

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

AMENDMENT No. 1
to
FORM S-3
REGISTRATION STATEMENT

*UNDER
THE SECURITIES ACT OF 1933*

NAVIDEA BIOPHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

31-1080091
(I.R.S. Employer
Identification Number)

**4995 Bradenton Avenue, Suite 240
Dublin, Ohio 43017-3552
(614) 793-7500**

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

Jed A. Latkin
Chief Executive Officer, Chief Financial Officer and Chief Operating Officer
Navidea Biopharmaceuticals, Inc.
4995 Bradenton Avenue, Suite 240
Dublin, Ohio 43017-3552
(614) 793-7500

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

Copy to:

Faith L. Charles, Esq.
Thompson Hine LLP
335 Madison Avenue, 12th Floor
New York, New York 10017-4611
(212) 908-3905
Faith.Charles@thompsonhine.com

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

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

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

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

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the U.S. Securities and Exchange Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging Growth Company	<input type="checkbox"/>		

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

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit (2)(3)	Proposed Maximum Aggregate Offering Price (2)(3)	Amount of Registration Fee (4)
Common Stock, \$0.001 par value per share				
Preferred Stock, \$0.001 par value per share				
Debt Securities				
Warrants				
Purchase Contracts				
Rights				
Units				
Total			\$100,000,000	\$10,910

(1) This registration statement covers an indeterminate amount of the securities of each identified class registered hereunder as may from time to time be offered and issued hereunder at indeterminate prices and shall have an aggregate initial offering price not to exceed \$100,000,000, along with an indeterminate number of securities that may be issued upon exercise, settlement, exchange or conversion of securities offered or sold hereunder. Separate consideration may or may not be received for securities that are issuable upon conversion, exercise, or exchange of other securities, or pursuant to the anti-dilution provisions of any such securities. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. This registration statement also covers, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), an indeterminate number of shares of common stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends, or similar transactions.

- (2) The proposed maximum aggregate offering price per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder and is not specified as to each class of security pursuant to General Instruction II.D. of Form S-3 under the Securities Act.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act.
- (4) Of this amount, \$2,552.94 was previously paid in connection with the initial filing of this registration statement.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until the registration statement shall become effective on such date as the U.S. Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 1 to Registration Statement on Form S-3 (File No. 333-252847) (the “*Original Registration Statement*”) of Navidea Biopharmaceuticals, Inc. (the “*Company*”), is being filed solely to update certain information in the fee table on the cover page of the Original Registration Statement and the opinion of counsel filed as Exhibit 5.1 to the Original Registration Statement. This Amendment consists of a cover page, this explanatory note, the information in Part II of the Original Registration Statement, the signature page hereto, an exhibit index and Exhibit 5.1 filed herewith.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth the expenses expected to be incurred by us in connection with the issuance and distribution of the securities being registered.

SEC registration fee	\$	10,910
FINRA filing fee		(1)
NYSE American listing fee		(1)
Legal fees and expenses		(1)
Accounting fees		(1)
Printing expenses		(1)
Miscellaneous		(1)
Total (2)	\$	<u>(1)</u>

- (1) These fees are calculated based on the securities offered and the number of issuances and accordingly cannot be estimated at this time.
- (2) Does not include any fees or expenses in connection with any subsequent underwritten offering and any prospectus supplements prepared in connection therewith.

Item 15. Indemnification of Directors and Officers.

Section 102(b)(7) of the Delaware General Corporation Law (the “DGCL”) permits a corporation in its certificate of incorporation or an amendment to eliminate or limit the personal liability of its directors or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of law or obtained an improper personal benefit. Our certificate of incorporation provides for this limitation of liability.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, to which he or she is a party by reason of such position, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Section 145 further provides that in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145(g) of the DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any indemnified person against any liability asserted against and incurred by such person in any indemnified capacity, or arising out of such person’s status as such, regardless of whether the corporation would otherwise have the power to indemnify under Delaware law.

We have entered into indemnification agreements with each of our directors and executive officers. In general, these agreements provide that we will indemnify the director or executive officer to the fullest extent permitted by law for claims arising in his or her capacity as a director or officer or in connection with his or her service at our request for another corporation or entity.

Article Nine, Section (b), of our certificate of incorporation further provides that no director will be personally liable to us or our stockholders for monetary damages or for any breach of fiduciary duty except for breach of the director's duty of loyalty to us or our stockholders, for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, pursuant to Section 174 of the Delaware General Corporation Law (which imposes liability in connection with the payment of certain unlawful dividends, stock purchases or redemptions), or any amendment or successor provision thereto, or for any transaction from which a director derived an improper personal benefit.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of our certificate of incorporation, our bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

We maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments that we may make to such directors and officers.

