the sale of certain credit card accounts and receivables.

Net interest expense was \$104 million for the third quarter of 2006, compared to \$145 million for the third quarter of 2005, benefiting from the pay-down of acquisition-related borrowings primarily with the proceeds from the sales of credit card accounts and receivables.

The Company's effective income tax rate of 32.9% for the third quarter of 2006 and 21.8% for the third quarter of 2005 differ from the federal income tax statutory rate of 35.0%, and on a comparative basis, principally because of the impact of the settlement of various state tax examinations, the utilization of capital loss carryforwards and the effect of state and local income taxes. Federal, state and local income tax expense for the third quarter of 2005 was reduced by approximately \$85 million to recognize capital loss carryforwards realized as a result of the sale of credit card accounts and receivables.

For the third quarter of 2006, the loss from the discontinued operations of the acquired May bridal group and Lord & Taylor businesses, net of income taxes, was \$23 million on sales of approximately \$419 million. The loss from discontinued operations includes the loss on disposal of the Lord & Taylor division of \$63 million on a pre-tax basis, or \$38 million after income taxes. The loss on disposal reflects the exclusion of certain properties under the purchase agreement and a corresponding reduction in purchase price. For the third quarter of 2005, income from the discontinued operations of the acquired May bridal group and Lord & Taylor business, net of income taxes was \$12 million on sales of approximately \$365 million.

Comparison of the 39 Weeks Ended October 28, 2006 and October 29, 2005

Net income for 2006 was \$262 million compared to net income of \$707 million in 2005. The net income for 2006 includes income from continuing operations of \$228 million and income from discontinued operations of \$34 million. The income from continuing operations in 2006 includes the impact of \$451 million of May integration costs and related inventory valuation adjustments, the impact of \$191 million of gains on the sale of accounts receivable, \$88 million of additional interest expense associated with the increased levels of borrowings associated with the acquisition of May and a \$155 million favorable tax settlement. The income from discontinued operations for 2006 includes the loss on disposal of the Lord & Taylor division of \$63 million on a pre-tax basis, or \$38 million after income taxes. The net income for 2005 includes income from continuing operations of \$695 million and income from discontinued operations of \$12 million. The income from continuing operations in 2005 includes the impact of \$63 million of May integration costs and the impact of a \$480 million gain on the sale of accounts receivable.

Net sales for 2006 totaled \$17,811 million, compared to net sales of \$12,819 million for 2005, an increase of \$4,992 million or 39%. Net sales for acquired May stores included in the Company's total net sales were \$6,597 million for 2006 compared to \$2,016 million for 2005. On a comparable store basis (sales from Bloomingdale's and Macy's stores in operation throughout 2005 and 2006 and all Internet sales and mail order sales from continuing businesses), net sales for 2006 were up 3.5 percent compared to 2005. Sales in 2006 were strongest at Macy's Florida and Bloomingdale's. By family of business, sales in the legacy Macy's and Bloomingdale's branded stores during 2006 were strongest in dresses, junior's, young men's, cosmetics and fragrances and were weakest in the home related areas.

Cost of sales was \$10,610 million or 59.6% of net sales for 2006, compared to \$7,614 million or 59.4% of net sales for 2005, an increase of \$2,996 million. Cost of sales for September and October 2005 include the continuing operations of May, which represented \$1,192 million or 59.1% of May net sales. In addition, gross margin for 2006 reflects \$168 million of inventory valuation adjustments related to the integration of May and Federated merchandise assortments. The valuation of merchandise inventories on the last-in, first-out basis did not impact cost of sales in either period.

SG&A expenses were \$6,365 million or 35.8% of net sales for 2006, compared to \$4,392 million or 34.3% of net sales for 2005, an increase of \$1,973 million. SG&A expenses for September and October 2005 include the continuing operations of May, which represented \$771 million or 38.3% of May net sales. The SG&A expense rate in 2006 was negatively impacted by higher depreciation and amortization expense, higher retirement expenses and higher stock-based compensation expenses, including the expensing of stock options. Depreciation and amortization expense was \$945 million for 2006, compared to \$639 million for 2005. Pension and supplementary retirement plan expense amounted to \$131 million for 2006, compared to \$82 million for 2005. Stock-based compensation expense was \$73 million for 2006, compared to \$7 million for 2005.

