Cheniere Energy Partners, L.P.
Form 10-Q
May 09, 2007
**Table of Contents**

# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# FORM 10-Q

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended March 31, 2007**

**OR**

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from to**

**Commission File No. 001-33366**

# Cheniere Energy Partners, L.P.

**(Exact name of registrant as specified in its charter)**

**Delaware**

**(State or other jurisdiction of incorporation or organization)**

**20-5913059**

**(I.R.S. Employer Identification No.)**

**700 Milam Street, Suite 800**

**Houston, Texas**

**(Address of principal executive offices)**

**77002**

**(Zip Code)**

**(713) 375-5000**

**(Registrant s telephone number, including area code)**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ¨ No x

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act.

Large accelerated filer ¨ Accelerated filer ¨ Non-accelerated filer x

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ¨ No x

The issuer had 26,416,357 common units and 135,383,831 subordinated units outstanding as of May 1, 2007.

---

**Table of Contents**

**CHENIERE ENERGY PARTNERS, L.P.**

**INDEX TO FORM 10-Q**


| | | Page |
|---|---|---|
| **Part I.** | **FINANCIAL INFORMATION** | |
| Item 1. | Consolidated Financial Statements | 3 |
| | Consolidated Balance Sheets | 3 |
| | Consolidated Combined Statements of Operations | 4 |
| | Consolidated Combined Statements of Partners Capital (Deficit) | 5 |
| | Consolidated Combined Statements of Cash Flows | 6 |
| | Notes to Consolidated Combined Financial Statements | 7 |
| Item 2. | Management s Discussion and Analysis of Financial Condition and Results of Operations | 15 |
| Item 3. | Quantitative and Qualitative Disclosures About Market Risk | 24 |
| Item 4. | Disclosure Controls and Procedures | 24 |
| **Part II.** | **OTHER INFORMATION** | |
| Item 1. | Legal Proceedings | 24 |
| Item 5. | Other Information | 26 |
| Item 6. | Exhibits | 27 |

**Table of Contents**

**PART I. FINANCIAL INFORMATION**

**Item 1. Consolidated Financial Statements**

**CHENIERE ENERGY PARTNERS, L.P.**

**A DEVELOPMENT STAGE ENTERPRISE**

**CONSOLIDATED BALANCE SHEETS**

**(in thousands, except unit data)**

| | Cheniere Energy Partners, L.P. March 31, 2007 (unaudited) | Combined Predecessor Entities December 31, 2006 |
|---|---|---|
| **ASSETS** | | |
| CURRENT ASSETS | | |
| Cash and cash equivalents | $ 12 | $ 7 |
| Restricted cash and cash equivalents | 209,645 | 176,324 |
| Interest receivable | 4,979 | 5,226 |
| Advances to affiliate | 1,327 | 379 |
| Prepaid expenses | 380 | 385 |
| TOTAL CURRENT ASSETS | 216,343 | 182,321 |
| NON-CURRENT RESTRICTED CASH AND CASH EQUIVALENTS | 895,058 | 982,613 |
| NON-CURRENT RESTRICTED TREASURY SECURITIES | 86,304 | |
| PROPERTY, PLANT AND EQUIPMENT, NET | 769,436 | 651,676 |
| DEBT ISSUANCE COSTS, NET | 32,646 | 33,970 |
| ADVANCES UNDER LONG-TERM CONTRACTS | 14,022 | 7,250 |
| OTHER | 211 | 284 |
| TOTAL ASSETS | $ 2,014,020 | $ 1,858,114 |
| **LIABILITIES AND PARTNERS CAPITAL (DEFICIT)** | | |
| CURRENT LIABILITIES | | |
| Accounts payable | $ 8,546 | $ 758 |
| Accounts payable affiliate | 70 | 223 |
| Accrued liabilities | 99,554 | 36,670 |
| Accrued liabilities affiliate | 435 | 652 |
| TOTAL CURRENT LIABILITIES | 108,605 | 38,303 |
| LONG-TERM DEBT | 2,032,000 | 2,032,000 |
| DEFERRED REVENUE | 40,000 | 40,000 |
| PAYABLE TO AFFILIATE | 15 | |
| OTHER NON-CURRENT LIABILITIES | 1,154 | 1,149 |
| COMMITMENTS AND CONTINGENCIES | | |

| | | |
|---|---|---|
| PARTNERS CAPITAL (DEFICIT) OR OWNERS DEFICIT | | |
| Owners deficit, including deficit accumulated during development stage of $72,452 at December 31, 2006 | | (253,338) |
| Common unitholders (26,416,357 units issued and outstanding at March 31, 2007) | 62,891 | |
| Subordinated unitholders (135,383,831 units issued and outstanding at March 31, 2007) | (225,154) | |
| General partner interest (2% interest with 3,302,045 units issued and outstanding at March 31, 2007) | (5,491) | |
| TOTAL PARTNERS DEFICIT OR OWNERS DEFICIT | (167,754) | (253,338) |
| TOTAL LIABILITIES AND PARTNERS DEFICIT OR OWNERS DEFICIT | $ 2,014,020 | $ 1,858,114 |

See accompanying notes to consolidated combined financial statements.

Table of Contents

**CHENIERE ENERGY PARTNERS, L.P.**

**A DEVELOPMENT STAGE ENTERPRISE**

**CONSOLIDATED COMBINED STATEMENTS OF OPERATIONS**

**(in thousands, except per unit data)**

**(unaudited)**

| | For the Three Months Ended March 31, 2007 | For the Three Months Ended March 31, 2006 | Period from October 20, 2003 (Date of Inception) to March 31, 2007 |
|---|---|---|---|
| REVENUES | $ | $ | $ |
| EXPENSES | | | |
| Legal | | | 2,227 |
| Professional | 131 | 126 | 1,702 |
| Technical consulting | | | 4,577 |
| Land site rental | 401 | 382 | 1,916 |
| Depreciation expense | 20 | 10 | 83 |
| Labor and overhead charge from affiliate | 1,324 | 1,025 | 8,868 |
| Phase 2 Stage 1 development reimbursement to affiliate | | | 4,527 |
| Other | 10 | 50 | 427 |
| TOTAL EXPENSES | 1,886 | 1,593 | 24,327 |
| LOSS FROM OPERATIONS | (1,886) | (1,593) | (24,327) |
| OTHER INCOME (EXPENSE) | | | |
| Interest income | 14,845 | 49 | 24,293 |
| Interest expense | (25,817) | | (41,280) |
| Loss on early extinguishment of debt | | | (23,761) |
| Derivative gain (loss), net | | 761 | (20,234) |
| TOTAL OTHER INCOME (EXPENSE) | (10,972) | 810 | (60,982) |
| NET LOSS | $ (12,858) | $ (783) | $ (85,309) |
| Less: | | | |
| Net loss through March 25, 2007 | (12,128) | | |
| Net loss for partners from March 26, 2007 through March 31, 2007 | $ (730) | | |
| Allocation of net loss: | | | |
| Limited partners interest | (715) | | |
| General partner s interest | (15) | | |
| Net loss for partners | $ (730) | | |
| Basic and diluted net loss per limited partner unit | $ | | |

| Weighted average number of limited partner units outstanding from March 26, 2007 through March 31, 2007 used for basic and diluted net loss per unit calculation: | |
|---|---|
| Common units | 26,416 |
| Subordinated units | 135,384 |
| | 161,800 |

See accompanying notes to consolidated combined financial statements.

Table of Contents

**CHENIERE ENERGY PARTNERS, L.P.**

**A DEVELOPMENT STAGE ENTERPRISE**

**CONSOLIDATED COMBINED STATEMENTS OF PARTNERS CAPITAL (DEFICIT)**

**(in thousands)**

**(unaudited)**

| | Owners Equity | Common Units | Subordinated Units | General Partner Units | Total |
|---|---|---|---|---|---|
| Balance at October 20, 2003 | $ | $ | $ | $ | $ |
| Net loss | (2,763) | | | | (2,763) |
| Balance at December 31, 2003 | (2,763) | | | | (2,763) |
| Distributions | (10,000) | | | | (10,000) |
| Net loss | (4,654) | | | | (4,654) |
| Balance at December 31, 2004 | (17,417) | | | | (17,417) |
| Capital contributions | 161,562 | | | | 161,562 |
| Rescinded distribution | 10,000 | | | | 10,000 |
| Change in fair value of derivative instrument | 1,814 | | | | 1,814 |
| Net loss | (4,263) | | | | (4,263) |
| Balance at December 31, 2005 | 151,696 | | | | 151,696 |
| Capital contributions | 35,900 | | | | 35,900 |
| Distributions | (378,348) | | | | (378,348) |
| Change in fair value of derivative instrument | (1,814) | | | | (1,814) |
| Net loss | (60,772) | | | | (60,772) |
| Balance at December 31, 2006 | (253,338) | | | | (253,338) |
| Net loss through March 25, 2007 | (12,128) | | | | (12,128) |
| Balance at March 25, 2007 | (265,466) | | | | (265,466) |
| Contribution of net deficit investment to unit holders | 265,466 | (35,434) | (224,556) | (5,476) | |
| Proceeds from initial public offering, net of issuance costs | | 98,442 | | | 98,442 |
| Net loss from March 26, 2007 through March 31, 2007 | | (117) | (598) | (15) | (730) |
| Balance at March 31, 2007 | $ | $ 62,891 | $ (225,154) | $ (5,491) | $ (167,754) |

See accompanying notes to consolidated combined financial statements.

Table of Contents

**CHENIERE ENERGY PARTNERS, L.P.**

**A DEVELOPMENT STAGE ENTERPRISE**

**CONSOLIDATED COMBINED STATEMENTS OF CASH FLOWS**

**(in thousands)**

**(unaudited)**

| | Three Months Ended March 31, | | Period from October 20, 2003 (Date of Inception) to March 31, |
|---|---|---|---|
| | 2007 | 2006 | 2007 |
| CASH FLOWS FROM OPERATING ACTIVITIES | | | |
| Net loss | $ (12,858) | $ (783) | $ (85,309) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | | |
| Depreciation | 20 | 10 | 83 |
| Non-cash derivative gain | | (676) | |
| Non-cash restricted interest income | (14,845) | | (23,910) |
| Amortization of debt issuance costs | 950 | | 1,645 |
| Loss on early extinguishment of debt | | | 23,750 |
| Changes in operating assets and liabilities: | | | |
| Interest receivable | | (1) | |
| Accounts payable and accrued liabilities | 26,551 | (877) | 40,540 |
| Accounts payable and accrued liabilities affiliate | (217) | | 435 |
| Deferred revenue | | | 40,000 |
| Payable to affiliate | 70 | | 70 |
| Other | 10 | (895) | 231 |
| NET CASH USED IN OPERATING ACTIVITIES | (319) | (3,222) | (2,465) |
| CASH FLOWS FROM INVESTING ACTIVITIES | | | |
| Use of (investment in) restricted cash and cash equivalents | 81,465 | 8,500 | (1,073,634) |
| Investment in restricted treasury securities | (98,442) | | (98,442) |
| LNG terminal construction-in-progress | (73,015) | (78,499) | (697,899) |
| Advances to EPC contractor, net of transfers to construction-in-progress | | 8,087 | |
| Advances under long-term contracts | (6,555) | | (13,317) |
| Other | (948) | (107) | (1,327) |
| NET CASH USED IN INVESTING ACTIVITIES | (97,495) | (62,019) | (1,884,619) |
| CASH FLOWS FROM FINANCING ACTIVITIES | | | |
| Proceeds from issuance of senior notes | | | 2,032,000 |
| Net proceeds from issuance of common units | 98,442 | | 98,442 |
| Debt issuance costs | (634) | (4,762) | (61,694) |
| Proceeds from subordinated note affiliate | | | 37,377 |
| Repayment of subordinated note affiliate | | | (37,377) |
| Borrowings from Sabine Pass credit facility | | 70,000 | 383,400 |
| Repayment of Sabine Pass credit facility | | | (383,400) |
| Distribution to owners | | | (378,348) |
| Affiliate payable | 11 | 5 | 15 |
| Capital contributions by owners | | | 196,681 |

| | | | | | | |
|---|---|---|---|---|---|---|
| NET CASH PROVIDED BY FINANCING ACTIVITIES | | 97,819 | | 65,243 | | 1,887,096 |
| NET INCREASE IN CASH AND CASH EQUIVALENTS | | 5 | | 2 | | 12 |
| CASH AND CASH EQUIVALENTS beginning of period | | 7 | | 5 | | |
| CASH AND CASH EQUIVALENTS end of period | $ | 12 | $ | 7 | $ | 12 |

See accompanying notes to consolidated combined financial statements.

6

Table of Contents

**CHENIERE ENERGY PARTNERS, L.P.**

**A DEVELOPMENT STAGE ENTERPRISE**

**NOTES TO CONSOLIDATED COMBINED FINANCIAL STATEMENTS**

**(unaudited)**

**NOTE 1 Nature of Operations and Basis of Presentation**

Cheniere Energy Partners, L.P. ( Cheniere Partners ) is a publicly-held limited partnership. As of March 31, 2007, Cheniere Energy, Inc. ( Cheniere Energy ) owned 91.8% of the partnership through its wholly-owned subsidiaries, Cheniere LNG Holdings, LLC ( Holdings ) and Cheniere Energy Partners GP, LLC (the General Partner ). Cheniere Partners is a Delaware limited partnership formed on November 21, 2006 to develop, own and operate the Sabine Pass liquefied natural gas ( LNG ) receiving and regasification facility in western Cameron Parish, Louisiana on the Sabine Pass Channel (the Sabine Pass LNG receiving terminal ). Cheniere Partners and Holdings, as a selling unitholder, completed an initial public offering (the Offering ) of Cheniere Partners common units on March 26, 2007.

The following entities were included on a combined basis in the accompanying Consolidated Combined Financial Statements for periods prior to the Offering because they were entities under common control:

- Cheniere Partners;
- Cheniere Energy Investments, LLC ( Cheniere Investments ) is a Delaware limited liability company owned by Cheniere Partners and was formed on November 21, 2006 to hold 100% of the ownership interests in Sabine Pass GP and Sabine Pass LP;
- Sabine Pass LNG-GP, Inc. ( Sabine Pass GP ) is a Delaware corporation that was owned by Holdings and was formed in 2004 to be the general partner of Sabine Pass LNG, L.P. ( Sabine Pass LNG );
- Sabine Pass LNG-LP, LLC ( Sabine Pass LP ) is a Delaware limited liability company that was owned by Holdings and was formed in 2004 to be the limited partner of Sabine Pass LNG; and
- Sabine Pass LNG is a Delaware limited partnership, formed with one general partner, Sabine Pass GP, and one limited partner, Sabine Pass LP, which owns the entire interest in the Sabine Pass LNG receiving terminal. Sabine Pass LNG is in the development stage, and the purpose of this limited partnership is to own and operate the Sabine Pass LNG receiving terminal.

At the closing of the Offering on March 26, 2007, the equity interests in Sabine Pass GP and Sabine Pass LP were contributed to Cheniere Investments, thereby resulting in Sabine Pass GP, Sabine Pass LP and Sabine Pass LNG becoming indirect, wholly-owned subsidiaries of Cheniere Partners. From and after the closing of the Offering, Cheniere Investments and these subsidiaries are consolidated with Cheniere Partners in the accompanying financial statements. As used in these Notes to Consolidated Combined Financial Statements, the terms Cheniere Partners , we , us and our refer to Cheniere Partners and its consolidated subsidiaries effective with the closing of the Offering and the foregoing entities on a combined basis (the Combined Predecessor Entities ) prior to the closing of the Offering.

With the exception of Sabine Pass GP, we are not subject to either federal or state income tax, as the partners are taxed individually on their proportionate share of our earnings. Sabine Pass GP is a corporation and is subject to both federal and state income tax. However, since Sabine Pass GP s inception, its activities have been strictly limited to holding a non-income or loss bearing general partner interest in Sabine Pass LNG and thus, this entity has not realized any taxable net income to date and is not expected to realize any taxable net income in the future.

The accompanying unaudited Consolidated Combined Financial Statements of Cheniere Partners have been prepared in accordance with generally accepted accounting principles in the United States ( GAAP ) for interim

**Table of Contents**

financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In our opinion, all adjustments, consisting only of normal recurring adjustments necessary for a fair presentation, have been included. The Consolidated Combined Financial Statements include our accounts and those of our subsidiaries. All significant intercompany transactions and balances have been eliminated.