The foregoing discussion of indemnification merely summarizes certain aspects of indemnification provisions of, and is limited by reference to, the above discussed sections of the DGCL and our certificate of incorporation.

Item 16. Exhibits.

A list of exhibits included as part of this registration statement is set forth in the Exhibit Index and is incorporated herein by reference.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "*Securities Act*");
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

provided, however, that paragraphs (i), (ii) and (iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*") that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is a part of the registration statement;

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act to any purchaser:
 - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
 - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

The undersigned registrant hereby further undertakes:

- (1) for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and
- (2) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act; and
- (3) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Exhibit Index

Exhibit Number	Exhibit Description
1.1*	Form of Underwriting Agreement.
3.1	Amended and Restated Certificate of Incorporation of Navidea Biopharmaceuticals, Inc., as corrected February 18, 1994, and amended June 27, 1994, July 25, 1995, June 3, 1996, March 17, 1999, May 9, 2000, June 13, 2003, July 29, 2004, June 22, 2005, November 20, 2006, December 26, 2007, April 30, 2009, July 27, 2009, August 2, 2010, January 5, 2012, June 26, 2013 and August 18, 2016 (filed as Exhibit 3.1 to the Company's Annual Report on Form 10-K filed March 31, 2017, and incorporated herein by reference).
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation of Navidea Biopharmaceuticals, Inc. (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed on April 26, 2019, and incorporated herein by reference).
3.3	Amended and Restated Certificate of Designations, Voting Powers, Preferences, Limitations, Restrictions, and Relative Rights of Series B Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed June 26, 2013).
3.4	Certificate of Designation of Preferences, Rights and Limitations of Series D Preferred Stock (filed as Exhibit 3.2 to the Company's Current Report on Form 8-K, filed by the Company on September 2, 2020, and incorporated herein by reference).
3.5	Amended and Restated Bylaws dated July 21, 1993, as amended July 18, 1995, May 30, 1996, July 26, 2007, and November 7, 2013 (filed as Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q, filed by the Company on November 12, 2013, and incorporated herein by reference).
3.6	Form of Common Stock Certificate (filed as Exhibit 4.3 to the Company's Registration Statement on Form S-3, filed December 31, 2019, and incorporated herein by reference).
4.1*	Form of Certificate of Designation for the Preferred Stock (together with Preferred Stock Certificate).
4.2*	Form of Warrant Agreement (together with form of Warrant Certificate)
4.3*	Form of Rights Agreement (together with Rights Certificate).
4.4*	Form of Purchase Contract (together with form of Purchase Contract Certificate).
4.5*	Form of Unit Agreement (together with form of Unit Certificate).
4.6♦	Form of Indenture.
4.7*	Form of Global Note.
5.1	Opinion of Thompson Hine LLP.
23.1	Consent of Thompson Hine LLP (included in Exhibit 5.1).
23.2♦	Consent of Independent Registered Public Accounting Firm, Marcum LLP.
24.1♦	Power of Attorney (See signature page).
25.1**	Form T-1 Statement of Eligibility of Trustee under the Indenture.

* To be subsequently filed, if applicable, and incorporated herein by reference by an amendment to this registration statement or by a Current Report on Form 8-K.

** To be filed separately under the electronic form type 305(b)(2) of the Trust Indenture Act of 1939, as amended.

♦ Previously Filed

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing this registration statement on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dublin, State of Ohio, on February 11, 2021.

NAVIDEA BIOPHARMACEUTICALS, INC.

/s/ Jed A. Latkin

Jed A. Latkin

Chief Executive Officer, Chief Financial Officer,
and Chief Operating Officer and

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

Signature	Title	Date
<u>/s/ Jed A. Latkin</u> Jed A. Latkin	Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Director <i>(Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)</i>	February 11, 2021
* <u>Y. Michael Rice</u>	Director (Chairman)	February 11, 2021
* <u>Claudine Bruck, Ph.D.</u>	Director	February 11, 2021
* <u>Adam D. Cutler</u>	Director	February 11, 2021
* <u>S. Kathryn Rouan, Ph.D.</u>	Director	February 11, 2021
* <u>Malcolm G. Witter</u>	Director	February 11, 2021
*By: <u>/s/ Jed A. Latkin</u> Jed A. Latkin Attorney-in-Fact		