May integration costs for 2006 amounted to \$283 million, primarily related to costs associated with the closing of duplicate store locations, partially offset by gains from the sale of Federated locations, and the re-branding-related marketing and advertising costs. May integration costs for 2005 amounted to \$63 million, primarily related to impairment charges for certain Macy's stores to be closed and sold.

Pre-tax gains of \$191 million and \$480 million were recorded in 2006 and 2005, respectively, in connection with the sale of certain credit card accounts and receivables.

Net interest expense was \$341 million for 2006, compared to \$253 million for 2005. The increase in net interest expense in 2006 over 2005 is due to the increased levels of borrowings associated with the acquisition of May, partially offset by \$17 million of interest income related to the settlement of tax examinations.

The Company's effective income tax rate of 3.0% for 2006 and 28.9% for 2005 differ from the federal income tax statutory rate of 35.0%, and on a comparative basis, principally because of the settlement of tax examinations, the utilization of capital loss carryforwards and the effect of state and local income taxes. The federal, state and local income tax expense for 2006 included a benefit of approximately \$80 million relating to the settlement of tax examinations, primarily attributable to losses related to the disposition of a former subsidiary. Federal, state and local income tax expense for 2005 was reduced by approximately \$85 million to recognize capital loss carryforwards realized as a result of the sale of credit card accounts and receivables.

For 2006, income from the discontinued operations of the acquired May bridal group and Lord & Taylor businesses, net of income taxes, was \$34 million on sales of approximately \$1,573 million. The income from discontinued operations for 2006 includes the loss on disposal of the Lord & Taylor division of \$63 million on a pre-tax basis, or \$38 million after income taxes.

The loss on disposal reflects the exclusion of certain properties under the purchase agreement and a corresponding reduction in purchase price. For 2005, income from the discontinued operations of the acquired May bridal group and

Lord & Taylor businesses, net of income taxes, was \$12 million on sales of approximately \$365 million.

### **Liquidity and Capital Resources**

The Company's principal sources of liquidity are cash from operations, cash on hand and available credit facilities.

Net cash provided by continuing operating activities in 2006 was \$1,971 million, compared to the \$2,316 million of net cash provided in 2005. The decrease in net cash provided by continuing operating activities in 2006 reflects lower net income, lower proceeds from the sale of proprietary accounts receivable, and a greater increase in merchandise inventories, partially offset by higher depreciation and amortization expense, higher May integration costs and smaller gains on the sale of accounts receivable.

Net cash provided by continuing investing activities was \$865 million for 2006, compared to net cash used by continuing investing activities of \$4,446 million for 2005. Continuing investing activities for 2006 included purchases of property and equipment totaling \$804 million and capitalized software of \$61 million. Continuing investing activities for 2006 also included the repurchase of accounts receivable from GE Bank and the subsequent sale to Citigroup and \$1,047 million of proceeds from the disposition of the discontinued operations of the Company's Lord & Taylor division and \$494 million from disposal of property and equipment, primarily from the sale of approximately 60 duplicate store locations. Continuing investing activities for 2005 included purchases of property and equipment totaling \$321 million, capitalized software of \$59 million, the \$5,339 million related to the acquisition of May and \$1,388 million of proceeds from the sale of non-proprietary accounts receivable.

Net cash used by the Company from all continuing financing activities was \$2,345 million for 2006, including the repayment of \$1,521 million of debt, the acquisition of 28 million shares of Company common stock at an approximate cost of \$1,118 million and cash dividends paid of \$208 million, partially offset by the issuance of \$352 million of Company common stock, primarily related to the exercise of stock options. The debt repaid in 2006 includes \$1,199 million of short-term borrowings associated with the acquisition of May, \$100 million of 8.85% senior debentures due 2006 and \$200 million of 8.30% debentures due 2026. The \$200 million of 8.30% debentures due 2026 was redeemed on July 17, 2006.

