

FIRST ALBANY COMPANIES INC

Form S-8

September 21, 2007

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As filed with the Securities and Exchange Commission on September 21, 2007

**UNITED STATES 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)

New York
(State or other jurisdiction of
incorporation or organization)

22-2655804
(I.R.S. Employer
Identification No.)

677 Broadway
Albany, New York
(Address of principal executive offices)

12207
(Zip code)

First Albany Companies Inc. 2007 Incentive Compensation Plan
(Full title of plans)

Peter J. McNierney
President and Chief Executive Officer
First Albany Companies Inc.
677 Broadway
Albany, New York 12207
(Name and address of agent for service)

518-447-8500
(Telephone number, including area code, of agent for service)

Calculation of Registration Fee

| Title of securities to be registered | Amount to be registered⁽¹⁾ | Proposed maximum offering price per share⁽²⁾ | Proposed maximum aggregate offering price⁽²⁾ | Amount of registration fee |
|--|--|--|--|-----------------------------------|
| Common stock, par value \$0.01 per share (including related rights) ⁽³⁾ | 13,500,000 shares | \$1.53 | \$ 20,587,500.00 | \$ 632.04 |

(1)

Pursuant to Rule 416 under the Securities Act of 1933, the number of shares of common stock registered hereby includes an indeterminate number of shares of common stock that may be issued in connection with stock splits, stock dividends or similar transactions.

- (2) Estimated pursuant to Rule 457(h) and Rule 457(c) solely for purposes of calculating the amount of registration fee, based on the average of the high and low prices of the registrant's common stock as reported on The NASDAQ Global Market on September 14, 2007.
- (3) Each share of the registrant's common stock being registered hereunder, if issued before the termination of the registrant's

preferred share
rights
agreement,
includes
Series A Junior
Participating
Preferred Stock
purchase rights.
Before the
occurrence of
certain events,
the Series A
Junior
Participating
Preferred Stock
purchase rights
will not be
exercisable or
evidenced
separately from
the registrant's
common stock
and have no
value except as
reflected in the
market price of
the shares to
which they are
attached.

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Part I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 have been or will be sent or given in accordance with Rule 428 under the Securities Act of 1933, as amended.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The SEC allows certain information to be incorporated by reference into this registration statement. Any statement in a document that First Albany Companies Inc. (the Company) has filed with the SEC prior to the date of this registration statement and which is incorporated by reference into this registration statement will be considered to be modified or superseded to the extent a statement contained in this registration statement or any other subsequently filed document that is incorporated by reference into this registration statement modifies or supersedes that statement. The modified or superseded statement will not be considered to be a part of this registration statement, except as modified or superseded.

The Company incorporates by reference into this registration statement the information contained in the documents listed below, which is considered to be a part of this registration statement:

The Company's annual report on Form 10-K for the year ended December 31, 2006, filed with the SEC on March 14, 2007 (File no. 000-14140);

The Company's quarterly report on Form 10-Q for the quarters ended March 31, 2007 and June 30, 2007, filed with the SEC on May 10, 2007 and August 9, 2007, respectively (File no. 000-14140);

The Company's current reports on Form 8-K, filed with the SEC on January 26, 2007, February 23, 2007, March 6, 2007, March 12, 2007, May 15, 2007, May 18, 2007, June 18, 2007, June 22, 2007, July 31, 2007, August 30, 2007, September 17, 2007, and September 20, 2007 (in each case excluding any portions of those current reports that were furnished to, and not filed with, the SEC) (File no. 000-14140);

The description of the Company's common stock contained in the Company's registration statement on Form 8-A, filed with the SEC on January 14, 1986, including any amendments or reports filed for the purpose of updating such description (File no. 000-14140);

The description of the Company's preferred stock purchase rights contained in the Company's registration statement on Form 8-A, filed with the SEC on March 30, 1998, including any amendments or reports filed for the purpose of updating such description (File no. 000-14140); and

All documents subsequently filed by the Company with the SEC under Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part thereof from the date of filing of such documents.