Certain reclassifications have been made to conform prior period information to the current presentation, including a $179.0 million reclassification between current Restricted Cash and Cash Equivalents and Non-Current Restricted Cash and Cash Equivalents on our December 31, 2006 Consolidated Balance Sheet. The reclassification had no effect on our overall consolidated financial position, results of operations or cash flows.

The interim financial statements reflect all adjustments which are, in the opinion of management, necessary for a fair presentation of our results for the interim periods. Such adjustments are considered to be of a normal recurring nature. Results of operations for the three months ended March 31, 2007 are not necessarily indicative of the results of operations that will be realized for the year ended December 31, 2007.

For further information, refer to our combined financial statements and footnotes for the year ended December 31, 2006 included in our Registration Statement on Form S-1, as amended, filed with the Securities and Exchange Commission ( SEC ) and declared effective on March 20, 2007.

*New Accounting Pronouncements*

In February 2007, the Financial Accounting Standards Board ( FASB ) issued Statement of Financial Accounting Standards ( SFAS ) No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities Including an amendment of FASB Statement No. 115*. This statement permits entities to choose to measure many financial instruments and certain other items at fair value. The objective is to improve financial reporting by providing entities with the opportunity to mitigate volatility in reported earnings caused by measuring related assets and liabilities differently without having to apply complex hedge accounting provisions. This statement is expected to expand the use of fair value measurement, which is consistent with the FASB s long-term measurement objectives for accounting for financial instruments. This statement is effective as of the beginning of an entity s first fiscal year that begins after November 15, 2007, although earlier adoption is permitted. Management has not determined the effect that adopting this statement would have on our financial condition or results of operations.

**NOTE 2 Development Stage Operations**

We were formed on October 20, 2003 (the earliest formation date of the Combined Predecessor Entities). Operations to date have been devoted to pre-construction and construction activities. Our ultimate profitability will depend on, among other factors, the successful completion of construction of the Sabine Pass LNG receiving terminal and commencement of commercial operation, which is not expected until the second quarter of 2008 at the earliest. As of March 31, 2007, we had a cumulative deficit of $85.3 million.

**NOTE 3 Initial Public Offering**

Cheniere Partners and Holdings, as a selling unitholder, completed the Offering of 13,500,000 Cheniere Partners common units for $21.00 per common unit on March 26, 2007. Cheniere Partners received $98.4 million of net proceeds, after deducting the underwriting discount and structuring fee, upon its issuance of 5,054,164 common units to the public in the Offering. Holdings received $164.5 million of net proceeds, after deducting the underwriting discount and structuring fee, upon its sale of 8,445,836 common units. We did not receive any proceeds from this sale of common units by Holdings. Our common units are traded on the American Stock Exchange under the symbol CQP .

Table of Contents

Upon the closing of the Offering on March 26, 2007, the following transactions occurred:

- Holdings contributed through us to our wholly-owned subsidiary, Cheniere Investments, all of its equity interests in Sabine Pass GP and Sabine Pass LP, which own all of the equity interests in Sabine Pass LNG;
- Cheniere Partners issued to Holdings 21,362,193 common units and 135,383,831 subordinated units;
- Cheniere Partners issued to our general partner, a direct wholly-owned subsidiary of Holdings, 3,302,045 general partner units representing a 2% general partner interest in us and all of our incentive distribution rights, which will entitle our general partner to increasing percentages of the cash that we distribute in excess of $0.489 per unit per quarter;
- we issued 5,054,164 common units to the public in the Offering;
- Holdings sold 8,445,836 common units to the public in the Offering, after which Holdings and the public held an aggregate 89.8% and 8.2% limited partner interest in us, respectively;
- our general partner entered into a services agreement with an affiliate of Cheniere Energy under which the affiliate will provide various general and administrative services for an annual administrative fee of $10.0 million (adjusted for inflation after January 1, 2007), with payment commencing January 1, 2009; and
- our general partner entered into a services and secondment agreement with an affiliate of Cheniere pursuant to which we anticipate that certain employees of the Cheniere Energy affiliate will be seconded to our general partner to provide operating and routine maintenance services with respect to the Sabine Pass LNG receiving terminal.

We used all of our net proceeds of $98.4 million from the sale of our common units in the Offering to purchase U.S. treasury securities to fund a distribution reserve to pay quarterly distributions of $0.425 per common unit, as well as related distributions to our general partner, through June 30, 2009.

**NOTE 4 Restricted Cash, Cash Equivalents and Treasury Securities**

In November 2006, we consummated a private offering of an aggregate principle amount of $2.0 billion of senior secured notes consisting of $550 million of 7 1/4% Senior Secured Notes due 2013 (the 2013 Notes ) and $1.5 billion of 7 1/2% Senior Secured Notes due 2016 (the 2016 Notes and, collectively with the 2013 Notes, the Sabine Pass LNG notes ) (see Note 7 Long-Term Debt). Under the terms and conditions of the Sabine Pass LNG notes, we were required to fund cash reserve accounts for approximately $335 million related to future interest payments through May 2009 and approximately $887 million to pay the remaining costs to complete the initial phase ( Phase 1 ) and the first stage of the second phase ( Phase 2 Stage 1 ) of the Sabine Pass LNG receiving terminal. These cash accounts are controlled by a collateral trustee, and therefore, are shown as Restricted Cash and Cash Equivalents on the accompanying Consolidated Balance Sheet. As of March 31, 2007 and December 31, 2006, $209.6 million and $176.3 million, respectively, related to future interest payments due within one year and accrued construction costs have been classified as a current asset, and $895.1 million and $982.6 million, respectively, related to remaining construction costs and future interest payments due beyond one year have been classified as a non-current asset on the accompanying Consolidated Balance Sheets.

As discussed above in Note 3, at the closing of the Offering, we funded a distribution reserve for $98.4 million, which was invested in U.S. treasury securities. The distribution reserve, including interest earned, will be used to pay quarterly distributions of $0.425 per common unit for all common units, as well as related distributions to our general partner, through June 30, 2009. The U.S. treasury securities were acquired at a discount from their maturity values equal to an average of approximately 4.87% per year. As of March 31, 2007, we have classified $86.3 million of the U.S. treasury securities as Non-Current Restricted Treasury Securities on our Consolidated Balance Sheet, as these securities have

maturities greater than three months. The remaining $12.1 million invested in U.S. treasury securities are classified as Non-Current Restricted Cash and Cash Equivalents on our Consolidated Balance Sheet as of March 31, 2007, as these securities have maturities less than or equal to three months.

Table of Contents

**NOTE 5 Property, Plant and Equipment**

Property, plant and equipment is comprised of LNG terminal construction-in-progress expenditures, LNG site and related costs and fixed assets, as follows (in thousands):

| | March 31, 2007 | December 31, 2006 |
|---|---|---|
| LNG TERMINAL COSTS | | |
| LNG terminal construction-in-progress | $ 769,028 | $ 651,369 |
| LNG site and related costs, net | 196 | 197 |
| Total LNG terminal costs | 769,224 | 651,566 |
| FIXED ASSETS | | |
| Computer and office equipment | 85 | 31 |
| Computer software | 36 | 33 |
| Leasehold improvements | 10 | 10 |
| Vehicles | 164 | 99 |
| Accumulated depreciation | (83) | (63) |
| Total fixed assets, net | 212 | 110 |
| PROPERTY, PLANT AND EQUIPMENT, NET | $ 769,436 | $ 651,676 |

Once the Sabine Pass LNG receiving terminal is placed into service, the LNG terminal construction-in-progress costs will be depreciated using the straight-line depreciation method. We are in the process of determining the most appropriate approach in grouping identifiable components with similar estimated useful lives. Estimated useful lives for components, once construction is completed, are currently estimated to range between 10 and 50 years.

In February 2005 and July 2006, Phase 1 and Phase 2 Stage 1, respectively, of the Sabine Pass LNG receiving terminal satisfied the criteria for capitalization. Accordingly, costs associated with the construction of Phase 1 and Phase 2 Stage 1 of the Sabine Pass LNG receiving terminal have been capitalized as construction-in-progress since those dates. During the three months ended March 31, 2007 and 2006, we capitalized $12.9 million and $2.8 million, respectively, of interest expense, which consisted primarily of interest expense qualifying to be capitalized, amortization of debt issuance costs and commitment fees under the Sabine Pass LNG notes during the three months ended March 31, 2007 and a Sabine Pass LNG credit facility during the three months ended March 31, 2006.

**NOTE 6 Accrued Liabilities**

Accrued liabilities consisted of the following (in thousands):

| | March 31, 2007 | December 31, 2006 |
|---|---|---|
| Interest and related debt fees | $ 59,571 | $ 21,815 |
| LNG terminal construction costs | 39,873 | 13,899 |
| Affiliate | 435 | 652 |
| Other | 110 | 956 |
| | $ 99,989 | $ 37,322 |

Table of Contents

**NOTE 7 Long-Term Debt**

As of March 31, 2007 and December 31, 2006, our long-term debt consisted of the following (in thousands):

| | March 31, 2007 | December 31, 2006 |
|---|---|---|
| Sabine Pass LNG notes | $ 2,032,000 | $ 2,032,000 |

*Sabine Pass LNG Notes*

In November 2006, Sabine Pass LNG consummated a private offering of an aggregate principal amount of $2,032 million of Sabine Pass LNG notes, consisting of $550 million of the 2013 notes and $1,482 million of the 2016 notes. We placed $335 million of the net proceeds in a reserve account to fund scheduled interest payments on the Sabine Pass LNG notes through May 2009. We also placed approximately $887 million in a construction account, which, until satisfaction of construction completion milestones, will only be applied to pay construction and startup costs of the Sabine Pass LNG receiving terminal and to pay other expenses incidental for us to complete construction of the project. We used the remaining net proceeds received from the issuance of the Sabine Pass LNG notes to repay indebtedness, to make a distribution to Holdings for the repayment of its outstanding term loan and to pay fees and expenses related to the issuance of the Sabine Pass LNG notes. Our subsidiary, Sabine Pass LNG, has filed a registration statement with the SEC offering to exchange the Sabine Pass LNG notes for a like amount of senior secured notes of Sabine Pass LNG which are registered under the Securities Act of 1933, as amended.

Interest on the Sabine Pass LNG notes is payable semi-annually in arrears on May 30 and November 30 of each year, beginning May 30, 2007. The Sabine Pass LNG notes are secured on a first-priority basis by a security interest in all of Sabine Pass LNG s equity interests and substantially all of its operating assets.

Under the indenture governing the Sabine Pass LNG notes, except for permitted tax distributions, Sabine Pass LNG may not make distributions until certain conditions are satisfied. The indenture requires that Sabine Pass LNG apply its net operating cash flow (i) first, to fund with monthly deposits its next semiannual payment of approximately $75.5 million of interest on the Sabine Pass LNG notes, and (ii) second, to fund a one-time, permanent debt service reserve fund equal to one semiannual interest payment of approximately $75.5 million on the Sabine Pass LNG notes. Distributions from Sabine Pass LNG will be permitted only after Phase 1 target completion, as defined in the indenture governing the Sabine Pass LNG notes, or such earlier date as project revenues are received, upon satisfaction of the foregoing funding requirements, after satisfying a fixed charge coverage ratio test of 2:1 and after satisfying other conditions specified in the indenture.

**NOTE 8 Description of Equity Interests**

The common units and subordinated units represent limited partner interests in us. The holders of the units are entitled to participate in partnership distributions and exercise the rights and privileges available to limited partners under our partnership agreement.

The common units and general partner units have the right to receive minimum quarterly distributions of $0.425 per unit, plus any arrearages thereon, before any distribution is made to the holders of the subordinated units.

During the subordination period, the subordinated units will not be entitled to receive any distributions until the common units have received $0.425 per unit plus any arrearages from prior quarters. Subordinated units will convert into common units on a one-for-one basis when the subordination period ends. The subordination period will end when we meet financial tests specified in the partnership agreement, but it generally cannot end before June 30, 2008.

The general partner interest is entitled to at least 2% of all distributions made by us. In addition, the general partner holds incentive distribution rights, which allow the general partner to receive a higher percentage of quarterly distributions of available cash from operating surplus after the minimum distributions have been achieved and as additional target levels are met. The higher percentages range from 15% up to 50%.

**NOTE 9 Financial Instruments**

The estimated fair value of financial instruments is the amount at which the instrument could be exchanged currently between willing parties. The carrying amounts reported on the Consolidated Balance Sheets for Cash and Cash Equivalents, Restricted Cash and Cash Equivalents, Accounts Receivable and Accounts Payable approximate fair value due to their short-term nature. We use available market data and valuation methodologies to estimate the fair value of debt. This disclosure is presented in accordance with SFAS No. 107, *Disclosures about Fair Value of Financial Instruments*, and does not impact our financial position, results of operations or cash flows.

Financial Instruments (in thousands):

| | March 31, 2007 | | December 31, 2006 | |
|---|---|---|---|---|
| | Carrying Amount | Estimated Fair Value | Carrying Amount | Estimated Fair Value |
| 2013 Notes (1) | $ 550,000 | $ 554,125 | $ 550,000 | $ 547,250 |
| 2016 Notes (1) | 1,482,000 | 1,489,410 | 1,482,000 | 1,478,295 |
| Restricted Treasury Securities (2) | 98,442 | 98,442 | | |

(1) The fair value of the Sabine Pass LNG notes was based on quotations obtained from broker-dealers who made markets in these and similar instruments as of March 30, 2007 and December 31, 2006.

(2) The fair value of our Restricted Treasury Securities was based on quotations obtained from broker-dealers who made markets in these and similar instruments as of March 30, 2007. This amount includes $12.1 million classified as Non-Current Restricted Cash and Cash Equivalents on our Consolidated Balance Sheet as of March 31, 2007, as these securities have maturities less than or equal to three months.

**NOTE 10 Related Party Transactions**

As of March 31, 2007 and December 31, 2006, we had $1.3 million and $0.4 million, respectively, of advances to affiliates.

**Service Agreements**

***Operation and Maintenance Agreement***

In February 2005, Sabine Pass LNG entered into an Operation and Maintenance Agreement ( O&M Agreement ) with Cheniere LNG O&M Services, L.P. ( O&M Services ), an indirect wholly-owned subsidiary of Cheniere Energy. Pursuant to the O&M Agreement, O&M Services has agreed to provide all necessary services required to construct, operate and maintain the Sabine Pass LNG receiving terminal. The O&M Agreement will remain in effect until 20 years after substantial completion of the facility. Prior to substantial completion of the facility, Sabine Pass LNG is required to pay a fixed monthly fee of $95,000 (indexed for inflation). The fixed monthly fee will increase to $130,000 (indexed for inflation) upon substantial completion of the facility, and O&M Services will thereafter be entitled to a bonus equal to 50% of the salary component of labor costs in certain circumstances to be agreed upon between Sabine Pass LNG and O&M Services at the beginning of each operating year. In addition, Sabine Pass LNG is required to reimburse O&M Services for expenditures incurred by O&M Services on behalf of Sabine Pass LNG for operating expenses, which are comprised of labor, maintenance, land lease and insurance expenses and for maintenance capital expenditures.

Table of Contents

Upon the closing of the Offering, O&M Services assigned the O&M Agreement to our general partner, and O&M Services and our general partner entered into a services and secondment agreement pursuant to which certain employees of O&M Services have been seconded to our general partner to provide operating and routine maintenance services with respect to the Sabine Pass LNG receiving terminal under the direction, supervision and control of our general partner. Under this agreement, our general partner pays O&M Services amounts that it receives from Sabine Pass LNG under the O&M Agreement.

***Management Services Agreements***

In February 2005, Sabine Pass LNG entered into a Management Services Agreement (the Sabine Pass LNG MSA ) with its general partner, Sabine Pass LNG GP, Inc., which is a wholly-owned subsidiary of us. Pursuant to the Sabine Pass LNG MSA, Sabine Pass LNG appointed its general partner to manage the construction and operation of the Sabine Pass LNG receiving terminal, excluding those matters provided for under the O&M Agreement. The Sabine Pass LNG MSA terminates 20 years after the commercial start date set forth in the Total TUA. Prior to substantial completion of construction of the Sabine Pass LNG receiving terminal, Sabine Pass LNG is required to pay its general partner a monthly fixed fee of $340,000 (indexed for inflation); thereafter, the monthly fixed fee will increase to $520,000 (indexed for inflation).