ATLANTA CLEVELAND DAYTON WASHINGTON, D.C.
CINCINNATI COLUMBUS NEW YORK

February 11, 2021

Navidea Biopharmaceuticals, Inc.
4995 Bradenton Avenue, Suite 240
Dublin, Ohio 43017

Ladies and Gentlemen:

We have acted as counsel to Navidea Biopharmaceuticals, Inc., a Delaware corporation (the “Company”), in connection with the preparation and filing by the Company of its registration statement on Form S-3 as amended, (the “Registration Statement”) with the U.S. Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), relating to the offering from time to time, pursuant to Rule 415 under the Securities Act, of (i) shares of the Company’s common stock (“Common Stock”), par value \$0.001 per share (the “Shares”), (ii) shares of preferred stock, par value \$0.001 per share of up to \$100,000,000 (the “Preferred Stock”), (iii) debt securities (the “Debt Securities”), (iv) warrants to purchase shares of Common Stock or Preferred Stock (the “Warrants”), (v) purchase contracts for the purchase or sale of Common Stock, Preferred Stock, Debt Securities or other securities (the “Purchase Contracts”), (vi) rights to purchase Common Stock, Preferred Stock or other securities (the “Rights”), and (vii) units representing ownership of Common Stock, Preferred Stock, Debt Securities, Warrants or any combination thereof (the “Units”). The Common Stock, the Preferred Stock, the Debt Securities, the Warrants, the Purchase Contracts, the Rights and the Units are collectively referred to as the “Securities” and each individually as a “Security”. The offering of the Securities will be as set forth in the prospectus (the “Prospectus”) contained in the Registration Statement, as supplemented by one or more supplements to the Prospectus.

The Debt Securities will be issued in one or more series pursuant to an Indenture (the “Indenture”) to be entered into between the Company and a trustee to be named therein (the “Trustee”), a form of which is filed as an exhibit to the Registration Statement. The Preferred Stock will be issued in one or more series and the relative powers, designations, preferences, rights and qualifications, limitations or restrictions of such Preferred Stock will be set forth in one or more certificates of designation (each, a “Certificate of Designation”). The Warrants will be issued under one or more warrant agreements (each, a “Warrant Agreement”) to be entered into between the Company and the warrant agent party thereto (the “Warrant Agent”). The Purchase Contracts will be issued pursuant to one or more contracts (each, a “Contract”) for the purchase or sale of Common Stock, Preferred Stock or other securities, to be entered into between the Company and the purchaser party thereto (the “Purchaser”). The Rights will be issued pursuant to one or more rights agreements (each, a “Rights Agreement”), to be entered into between the Company and the rights agent party thereto (the “Rights Agent”). The Units will be issued pursuant to one or more unit agreements (each, a “Unit Agreement”) to be entered into between the Company and the unit agent party thereto (the “Unit Agent”). The Indenture, Certificate of Designation, Warrant Agreement, the Contract, the Rights Agreement and Unit Agreement are hereinafter referred to as the “Securities Documents”.

Item 601 of Regulation S-K and the instructions to Form S-3 require that an opinion of counsel concerning the legality of the securities to be registered be filed as an exhibit to a Form S-3 registration statement if the securities are original issue shares. This opinion is provided in satisfaction of that requirement as it relates to the Registration Statement.

In rendering this opinion, we have examined (a) the Certificate of Incorporation and By-laws of the Company, each as amended and restated through the date hereof; (b) the Registration Statement; (c) the Prospectus; (d) the form of Indenture; and (e) Such other records, instruments, documents and certificates as we have deemed advisable in order to render such opinion.

THOMPSON HINE LLP
ATTORNEYS AT LAW

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12th Floor
New York, New York 10017-4611

