

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

AMENDMENT No. 2

to

FORM S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

CHEMBIO DIAGNOSTICS, INC.

(Exact Name of Registrant as Specified in its Charter)

Nevada
(State or other jurisdiction of
incorporation or organization)

6282
(Primary Standard Industrial
Classification Code Number)

88-0425691
(I.R.S. Employer
Identification No.)

**3661 Horseblock Road
Medford, New York 11763
(631) 924-1135**

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

**Richard J. Larkin
Chembio Diagnostics, Inc.
Chief Financial Officer
3661 Horseblock Road
Medford, New York 11763
(631) 924-1135**

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

**with copies to:
Alan L. Talesnick, Esq.
Jamie M. Jackson, Esq.
Haynes and Boone, LLP
1801 Broadway St., Suite 800
Denver, Colorado 80202
(303) 382-6200**

Approximate date of commencement of proposed sale to the public: From time to time after this Registration Statement becomes effective.

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

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with the 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 hereto that shall become effective upon filing with the 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 or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐
(Do not check if a smaller reporting company)

Smaller reporting company ☐



CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(2)	Amount to be Registered(3)	Proposed Maximum Price per Unit(4)	Proposed Maximum Aggregate Offering Price(5)	Amount of Registration Fee(1)
Chembio Diagnostics, Inc.:				
Common Stock (including Preferred Share Purchase Rights) (6)				
Preferred Stock (6)				
Warrants to purchase Common Stock (7)				
Warrants to purchase Preferred Stock (7)				
Units (8)				
TOTAL:	\$35,000,000	\$35,000,000		\$3,524.50

(1) Estimated in accordance with Rule 457(o) solely for the purpose of calculating the registration fee.

(2) Any securities registered hereunder may be sold separately or together with other securities registered hereunder as units.

(3) Includes such indeterminate number of shares of common stock, shares of preferred stock, warrants to purchase common stock, warrants to purchase preferred stock and units that Chembio Diagnostics, Inc. may sell pursuant to this Registration Statement, which may not exceed the maximum aggregate offering price of \$35,000,000. The securities registered hereunder also include such indeterminate number of shares of common stock, preferred stock, warrants or units that may be issued upon conversion, exchange or exercise of any of the securities being registered hereby.

(4) Omitted pursuant to General Instruction II.D of Form S-3. The proposed maximum offering price per class of security will be determined from time to time by Chembio Diagnostics, Inc. in connection with, and at the time of, the issuance by Chembio Diagnostics, Inc. of the securities registered hereunder.

(5) In no event will the aggregate initial offering price of the securities issued under this Registration Statement exceed the amount registered above or the equivalent thereof in one or more foreign currencies or currency units.

(6) Such indeterminate number of shares of common stock or preferred stock, as may be issued from time to time at indeterminate prices. The common stock includes certain Preferred Share Purchase Rights (the "Rights") issued pursuant to the Rights Agreement dated as of March 8, 2016 (filed on Exhibit 4.1 to the Company's Registration Statement on Form 8-A filed on March 8, 2016) (the "Rights Agreement") between the Company and Action Stock Transfer Company, as Rights Agent. Until the occurrence of certain events specified in the Rights Agreement, none of which have occurred as of the filing of this Registration Statement, the Rights are not exercisable, are evidenced only by the certificates for common stock, and will be transferred along with and only with, and are not severable from, the common stock. The value attributable to the Rights, if any, is reflected in the market price of the common stock. No separate consideration will be payable for the Rights.

(7) Warrants will represent rights to purchase common stock or preferred stock registered hereby. Because the warrants will provide a right only to purchase such securities offered hereunder, no additional registration fee is required.

(8) Such indeterminate number of units, which will be comprised of two or more of the securities registered hereby in any combination.

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 which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 2 on Form S-3/A (this "Amendment") to the Registration Statement on Form S-3 of Chembio Diagnostics, Inc. (the "Company") is being filed to amend Exhibits 5.1 and 23.2 of Item 16 of Part II to include the revised opinion and consent of Ballard Spahr LLP. No changes have been made to Part I.

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth the estimated expenses to be incurred in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions, all of which will be paid by the Company.

SEC Registration fee	3,524.50
Legal fees and expenses	25,000.00
Accounting fees and expenses	10,000.00
Other	1,475.50
Total	\$ 40,000.00

* Estimate

Item 15. Indemnification of Directors and Officers.

Nevada law permits a Nevada corporation, such as the Registrant, to indemnify its directors and officers in certain circumstances. Specifically, Section 78.7502 of the NRS provides as follows:

Indemnification of directors and officers.