In September 2006, the general partner of Sabine Pass LNG entered into a Management Services Agreement with Cheniere LNG Terminals, Inc. ( Cheniere Terminals ), a wholly-owned subsidiary of Cheniere Energy. Pursuant to this agreement, Cheniere Terminals provides the general partner with technical, financial, staffing and related support necessary to allow it to meet its obligations to Sabine Pass LNG under the Sabine Pass LNG MSA. Under this agreement with Cheniere Terminals, the general partner of Sabine Pass LNG pays Cheniere Terminals amounts that it receives from Sabine Pass LNG for management of the Sabine Pass LNG receiving terminal.

***Services Agreement***

Our general partner entered into a services agreement with Cheniere Terminals upon the closing of the Offering. Under this agreement, we will pay Cheniere Terminals an annual administrative fee of $10 million (adjusted for inflation after January 1, 2007) commencing January 1, 2009 for the provision of various general and administrative services provided for our benefit and will reimburse Cheniere Terminals for its services in an amount equal to the sum of all out-of-pocket costs and expenses incurred by Cheniere Terminals that are directly related to our business or activities, such as salaries of operational personnel performing services on-site at the Sabine Pass LNG receiving terminal and the cost of their employee benefits, including 401(k) plan, pension and health insurance benefits. The annual administrative fee includes expenses incurred by Cheniere Terminals to perform all technical, commercial, regulatory, financial, accounting, treasury, tax and legal staffing and related support and all management and other services necessary or reasonably requested on behalf of our partnership by our general partner in order to conduct our business as contemplated by our partnership agreement.

Our general partner will also be entitled to a special annual bonus, which is payable in the sole discretion of Sabine Pass LNG, which is controlled by our general partner. These fees and bonus payments do not include substantial reimbursements that we will make to our general partner and its affiliates on an annual basis for expenses incurred on our behalf.

During the three months ended March 31, 2007 and 2006, we paid a management fee of $0.4 million per month as required under the O&M Agreement and the general partner MSA totaling $1.3 million. These costs are included as an overhead charge from affiliates, net of capitalized general and administrative costs, within the accompanying Consolidated Combined Statements of Operations. As of March 31, 2007 and December 31, 2006, we had $0.4 million and $0.7 million, respectively, of accrued liabilities payable to our affiliates related to these management fees.

Table of Contents

**NOTE 11 Commitments and Contingencies**

**Legal Proceedings**

We may in the future be involved as a party to various legal proceedings, which are incidental to the ordinary course of business. We regularly analyze current information and, as necessary, provide accruals for probable liabilities on the eventual disposition of these matters. In the opinion of management and legal counsel, as of March 31, 2007 and December 31, 2006, there were no threatened or pending legal matters that would have a material impact on our consolidated combined results of operations, financial position or cash flows.

**NOTE 12 Supplemental Cash Flow Information and Disclosures of Non-Cash Transactions**

The following table provides supplemental disclosure of cash flow information (in thousands):

| | Three Months Ended March 31, | | Period from October 20, 2003 (Date of Inception) to March 31, |
|---|---|---|---|
| | 2007 | 2006 | 2007 |
| Cash paid for interest (1) | $ | $ 2,260 | $ 14,353 |
| Construction-in-progress additions recorded as accrued liabilities | $ 46,760 | $ 15,782 | $ 46,760 |

(1) All cash paid for interest was capitalized as construction-in-progress.

**NOTE 13 Subsequent Events**

On April 16, 2007, the underwriters of the Offering exercised their over-allotment option to purchase 2,025,000 additional common units, which resulted in net proceeds of approximately $39.4 million to Holdings, as the selling unitholder, and reduced Cheniere Energy s overall ownership interest in us to approximately 90.6%. We did not receive any proceeds from this sale of additional common units by Holdings.

Table of Contents

**Item 2. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS INFORMATION REGARDING FORWARD-LOOKING STATEMENTS**

This quarterly report contains certain statements that are, or may be deemed to be, forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act ), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act ). All statements, other than statements of historical fact, included herein or incorporated herein by reference are forward-looking statements. Included among forward-looking statements are, among other things:

- statements regarding our ability to pay distributions to our unitholders;
- statements relating to the construction and operation of the Sabine Pass liquefied natural gas ( LNG ) receiving terminal, including statements concerning the completion or expansion thereof by certain dates or at all, the costs related thereto and certain characteristics, including amounts of regasification and storage capacity, the number of storage tanks and docks, pipeline deliverability and the number of pipeline interconnections, if any;
- statements relating to the construction and operation of facilities related to the Sabine Pass LNG receiving terminal;
- statements regarding future levels of domestic natural gas production, supply or consumption; future levels of LNG imports into North America; sales of natural gas in North America; and the transportation, other infrastructure or prices related to natural gas, LNG or other energy sources or hydrocarbon products;
- our expected receipt of cash distributions from Sabine Pass LNG;
- statements regarding any financing transactions or arrangements, or ability to enter into such transactions or arrangements;
- statements regarding any terminal use agreement ( TUA ) or other agreement to be entered into or performed substantially in the future, including any cash distributions and revenues anticipated to be received and the anticipated timing thereof, and statements regarding the amounts of total LNG regasification capacity that are, or may become, subject to TUAs or other contracts;
- statements regarding counterparties to our TUAs, construction contracts and other contracts;
- statements regarding any business strategy, any business plans or any other plans, forecasts, projections or objectives, any or all of which are subject to change;

Table of Contents

was $.9 million in 2011 and $6.9 million in 2010. The favorable difference of $6.1 million primarily represented the change in fair value of the financial derivative instruments of $8.6 million (see NOTE K of our Consolidated Financial Statements) offset by interest expense in connection with our senior convertible notes sold in November 2011 ($.2 million) and an increase in expense representing the loss on our equity investment ($2.3 million) in Neptune Minerals Inc. (See NOTE J of our Consolidated Financial Statements).

**Income Taxes**

We did not record any provision (benefit) for income taxes in 2011 or 2010. Due to the uncertainty surrounding the realization of deferred tax assets resulting from operating loss carryforwards, we recorded a full valuation allowance of $52.5 million against the deferred tax assets as of December 31, 2011 compared to $46.0 million as of December 31, 2010. As required by the Accounting for Income Taxes topic in the Accounting Standards Codification ( ASC ), we have evaluated whether it is more likely than not that the deferred tax assets will be realized. Based on the available evidence, we have concluded that it is more likely than not that those assets would not be realizable without the recovery of high-value shipwrecks and thus a valuation allowance has been recorded as of December 31, 2011. We will continue to reassess the need for a valuation allowance during each future reporting period.

**Liquidity and Capital Resources**

| (Dollars in thousands) | 2011 | 2010 |
|---|---|---|
| Summary of Cash Flows: | | |
| Net cash (used) by operating activities | $ (15,190) | $ (12,159) |
| Net cash (used) by investing activities | (489) | (1,631) |
| Net cash provided by financing activities | 23,415 | 11,880 |
| Net increase (decrease) in cash and cash equivalents | $ 7,736 | $ (1,910) |
| Beginning cash and cash equivalents | 236 | 2,145 |
| Ending cash and cash equivalents | $ 7,972 | $ 236 |

**Discussion of Cash Flows**

Cash flow used in operating activities in 2011 was $15.2 million. This amount primarily reflected an operating loss of $16.2 million offset in part by non-cash items including depreciation and amortization ($1.9 million), share-based compensation ($1.6 million), change in fair value of derivatives liabilities primarily due to redemption of Series G preferred stock ($5.0 million), write down of vessel *Ocean Alert* of $.6 million based upon sale in 2011, and interest accretion and financing charge amortization on notes payable ($.7 million). Other working capital changes included a decrease in accounts payable and accrued expenses of $1.7 million, and an increase in deferred revenue of $2.8 million (representing cash receipts of $8.5 million offset by revenue recognized of $5.7 million on the *Firebrand*, *Enigma*, *Shantaram*, *Stanton A* and *Neptune* projects). The outstanding deferred revenue balance of $3.5 millio represents work to be completed on the *Stanton A* and *Enigma* projects.

Cash flow used in operating activities in 2010 was $12.2 million. This amount primarily reflected an operating loss of $23.3 million offset in part by non-cash items including depreciation and amortization ($2.2 million), share-based compensation ($2.1 million), loss from unconsolidated entity ($2.4 million), change in fair value of derivatives liabilities due to the issuance of Series G preferred stock ($3.6 million), and loss on extinguishment of debt and loan discount amortization related to the exchange of notes payable for Series G preferred stock ($.5 million). The overall net increase in accounts receivable, net of reserves of $8.5 million, is $1.8 million which primarily represents charter services for Dorado Ocean Resources. Other working capital changes included an increase in accounts payable and accrued expenses of $2.8 million ($2.1 million represents ship charter-related expenses), and a decrease in deferred revenue of $.5 million (representing cash receipts of $3.7 million offset by revenue recognized of $4.2 million on the *Firebrand*, *Enigma* and *Shantaram* projects).

Net cash flow used in investing activities for 2011 was $.5 million which primarily represented the purchase of marine property and equipment of $1.0 million offset by the proceeds for the sale of the *Ocean Alert* of $.5 million. Cash flows used in investing activities for 2010 of $1.6 million primarily represented marine property and equipment purchases for our business venture into subsea mineral

mining and exploration.

Net cash flow provided by financing activities for 2011 was $23.4 million which primarily represented proceeds from the issuance of common stock ($15.6 million), an increase in deferred income from revenue participation rights on the Galt project ($7.5 million, see NOTE P), proceeds from the sale of convertible notes ($10.0 million), offset by payments of

$1.0 million for dividends on the Series G convertible preferred stock and broker commissions on capital raises, $5.8 million on redemptions of Series G convertible preferred stock, and $2.9 million repayment of mortgage and notes payable. The deferred income increase represented the proceeds from the Galt project.

Net cash flow provided by financing activities in 2010 was $11.9 million which included $6.2 million proceeds from the issuance and sale of common stock in January 2010 offset by fees related to the private offering of $.2 million, $1.9 million proceeds from the issuance of promissory notes in August 2010 (of which $1.0 million was exchanged for Series G preferred stock in October 2010), $5.1 million in proceeds from the sale of Series G preferred stock in October 2010, and repayment of $1.1 million of mortgage and loans payable ($.9 million of which related to the repayment of the promissory notes in October 2010).

**General Discussion 2011**

At December 31, 2011, we had cash and cash equivalents of $8.0 million, an increase of $7.7 million from the December 31, 2010 balance of $.2 million.

In January 2011, we executed agreements to provide marine archaeological excavation and related services on an existing project to certain client companies of Robert Fraser & Partners LLP (RFP). The work was conducted on a shipwreck site that we discovered and inspected during a recently completed survey carried out under contract with the RFP client companies. The contract provides for cash payments totaling approximately $2.3 million to Odyssey (of which $2.1 million was received in the first quarter) plus additional payments based upon revenue derived from the project. We plan to begin work on this project later in 2012.

In February 2011, Odyssey closed on a project syndication deal with Galt Resources LLC. Odyssey has received approximately $7.5 million from Galt which represent rights to future revenues of the project Galt selects prior to December 31, 2011. If the project is successful, Galt will recoup their investment plus three times the investment. These amounts will be paid out of proceeds of the project. Galt will receive 50% of the proceeds until this amount is recouped. In addition they will share in the future net proceeds of the project at the rate of 1% for every million invested. In January 2012, Odyssey and Galt agreed to bifurcate Galt s selection between two projects, the SS *Gairsoppa* and HMS *Victory*, subject to final executed agreements for the project. Galt will receive 50% of Odyssey s net proceeds, if any, on the SS *Gairsoppa* project until Galt receives two (2) times its initial investment of $7,512,500. Galt will also receive 50% of Odyssey s net proceeds, if any, on the HMS *Victory* project until Galt receives two (2) times its initial investment and thereafter will receive 7.5125% of Odyssey s net proceeds from the HMS *Victory* project. Galt has currently received the approximate $15 million earned on the project.

During February 2011, Odyssey entered into a charter agreement with Neptune Minerals PLC (a UK Company) and Neptune Minerals, Inc. (a Nevada Corp.) and Neptune Resources Ltd. (a New Zealand Company) for the *Dorado Discovery* to supply geological exploration services to Neptune Minerals to explore their tenements in the waters surrounding New Zealand in the first half of 2011**.** Odyssey received $3 million in cash for the charter services and also received a minority equity position in Neptune Minerals, Inc.

In March 2011, we executed an agreement with client companies of RFP to provide mining exploration and certain drilling operations in a tenement area controlled by Dorado Ocean Resources (now owned by Neptune Minerals, Inc.). The drilling operations would be conducted on a Seafloor Massive Sulfide (SMS) deposit that was surveyed by us during the first 100 days of exploration in Dorado s South Pacific concession areas in 2010. We initially received $1.4 million with another $.1 million due at the start of the project plus additional payments based upon revenue derived from the project, if any. Final payment of $.2 million was received in March 2011 for the Firebrand project which was completed in the second quarter 2011.

In March 2011, we executed agreements to expand a search and provide marine archaeological excavation and related services to certain client companies of RFP. Additional work was conducted on and around a site that we discovered and inspected during a recently completed survey carried out under contract with the RFP client companies. The contract provides for cash payments totaling approximately $2.0 million to Odyssey (of which $1.0 million was received in the first quarter and an additional $.8 million was received in April 2011), plus additional payments based upon revenue derived from the project. The work has been completed and the target shipwreck was not located.

In April 2011, we entered into separate agreements with two holders of our Series G 8% Convertible Preferred Stock. The two holders represented $5,250,000 of the original $6,000,000 Series G Convertible Preferred Stock issued on October 12, 2010. The Certificate of Designation relating to the Series G Convertible Preferred Stock includes (a) an option for the holders thereof to convert their shares of Series G Preferred Stock into shares of common stock that became exercisable on April 15, 2011, and (b) an

option for the holders to redeem the shares of Series G Convertible Preferred Stock at any time after December 15, 2011, with the redemption price increasing by 1% per every month beginning April 1, 2011.

In consideration of the issuance by Odyssey of warrants to purchase an additional 525,000 shares of common stock at an exercise price of $2.75 per share, the holders agreed to extend by six months the dates upon which the conversion option and the redemption option become exercisable and date upon which the redemption price begins to increase by 1% per month. The shares of Series G Convertible Preferred Stock held by the remaining holders, representing $750,000 of the offering, were redeemed in April 2011 in accordance with the Certificate of Designation (See NOTE Q to our Consolidated Financial Statements). Also, in October 2011, Odyssey redeemed the largest holder of the Series G Preferred Stock for $5.0 million plus accrued dividends. Currently, all Series G Preferred Stock has been redeemed or converted.

In June 2011, Neptune completed a share exchange with the stockholders of Dorado whereby each one outstanding share of DOR was exchanged for 1,000 shares of NMI Class B non-voting common stock. Prior to the share exchange, Odyssey was a stockholder of DOR, and we received 1.65 million shares of NMI Class B non-voting common stock pursuant to the share exchange. In connection with the share exchange, NMI executed an assignment and assumption agreement, whereby NMI assumed $8.2 million of the outstanding debt of DOR owed to us. In addition, we executed a debt conversion agreement with NMI, whereby we converted $2.5 million of the debt for 2.5 million shares of NMI Class B non-voting common stock (See NOTE J to our Consolidated Financial Statements).

In June 2011, our stockholders approved an amendment to our articles of incorporation to increase the number of shares of common stock, par value $0.0001 per share, from 100,000,000 to 150,000,000. We filed the amendment on June 6, 2011.

In June 2011, we entered into a charter agreement with Neptune, Bluewater Metals (South Pacific) Ltd., and Bluewater Metals (Solomon Islands) Ltd. for the *Dorado Discovery* to supply geological exploration services to Neptune Minerals to explore tenements in the waters of the South Pacific previously held by Dorado. We received $6.9 million for our services in a combination of cash and additional equity in Neptune. As of December 31, 2011, we had approximately a 32 % equity ownership in Neptune (See NOTE J to our Consolidated Financial Statements).