You may request a copy of these filings, at no cost, by writing or telephoning the Company at the following address or telephone number:

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First Albany Companies Inc.
677 Broadway
Albany, New York 12207-2990
518-447-8500

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

Article 6.07 of the the Company s Amended and Restated By-Laws permits the indemnification of officers and directors under certain circumstances to the full extent that such indemnification may be permitted by law. Such rights of indemnification are in addition to, and not in limitation of, any rights to indemnification to which any officer or director of the Registrant is entitled under the Business Corporation Law of the State of New York (Sections 721 through 726), which provides for indemnification by a corporation of its officers and directors under certain circumstances as stated in the Business Corporation Law and subject to specified limitations set forth in the Business Corporation Law. The Company has also purchased director and officer liability insurance.

Item 7. Exemption from Registration Claimed.

Not applicable.

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Item 8. Exhibits.

| Exhibit Number | Description |
|---------------------------|---|
| 4.1 ⁽¹⁾ | Certificate of Incorporation of First Albany Companies Inc. |
| 4.1a ⁽²⁾ | Amendment to Certificate of Incorporation of First Albany Companies Inc. |
| 4.1b ⁽³⁾ | Amendment to Certificate of Incorporation of First Albany Companies Inc. |
| 4.2 ⁽⁴⁾ | Amended and Restated Bylaws of First Albany Companies |
| 4.3 ⁽⁵⁾ | Specimen Certificate of Common Stock |
| 4.4 ⁽⁶⁾ | First Albany Companies Inc. 2007 Incentive Compensation Plan |
| 5.1 ⁽⁷⁾ | Opinion of Dewey Ballantine LLP, counsel to First Albany Companies Inc. regarding the legality of the common stock being registered |
| 23.1 ⁽⁸⁾ | Consent of PricewaterhouseCoopers LLP, independent auditors |
| 23.2 ⁽⁹⁾ | Consent of Dewey Ballantine LLP |
| 24.1 ⁽¹⁰⁾ | Power of attorney |

(1) Incorporated by reference to Exhibit 3.1 to Registration Statement No. 33-1353.

(2) Incorporated by reference to Exhibit 3.1 to Form 10-Q for the quarter ended June 26, 1998 (File no. 000-14140).

(3) Incorporated by reference to Appendix B to Proxy Statement on Schedule 14A dated May 2,

2000 (File no.
000-14140).

(4) Incorporated by
reference to
Exhibit 3.2 to
Form 10-K for
the fiscal year
ended
December 31,
2002 (File no.
000-14140).

(5) Incorporated by
reference to
Exhibit 4 to
Registration
Statement
No. 33-1353.

(6) Filed herewith.

(7) Filed herewith.

(8) Filed herewith.

(9) Contained in
Exhibit 5.1

(10) Included in
signature page.

Item 9. 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;

(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 Commission 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;

(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) and (ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished

to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of the registrant under the Securities Act of 1933 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

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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 undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) 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.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 Act and will be governed by the final adjudication of such issue.

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Pursuant to the requirements of the Securities Act of 1933, the registrant 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, State of New York, on September 21, 2007.

FIRST ALBANY COMPANIES INC.

By: /s/ Peter J. McNierney
 Name: Peter J. McNierney
 Title: President and Chief Executive
 Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Peter J. McNierney and Brian Coad, and each of them acting individually, as his or her attorney-in-fact, for him or her in any and all capacities, to sign any amendments (including post-effective amendments) to this registration statement and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each attorney-in-fact, or his or her substitute, may 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 the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|--|--------------------|
| /s/ George C. McNamee George C. McNamee | Chairman | September 21, 2007 |
| /s/ Peter J. McNierney Peter J. McNierney | Director, President and Chief Executive Officer (Principal Executive Officer) | September 21, 2007 |
| /s/ Brian Coad Brian Coad | Chief Financial Officer (Principal Accounting Officer and Principal Financial Officer) | September 21, 2007 |
| /s/ Alan P. Goldberg Alan P. Goldberg | Director | September 21, 2007 |
| /s/ Nicholas A. Gravante, Jr. Nicholas A. Gravante, Jr. | Director | September 21, 2007 |
| /s/ Dale Kutnick Dale Kutnick | Director | September 21, 2007 |

/s/ Shannon P. O Brien

Director

September 21, 2007

Shannon P. O Brien

/s/ Carl P. Carlucci

Director

September 21, 2007

Carl P. Carlucci