(1) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director or officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director or officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he: (a) is not liable pursuant to NRS 78.138 or (b) acted in good faith and in a manner he 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 conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, does not, of itself, create a presumption that the person is liable pursuant to NRS 78.138 or did not act in good faith and in a manner which he reasonable believed to be in or not opposed to the bests interests of the corporation, or that, with respect to any criminal action or proceedings, he had reasonable cause to believe that his conduct was unlawful.

(2) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer, employee or agent of the corporation, or is or was serving at the request of the corporation, or is or was serving at the request of the corporation as a director or officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he (a) is not liable pursuant to NRS 78.138 or (b) acted in good faith and in a manner which he reasonably believed to be in or not, opposed to the best interests of the corporation. Indemnification may not be made for any claim, issue or matter as to which such a person shall have been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for negligence or misconduct in the performance of his duty to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which such action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(3) To the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1) or (2) of this section, or in the defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

The Registrant's bylaws provide that it will indemnify any of its directors or officers against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, relating to service for or at the request of the Registrant. The Registrant will not indemnify a director or officer if in relation to matters such director or officer is adjudged in the action, suit or proceeding to be liable for negligence or misconduct in the performance of their duties.

The Registrant's articles of incorporation also provide that no director will be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, except that the director's liability will not be eliminated or limited: (A) for acts or omissions involving intentional misconduct, fraud or a knowing violation of the law; or (B) for the payment of any distribution in violation of Nevada law.

Item 16. Exhibits

EXHIBIT INDEX

Exhibit No.	Description
1.1	Form of Underwriting Agreement*
4.1	Form of certificate of designation of series of preferred stock*
4.2	Form of securities and warrant agreement*
5.1	Opinion of Ballard Spahr LLP
8.0	Opinion as to certain federal income tax matters*
23.1	Consent of BDO USA, LLP
23.2	Consent of Ballard Spahr LLP (included in Exhibit 5.1)
24	Power of Attorney of certain officers and directors (located on the signature page to the Registration Statement)

* To be filed, as applicable, by amendment or as an exhibit to a document incorporated by reference herein for the specific offering of securities, if any, to which it relates.

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;

(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 20 percent 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) 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, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of 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 under the Securities Act of 1933 to any purchaser:

(A) Each prospectus filed by a 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

(B) 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 of 1933 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 the 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 a Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, each undersigned Registrant undertakes that in a primary offering of securities of an 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 an 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 an undersigned Registrant or used or referred to by an undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about an undersigned Registrant or its securities provided by or on behalf of an undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by an undersigned Registrant to the purchaser.

(6) 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 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 each Registrant pursuant to the foregoing provisions, or otherwise, each Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by a Registrant of expenses incurred or paid by a director, officer or controlling person of a 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, that 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 of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

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-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the state of New York, on April 1, 2016.

CHEMBIO DIAGNOSTICS, INC.

By: /s/ John J. Sperzel III
John J. Sperzel III
President, Chief Executive Officer and
Chairman of the Board

POWER OF ATTORNEY

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 date indicated. Each person whose signature appears below, hereby makes, constitutes and appoints John J. Sperzel III or their respective true and lawful attorney, with full power to sign for such person and in such person's name and capacity indicated below, and with full power of substitution, any and all amendments, including post-effective amendments, to this Registration Statement, hereby ratifying and confirming such person's signature as it may be signed by said attorney to any and all amendments.

Name	Title	Date
<u>/s/ John J. Sperzel III</u> John J. Sperzel III	Chief Executive Officer, President and Chairman of the Board (principal executive officer)	April 1, 2016
<u>/s/ Richard J. Larkin*</u> Richard J. Larkin	Chief Financial Officer (principal financial officer & accounting officer)	April 1, 2016
<u>/s/ Gary Meller*</u> Dr. Gary Meller	Director	April 1, 2016
<u>/s/ Katherine L. Davis*</u> Katherine L. Davis	Director	April 1, 2016
<u>/s/ Pete Kissinger*</u> Pete Kissinger	Director	April 1, 2016
<u>/s/ Barbara DeBuono*</u> Barbara DeBuono	Director	April 1, 2016

* - Executed by John J. Sperzel III through power of attorney

EXHIBIT INDEX

Exhibit No.	Description
1.1	Form of Underwriting Agreement*
4.1	Form of certificate of designation of series of preferred stock*
4.2	Form of securities and warrant agreement*
5.1	Opinion of Ballard Spahr LLP
8.0	Opinion as to certain federal income tax matters*
23.1	Consent of BDO USA, LLP
23.2	Consent of Ballard Spahr LLP (included in Exhibit 5.1)
24	Power of Attorney of certain officers and directors (located on the signature page to the Registration Statement)

* To be filed, as applicable, by amendment or as an exhibit to a document incorporated by reference herein for the specific offering of securities, if any, to which it relates.