On June 21, 2011 Odyssey completed a public offering of 5,520,000 shares of common stock at a price to the public of $3.05 whereby Odyssey received $15.6 million in net proceeds. We used the net proceeds from the offering for shipwreck exploration and recovery projects, other working capital and for general corporate purposes.

On June 27, 2011, we announced we were added to the Russell 3000® and Russell Global® Indexes as of close of trading on Friday, June 24, 2011, and will remain in place for the ensuing 12-month period. All Russell indexes are subindexes of the Global Index. The addition to the Russell 3000® and Russell Global® Indexes will expand awareness of our company among institutional investors as we continue to execute our growth strategy.

On November 8, 2011, we entered into a securities purchase agreement with one institutional investor pursuant to which Odyssey issued and sold a senior convertible note in the original principal amount of $10.0 million and a warrant to purchase up to 1,302,083 shares of Odyssey s common stock for an aggregate purchase price of $10.0 million. Subject to the satisfaction of conditions set forth in the Purchase Agreement, Odyssey has the right to require the investor to purchase an additional senior convertible note in the original principal amount of up to $5.0 million on the six-month anniversary of the initial closing date. The indebtedness evidenced by the Notes bears interest at 8.0% percent per year, payable quarterly, and matures on the 30-month anniversary of the initial closing date. (See NOTE L to the Consolidated Financial Statements).

During December 2011, we chartered the *Dorado Discovery* vessel to Chatham Rock Phosphate, Ltd. for $1.2 million in relation to deep-ocean surveying. The charter permits Chatham to pay for services in either cash or common shares of their company. At December 31, 2011, Chatham was planning on a financing to pay for the charter. We did not record the revenue from this charter because of their liquidity and capital positions at that time. Chatham completed a portion of their financing in the first quarter of 2012 and remitted the $1.2 million payment.

***Bank Term Loan***

On May 4, 2011, we amended our revolving credit facility to replace it with a $5 million term loan maturing on April 23, 2012. A principal payment of $2 million was due and paid by August 1, 2011 with the remainder due upon maturity. The facility bears a floating interest rate at the one month LIBOR rate according to the Wall Street Journal plus 500 basis points. Any prepayments made in full or in part are without premium or penalty. A commitment fee of $250,000 was payable at closing. No restricted cash payments will need to be kept on deposit. As a condition to the loan renewal, we were required to amend the mortgage loan whereby we are required to pay additional principal to meet an 80% loan-to-value (LTV) based upon an independent real estate appraisal. The

additional principal payments will be at $100,000 per month until the loan balance meets the 80% LTV. Based on this condition, we commenced the repayment of $.6 million starting in July 2011. The amended term loan is secured by approximately 27,000 numismatic coins recovered from the SS *Republic* shipwreck, which amount will be reduced over the term by the amount of coins sold by the Company. The coins used as

collateral are held by a custodian for the security of the Bank. The borrowing base is equal to forty percent (40%) of the eligible coin inventory valued on a rolling twelve-month wholesale average value ($16.3 million as of December 31, 2011). The Company is required to comply with a number of customary covenants. On March 30, 2012, the bank the term loan was increased to $5 million (an additional $2 million) with similar terms and conditions as the former term loan.

**Off Balance Sheet Arrangements**

We do not engage in off-balance sheet financing arrangements. In particular, we do not have any interest in so-called limited purpose entities, which include special purpose entities (SPEs) and structured finance entities.

**Indemnification Provisions**

Under our bylaws and certain consulting agreements, we have agreed to indemnify our officers and directors for certain events arising as a result of the officer s or director s serving in such capacity. Separate agreements may provide indemnification after term of service. The term of the indemnification agreement is as long as the officer or director remains in the employment of the company. The maximum potential amount of future payments we could be required to make under these indemnification agreements is unlimited. However, our director and officer liability insurance policy limits its exposure and enables us to recover a portion of any future amounts paid. As a result of our insurance policy coverage, we believe the estimated fair value of these indemnification agreements is minimal and no liabilities are recorded for these agreements as of December 31, 2012.

**Critical Accounting Estimates**

The discussion and analysis of our financial position and results of operations is based upon our financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these financial statements requires us to make estimates and judgments that affect our financial position and results of operations. See NOTE A to the Consolidated Financial Statements for a description of our significant accounting policies. Critical accounting estimates are defined as those that are reflective of significant judgment and uncertainties, and potentially result in materially different results under different assumptions and conditions. We have identified the following critical accounting estimates. We have discussed the development, selection and disclosure of these policies with our audit committee.

***Long-Lived Assets***

As of December 31, 2012, we had approximately $6.5 million of property and equipment and related assets. Our policy is to recognize impairment losses relating to long-lived assets in accordance with the ASC topic for Property, Plant and Equipment. Impairment decisions are based on several factors, including, but not limited to, management s plans for future operations, recent operating results and projected cash flows.

***Realizability of Deferred Tax Assets***

We have recorded a net deferred tax asset of $0 at December 31, 2012. As required by the Accounting for Income Taxes topic in the ASC, we have evaluated whether it is more likely than not that the deferred tax assets will be realized. Based on the available evidence, we have concluded that it is more likely than not that those assets would not be realizable without the recovery and rights of ownership or salvage rights of high value shipwrecks and thus a valuation allowance of $57.9 million has been recorded as of December 31, 2012.

***Artifact Inventory***

The value of recovered artifacts in inventory includes the costs of recovery and conservation. The capitalized costs include direct costs of recovery such as vessel and related equipment operations and maintenance, crew and technical labor, fuel, provisions, supplies, port fees, depreciation and may even include fees paid to an insurer to relinquish the insurer s claim to the recovered artifacts. Conservation costs include fees paid to conservators for cleaning and preserving the artifacts. We continually monitor the recorded aggregate costs of the artifacts in inventory to ensure these costs do not exceed the net realizable value. We use historical sales, publications or available public market data to assess market value.

***Allowance for Doubtful Accounts***

In determining the collectability of our accounts receivable, we need to make certain assumptions and estimates. Specifically, we may examine accounts and assess the likelihood of collection of particular accounts.

Table of Contents

***Derivative Financial Instruments***

In evaluating fair value of derivative financial instruments, there are numerous assumptions which management must make that may influence the valuation of the derivatives as included in the financial statements.

**Contractual Obligations**

At December 31, 2012, the Company s contractual obligations including estimated payments due by period are as follows:

| (Dollars in thousands) | | Payments due by period | | | |
|---|---|---|---|---|---|
| **Contractual Obligations** | **Total** | **Less than 1 year** | **1-3 years** | **3-5 years** | **More than 5 years** |
| Long-term obligations | $ 16,045 | $ 12,347 | $ 3,698 | $ | $ |
| Interest on long-term obligations | 5,113 | 4,402 | 711 | | |
| Operating lease | 897 | 782 | 115 | | |
| Total contractual obligations | $ 22,055 | $ 17,531 | $ 4,524 | $ | $ |

Long-term obligations represent the amount due on our existing mortgages and convertible note. The operating lease represents our vessel charter. The vessel charter has a lease period March 2010 to February 2014 as well as a ninety-day termination notice clause. In January 2013, we entered into a 90 day firm time party charter agreement with a Norwegian company for a vessel to assist in the excavation of the *Gairsoppa* and *Mantola* sites. The charter is to commence around the May June 2013 time frame, but the exact time will be mutually agreed to at a later time. The charter commitment is approximately 66 million NOK (Norwegian Kroner) which currently approximates $12.1 million. A payment of USD 1,500,000 is to be remitted 14 days prior to the start of the charter.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. We do not believe we have material market risk exposure and have not entered into any market risk sensitive instruments to mitigate these risks or for trading or speculative purposes.

Our term loan bears a variable interest rate based on LIBOR and our primary mortgage bears interest at a variable rate based on the prime rate. See NOTE L for further detail on these instruments. Both of these instruments expose us to interest rate risk. On our primary mortgage, for an increase of every 100 basis points, our interest obligation increases, at most, by approximately $1,100 per month until maturity in July 2013. On our term loan, an increase of every 100 basis points to the interest rate increases our interest obligation, at most, by approximately $4,000 per month until maturity in April 2012. If an increase to the rates on these instruments occurs, it will have an adverse effect on our operating cash flows and financial condition but we believe it would not be material.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The information required by this item appears beginning on page 28.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

***Disclosure Controls and Procedures***

We maintain a set of disclosure controls and procedures designed to ensure that information we are required to disclose in reports that we file with or furnish to the SEC is recorded, processed, summarized and reported within the time periods specified by the

SEC. An evaluation was carried out under the supervision and with the participation of the Company s management, including the Chief Executive Officer ( CEO ) and Chief Financial Officer ( CFO ), of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the CEO and CFO have concluded that the Company s disclosure controls and procedures are effective to ensure that we are able to collect process and disclose the information we are required to disclose in the reports we file with the SEC within required time periods.

Table of Contents

*Internal Controls over Financial Reporting*

Management s report on our internal controls over financial reporting can be found in the financial statement section of this report. The Independent Registered Public Accounting Firm s attestation report on management s assessment of the effectiveness of our internal control over financial reporting can also be found in the financial statement section of this report.

There have been no significant changes in the Company s internal controls over financial reporting during the quarter ended December 31, 2012 that have materially affected, or are reasonably likely to materially affect, the Company s internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

None.

Table of Contents

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information concerning Directors and Executive Officers is hereby incorporated by reference to the information under the headings Election of Directors and Executive Officers and Directors of the Company in the Company s Proxy Statement (the Proxy Statement ) for the Annual Meeting of Stockholder to be held on June 5, 2013.

The Company has adopted a Code of Ethics that applies to all of its employees, including the principal executive officer, the principal financial officer and the principal accounting officer. The Code of Ethics and all committee charters are posted on the Company s website (www.shipwreck.net). We will provide a copy of any of these documents to stockholders free of charge upon request to the Company.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this Item is hereby incorporated by reference to the information under the heading Executive Compensation in the Proxy Statement.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

A portion of the information required by this Item pursuant to Item 403 of Regulation S-K is hereby incorporated by reference to the information under the heading Security Ownership of Certain Beneficial Owners and Management in the Proxy Statement. The information required pursuant to Item 201(d) of Regulation S-K is hereby incorporated by reference to the information under the heading Equity Compensation Plan Information in the Proxy Statement.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this Item is hereby incorporated by reference to the information under the heading Certain Relationships and Related Transactions in the Proxy Statement.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this Item is hereby incorporated by reference to the information under the heading Independent Auditor Fees in the Proxy Statement.

Table of Contents

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following documents are filed as part of this Annual Report on Form 10-K:

1. (a) Consolidated Financial Statements

   See Index to Consolidated Financial Statements on page 28.

   ( b) Consolidated Financial Statement Schedules

   See Index to Consolidated Financial Statements on page 28.

   All other schedules have been omitted because the required information is not significant or is included in the financial statements or notes thereto, or is not applicable.

2. Exhibits

   The Exhibits listed in the Exhibits Index, which appears immediately following the signature page and is incorporated herein by reference, are filed as part of this Annual Report on Form 10-K.

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

**ODYSSEY MARINE EXPLORATION, INC.**


| | **PAGE** |
|---|---|
| Management s Annual Report on Internal Control over Financial Reporting | 30 |
| Report of Independent Registered Public Accounting Firm | 31 |
| Report of Independent Registered Public Accounting Firm on Internal Control over Financial Reporting | 32 |
| Consolidated Financial Statements: | |
| Consolidated Balance Sheets | 33 |
| Consolidated Statements of Income | 34 |
| Consolidated Statements of Changes in Stockholders Equity/(Deficit) | 35 |
| Consolidated Statements of Cash Flows | 36 |
| Notes to the Consolidated Financial Statements | 38 |
| Consolidated Financial Statement Schedules: | |
| Schedule II Valuation and Qualifying Accounts | 64 |

Table of Contents

**MANAGEMENT S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

The Company s management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company. With the participation of the Chief Executive Officer and the Chief Financial Officer, management conducted an evaluation of the effectiveness of internal control over financial reporting based on the framework and the criteria established in *Internal Control Integrated Framework,* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management has concluded that internal control over financial reporting was effective as of December 31, 2012.

The Company s independent auditor, Ferlita, Walsh, Gonzalez & Rodriguez, P.A., a registered public accounting firm, has issued an attestation report on management s assessment of internal control over financial reporting, which is included herein.

Table of Contents

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors

Odyssey Marine Exploration, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of Odyssey Marine Exploration, Inc. and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of income, changes in stockholders equity (deficit) and cash flows for each of the years in the three-year period ended December 31, 2012, 2011, and 2010. Odyssey Marine Exploration, Inc. and subsidiaries management is responsible for these consolidated financial statements. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Odyssey Marine Exploration, Inc. and subsidiaries as of December 31, 2012 and 2011, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2012, 2011, and 2010, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Odyssey Marine Exploration, Inc. and subsidiaries internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 4, 2013 expressed an unqualified opinion.

*/s/ Ferlita, Walsh, Gonzalez & Rodriguez P.A.*
FERLITA, WALSH, GONZALEZ & RODRIGUEZ. P.A.
Certified Public Accountants
Tampa, Florida
March 4, 2013

Table of Contents

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON**

**INTERNAL CONTROL OVER FINANCIAL REPORTING**

The Board of Directors

Odyssey Marine Exploration, Inc. and Subsidiaries

We have audited Odyssey Marine Exploration, Inc. and subsidiaries internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Odyssey Marine Exploration, Inc. and subsidiaries management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management s Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on Odyssey Marine Exploration, Inc. and subsidiaries internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that degree of compliance with the policies or procedures may deteriorate.

In our opinion, Odyssey Marine Exploration, Inc and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets and the related consolidated statements of income, changes in stockholders equity (deficit) and cash flows of Odyssey Marine Exploration, Inc. and subsidiaries, and our report dated March 4, 2013 expressed an unqualified opinion.

*/s/ Ferlita, Walsh, Gonzalez & Rodriguez P.A.*
FERLITA, WALSH, GONZALEZ & RODRIGUEZ, P.A.
Certified Public Accountants
Tampa, Florida
March 4, 2013

32

Table of Contents

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash and cash equivalents | $ 10,096,414 | $ 7,971,794 |
| Restricted cash | 276,906 | 212,788 |
| Accounts receivable, net | 2,101,941 | 500,626 |
| Inventory | 418,926 | 557,151 |
| Other current assets | 874,115 | 779,478 |
| Total current assets | 13,768,302 | 10,021,837 |
| PROPERTY AND EQUIPMENT | | |
| Equipment and office fixtures | 16,781,671 | 15,450,467 |
| Building and land | 4,708,091 | 4,703,359 |
| Accumulated depreciation | (15,038,811) | (13,620,956) |
| Total property and equipment | 6,450,951 | 6,532,870 |
| NON-CURRENT ASSETS | | |
| Inventory | 5,574,841 | 5,501,808 |
| Restricted cash | | 251,791 |
| Investment in unconsolidated entity | | |
| Other non-current assets | 1,102,732 | 1,106,097 |
| Total other assets | 6,677,571 | 6,859,696 |
| Total assets | $ 26,896,824 | $ 23,414,403 |
| LIABILITIES AND STOCKHOLDERS EQUITY/(DEFICIT) | | |
| CURRENT LIABILITIES | | |
| Accounts payable | $ 1,948,555 | $ 1,105,902 |
| Accrued expenses and other | 14,050,840 | 2,061,974 |
| Deferred revenue | 2,835,522 | 3,545,140 |
| Derivative liabilities | 5,356,203 | 7,333,293 |
| Mortgage and loans payable | 14,809,737 | 4,802,930 |
| Total current liabilities | 39,000,857 | 18,849,239 |
| LONG-TERM LIABILITIES | | |
| Mortgage and loans payable | 4,010,946 | 5,690,125 |
| Deferred income from revenue participation rights | 4,643,750 | 8,400,000 |
| Total long-term liabilities | 8,654,696 | 14,090,125 |
| Total liabilities | 47,655,553 | 32,939,364 |
| Commitments and contingencies (NOTE U) | | |
| Redeemable Series G Convertible Preferred stock | | 250,000 |

| | | |
|---|---|---|
| STOCKHOLDERS DEFICIT | | |
| Preferred stock - $.0001 par value; 9,361,177 and 9,361,176 shares authorized, respectively; none outstanding | | |
| Preferred stock series D convertible - $.0001 par value; 448,800 shares authorized, respectively; 206,400 issued and outstanding, respectively | 21 | 21 |
| Common stock $.0001 par value; 150,000,000 shares authorized; 75,416,203 and 73,095,384 issued and outstanding | 7,542 | 7,309 |
| Additional paid-in capital | 144,446,574 | 137,236,462 |
| Accumulated deficit | (165,212,866) | (147,018,753) |
| Total stockholders deficit | (20,758,729) | (9,774,961) |
| Total liabilities and stockholders deficit | $ 26,896,824 | $ 23,414,403 |

The accompanying notes are an integral part of these financial statements.