Net cash provided by the Company from all continuing financing activities was \$1,484 million for 2005, including the issuance of \$4,580 million of short-term debt used to finance the acquisition of May, the repayment of approximately \$3,338 million of debt, the issuance of \$250 million of its common stock, primarily related to the exercise of stock options, and \$89 million of cash dividends paid. The debt repaid in 2005 includes \$1,200 million of receivables backed financings and approximately \$2,100 million of acquisition-related borrowings, which repayments were primarily funded from the net proceeds received from the sale of the credit card accounts and receivables. The Company acquired no shares of its common stock under its share repurchase program during 2005.

In connection with the Merger, the Company entered into a 364-day bridge credit agreement with certain financial institutions providing for revolving credit borrowings in an aggregate amount initially not to exceed \$5.0 billion outstanding at any particular time. On June 19, 2006, the Company terminated the 364-day bridge credit agreement.

The Company's \$2,000 million five-year credit agreement which was set to expire August 30, 2010 was extended and will now expire August 30, 2011. There are no revolving credit loans outstanding under this agreement.

On August 25, 2006, the Company's board of directors approved an additional \$2,000 million authorization to the Company's existing share repurchase program. The new authorization is additive to the existing repurchase program, which as of October 28, 2006 had approximately \$1,553 million of authorization remaining. The Company may continue or, from time to time, suspend repurchases of shares under its stock repurchase program, depending on prevailing market conditions, alternate uses of capital and other factors.

On October 26, 2006, the Company's board of directors declared a regular quarterly dividend of 12.75 cents per share on its common stock, payable January 2, 2007 to Federated shareholders of record at the close of business on December 15, 2006.

On November 29, 2006, the Company issued \$1,100 million aggregate principal amount of 5.90% senior unsecured notes due 2016. On December 4, 2006, the Company used the net proceeds of the issuance of such notes, together with cash on hand, to repurchase approximately \$957 million aggregate principal amount of its outstanding senior unsecured notes, which had a net book value of approximately \$1,201 million. The repurchased outstanding senior unsecured notes had stated interest rates ranging from 7.60% to 10.25%, a weighted-average interest rate of 8.53% and had maturities from 2019 to 2036. In connection with the repurchase of the senior unsecured notes, on November 21, 2006, the Company entered into reverse Treasury lock agreements, which are derivative financial instruments, with an aggregate notional amount of \$900 million. These agreements were settled on December 4, 2006, with a net payment to the Company of approximately \$4 million. The derivative financial instruments were used to mitigate the Company's exposure to interest rate sensitivity during the period between the date on which the 5.90% senior unsecured notes were priced and the date on which the applicable consideration payable with respect to the cash repurchase of senior unsecured notes was finalized. As a result of these transactions, the Company expects to record a one-time pre-tax gain of approximately \$54 million in the fourth quarter of 2006 and to incur approximately \$7 million less interest expense and pay approximately \$18 million less cash interest in fiscal 2007, which ends February 2, 2008.

Management believes that, with respect to the Company's current operations, cash on hand and funds from operations, together with its credit facilities and other capital resources, will be sufficient to cover the Company's reasonably foreseeable working capital, capital expenditure and debt service requirements and other cash requirements in both the near term and over the longer term. The Company's ability to generate funds from operations may be affected by numerous factors, including general economic conditions and levels of consumer confidence and demand; however, the Company expects to be able to manage its working capital levels and capital expenditure amounts so as to maintain sufficient levels of liquidity. Depending upon conditions in the capital markets and other factors, the Company will from time to time consider the issuance of debt or other securities, or other possible capital markets transactions, the proceeds of which could be used to refinance current indebtedness or for other corporate purposes.

Management believes the department store business and other retail businesses will continue to consolidate. The Company intends from time to time to consider additional acquisitions of, and investments in, department stores and other complementary assets and companies. Acquisition transactions, if any, are expected to be financed from one or more of the following sources: cash on hand, cash from operations, borrowings under existing or new credit facilities and the issuance of long-term debt, commercial paper or other securities, including common stock.