Ballard Spahr LLP

100 North City Parkway, Suite 1750
Las Vegas, NV 89106-4617
TEL 702.471.7000
FAX 702.471.7070
www.ballardspahr.com

April 1, 2016

Chembio Diagnostics, Inc.
3661 Horseblock Road
Medford, New York 11763

Re:Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as Nevada counsel to Chembio Diagnostics, Inc., a Nevada corporation (the "Corporation"), in connection with the Corporation's Registration Statement on Form S-3 (File No. 333-210003) (the "Registration Statement") and as filed with the United States Securities and Exchange Commission (the "Commission") on or about the date referenced above under the Securities Act of 1933, as amended (the "Securities Act") and as amended from time to time, for the registration of the following securities in the aggregate amount of \$35,000,000, all of which may be issued from time to time on a delayed or continuous basis pursuant to Rule 415 under the Securities Act:

- (i) common stock, par value \$0.01 per share, of the Corporation ("Common Stock"), where each share of Common Stock includes the right (the "Preferred Share Purchase Right") to purchase one one-thousandth of a share of the Corporation's Junior Participating Preferred Stock, Series D, par value \$0.01 per share, in accordance with the Rights Agreement dated as of March 8, 2016 (the "Rights Agreement");
- (ii) preferred stock of the Corporation ("Preferred Stock") in one or more series;
- (iii) warrants to purchase Common Stock or Preferred Stock ("Warrants"); and
- (iv) units of the Corporation ("Units") representing two or more of the class of securities issued by the Registration Statement.

The Common Stock, Preferred Stock, Warrants and Units are collectively referred to as the "Securities."

In connection therewith, we have examined, and relied upon the accuracy of factual matters contained in: (a) the Articles of Incorporation of the Corporation filed with the Nevada Secretary of State on May 14, 1999, as amended (the "Articles"); (b) the Amended and Restated Bylaws of the Corporation, as amended (the "Bylaws"); (c) resolutions adopted by the Corporation's board of directors authorizing the filing of the Registration Statement with the Commission (the "Board Resolutions"); and (d) the Registration Statement and the exhibits thereto. We have also examined such corporate records and other agreements, documents and instruments, and such certificates or comparable documents of public officials and officers and representatives of the Corporation and have made such inquiries of such officers and representatives and have considered such matters of law as we have deemed appropriate as the basis for the opinion hereinafter set forth.

In delivering this opinion, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, photostatic or conformed copies, the authenticity of originals of all such latter documents, and the accuracy and completeness of all records, information and statements submitted to us by officers and representatives of the Corporation. In making our examination of documents executed by parties other than the Corporation, we have assumed that such parties had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization of all requisite action, corporate or other, and execution and delivery by such parties of such documents and the validity and binding effect thereof with respect to such parties.

The opinion expressed below is based on the assumption that the Registration Statement has been filed by the Corporation with the Commission and will be effective at the time that any of the Securities are issued, and that persons acquiring the Securities will receive a prospectus containing all of the information required by Part I of the Registration Statement before acquiring such Securities. We further assume that the Securities will continue to be duly and validly authorized on the dates that the Securities are issued, and, upon the issuance of any of the Securities, the total number of shares of common stock of the Corporation issued and outstanding, after giving effect to such issuance of such Securities, will not exceed the total number of shares of common stock that the Corporation is then authorized to issue under its Articles of Incorporation, as amended.

On the basis of the foregoing, and subject to the qualifications, assumptions, and limitations set forth herein, we are of the opinion that:

1. With respect to the shares of Common Stock, including the Preferred Stock Purchase Rights (the "Offered Common Stock"), when, as and if (a) the Board of Directors or any duly appointed Pricing Committee has taken all necessary corporate action to fix and determine the terms of the Offered Common Stock and authorize their issuance and sale in accordance with the Articles, including the reservation of a sufficient number of shares of Common Stock, (b) certificates representing the shares of the Offered Common Stock have been manually signed by an authorized officer of the transfer agent and registrar for the Common Stock and registered by such transfer agent and registrar, and delivered to the purchasers thereof; and (c) the Corporation receives consideration per share of the Offered Common Stock in such amount as may be determined by the Board of Directors or any duly appointed Pricing Committee (including any Offered Common Stock duly issued upon exchange, exercise or conversion of any Offered Preferred Stock (defined below) or Offered Warrants (defined below) that are exchangeable, exercisable or convertible into Offered Common Stock), the issuance and sale of the shares of Offered Common Stock, including the Preferred Stock Purchase Rights, will have been duly authorized, and such shares of Offered Common Stock, including the Preferred Stock Purchase Rights, will be validly issued, fully paid and non-assessable.
 2. With respect to the shares of any series of Preferred Stock (the "Offered Preferred Stock"), when, as and if (a) the Board of Directors or any duly appointed Pricing Committee has taken all necessary corporate action to fix and determine the terms of the Offered Preferred Stock and authorize their issuance and sale in accordance with the Articles, including the adoption of a Certificate of Designation for such Preferred Stock in the form required by applicable law and the reservation of a sufficient number of shares of Common Stock issuable upon exchange, exercise or conversion of such Offered Preferred Stock, if applicable; (b) such Certificate of Designation has been duly filed with the Secretary of State of Nevada; (c) certificates representing the shares of the Offered Preferred Stock have been manually signed by an authorized officer of the transfer agent and registrar for the Preferred Stock and registered by such transfer agent and registrar, and delivered to the purchasers thereof; and (d) the Corporation receives the consideration per share of the Offered Preferred Stock in such amount as may be determined by the Board of Directors or any duly appointed Pricing Committee (including any Offered Preferred Stock duly issued upon exchange, exercise or conversion of any Warrants that are exchangeable or convertible into Offered Preferred Stock), the issuance and sale of the shares of Offered Preferred Stock will have been duly authorized, and such shares will be validly issued, fully paid and non-assessable.
-