Table of Contents

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF INCOME**

| | 12 Month Period Ended December 31, 2012 | 12 Month Period Ended December 31, 2011 | 12 Month Period Ended December 31, 2010 |
|---|---|---|---|
| REVENUE | | | |
| Artifact sales and other | $ 8,036,658 | $ 853,627 | $ 391,189 |
| Exhibit | 225,000 | 207,289 | 140,000 |
| Expedition | 4,935,857 | 14,666,316 | 20,469,506 |
| Total revenue | 13,197,515 | 15,727,232 | 21,000,695 |
| OPERATING EXPENSES | | | |
| Cost of sales artifacts and other | 235,537 | 414,993 | 191,091 |
| Operations and research | 17,941,573 | 21,288,476 | 19,570,672 |
| Marketing, general and administrative | 10,606,281 | 9,392,465 | 9,151,502 |
| Receivable reserves | | | 8,494,672 |
| Total operating expenses | 28,783,391 | 31,095,934 | 37,407,937 |
| LOSS FROM OPERATIONS | (15,585,876) | (15,368,702) | (16,407,242) |
| OTHER INCOME OR (EXPENSE) | | | |
| Interest income | 24,420 | 3,875 | 3,903 |
| Interest expense | (6,263,589) | (1,155,072) | (515,878) |
| Change in derivative liabilities fair value | 3,631,930 | 4,980,138 | (3,638,112) |
| (Loss) on debt extinguishment | | | (383,023) |
| (Loss) from unconsolidated entity | | (4,733,100) | (2,447,471) |
| Other | 9,002 | 47,553 | 44,757 |
| Total other income or (expense) | (2,598,237) | (856,606) | (6,935,824) |
| LOSS BEFORE INCOME TAXES | (18,184,113) | (16,225,308) | (23,343,066) |
| Income tax (provision) benefit | | | |
| NET LOSS | $ (18,184,113) | $ (16,225,308) | $ (23,343,066) |
| LOSS PER SHARE | | | |
| Basic and diluted | $ (.25) | $ (.28) | $ (.36) |
| Weighted average number of common shares outstanding | | | |
| Basic and diluted | 73,889,112 | 70,179,935 | 65,633,382 |

The accompanying notes are an integral part of these financial statements.

Table of Contents

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS EQUITY / (DEFICIT)**

| | 12 Month Period Ended December 31, 2012 | 12 Month Period Ended December 31, 2011 | 12 Month Period Ended December 31, 2010 |
|---|---|---|---|
| **Preferred Stock, Series D Shares** | | | |
| At beginning of year | 206,400 | 206,400 | 1,906,400 |
| Preferred stock issued for cash | | | |
| Preferred stock converted to common | | | (1,700,000) |
| At end of year | 206,400 | 206,400 | 206,400 |
| **Preferred Stock, Series E Shares** | | | |
| At beginning of year | | | 13 |
| Preferred stock issued for cash | | | (13) |
| At end of year | | | |
| **Common Stock Shares** | | | |
| At beginning of year | 73,095,384 | 67,082,835 | 59,425,947 |
| Common stock issued on convertible instruments | 496,500 | 102,000 | 3,000,000 |
| Common stock issued for cash | 15,150 | 5,520,000 | 4,000,000 |
| Common stock issued for settlement of senior convertible notes | 1,441,013 | | |
| Common stock issued for services | 368,156 | 390,549 | 656,888 |
| At end of year | 75,416,203 | 73,095,384 | 67,082,835 |
| **Preferred Stock, Series D** | | | |
| At beginning of year | $ 21 | $ 21 | $ 191 |
| Preferred stock issued for cash | | | |
| Preferred stock converted to common | | | (170) |
| At end of year | $ 21 | $ 21 | $ 21 |
| **Preferred Stock, Series E** | | | |
| At beginning of year | $ | $ | $ |
| Preferred stock issued for cash | | | |
| At end of year | $ | $ | $ |
| **Common Stock** | | | |
| At beginning of year | $ 7,309 | $ 6,708 | $ 5,943 |
| Common stock issued on convertible instruments | 50 | 10 | 300 |
| Common stock issued for cash | 2 | 552 | 400 |
| Common stock issued for settlement of senior convertible notes | 144 | | |
| Common stock issued for services | 37 | 39 | 65 |
| At end of year | $ 7,542 | $ 7,309 | $ 6,708 |
| **Paid-in Capital** | | | |

| | | | |
|---|---|---|---|
| At beginning of year | $ 137,236,462 | $ 122,722,840 | $ 114,490,556 |
| Series D Preferred stock issued for cash | | | |
| Accretion of Series G Preferred stock | | (1,987,977) | (383,050) |
| Fair value of warrants issued to Series G Preferred stock shareholders | | (906,150) | |
| Warrants issued in connection with short term funding | | | 150,892 |
| Common stock issued for settlement of senior convertible notes | 4,262,383 | | |
| Common stock issued for services | 347,516 | | |
| Common stock issued for cash | 39,605 | 15,397,144 | 6,056,346 |
| Share-based compensation | 1,489,794 | 1,781,115 | 2,408,226 |
| Common stock issued on convertible instruments | 1,070,814 | 229,490 | (130) |
| At end of year | $ 144,446,574 | $ 137,236,462 | $ 122,722,840 |
| **Accumulated Deficit** | | | |
| At beginning of year | $ (147,018,753) | $ (130,277,889) | $ (106,934,823) |
| Net loss | (18,184,113) | (16,225,308) | (23,343,066) |
| Dividends | (10,000) | (515,556) | |
| At end of year | (165,212,866) | (147,018,753) | (130,277,889) |
| Total stockholders equity/(deficit) | $ (20,758,729) | $ (9,774,961) | $ (7,548,320) |

The accompanying notes are an integral part of these financial statements.

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

| | 12 Month Period Ended December 31, 2012 | 12 Month Period Ended December 31, 2011 | 12 Month Period Ended December 31, 2010 |
|---|---|---|---|
| CASH FLOWS FROM OPERATING ACTIVITIES: | | | |
| Net loss | $ (18,184,113) | $ (16,225,308) | $ (23,343,066) |
| Adjustments to reconcile net loss to net cash used by operating activity: | | | |
| Loan fee amortization | 425,561 | 272,998 | |
| Note payable interest accretion | 4,120,221 | 405,465 | |
| Senior convertible debit interest settled with common stock issuance | 349,483 | | |
| Share-based compensation | 1,489,807 | 1,551,589 | 2,137,136 |
| Depreciation and amortization | 1,589,133 | 1,892,969 | 2,162,194 |
| Write down of long-lived asset | | 593,966 | |
| Loan discount amortization | | | 129,375 |
| Loss on extinguishment of debt | | | 383,023 |
| Change in derivatives liabilities fair value | (3,631,930) | (4,980,138) | 3,638,112 |
| Loss in unconsolidated entity | | 4,733,100 | 2,447,471 |
| Investment in unconsolidated entity | | (4,733,100) | |
| Accounts receivable-reserve | | | 8,494,672 |
| (Increase) decrease in: | | | |
| Accounts receivable | (1,601,315) | (403,856) | (10,343,976) |
| Restricted cash | 187,673 | 282,629 | 3,368 |
| Inventory | 65,192 | 371,353 | 158,045 |
| Other assets | (119,358) | (93,110) | (167,315) |
| Increase (decrease) in: | | | |
| Accounts payable | 832,653 | (1,132,454) | 1,873,327 |
| Accrued expenses and other | 12,254,102 | (541,356) | 796,166 |
| Deferred revenue | (4,465,868) | 2,815,042 | (527,355) |
| NET CASH (USED) IN OPERATING ACTIVITIES | (6,688,759) | (15,190,211) | (12,158,824) |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | | |
| Purchase of property and equipment | (946,190) | (973,764) | (1,630,108) |
| Investment in unconsolidated entity | | | (1,200) |
| Proceeds from disposal of long-lived asset | | 485,000 | |
| NET CASH (USED) IN INVESTING ACTIVITIES | (946,190) | (488,764) | (1,631,308) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | | |
| Proceeds from issuance of common stock | 860,482 | 15,627,196 | 6,243,000 |
| Proceeds from issuance of loan payable | 19,994,483 | 10,000,000 | 1,872,714 |
| Proceeds from issuance of preferred stock | | | 5,050,000 |
| Proceeds from warrants exercise | | | |
| Broker commissions and fees on capital raises | (400,000) | (545,000) | (186,254) |
| Deferred income from revenue participation rights | | 7,512,500 | |
| Dividends | (10,000) | (515,556) | |
| Redemption of Series G Preferred stock | | (5,757,500) | |
| Repayment of mortgage and loans payable | (10,685,396) | (2,906,633) | (1,099,015) |
| NET CASH PROVIDED BY FINANCING ACTIVITIES | 9,759,569 | 23,415,007 | 11,880,445 |

| | | | |
|---|---|---|---|
| NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS | 2,124,620 | 7,736,032 | (1,909,687) |
| CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR | 7,971,794 | 235,762 | 2,145,449 |
| CASH AND CASH EQUIVALENTS AT END OF YEAR | $ 10,096,414 | $ 7,971,794 | $ 235,762 |
| SUPPLEMENTARY INFORMATION: | | | |
| Interest paid | $ 1,368,324 | $ 736,915 | $ 410,350 |
| Income taxes paid | $ | $ | $ |
| NON-CASH TRANSACTIONS: | | | |
| Accrued compensation paid by equity instruments | $ 347,528 | $ 229,564 | $ 561,594 |
| Equipment purchased with financing | $ 558,499 | $ 198,660 | $ 186,762 |
| Debt and interest payments with common shares | $ 4,262,528 | $ | |
| Series G Preferred Stock accretion | $ | $ 1,987,977 | |
| Series G Preferred Stock conversion | $ 250,000 | $ | |
| Offset account receivable with subscription payable (See NOTE J) | $ | $ 1,998,800 | |
| Accounts receivable converted to stock in unconsolidated entity (See NOTE J) | $ | $ | |
| Acquired non-controlling interest of Dorado Ocean Resources, Ltd. with the assumption of a subscription payable of an equal amount (See NOTE J) | $ | $ | $ 1,998,800 |

Table of Contents

**Summary of Significant Non-Cash Transactions**

On October 6, 2010, we and certain investors entered into separate purchase agreements pursuant to which we agreed to sell an aggregate of 24 shares of Odyssey s Series G 8% Convertible Preferred Stock, par value $0.0001 per share, and warrants to purchase up to 1,800,000 shares of Odyssey s common stock to such investors. The Series G preferred stock and warrants were offered as units, with each unit consisting of one share of Preferred Stock and a Warrant to purchase 75,000 shares of common stock. The purchase price for each unit was $250,000 for a total offering of $6,000,000. Of the $6,000,000, $5,050,000 was received in cash and $950,000 was converted from our $1,800,000 of promissory notes that were issued on August 20, 2010. See NOTE Q.

The accompanying notes are an integral part of these financial statements.

Table of Contents

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES**

**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE A ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Organization**

Odyssey Marine Exploration, Inc. and subsidiaries (the Company, Odyssey, us, we or our ) is engaged in the archaeologically sensitive exploration and recovery of deep-ocean shipwrecks throughout the world. Our corporate headquarters are located in Tampa, Florida.

**Summary of Significant Accounting Policies**

This summary of significant accounting policies of the Company is presented to assist in understanding our financial statements. The financial statements and notes are representations of the Company s management who are responsible for their integrity and objectivity and have prepared them in accordance with our customary accounting practices.

**Principles of Consolidation**

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, Odyssey Marine, Inc., Odyssey Marine Services, Inc., OVH, Inc., Odyssey Retriever, Inc. and Odyssey Marine Entertainment, Inc. Equity investments in which we exercise significant influence but do not control and are not the primary beneficiary are accounted for using the equity method. All significant inter-company and intra-company transactions and balances have been eliminated.

**Use of Estimates**

Management uses estimates and assumptions in preparing these financial statements in accordance with generally accepted accounting principles. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could vary from the estimates that were used.

**Revenue Recognition and Accounts Receivable**

Revenue from product sales is recognized at the point of sale when legal title transfers. Legal title transfers when product is shipped or is available for shipment to customers. In accordance with Topic A.1. in SAB 13: Revenue Recognition, exhibit and expedition charter revenue is recognized ratably when realized and earned as time passes throughout the contract period as defined by the terms of the agreement. Bad debts are recorded as identified and, from time to time, a specific reserve allowance will be established when required. A return allowance is established for sales which have a right of return. Accounts receivable is stated net of any recorded allowances.

**Cash and Cash Equivalents**

Cash and cash equivalents include cash on hand and cash in banks. We also consider all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

**Inventory**

Our inventory consists of artifacts recovered from the SS *Republic* shipwreck, general branded merchandise and related packaging material. Inventoried costs of recovered artifacts include the costs of recovery, conservation and administrative costs to obtain legal title to the artifacts. Administrative costs are generally legal fees or insurance settlements required in order to obtain clean title. The capitalized recovery costs include direct costs such as vessel and related equipment operations and maintenance, crew and technical labor, fuel, provisions, supplies, port fees and depreciation. Conservation costs include fees paid to conservators for cleaning and preserving the artifacts. We continually monitor the recorded aggregate costs of the artifacts in inventory to ensure these costs do not exceed the net realizable value. Historical sales, publications or available public market data are used to assess market value.

The packaging materials and merchandise are recorded at average cost. We record our inventory at the lower of cost or market.

Table of Contents

**Long-Lived Assets**

Our policy is to recognize impairment losses relating to long-lived assets in accordance with the Accounting Standards Codification ( ASC ) topic for Property, Plant and Equipment. Decisions are based on several factors, including, but not limited to, management s plans for future operations, recent operating results and projected cash flows.

**Comprehensive Income**

Securities with a maturity greater than three months from purchase date are deemed available-for-sale and carried at fair value. Unrealized gains and losses on these securities are excluded from earnings and reported as a separate component of stockholders equity. At December 31, 2012, we did not own securities with a maturity greater than three months.

**Property and Equipment and Depreciation**

Property and equipment is stated at historical cost. Depreciation is provided using the straight-line method at rates based on the assets estimated useful lives which are normally between three and ten years. Leasehold improvements are amortized over their estimated useful lives or lease term, if shorter. Major overhaul items (such as engines or generators) that enhance or extend the useful life of vessel related assets qualify to be capitalized and depreciated over the useful life or remaining life of that asset, whichever is shorter. Certain major repair items required by industry standards to ensure a vessel s seaworthiness also qualify to be capitalized and depreciated over the period of time until the next scheduled planned major maintenance for that item. All other repairs and maintenance are accounted for under the direct-expensing method and are expensed when incurred.

**Earnings Per Share**

Basic earnings per share (EPS) is computed by dividing income available to common stockholders by the weighted-average number of common shares outstanding for the period. In periods when the Company generates income, the Company calculates basic earnings per share ( EPS ) using the two-class method pursuant to ASC 260 *Earnings Per Share.* The two-class method is required effective with the issuance of the Senior Convertible Note disclosed in NOTE L because the note qualifies as participating security, giving the holder the right to receive dividends should dividends be declared on common stock. Under the two-class method, earnings for the period are allocated on a pro-rata basis to the common stockholders and to the holders of Convertible Notes based on the weighted average number of common shares outstanding and number of shares that could be converted. The Company does not use the two-class method in periods when it generates a loss as the holders of the Convertible Notes do not participate in losses.

