

FIRST ALBANY COMPANIES INC

Form S-8

May 05, 2004

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As filed with the Securities and Exchange Commission on May 5, 2004

**Registration No. 333-**

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**SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**FIRST ALBANY COMPANIES INC.**  
(Exact Name of Registrant as Specified in Its Charter)

|   |  |
|---|--|
| <b>New York</b>   | <b>22-2655804</b>                          |
| (State or Other Jurisdiction of<br>Incorporation or Organization) | (I.R.S. Employer Identification<br>Number) |

**30 S. Pearl Street  
Albany, New York 12207-1599  
(518) 447-8500**  
(Address of Registrant's Principal Executive Offices)

**FIRST ALBANY COMPANIES INC.  
DEFERRED COMPENSATION PLAN FOR KEY EMPLOYEES**

(Full Title of the Plans)

**Stephen P. Wink, Esq.  
Secretary and General Counsel  
First Albany Companies Inc.  
30 S. Pearl Street  
Albany, New York 12207-1599  
(518) 447-8500**

(Name, Address, and Telephone Number of Agent for Service)

*Copy of communications to:*

**Arthur H. Kohn, Esq.  
Cleary, Gottlieb, Steen & Hamilton  
One Liberty Plaza  
New York, New York 10006  
(212) 225-2000**

**CALCULATION OF REGISTRATION FEE**

| <b>Title of securities<br/>to be registered</b> | <b>Amount to be<br/>registered</b> | <b>Proposed<br/>maximum<br/>offering<br/>price per<br/>share</b> | <b>Proposed<br/>maximum<br/>aggregate<br/>offering<br/>price</b> | <b>Amount of<br/>registration<br/>fee</b> |
|---|------------------------------------|--|--|---|
| Deferred Compensation<br>Obligations (1)        | \$ 10,000,000                      | 100%   | \$ 10,000,000(4)   | \$ 1,267.00                               |
| Common Stock, par<br>value \$.01 per share      | 750,000(2)                         | \$ 12.69(3)  | \$ 9,517,500   | \$ 1,205.87                               |

- (1) The Deferred Compensation Obligations are unsecured obligations of First Albany Companies Inc. to pay deferred compensation in the future in accordance with the terms of the First Albany Companies Inc. Deferred Compensation Plan For Key Employees.
- (2) This Registration Statement shall be deemed to cover any additional shares of Common Stock which will become issuable under such plan by reason of any stock dividend, stock split, recapitalization or other similar transaction. This Registration Statement also covers the rights (the Rights ) attached to each share of Common Stock pursuant to the Rights Agreement dated March 30, 1998. Until the occurrence of certain specified events, the Rights are not exercisable, are evidenced by the certificates representing the shares and may be transferred only together with the shares.
- (3) Pursuant to Rule 457(h) and Rule 457(c) under the Securities Act of 1933, the proposed maximum offering price per share is based upon the average of the high (\$12.78) and low (\$12.60) prices of the Common Stock as reported on the NASDAQ National Exchange on May 3, 2004.
- (4) Estimated solely for purposes of determining the registration fee in accordance with Rule 457(h) under the Securities Act of 1933.
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CONSENT OF PRICEWATERHOUSECOOPERS LLP

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The Deferred Compensation Obligations and shares of Common Stock of First Albany Companies Inc. (the Company ) to be registered by this Registration Statement are of the same class as those securities covered by the Company's previously filed Registration Statement on Form S-8 filed on May 23, 2000 (Registration No. 333-37640) with respect to the Deferred Compensation Plan For Key Employees (the Plan ). This Registration Statement on Form S-8 has been prepared and filed pursuant to and in accordance with the requirements of General Instruction E to Form S-8 for the purpose of effecting the registration under the Securities Act of 1933 of an additional \$10,000,000 of Deferred Compensation Obligations and 750,000 shares of Common Stock to be granted under the Plan, as so amended and restated. Pursuant to General Instruction E to Form S-8, the contents of the prior Registration Statement, made in connection with the Plan, including the periodic reports that the Company filed after the prior Registration Statement to maintain current information about the Company, are incorporated herein by reference.