#### **Item 4. Controls and Procedures**

The Company's Chief Executive Officer and Chief Financial Officer have carried out, as of October 28, 2006, with the participation of the Company's management, an evaluation of the effectiveness of the Company's disclosure controls and procedures, as defined in Rule 13a-15(e) under the Exchange Act. Based upon this evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures are effective to provide reasonable assurance that material information required to be disclosed in reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms.

The Company is in the process of making changes to the internal control over financial reporting historically used in acquired May divisions and operations to conform such internal control to that used in the Company's other divisions and operations. Based on information presently available to management, the Company does not believe that such changes will materially affect the Company's internal control over financial reporting. Subject to the foregoing, there were no changes in the Company's internal controls over financial reporting that occurred during the Company's most

recently completed fiscal quarter that materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

## PART II -- OTHER INFORMATION

### FEDERATED DEPARTMENT STORES, INC.

#### Item 1. Legal Proceedings.

On January 11, 2006, Edward Decristofaro, an alleged former May stockholder, filed a purported class action lawsuit on behalf of all former May stockholders in the Circuit Court of St. Louis, Missouri against May and the former members of the board of directors of May. The complaint generally alleges that the directors of May breached their fiduciary duties of loyalty, due care, good faith and candor to May stockholders in connection with the Merger. The Company believes the lawsuit is without merit and intends to contest it vigorously. The defendants have filed a motion to dismiss the lawsuit upon which the court has not yet ruled.

#### Item 1A. Risk Factors.

There have been no material changes to the Risk Factors described in Part I, "Item 1A. Risk Factors" in the Company's Annual Report on Form 10-K, as amended, for the fiscal year ended January 28, 2006 as filed with the Securities and Exchange Commission.

#### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

The following table provides information regarding the Company's purchases of common stock during the third quarter of 2006:

|   | Total Number of<br>Shares<br><u>Purchased</u><br>(thousands) | Average Price per<br><u>Share (\$)</u> | Number of Shares Purchased<br>Under <u>Program (1)</u><br>(thousands) | Open Authorization<br><u>Remaining (1) (\$)</u><br>(millions) |
|---|--|--|---|---|
| -<br>July 30, 2006 -<br>August 26, 2006 | 3,112  | 37.31                                  | 3,112   | 2,267   |
| August 27, 2006<br>-                    | 5,237  | 39.78                                  | 5,237   | 2,059   |
| September 30,<br>2006                   |  |  |   |   |
| October 1, 2006<br>-                    | <u>11,448</u>  | <u>44.21</u>                           | <u>11,448</u>   | 1,553   |
| October 28,<br>2006                     |  |  |   |   |
| Total                                   | 19,797   | 41.95                                  | 19,797  |   |

(1) The Company's board of directors initially approved a \$500 million authorization to purchase common stock on January 27, 2000 and approved additional \$500 million authorizations on each of August 25, 2000, May 18, 2001 and April 16, 2003, additional \$750 million authorizations on each of February 27, 2004 and July 20, 2004 and approved an additional authorization of \$2,000 million on August 25, 2006. All authorizations are cumulative and do not have an expiration date.

## **Item 5. Other Information**

### **Forward Looking Statements**

This report and other reports, statements and information previously or subsequently filed by the Company with the SEC contain or may contain forward-looking statements. Such statements are based upon the beliefs and assumptions of, and on information available to, the management of the Company at the time such statements are made. The following are or may constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995: (i) statements preceded by, followed by or that include the words "may," "will," "could," "should," "believe," "expect," "future," "potential," "anticipate," "intend," "plan," "think," "estimate" or "continue" or the negative or other variations thereof, and (ii) statements regarding matters that are not historical facts. Such forward-looking statements are subject to various risks and uncertainties, including:

risks and uncertainties relating to the possible invalidity of the underlying beliefs and assumptions;

possible changes or developments in social, economic, business, industry, market, legal and regulatory circumstances and conditions;

actions taken or omitted to be taken by third parties, including customers, suppliers, business partners, competitors and legislative, regulatory, judicial and other governmental authorities and officials; and

attacks or threats of attacks by terrorists or war.