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In such examination, we have assumed: (a) the genuineness of all signatures; (b) the legal capacity of all natural persons; (c) the authenticity of all documents submitted to us as originals; (d) the conformity to original documents of all documents submitted to us as copies; (e) as to matters of fact, the truthfulness of the representations made in the Securities Documents and in certificates of public officials and officers of the Company; (f) that each of the Securities Documents, when executed, will be the legal valid and binding obligations of each party thereto, other than the Company, enforceable against each such party in accordance with its terms; (g) that the issuance and delivery by the Company of the Securities and the execution, delivery and performance by the Company of the Securities Documents do not and will not: (i) contravene its Certificate of Incorporation or By-laws, each as amended and restated through the date hereof; (ii) do not and will not, except with respect to Generally Applicable Law, violate any law, rule or regulation applicable to it; or (iii) result in any conflict with, or breach of, any agreement or document binding on the Company or any of its subsidiaries; and except with respect to Generally Applicable Law, no authorization, approval or other action by, and no notice to or wiling with, any governmental authority or regulatory body or any other third party for the due execution, delivery or performance by the Company of any Securities Document to which it is a party or, if any such authorization, approval, action, notice or filing is required, it has been obtained, taken, given or made and is in full force and effect; (h) at the time of the offering or sale, the Securities and the Securities Documents relating thereto will have been specifically authorized by the Board of Directors of the Company or an authorized committee thereof for issuance and execution and delivery by the Company; (i) any Securities issuable upon conversion, exchange or exercise of any Security being offered will, at the time of such offering or sale, have been duly authorized, created and, if appropriate, reserved for issuance upon such conversion, exchange or exercise; (j) Any Securities consisting of Common Stock, Preferred Stock, or Warrants, including Common Stock or Preferred Stock issuable upon conversion, exchange or exercise of any Security being offered, will, when so issued, have been duly authorized, executed and delivered, against receipt of the consideration approved by the Company, which will be no less than the par value thereof; (k) With respect to the issuance and sale of any Debt Securities, (i) the Indenture has been duly executed and delivered by the Company and the Trustee, and (ii) the Debt Securities, when issued, will be executed, authenticated, issued and delivered against receipt of the consideration therefor approved by the Company and as provided in the Indenture; (l) with respect to the issuance and sale of any Warrants, (i) the related Warrant Agreement will have been duly executed and delivered by the Company and the Warrant Agent, and (ii) the Warrants, when issued, will be executed, countersigned by the Warrant Agent, issued and delivered against receipt of the consideration therefor approved by the Company and as provided in such Warrant Agreement; (m) With respect to the issuance and sale of any Purchase Contracts, (i) the related Contract will have been duly executed and delivered by the Company and the Purchaser, and (ii) the Purchase Contracts, when issued, will be executed, countersigned by the Purchaser, issued and delivered against receipt of the consideration therefor approved by the Company and as provided in such Contract; (n) with respect to the issuance and sale of any Rights, (i) the related Rights Agreement will have been duly executed and delivered by the Company and the Rights Agent, and (ii) the Rights, when issued, will be executed, countersigned by the Rights Agent, issued and delivered against receipt of the consideration therefor approved by the Company and as provided in such Rights Agreement; (o) With respect to the issuance and sale of any Units, (i) the related Unit Agreement will have been duly executed and delivered by the Company and the Unit Agent, and (ii) the Units, when issued, will be executed, countersigned by the Unit Agent, issued and delivered against receipt of the consideration therefor approved by the Company and as provided in such Unit Agreement; (p) that the Registration Statement shall have become effective and such effectiveness shall not have been terminated or withdrawn.

We have not independently established the validity of the foregoing assumptions.

Based upon and subject to the foregoing and such other investigation as we have deemed necessary and subject to the qualifications set forth below, we are of the opinion that:

1. Any Securities consisting of Shares will be validly issued, fully paid and non-assessable.
 2. Any Securities consisting of Preferred Stock will be validly issued, fully paid and non-assessable.
-

3. Any Securities consisting of Debt Securities will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Indenture.
4. Any Securities consisting of Warrants will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Warrant Agreement.
5. Any Securities consisting of Purchase Contracts will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Contract.
6. Any Securities consisting of Rights will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Rights Agreement.
7. Any Securities consisting of Units will constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms and will be entitled to the benefits of the Unit Agreement.

The foregoing opinions are qualified to the extent that the enforceability of any document, instrument, Securities or Securities Document may be limited by or subject to bankruptcy, insolvency, fraudulent transfer or conveyance, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally, and general equitable or public policy principles. With respect to Securities denominated in a currency other than United States dollars, we express no opinion as to whether a court would award a judgment in a currency other than United States dollars.

Our opinions expressed above are limited to the General Corporation Laws of the State of Delaware and laws of the State of New York, in each case as currently in effect (collectively, "Generally Applicable Law"), and we express no opinion as to the effect on the matters covered by this letter of the laws of any other jurisdiction.

This opinion letter is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company, the Securities, the Securities Documents, the Registration Statement or the Prospectus.

We hereby consent to being named in the Registration Statement and in the Prospectus under the caption "Legal Matters" and to the use of this opinion for filing with said Registration Statement as Exhibit 5.1 thereto. In giving this consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Thompson Hine LLP

Thompson Hine LLP