Diluted EPS reflects the potential dilution that would occur if dilutive securities and other contracts to issue Common Stock were exercised or converted into Common Stock or resulted in the issuance of Common Stock that then shared in our earnings. We use the treasury stock method to compute potential common shares from stock options and warrants and the if-converted method to compute potential common shares from Preferred Stock, Convertible Notes or other convertible securities. As it relates solely to the Senior Convertible Note, for diluted earnings per share, the Company uses the more dilutive of the if-converted method or two-class method. When a net loss occurs, potential common shares have an anti-dilutive effect on earnings per share and such shares are excluded from the Diluted EPS calculation.

At December 31, 2012, 2011 and 2010 weighted average common shares outstanding were 73,889,112, 70,179,935 and 65,633,382, respectively. For the periods ending December 31, 2012, 2011 and 2010 in which net losses occurred, all potential common shares were excluded from Diluted EPS because the effect of including such shares would be anti-dilutive.

The potential common shares, in the table following, represent potential common shares calculated using the treasury stock method from outstanding options and warrants that were excluded from the calculation of Diluted EPS:

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Average market price during the period | $ 3.20 | $ 2.98 | $ 1.56 |
| In the money potential common shares from options excluded | 275,101 | 129,793 | |
| | 1,129,973 | 959,521 | |

In the money potential common shares from warrants excluded

Table of Contents

Potential common shares from out-of-the-money options and warrants were also excluded from the computation of diluted earnings per share because calculation of the associated potential common shares has an anti-dilutive effect. The following table lists options and warrants that were excluded from diluted EPS.

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Out of the money options and warrants excluded: | | | |
| Stock Options with an exercise price of $1.74 per share | | | 71,500 |
| Stock Options with an exercise price of $2.25 per share | | | 200,000 |
| Stock Options with an exercise price of $2.50 per share | | | |
| Stock Options with an exercise price of $3.30 per share | 100,000 | | |
| Stock Options with an exercise price of $3.50 per share | 245,000 | 495,000 | 1,266,666 |
| Stock Options with an exercise price of $3.51 per share | 959,500 | 984,670 | 984,670 |
| Stock Options with an exercise price of $3.53 per share | 194,100 | 211,900 | 211,900 |
| Stock Options with an exercise price of $3.90 per share | 20,000 | | |
| Stock Options with an exercise price of $4.00 per share | 52,500 | 52,500 | 52,500 |
| Stock Options with an exercise price of $5.00 per share | 200,000 | 650,000 | 650,000 |
| Stock Options with an exercise price of $7.00 per share | 100,000 | 100,000 | 100,000 |
| Warrants with an exercise price of $2.25 per share | | | 2,670,000 |
| Warrants with an exercise price of $2.50 per share | | | 1,800,000 |
| Warrants with an exercise price of $3.60 per share | 1,562,500 | | |
| Warrants with an exercise price of $4.32 per share | | 1,302,083 | |
| Warrants with an exercise price of $5.25 per share | 100,000 | 100,000 | 100,000 |
| Total anti-dilutive warrants and options excluded from EPS | 3,533,600 | 3,896,153 | 8,107,236 |

Potential common shares from outstanding Convertible Preferred Stock calculated per the if-converted basis having an anti-dilutive effect on diluted earnings per share were excluded from potential common shares as follows:

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Potential common shares from Preferred Stock excluded from computation of diluted earnings per share | 206,400 | 346,400 | 3,566,400 |

The weighted average equivalent common shares relating to our unvested restricted stock awards that were excluded from potential common shares used in the earning per share calculation due to having an anti-dilutive effect are:

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Excluded unvested restricted stock awards | 177,830 | 90,033 | 256,315 |

Table of Contents

The following is a reconciliation of the numerators and denominators used in computing basic and diluted net income per share:

| | 12 Month Period Ended December 31, 2012 | 12 Month Period Ended December 31, 2011 | 12 Month Period Ended December 31, 2010 |
|---|---|---|---|
| Net loss | $ (18,184,113) | $ (16,225,308) | $ (23,343,066) |
| Accretion of Series G Preferred Stock | | (1,987,977) | (383,050) |
| Cumulative dividends on Series G Preferred Stock | (10,000) | (409,035) | |
| Fair market value of warrants issued to Series G Preferred Stock stockholders | | (906,150) | |
| Undecleared cumulative dividends on Series G Preferred Stock in arrears | | (5,000) | (106,521) |
| Numerator, basic and diluted net loss available to stockholders | $ (18,194,113) | $ (19,533,470) | $ (23,832,637) |
| Denominator: | | | |
| Shares used in computation basic: | | | |
| Weighted average common shares outstanding | 73,889,112 | 70,179,935 | 65,633,382 |
| Shares used in computation diluted: | | | |
| Weighted average common shares outstanding | 73,889,112 | 70,179,935 | 65,633,382 |
| Dilutive effect of options, warrants and convertible instruments outstanding | | | |
| Shares used in computing diluted net loss per share | 73,889,112 | 70,179,935 | 65,633,382 |
| Net loss per share basic and diluted | $ (0.25) | $ (0.28) | $ (0.36) |

**Income Taxes**

Income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases. A valuation allowance is provided when it is more likely than not that some portion or the entire deferred tax asset will not be realized.

**Stock-based compensation**

Our stock-based compensation is recorded in accordance with the guidance in the ASC topic for Stock-Based Compensation (See NOTE R).

**Fair Value of Financial Instruments**

Financial instruments consist of cash, evidence of ownership in an entity, and contracts that both (i) impose on one entity a contractual obligation to deliver cash or another financial instrument to a second entity, or to exchange other financial instruments on potentially unfavorable terms with the second entity, and (ii) conveys to that second entity a contractual right (a) to receive cash or another financial instrument from the first entity, or (b) to exchange other financial instruments on potentially favorable terms with the first entity. Accordingly, our financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, derivative financial instruments, mortgage and loans payable, and redeemable preferred stock. We carry cash and cash equivalents, accounts payable and accrued liabilities, and mortgage and loans payable at the approximate fair market value, and, accordingly, these estimates are not necessarily indicative of the amounts that we could realize in a current market exchange. We carry derivative financial instruments at fair value as is required under current accounting standards. We carry redeemable preferred stock at historical cost and accrete carrying values to estimated redemption values over the term of the financial instrument.

Derivative financial instruments consist of financial instruments or other contracts that contain a notional amount and one or more underlying variables (e.g. interest rate, security price or other variable), require no initial net investment and permit net settlement. Derivative financial instruments may be free-standing or embedded in other financial instruments. Further, derivative financial instruments are initially, and subsequently, measured at fair value and recorded as liabilities or, in rare instances, assets. See NOTE K for additional information. We generally do not use derivative financial instruments to hedge exposures to cash-flow, market or foreign-currency risks. However, we have entered into certain other financial instruments and contracts, such as our sale and issuance of redeemable preferred stock and freestanding warrants during October 2010 with features that are either (i) not afforded equity classification, (ii) embody risks not clearly and closely related to host contracts, or (iii) may be net-cash settled by the counterparty. As required by ASC 815 Derivatives and Hedging, these instruments are required to be carried as derivative liabilities, at fair value, in our financial statements with changes in fair value reflected in our income.

Table of Contents

*Fair Value Hierarchy Fair Value Hierarchy*

The three levels of inputs that may be used to measure fair value are as follows:

*Level 1.* Quoted prices in active markets for identical assets or liabilities.

*Level 2.* Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets with insufficient volume or infrequent transactions (less active markets), or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated with observable market data for substantially the full term of the assets or liabilities. Level 2 inputs also include non-binding market consensus prices that can be corroborated with observable market data, as well as quoted prices that were adjusted for security-specific restrictions.

*Level 3.* Unobservable inputs to the valuation methodology that is significant to the measurement of the fair value of assets or liabilities. Level 3 inputs also include non-binding market consensus prices or non-binding broker quotes that we were unable to corroborate with observable market data.

**Redeemable Preferred Stock**

Redeemable preferred stock (and, if ever, any other redeemable financial instrument we may enter into) is initially evaluated for possible classification as liabilities in instances where redemption is certain to occur pursuant to ASC 480 *Distinguishing Liabilities from Equity*. Redeemable preferred stock classified as liabilities is recorded and carried at fair value. Redeemable preferred stock that does not, in its entirety, require liability classification is evaluated for embedded features that may require bifurcation and separate classification as derivative liabilities. In all instances, the classification of the redeemable preferred stock host contract that does not require liability classification is evaluated for equity classification or mezzanine classification based upon the nature of the redemption features. Generally, mandatory redemption requirements or any feature that could require cash redemption for matters not within our control, irrespective of probability of the event occurring, requires classification outside of stockholders equity. Redeemable preferred stock that is recorded in the mezzanine section is accreted to its redemption value through charges to stockholders equity when redemption is probable using the effective interest method. See NOTE Q for further disclosures about our redeemable preferred stock.

**Subsequent Events**

We have evaluated subsequent events for recognition or disclosure through the date this Form 10-K is filed with the Securities and Exchange Commission.

**NOTE B CONCENTRATION OF CREDIT RISK**

We maintain our cash at one financial institution. From December 31, 2010 to December 31, 2012, all noninterest-bearing transaction accounts are fully insured by the Federal Deposit Insurance Corporation, regardless of the balance of the account, at all insured institutions. At December 31, 2012, our uninsured cash balance was approximately $27,000.

Our term loan bears a variable interest rate based on LIBOR and our primary mortgage bears interest at a variable rate based on the prime rate. See NOTE L for further detail on these instruments. Both of these instruments expose us to interest rate risk. On our primary mortgage, for an increase of every 100 basis points, our interest obligation increases, at most, by approximately $1,100 per month until maturity in July 2013. On our term loan, an increase of every 100 basis points to the interest rate increases our interest obligation, at most, by approximately $4,000 per month until maturity in July 2013. If an increase to the rates on these instruments occurs, it will have an adverse effect on our operating cash flows and financial condition but we believe it would not be material.

**NOTE C CASH AND CASH EQUIVALENTS**

Cash and cash equivalents include cash on hand and United States Treasury Bills maturing in less than ninety days from the date of purchase. At December 31, 2012, we did not own any United States Treasury Bills with a maturity of ninety days or longer.

**NOTE D RESTRICTED CASH**

As required by the mortgage loan entered into with the Bank on July 11, 2008, $500,000 was deposited into an additional interest-bearing account from which principal and interest payments are and will be made. On each anniversary of the mortgage, the agreement calls for a deposit into the account an amount sufficient to ensure a balance of $500,000 for

principal and interest payments for the subsequent year of the mortgage. The balance in this restricted cash account is held as additional collateral by the Bank and is not available for operations. Any funds remaining in this account at the end of the mortgage term will be returned to the Company. The balance in this account at December 31, 2012, was $276,906.

**NOTE E ACCOUNTS RECEIVABLE**

The accounts receivable balances at December 31, 2012 and December 31, 2011 were $2,101,941 and $500,626, respectively, which are net of reserves of $4,820,593 and $6,390,593, respectively. As described in NOTE J, Neptune Minerals, Inc. ( NMI ) completed a 2011 share exchange with DOR shareholders which resulted in an executed assignment and assumption agreement, whereby NMI assumed $8,227,675 of the outstanding debt of DOR owed to us. The $4,820,593 reserve at December 31, 2012 and 2011 is for the remaining NMI accounts receivable assumed from DOR. The $6,390,593 reserve at December 31, 2011 was comprised of the $1,570,000 *Shantaram* and $4,820,593 for the DOR receivable that was assumed by NMI in 2011. See NOTE J for further details regarding NMI.

The December 31, 2012 amount of $2,101,941 includes $1,470,357 representing revenue related to the remaining silver bullion to be sold into the London bullion market. During 2012, we recovered approximately 48 tons of silver from the SS *Gairsoppa* and commenced the refining process which allows us to sell silver into London s bullion market on behalf of United Kingdom Government. The *Gairsoppa* project is discussed at length in ITEM 1 of this Form 10-K.

At December 31, 2011, we had a reserve for the *Shantaram* receivable of $1,570,000 owed according to the terms of sale of research for the *Shantaram* project. During the three-month period ending March 31, 2012, management offset the amount due against its reserve. According to our agreement, we have the right to receive additional participation amounts, if any, up to approximately 11% from the first £100 million and approximately 7% thereafter from recovery distributions after recovery costs.

**NOTE F INVENTORY**

Our inventory consists of the following:

| | 2012 | 2011 |
|---|---|---|
| Artifacts | $ 5,743,915 | $ 5,879,137 |
| Packaging | 131,641 | 159,160 |
| Merchandise | 485,769 | 412,865 |
| Merchandise reserve | (367,558) | (392,203) |
| Total Inventory | $ 5,993,767 | $ 6,058,959 |

Based on our estimates of the timing of future sales, $5,574,841 and $5,501,808 of artifact inventory for the fiscal years ended 2012 and 2011 were classified as non-current.

**NOTE G OTHER CURRENT ASSETS**

Our other current assets consist of the following:

| | 2012 | 2011 |
|---|---|---|
| Prepaid expenses | $ 772,660 | $ 677,621 |
| Deposits | 101,455 | 101,857 |
| Total other current assets | $ 874,115 | $ 779,478 |

For the period ended December 31, 2012, prepaid expenses consisted of $87,922 of prepaid insurance premiums, $396,907 for vessel fuel not yet consumed, $205,608 of deferred financing fees, $101,455 of purchase deposits and $82,223 of other operating prepaid

costs. For the period ended December 31, 2011, prepaid expenses consisted of $192,602 of prepaid insurance premiums, $81,081 for vessel fuel not yet consumed, $310,335 of deferred financing fees, $101,857 of purchase deposits and $93,603 of other operating prepaid costs. All prepaid expenses, except fuel, are amortized on a straight-line basis over the term of the underlying agreements. Fuel is expensed based on actual usage. Deposits are held by various entities for equipment, services, and in accordance with agreements in the normal course of business.

**NOTE H PROPERTY AND EQUIPMENT**

Property and equipment consist of the following:

| | 2012 | 2011 |
|---|---|---|
| Building, improvements and land | $ 4,708,091 | $ 4,703,360 |
| Computers and peripherals | 1,134,420 | 1,148,971 |
| Furniture and office equipment | 1,722,255 | 1,455,250 |
| Vessels and equipment | 12,195,019 | 11,072,854 |
| Exhibits and related | 1,729,977 | 1,773,391 |
| | 21,489,762 | 20,153,826 |
| Less: Accumulated depreciation | (15,038,811) | (13,620,956) |
| Property and equipment, net | $ 6,450,951 | $ 6,532,870 |

**NOTE I OTHER LONG-TERM ASSETS**

Other long-term assets consist of the following:

| | 2012 | 2011 |
|---|---|---|
| Artifacts | $ 557,494 | $ 557,494 |
| Deposits | 541,590 | 541,590 |
| Image use rights, net | 3,648 | 7,013 |
| Total other long-term assets | $ 1,102,732 | $ 1,106,097 |

The artifact balances for both years consist of artifacts conserved specifically for the Company and are not for resale. Deposits include $432,500 on account with the United Kingdom s Ministry of Defense relating to the expense deposits for HMS *Sussex* as well as a $100,000 deposit to fund conservation and documentation of any artifacts recovered. These deposits are refundable from proceeds the United Kingdom would receive if HMS *Sussex* is discovered and its artifacts monetized. If HMS *Sussex* is not discovered, the Company is at risk for the expense deposit portion. Other deposits are held by various vendors for equipment, services, and in accordance with agreements in the normal course of business. Image use rights are amounts paid to utilize, for a period up to five years, copyrighted images in our themed attractions.

**NOTE J INVESTMENT IN UNCONSOLIDATED ENTITY**

***Neptune Minerals, Inc.***

During the quarter ended December 31, 2009, we invested $500,000 for a 25% interest (five membership units) in SMM Project, LLC ( SMM ) to pursue opportunities in the exploration of deep-ocean gold and copper deposits. SMM purchased a majority interest in Bluewater Metals Pty, Ltd. ( Bluewater ), an Australian company with licenses for mineral exploration of approximately 150,000 square kilometers of ocean floor in territorial waters controlled by four different countries in the South Pacific. In April 2010, SMM was acquired by Dorado Ocean Resources, Ltd. ( DOR ) through a share exchange. At that time, DOR also acquired the remaining interest in Bluewater. We were issued 450 DOR shares in exchange for our surrendered units in SMM. We also acquired an additional 1,200 shares of DOR valued at $2,000,000 that resulted in a 41.25% ownership of DOR. Under the terms of the Share Subscription Agreement (subscription payable), we had the option to pay for this investment in cash, provide marine services to DOR over a three-year period commencing April 2010 or exercise our contractual right to offset against the $2,000,000 marine services accounts receivable owed to us. During 2011, we exercised our contractual right and offset these two amounts. The focus of DOR was on the exploration and monetization of gold- and copper-rich Seafloor Massive Sulfide ( SMS ) deposits.