Without limiting the generality of the foregoing, forward-looking statements regarding the effects of the acquisition of May are subject to risks and uncertainties relating to, among other things, the successful and timely integration of the acquired businesses with the Company's historical businesses, timely realization of expected cost savings and other synergies, and potential disruption from the transaction which could make it more difficult to maintain relationships with the companies' respective employees, customers and vendors.

No forward-looking statements should be relied upon as continuing to reflect the expectations of management or the current status of any matter referred to therein as of any date subsequent to the date on which such statements are made. Furthermore, future results of the operations of the Company could differ materially from historical results or current expectations because of a variety of factors that affect the Company, including:

the acquisition of May;

transaction costs associated with the renovation, conversion and transitioning of retail stores in regional markets;

the outcome and timing of sales and leasing in conjunction with the disposition of retail store properties in regional markets;

the retention, reintegration and transitioning of displaced employees;

the sale of the Company's credit card operations and related strategic alliance;

competitive pressures from department and specialty stores, general merchandise stores, manufacturers' outlets, off-price and discount stores, and all other retail channels, including the Internet, mail-order catalogs and television; and

general consumer-spending levels, including the impact of the availability and level of consumer debt, levels of consumer confidence and the effects of the weather or natural disasters.

In addition to any risks and uncertainties specifically identified in the text surrounding such forward-looking statements, the statements in the immediately preceding sentence and the statements under captions such as "Risk Factors" and "Special Considerations" in reports, statements and information filed by the Company with the SEC from time to time constitute cautionary statements identifying important factors that could cause actual amounts, results, events and circumstances to differ materially from those reflected in such forward-looking statements.

## **Item 6. Exhibits**

- 4.1 Indenture, dated as of November 2, 2006, by and among Federated Retail Holdings, Inc., the Company and U.S. Bank National Association (incorporated by reference to Exhibit 4.6 to the Company's Registration Statement on Form S-3ASR (Registration No. 333-138376) filed on November 2, 2006).
- 4.1.1 First Supplemental Indenture, dated November 29, 2006, among Federated Retail Holdings, Inc., the Company and U.S. Bank National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed November 29, 2006).
- 10.1 Amended and Restated Credit Agreement dated as of August 30, 2006 among the Company, Federated Retail Holdings, Inc., the lenders from time to time party thereto, JPMorgan Chase Bank, N.A. and Bank of America, N.A., as administrative agents, and JPMorgan Chase Bank, N.A. as paying agent, and J.P. Morgan Securities Inc. and Banc of America Securities LLC as joint bookrunners and joint lead arrangers (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed September 1, 2006).
- 10.2 Guarantee Agreement, dated as of August 30, 2006, among the Company, Federated Retail Holdings, Inc. and JPMorgan Chase Bank, N.A. as paying agent (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed September 1, 2006).
- 10.3 Agreement between Federated Corporate Services, Inc. and Ronald W. Tysoe, dated as of October 2, 2006 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed October 3, 2006).
- 10.4 Form of Amendment No. 1 to Severance Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed November 2, 2006).
- 31.1 Certification of Chief Executive Officer pursuant to Rule 13a-14(a).
- 31.2 Certification of Chief Financial Officer pursuant to Rule 13a-14(a).

- 32.1 Certifications by Chief Executive Officer and Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act.

**FEDERATED DEPARTMENT STORES, INC.**

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

FEDERATED DEPARTMENT STORES, INC.

Dated: December 7, 2006 By: /s/Dennis J. Broderick

Name: Dennis J. Broderick

Title: Senior Vice President, General Counsel  
and Secretary

By: /s/Joel A. Belsky

Name: Joel A. Belsky

Title: Vice President and Controller  
(Principal Accounting Officer)