**Part II****Item 8. Exhibits.**

In addition to the exhibits filed or incorporated by reference into the prior Registration Statement, the following documents are filed as exhibits to this Registration Statement.

| <b>Exhibit No.</b> | <b>Description</b>   | <b>Method of Filing</b>   |
|--------------------|--|---|
| 4(a)               | Certificate of Incorporation of First Albany Companies Inc.                                      | Incorporated by reference to Exhibit No. 3.1 to Registration Statement No. 33-1353                  |
| 4(b)               | Amendment to Certificate of Incorporation of First Albany Companies Inc.                         | Incorporated by reference to Exhibit No. (3) (i) to Form 10-Q for the quarter ended June 26, 1998   |
| 4(c)               | Amendment to Certificate of Incorporation of First Albany Companies Inc.                         | Incorporated by reference to Appendix B to Proxy Statement on Schedule 14A dated May 2, 2000        |
| 4(d)               | By laws of First Albany Companies Inc., as amended   | Incorporated by reference to Exhibit 3.2 to Form 10-K for the fiscal year ended                     |
| 4(e)               | Specimen Certificate of Common Stock, par value \$.01 per share                                  | December 31, 2002. Incorporated by reference to Exhibit No. 4 to Registration Statement No. 33-1353 |
| 4(f)               | First Albany Companies Inc. Deferred Compensation Plan For Key Employees                         | Filed herewith  |
| 5                  | Opinion of the Company's General Counsel as to the legality of securities offered under the Plan | Filed herewith  |
| 23(a)              | Consent of PricewaterhouseCoopers LLP  | Filed herewith  |

23(b)

Consent of the Company's General Counsel

Contained in the opinion filed as Exhibit 5

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| <b>Exhibit No.</b> | <b>Description</b> | <b>Method of Filing</b>        |
|--------------------|--------------------|--------------------------------|
| 24                 | Power of Attorney  | Included on the signature page |

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Albany and the State of New York on the 27<sup>th</sup> day of April, 2004.

FIRST ALBANY COMPANIES INC.

By /s/ Alan P. Goldberg

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Name: Alan P. Goldberg  
Title: President and Chief Executive Officer



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## POWER OF ATTORNEY

Know all men by these presents, that each officer or director of First Albany Companies Inc. whose signature appears below constitutes and appoints Alan P. Goldberg and George C. McNamee, and each of them acting singly, as his or her true and lawful attorney-in-fact and agent, with full and several power of substitution, to sign for him and in his name, place and stead in any and all capacities indicated below, the Registration Statement on Form S-8 to be filed herewith and any and all pre-effective and post-effective amendments and supplements to the said Registration Statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary fully to all intents and purposes as he or she might or could do in person hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by each of the following persons in the capacities and on the dates indicated.

| <u>Signature</u>              | <u>Title</u>   | <u>Date</u>    |
|-------------------------------|--|----------------|
| /s/ Alan P. Goldberg          |  |                |
| Alan P. Goldberg              | Director, President and Chief Executive Officer (Principal Executive Officer)          | April 27, 2004 |
| /s/ Steven R. Jenkins         |  |                |
| Steven R. Jenkins             | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | April 27, 2004 |
| /s/ George C. McNamee         |  |                |
| George C. McNamee             | Director   | April 27, 2004 |
| /s/ Robert F. Campbell        |  |                |
| Robert F. Campbell            | Director   | April 27, 2004 |
| /s/ Carl P. Carlucci          |  |                |
| Carl P. Carlucci              | Director   | April 27, 2004 |
| /s/ Walter W. Fiederowicz     |  |                |
| Walter W. Fiederowicz         | Director   | April 27, 2004 |
| /s/ Nicholas A. Gravante, Jr. |  |                |
| Nicholas A. Gravante, Jr.     |  | April 27, 2004 |

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|                           |          |                |
|---------------------------|----------|----------------|
| Nicholas A. Gravante, Jr. | Director |                |
| /s/ Hugh A. Johnson, Jr.  |          | April 27, 2004 |
| Hugh A. Johnson, Jr.      | Director |                |
| /s/ Dale Kutnick          |          | April 27, 2004 |
| Dale Kutnick              | Director |                |

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| <b>Signature</b>                          | <b>Title</b> | <b>Date</b>    |
|---|--------------|----------------|
| <hr/> <i>/s/</i> Arthur T. Murphy <hr/>   |              |                |
| Arthur T. Murphy                          | Director     | April 27, 2004 |
| <hr/> <i>/s/</i> Shannon P. O'Brien <hr/> |              |                |
| Shannon P. O'Brien                        | Director     | April 27, 2004 |
| <hr/> <i>/s/</i> Arthur J. Roth <hr/>     |              |                |
| Arthur J. Roth                            | Director     | April 27, 2004 |

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