During 2011, we were engaged by Neptune Minerals, Inc. ( NMI ) and its affiliates to perform marine services relating to deep-sea mining. The agreements provided for payments in cash and Class B shares of non-voting common stock of NMI. In 2011, we earned 2,066,600 shares of the Class B non-voting common stock from these engagements. During this same period, NMI completed a share exchange with DOR shareholders whereby each one outstanding share of DOR was exchanged for 1,000 shares of NMI Class B non-voting common stock. We received 1,650,000 shares of NMI Class B non-voting common stock for our 1,650 DOR shares pursuant to the share exchange. In connection with this share exchange, NMI executed an assignment and assumption agreement, whereby NMI assumed $8,227,675 of the outstanding debt DOR owed to us. Additionally in 2011, we executed a debt conversion agreement with NMI, whereby we converted $2,500,000 of the debt owed to us for 2,500,000 shares of NMI Class B non-voting common stock. At December 31, 2012, we have a net share position in NMI of 6,216,600 shares, which represents an approximate 30% ownership before any further dilution of the NMI stock.

Table of Contents

At December 31, 2012, there is a known loss of $959,000, which is as of December 31, 2011, of DOR (NMI) losses allocable to us that we have not recognized in our income statement because these losses exceeded our investment. Based on the NMI and DOR transaction described above, we believe it is appropriate to allocate these losses to any incremental investment that may be recognized on our balance sheet in NMI. NMI has been unable to provide their financial statements for periods subsequent to December 31, 2011 so we are unable to accurately quantify our share of their loss for the respective periods. With NMI being involved in the capital intensive deep-sea mining and exploration industry as well as not having revenue, their cumulative losses for each of the periods may be several million dollars.

***Chatham Rock Phosphate, Ltd.***

During 2012, we performed deep-sea mining exploratory services for Chatham Rock Phosphate, Ltd. ( CRP ) valued at $1,680,000. As payment for these services, CRP issued 9,320,348 of ordinary shares to us which currently represents a 7.3% equity stake in CRP. With CRP being on the New Zealand Stock Exchange and guidance per ASC 320: Debt and Equity Securities regarding readily determinable fair value, we believe it is appropriate to have not recognized this amount as an asset nor as revenue.

**NOTE K DERIVATIVE FINANCIAL INSTRUMENTS**

The following tables summarize the components of our derivative liabilities and linked common shares as of December 31, 2012 and 2011 and the amounts that were reflected in our income related to our derivatives for the years then ended:

| | December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Derivative liabilities: | | |
| Embedded derivatives derived from: | | |
| Senior Convertible Notes | $ 1,529,583 | $ 2,521,422 |
| Series G Convertible Preferred Stock | | 158,711 |
| | 1,529,583 | 2,680,133 |
| Warrant derivatives | | |
| Senior Convertible Notes | 1,921,094 | 1,898,785 |
| Series G Convertible Preferred Stock | 1,905,526 | 2,754,375 |
| Warrant derivatives | 3,826,620 | 4,653,160 |
| Total derivative liabilities | $ 5,356,203 | $ 7,333,293 |

| | December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Common shares linked to derivative liabilities: | | |
| Embedded derivatives: | | |
| Senior Convertible Notes | 4,247,343 | 2,673,797 |
| Series G Convertible Preferred Stock | | 140,000 |
| | 4,247,343 | 2,813,797 |
| Warrant derivatives | | |
| Senior Convertible Notes | 1,562,500 | 1,302,083 |
| Series G Convertible Preferred Stock | 2,250,000 | 2,325,000 |
| | 3,812,500 | 3,627,083 |
| Total common shares linked to derivative liabilities | 8,059,843 | 6,440,880 |

| | Years ended December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Derivative income (expense): | | |
| Unrealized gains (losses) from fair value changes: | | |
| Senior Convertible Notes | $ 1,747,133 | $ 468,115 |
| Series G Convertible Preferred Stock | (115,955) | (738,606) |
| Warrant derivatives | 1,071,583 | 595,391 |
| | 2,702,761 | 324,900 |
| Redemptions of Series G Convertible Preferred Stock | 393,166 | 4,655,239 |
| Redemptions of Senior Convertible Notes | 536,003 | |
| Total derivative income (expense) | $ 3,631,930 | $ 4,980,139 |

Table of Contents

Our Series G Convertible Preferred Stock and Warrant Financing Transaction on October 11, 2010, Series G Convertible Preferred Stock and Warrant Settlement Transaction during April 2011, and Senior Convertible Note and Warrant Financing Transaction on November 8, 2011 gave rise to derivative financial instruments. As more fully discussed in NOTE Q, we entered into the Series G Convertible Preferred Stock and Warrant Financing Transaction and the Series G Convertible Preferred Stock and Warrant Settlement Transaction on October 11, 2010 and April 14, 2011, respectively. The Series G Convertible Preferred Stock embodied certain terms and features that both possessed all of the conditions of derivative financial instruments and were not clearly and closely related to the host preferred contract in terms of economic risks and characteristics. These terms and features consist of the embedded conversion option and the related down-round anti-dilution protection provision, the Company s redemption privilege and the holder s redemption privilege. Each of the redemption features also embodies the redemption premium payments. Warrants issued with this transaction and the subsequent Settlement Transaction embodied down-round anti-dilution protection and, accordingly, were not afforded equity classification.

As more fully discussed in NOTE L, we entered into the Senior Convertible Note and Warrant Financing Transactions on November 8, 2011 and May 10, 2012. The Senior Convertible Notes embodied certain terms and conditions that were not clearly and closely related to the host debt agreement in terms of economic risks and characteristics. These terms and features consist of the embedded conversion options, certain redemption features and a conversion price reset feature. Warrants issued with this transaction embodied reset price protection and, accordingly, were not afforded equity classification.

Current accounting principles that are provided in ASC 815 - *Derivatives and Hedging* require derivative financial instruments to be classified in liabilities and carried at fair value with changes recorded in income. In addition, the standards do not permit an issuer to account separately for individual derivative terms and features embedded in hybrid financial instruments that require bifurcation and liability classification as derivative financial instruments. Rather, such terms and features must be bundled together and fair valued as a single, compound embedded derivative. We have selected the Monte Carlo Simulations valuation technique to fair value the compound embedded derivative because we believe that this technique is reflective of all significant assumption types, and ranges of assumption inputs, that market participants would likely consider in transactions involving compound embedded derivatives. Such assumptions include, among other inputs, interest risk assumptions, credit risk assumptions and redemption behaviors in addition to traditional inputs for option models such as market trading volatility and risk free rates. We have selected Binomial Lattice to fair value our warrant derivatives because we believe this technique is reflective of all significant assumption types market participants would likely consider in transactions involving freestanding warrants derivatives. The Monte Carlo Simulations technique is a level three valuation technique because it requires the development of significant internal assumptions in addition to observable market indicators.

Significant inputs and results arising from the Monte Carlo Simulations process are as follows for the compound embedded derivative that has been bifurcated from our Senior Convertible Note and classified in liabilities:

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| Quoted market price on valuation date | $2.97 | $2.74 |
| Contractual conversion rate | $3.74 | $3.74 |
| Range of effective contractual conversion rates | | $2.74 - $2.89 |
| Contractual term to maturity | 1.33 Years | 2.33 Years |
| Implied expected term to maturity | 1.24 Years | 2.06 Years |
| Market volatility: | | |
| Range of volatilities | 31.3% - 64.03% | 55.6% - 101.8% |
| Range of equivalent volatilities | 38.6% - 45.0% | 78.9% - 84.3% |
| Contractual interest rate | 8.0 - 9.0% | 8.0% |
| Range of equivalent market risk adjusted interest rates | 9.0%-9.1% | 8.0%-8.1% |
| Range of equivalent credit risk adjusted yields | 0.94% - 1.03% | 3.1% - 3.5% |
| Risk-free rates | 0.02% - 0.16% | 0.01% - 0.25% |

The effective contractual conversion rates on December 31, 2011 gave effect to the conversion price reset related to the Additional Notes, six months from their inception date, and were derived using a Random-Walk Brownian Motion Stochastic Process. In this process, the expected mean selling price of the Company s common stock on the reset date was estimated at a range of $2.49 - $2.63 as of December 31, 2011. Once the registration statement was declared effective on July 6, 2012, the conversion price was no longer subject to reset.

Table of Contents

Significant inputs and results arising from the Monte Carlo Simulations process are as follows for the compound embedded derivative that has been bifurcated from our Series G Convertible Preferred Stock and classified in liabilities. All remaining Series G Convertible Preferred Stock was redeemed during 2012.

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| Quoted market price on valuation date | | $2.74 |
| Contractual conversion rate | | $1.78 |
| Implied expected term | | 0.46 Years |
| Market volatility: | | |
| Range of volatilities | | 49.5% - 101.8% |
| Equivalent volatility | | 74.1% |
| Market risk adjusted interest rate: | | |
| Range of rates | | 13.0% - 32.0% |
| Equivalent market risk adjusted interest rate | | 15.3% |
| Credit risk adjusted yield rate: | | |
| Range of rates | | 3.1% - 3.7% |
| Equivalent credit-risk adjusted yield rate | | 3.1% |
| Risk free rates using zero coupon US Treasury Security rates: | | |
| Range of rates | | 0.12% - 0.25% |

The following table reflects the issuances of compound embedded derivatives, redemptions and changes in fair value inputs and assumptions related to the compound embedded derivatives during the years ended December 31, 2012 and 2011.

| | Years ended December 31, 2012 | Years ended December 31, 2011 |
|---|---|---|
| Balances at January 1 | $ 2,680,133 | $ 4,075,344 |
| Issuances: | | |
| Senior Convertible Note Financing | 1,291,298 | 2,989,537 |
| Expirations from redemptions of Series G Convertible Preferred Stock | (810,669) | (4,655,239) |
| Changes in fair value inputs and assumptions reflected in income | (1,631,179) | 270,491 |
| Balances at December 31 | $ 1,529,583 | $ 2,680,133 |

The fair value of the compound embedded derivative is significantly influenced by our trading market price, the price volatility in trading and the interest components of the Monte Carlo Simulation technique.

On October 11, 2010, we also issued warrants to acquire 1,800,000 of our common shares in connection with the Series G Convertible Preferred Stock Financing. During April 4-8, 2011, we issued warrants to acquire 525,000 of our common shares in connection the Series G Convertible Preferred Stock and Warrant Settlement Transaction. Finally, on November 8, 2011, we issued warrants to acquire 1,302,083 of our common shares in connection with the Senior Convertible Note Financing Transaction. These warrants required liability classification as derivative financial instruments because certain down-round anti-dilution protection or price protection features included in the warrant agreements are not consistent with the concept of equity. We applied the Binomial Lattice valuation technique in estimating the fair value of the warrants because we believe that this technique is most appropriate and reflects all of the assumptions that market participants would likely consider in transactions involving the warrants, including the potential incremental value associated with the down-round anti-dilution protections.

Table of Contents

The Binomial Lattice technique is a level three valuation technique because it requires the development of significant internal assumptions in addition to observable market indicators. Significant assumptions utilized in the Binomial Lattice process are as follows for both the issuance dates of the warrants and December 31, 2012 and 2011:

| | December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Linked common shares | 1,725,000 | 1,800,000 |
| Quoted market price on valuation date | $2.97 | $2.74 |
| Contractual exercise rate | $2.4648 | $2.50 |
| Term (years) | 0.78 | 1.78 |
| Range of market volatilities | 33.1% - 49.17% | 56.8% - 101.6% |
| Risk free rates using zero coupon US Treasury Security rates | 0.02% - 0.11% | 0.02% - 0.25% |

| | December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Linked common shares | 525,000 | 525,000 |
| Quoted market price on valuation date | $2.97 | $2.74 |
| Contractual exercise rate | $2.4648 | $2.75 |
| Term (years) | 1.28 | 2.28 |
| Range of market volatilities | 33.8% - 63.6% | 56.9% - 94.0% |
| Risk free rates using zero coupon US Treasury Security rates | 0.02% - 0.16% | 0.02% - 0.25% |

| | December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Linked common shares | 1,562,500 | 1,302,083 |
| Quoted market price on valuation date | $2.97 | $2.74 |
| Contractual exercise rate | $3.60 | $4.32 |
| Term (years) | 4.35 | 5.35 |
| Range of market volatilities | 39.2% - 70.2% | 67.2% -87.5% |
| Risk free rates using zero coupon US Treasury Security rates | 0.05% - 0.54% | 0.02% - 0.83% |
| Custom lattice variable: Probability of exercisability (434,027 linked common shares) | | 60.0% |

Of the 1,302,083 common shares accessible from the warrant issued on November 8, 2011, 434,027 of those common shares were accessible only based upon the Company s election to require the lender to provide the additional financing. The lattice custom variable is the probability that management will elect to receive this funding. Based upon all current facts and circumstances, that probability was 60% as of December 31, 2011. When the lender provided additional financing of $8,000,000 on May 10, 2012, the additional 434,027 of common shares became accessible. Warrants indexed to an additional 260,417 were issued in conjunction with the additional financing.

The following table reflects the issuances of derivative warrants and changes in fair value inputs and assumptions related to the derivative warrants during the year ended December 31, 2012 and 2011.

| | Years ended December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Balances at January 1 | $ 4,653,160 | $ 2,287,800 |
| Issuances: | | |
| Series G Convertible Preferred Stock Financing | | 906,150 |
| Senior Convertible Note Financing | 363,542 | 2,054,601 |
| Exercises: | | |
| Series G Convertible Preferred Stock Financing | (118,500) | |
| Changes in fair value inputs and assumptions reflected in income | (1,071,583) | (595,391) |

| | | |
|---|---|---|
| Balances at December 31 | $ 3,826,619 | $ 4,653,160 |

The fair value of all warrant derivatives is significantly influenced by our trading market price, the price volatility in trading and the risk free interest components of the Binomial Lattice technique.

Table of Contents

**NOTE L MORTGAGE AND LOANS PAYABLE**

The Company s consolidated mortgages and notes payable consisted of the following at December 31, 2012 and 2011:

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| Term loan | $ 5,000,000 | $ 3,000,000 |
| Face value $10,000,000, 8% Convertible Senior Note Payable | 8,234,367 | 5,316,328 |
| Face value $8,000,000, 9% Convertible Senior Note Payable | 3,628,779 | |
| Mortgages payable | 1,957,537 | 2,176,727 |
| | $ 18,820,683 | $ 10,493,055 |

**Term Loan**

On May 4, 2011, we amended our revolving credit facility with Fifth Third Bank (the Bank ) to replace it with a $5 million term loan with a maturity date of April 23, 2012. A principal payment of $2 million was required and paid prior to August 1, 2011, with the remainder due by maturity. The facility bore a floating interest rate at the one-month LIBOR rate according to the Wall Street Journal plus 500 basis points. Prepayments made in full or in part are without premium or penalty. A commitment fee of $250,000 was paid at closing. Restricted cash amounts are not required to be kept on deposit. As a condition to this loan renewal, we were required to amend the Loan Agreement (mortgage payable) for our corporate real estate facility, which is due to mature on July 11, 2013, whereby we were required to pay additional principal to meet an 80% loan-to-value (LTV) based upon an independent real estate appraisal. All additional principal payments have been made.

On March 30, 2012, the above term loan that was set to mature on April 23, 2012 was amended and increased to $5 million with an expiration date of July 11, 2013. This facility bears floating interest at the one month LIBOR rate according to the Wall Street Journal plus 500 basis points. Prepayments made in full or in part are without premium or penalty. No restricted cash payments are required to be kept on deposit.