3. With respect to the Warrants (the "Offered Warrants"), when, as and if (a) specifically authorized for issuance by the Board of Directors or any duly appointed Pricing Committee, including the reservation of a sufficient number of shares of Common Stock issuable upon exchange, exercise or conversion of such Offered Warrants; (b) any Warrant Agreement relating to the Offered Warrants and the Offered Warrants have been duly authorized, executed, and delivered by authorized officers of the Corporation; (c) the terms of the Offered Warrants and their issuance and sale have been duly established in conformity with any such Warrant Agreement and do not violate any applicable law or result in a default under or breach of any agreement or instrument binding upon the Corporation and comply with any requirement and restriction imposed by any court or governmental body having jurisdiction over the Corporation; (d) the Offered Warrants have been duly executed and countersigned in accordance with any such Warrant Agreement and issued and sold as contemplated by the Registration Statement; and (e) the Corporation has received the consideration for the Offered Warrants provided for in the resolutions of the Board of Directors or any duly appointed Pricing Committee, the issuance and sale of the Offered Warrants will have been duly authorized, and such securities will be validly issued, fully paid and non-assessable.
4. With respect to the Units (the "Offered Units"), when, as and if (a) specifically authorized for issuance by the Board of Directors or any duly appointed Pricing Committee, including the reservation of a sufficient number of shares of Common Stock as to any Offered Common Stock and as to any shares of Common stock issuable upon exchange, exercise or conversion of any Offered Preferred Stock and/or any Offered Warrants; (b) any Unit Agreement relating to the Offered Units and the Offered Units have been duly authorized, executed, and delivered by authorized officers of the Corporation; (c) the terms of the Offered Units and their issuance and sale have been duly established in conformity with any such Unit Agreement and do not violate any applicable law or result in a default under or breach of any agreement or instrument binding upon the Corporation and comply with any requirement and restriction imposed by any court or governmental body having jurisdiction over the Corporation; (d) the Offered Units have been duly executed and countersigned in accordance with any such Unit Agreement and issued and sold as contemplated by the Registration Statement; and (e) the Corporation has received the consideration for the Offered Units provided for in the resolutions of the Board of Directors or any duly appointed Pricing Committee, the issuance and sale of the Offered Units will have been duly authorized, and such securities will be validly issued, fully paid and non-assessable.

This opinion is limited to the present laws of the State of Nevada. We express no opinion as to the laws of any other jurisdiction and no opinion regarding the statutes, administrative decisions, rules and regulations or requirements of any county, municipality or subdivision or other local authority of any jurisdiction.

Further, with respect to the Preferred Share Purchase Rights, we note the following:

This opinion does not address the determination a court of competent jurisdiction may make regarding whether the Corporation's board of directors would be required to redeem or terminate, or take other action with respect to, the Preferred Share Purchase Rights at some future time based on the facts and circumstances existing at that time;

The Corporation's board members are assumed to have acted in a manner consistent with their fiduciary duties as required under applicable law in adopting the Rights Agreement; and

This opinion addresses the Preferred Share Purchase Rights and the Rights Agreement in their entirety, and it is not settled whether the invalidity of any particular provision of a Rights Agreement or of Preferred Share Purchase Rights issued thereunder would result in invalidating such rights in their entirety.

We do not undertake to advise you or anyone else of any changes in the opinions expressed herein resulting from changes in law, changes in fact or any other matters that hereafter might occur or be brought to our attention.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the references to us under the heading "Legal Matters" in the prospectus forming part of the Registration Statement and any supplement thereto. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations promulgated thereunder.

Very truly yours,

/s/ Ballard Spahr LLP