The amended term loan is secured by approximately 26,500 numismatic coins which had a carrying value of $5,743,915 that were recovered from the SS *Republic* shipwreck, which amount will be reduced over the term by the amount of coins sold by the Company. The coins used as collateral are held by a custodian for the security of the Bank. The borrowing base is equal to forty percent (40%) of the eligible coin inventory valued on a rolling twelve-month wholesale average value which was $16.0 million at December 31, 2012. The Company is required to comply with a number of customary covenants.

**Mortgages Payable**

On July 11, 2008, we entered into a mortgage loan with Fifth Third Bank. Pursuant to the Loan Agreement, we borrowed $2,580,000. The loan bears interest at a variable rate equal to the prime rate plus three-fourths of one percent (0.75%) per annum. The loan matures on July 11, 2013, and requires us to make monthly principal payments in the amount of $10,750 plus accrued interest. This loan is secured by a restricted cash balance (See NOTE D) as well as a first mortgage on our corporate office building which has a carrying value of $2,431,187. This loan contains customary representations and warranties, affirmative and negative covenants, conditions, and other provisions. As of December 31, 2012, the loan balance outstanding was $1,366,500.

During May 2008, we entered into a mortgage loan in the principal amount of $679,000 with The Bank of Tampa to purchase our conservation lab and storage facility. This obligation has monthly payment of $5,080 and a maturity date of May 14, 2015. Principal and interest payments are payable monthly. Interest is at a fixed annual rate of 6.45%. This debt is secured by the related real property which has a carrying value of $906,752. As of December 31, 2012, the loan balance outstanding was $591,037. The seller carried a second mortgage for $100,000 with interest due monthly and $25,000 of principal due each May. The first principal payment was made in May 2009. The interest was at a variable rate of 1.0% above the prime interest rate stated by BB&T, formerly Colonial Bank of Tampa. This obligation had a maturity date of May 14, 2012 and is paid in full.

Table of Contents

**Senior Convertible Note**

***Initial Note***

During November 2011, we entered into a securities purchase agreement (the Purchase Agreement ) with one institutional investor pursuant to which we issued and sold a Senior Convertible Note in the original principal amount of $10.0 million (the Initial Note ) and a warrant (the Warrant ) to purchase up to 1,302,083 shares of our common stock. Subject to the satisfaction of conditions set forth in the Purchase Agreement, we have the right to require the investor to purchase an additional senior convertible note in the original principal amount of up to $5.0 million on the six-month anniversary of the initial closing date (the Additional Note and, collectively Notes ). Aggregate direct finance costs amounted to $545,000 of which $45,000 related to costs of the lender and, accordingly, were included in the original issue discount on the Initial Note.

The indebtedness evidenced by the Note bears interest at 8.0% percent per year (15% under default conditions, if ever). Interest is compounded monthly and payable quarterly at the beginning of each calendar quarter. During 2012, the lender elected to apply the principal amortization on this note to the Additional Note. This allocation reset the equal monthly principal installments at December 31, 2012 to $555,555 from the original $434,783. Prepayment is not allowed. Further, the Note may be converted into our common stock, at the option of the holder, at any time following issuance, with respect to the Initial Note, or at any time following six months after the date of issuance, with respect to the Additional Note. The initial conversion price of the Initial Note was $3.74, subject to adjustment on the six-month anniversary of the initial closing date as follows: The reset conversion price applicable to the Initial Note will be adjusted to the lesser of (a) the then current conversion price and (b) the greater of (i) $1.44 and (ii) 110.0% of the market price of our common stock on the six-month anniversary of the initial closing date (as applicable, the Conversion Price ). On May 10, 2012 (the six-month anniversary of the initial closing date), the conversion price applicable to the Initial Note was adjusted to $3.17, which represented 110.0% of the market price of Odyssey s common stock. The conversion price is also subject to adjustment for stock splits, stock dividends, recapitalizations, and similar transactions. We have agreed to pay each amortization payment in shares of our common stock, if certain conditions are met; provided, that we may, at our option, elect to pay such amortization payments in cash. The conversion rate applicable to any amortization payment that we make in shares of our common stock will be the lower of (a) the Conversion Price and (b) a price equal to 85.0% of the volume-weighted average price of our shares of common stock for a ten-day period immediately prior to the applicable amortization date.

The Note provides for redemption upon the occurrence of an event of default. Default conditions include non-servicing of the debt and certain other credit risk related conditions. Default conditions also include certain equity indexed events including failures to file public information documents, non-conversion or insufficient share authorizations to effect conversion and failure obtain and maintain an effective registration statement covering the underlying common shares. The remedies to the investor for events of default include acceleration of payment at 125% of the remaining face value in certain circumstances. In the event the default redemption is not paid, the investor would have the right to elect conversion of the note at an adjusted conversion price approximating 75% of quoted market prices. A change in control would also result in a redemption requirement at 125% of the face value.

The Notes extend no voting rights to the investors. However, the Notes extend participation rights in dividend payments, if any, made to the holders of the Company s common or other class of stock, except our Series G Preferred Stock.

The Holder of the Initial Note elected to apply the payments due on the principal balance of the Initial Note to the Additional Note described below. The principal balance of the Initial Note at December 31, 2012 was $10,000,000.

Under the terms of the Warrant, the holder is entitled to exercise the Warrant to purchase up to 1,302,083 shares of our common stock at an initial exercise price of $4.32 per share, during the five-year period beginning on the six-month anniversary of the initial closing date; provided, that 434,027 shares of our common stock issuable upon exercise of the Warrant could not be exercised unless the investor purchased the Additional Note. In accordance with the terms of the warrant agreement, on May 10, 2012, the exercise price applicable to the Warrant was adjusted to $3.60 which was the lesser of (a) the then current exercise price and (b) 125.0% of the market price of our common stock on the six-month anniversary of the initial closing date. The Exercise Price is also subject to adjustment for stock splits, stock dividends, recapitalizations, and similar transactions. We are generally prohibited from issuing shares of common stock upon exercise of the Warrant if such exercise would cause us to breach our obligations under the rules or regulations of the stock market on which the common stock is traded.

Table of Contents

In connection with the financing, we entered into a registration rights agreement pursuant to which we agreed to file a registration statement with the Securities and Exchange Commission (with the SEC ) relating to the offer and sale by the investor of the shares of common stock issuable upon conversion of the Notes and the exercise of the Warrant. Pursuant to the agreement, we are required to file the registration statement within six months of the initial closing date and to use its best efforts for the registration statement to be declared effective 90 days thereafter (or 120 days thereafter if the registration statement is subject to review by the SEC).

***Additional Note***

On May 10, 2012, we issued a second senior convertible note, referred to as the Additional Note, in the original principal amount of $8.0 million, and the number of shares of Odyssey s common stock issuable upon exercise of the warrant increased to 1,562,510. The Additional Note bears interest at 9.0% per year and will mature on the 30-month anniversary of the initial closing date. The Additional Note will amortize in equal monthly installments commencing on the eighth-month anniversary of the initial note and may be paid in cash or Odyssey common stock. The Additional Note may be converted into Odyssey s common stock, at the option of the holder, at any time following six months after the date of issuance. Odyssey has a right to redeem the Additional Note. The initial conversion price of the Additional Note is $3.74, subject to reset on the earlier of the date the registration statement registering the offer and sale of the common stock issuable under the notes and the warrants becomes effective and a prospectus contained therein shall be available for the resale by the holder of all of the registrable securities or the six-month anniversary of the additional closing date. The registration statement was declared effective on July 6, 2012 and there was no reset to the conversion price of the Additional Note. The principal balance of the Additional Note at December 31, 2012 was $4,086,956.

***Accounting considerations***

We have accounted for the Initial Note, Additional Note and Warrant issued for cash as a financing transaction, wherein the net proceeds that we received were allocated to the financial instruments issued. Prior to making the accounting allocation, we evaluated the Initial Note, Additional Note and the Warrant for proper classification under ASC 480 *Distinguishing Liabilities from Equity* ( ASC 480 ) and ASC 815 *Derivatives and Hedging* ( ASC 815 ).

ASC 815 generally requires the analysis embedded terms and features that have characteristics of derivatives to be evaluated for bifurcation and separate accounting in instances where their economic risks and characteristics are not clearly and closely related to the risks of the host contract. The material embedded derivative features consisted of the conversion option and related conversion reset price protection, the Company s redemption privilege, and certain redemption rights that were indexed to equity risks. The conversion option and conversion reset price protection, along with the redemption features bearing risks of equity, were not clearly and closely related to the host debt agreement and required bifurcation. Current accounting principles that are also provided in ASC 815 do not permit an issuer to account separately for individual derivative terms and features that require bifurcation and liability classification. Rather, such terms and features must be and were bundled together and fair valued as a single, compound embedded derivative.

The Warrant has a term of five and one-half years and at inception, had an initial exercise price of $4.32. The contractual exercise price is subject to adjustment for both traditional recapitalization events and was reset on the sixth month anniversary of issuance to $3.60 per share. Although the warrant did not fall within the scope of ASC 480, the warrant required derivative liability accounting because the conversion price reset protection terms are not consistent with the definition for financial instruments indexed to a company s own stock

Based on the previous conclusions, we allocated the cash proceeds first to the derivative components at their fair values (see NOTE K) with the residual allocated to the host debt contract, as follows:

| | Allocation |
|---|---|
| Initial Note | $ 4,910,862 |
| Compound embedded derivative | 2,989,537 |
| Derivative warrants | 2,054,601 |
| | $ 9,955,000 |

The basis that was subject to allocation included the gross proceeds of $10,000,000, less costs of the investor paid out of proceeds that amounted to $45,000. We also allocated the direct financing costs of $500,000 to the note payable and the derivative components based upon the relative fair values of these financial instruments. As a result of this allocation, $246,653 was recorded in deferred costs and $253,347 was recorded as expense.

Table of Contents

Allocation of the cash proceeds related to the Additional Financing was as follows:

| | Allocation |
|---|---|
| Additional Note | $ 6,339,642 |
| Compound embedded derivative | 1,291,298 |
| Derivative warrants | 363,542 |
| | $ 7,994,482 |

The basis that was subject to allocation included the gross proceeds of $8,000,000, less costs of the investor paid out of proceeds that amounted to $5,518. We also allocated the direct financing costs of $400,000 to the note payable and the derivative components based upon the relative fair values of these financial instruments. As a result of this allocation, $317,201 was recorded in deferred costs and $82,799 was recorded as expense.

The financing basis allocated to the notes payable and the deferred asset arising from direct finance costs are subject to amortization with periodic charges to interest expense using the effective interest method. Amortization of these components included in interest expense during the years ended December 31, 2012 and 2011 amounted to $4,545,781 and $425,116, respectively. Amortization during the year ended December 31, 2012 included $223,783 representing the difference between the portion of the Additional Note which was redeemed and its carrying value. The derivative components are subject to re-measurement to fair value at the end of each reporting period with the change reflected in income. See NOTE K for information about our derivatives.

**Long-Term Obligation Maturities**:

| | Total | 2013 | 2014 | 2015 | 2016 | 2017 | More than 5 years |
|---|---|---|---|---|---|---|---|
| Long term obligations | $ 16,044,368 | $ 12,346,552 | $ 3,155,529 | $ 542,287 | $ | $ | $ |
| Operating leases | 5,113,033 | 4,401,550 | 711,483 | | | | |
| Interest on obligations | 897,642 | 782,126 | 96,169 | 19,347 | | | |
| Total obligations | $ 22,055,044 | $ 17,530,228 | $ 3,963,181 | $ 561,634 | $ | $ | $ |

Long-term obligations represent the amount due on our existing mortgages and convertible note as described above. The operating lease represents our vessel charter. The vessel charter has a lease period March 2010 to February 2014 as well as a ninety-day termination notice clause.

**NOTE M ACCRUED EXPENSES**

Accrued expenses consist of following:

| | 2012 | 2011 |
|---|---|---|
| Compensation and bonuses | $ | $ 891,136 |
| Customer deposits | 82,175 | 57,175 |
| Revenue participation distribution payable | 12,506,755 | |
| Vessel operations | 926,648 | 959,857 |
| Professional services | 335,748 | |
| Other operating | 199,514 | 153,806 |
| Total accrued expenses | $ 14,050,840 | $ 2,061,974 |

Vessel operations relates to expenditures required to operate our ships such as fuel, repair and maintenance, port fees and charter related. Professional fees are mainly attributable to legal fees and related and other professional services in support of operations. Other operating expenses contain general items related to, but not limited to marketing, insurance and the exhibit. See NOTE P Revenue Participation Rights for detail on the revenue participation distribution payable amount of $12,506,755.

Table of Contents

**NOTE N DEFERRED REVENUE**

Since 2009, we entered into several marine search services contracts associated with the Robert Frasier Marine, Ltd. projects. For each contract, revenue is recognized over the contractual period when services are performed as defined by the contract. The period of time a search project remains active varies but usually extends over several months and may be accelerated or extended depending upon operational factors. At December 31, 2012, we have a $2,835,522 service obligation on two service contracts that will be recognized as revenue over the period of time the contractual services are provided. At December 31, 2011, we had a $3,545,140 service obligation on two service contracts that will be recognized as revenue over the period of time the contractual services are provided. For the years ended December 31, 2012 and 2011, we earned charter expedition revenue, exclusive of the sale of research, of $709,618 and $2,708,947, respectively, relating to these contracts.

**NOTE O RELATED PARTY TRANSACTIONS**

On December 9, 2002, a Georgia limited liability company acquired rights from an unrelated third party through a foreclosure sale to receive 5% of post-finance cost proceeds, if any, from shipwrecks that we may recover within a predefined search area of the Mediterranean Sea. The shipwreck we believe to be HMS *Sussex* is located within this search area. Two of our officers and directors at the time owned a 58% interest in the limited liability company until they sold their interests to an unrelated third party in 2005. If, at any time, Odyssey is forced to cancel or abandon the project due to political interference, the officers may be required to buy back their interests.

**NOTE P REVENUE PARTICIPATION RIGHTS**

The Company s participating revenue rights consisted of the following at December 31, 2012 and 2011:

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| *Cambridge* project | $ 825,000 | $ 825,000 |
| *Republic* (now *Seattle* ) project | 62,500 | 62,500 |
| Galt Resources, LLC | 3,756,250 | 7,512,500 |
| Total participating revenue rights | $ 4,643,750 | $ 8,400,000 |

We previously sold Revenue Participation Certificates ( RPCs ) that represent the right to share in our future revenues derived from the *Cambridge* project, which is now referred to as the HMS *Sussex* shipwreck project. We also sold RPCs related to a project formerly called the *Republic* project which we now call the *Seattle* project. The *Seattle* project refers to a shipwreck which we have not yet located. The *Cambridge* RPC units constitute restricted securities.

Each $50,000 convertible *Cambridge* RPC entitles the holder to receive a percentage of the gross revenue received by us from the *Cambridge* project, which is defined as all cash proceeds payable to us as a result of the *Cambridge* project, less any amounts paid to the British Government or their designee(s); provided, however, that all funds received by us to finance the project are excluded from gross revenue. The *Cambridge* project holders are entitled to 100% of the first $825,000 of gross revenue, 24.75% of gross revenue from $4 - 35 million, and 12.375% of gross revenue above $35 million generated by the project.

In a private placement that closed in September 2000, we sold units consisting of *Republic* Revenue Participation Certificates and Common Stock. Each $50,000 unit entitled the holder to 1% of the gross revenue generated by the *Seattle* project (formerly referred to as the *Republic* project), and 100,000 shares of Common Stock. Gross revenue is defined as all cash proceeds payable to us as a result of the *Seattle* project, excluding funds received by us to finance the project.

The participating rights balance will be amortized under the units of revenue method once management can reasonably estimate potential revenue for each of these projects. The RPCs for the *Cambridge* and *Republic* projects do not have a termination date, therefore these liabilities will be carried on the books until revenue is recognized from these projects or we permanently abandon either project.

In February 2011, we entered into a project syndication deal with Galt Resources LLC ( Galt ) for which they invested $7,512,500 representing rights to future revenues of any project Galt selected prior to December 31, 2011. If the project is successful, Galt will recoup their investment plus three times the investment. These amounts will be paid out of proceeds of the project. Galt will receive 50% of the proceeds until this amount is recouped. Thereafter, they will share in additional net proceeds of the project at the rate of 1% for every million invested. The agreement originally allowed Galt to select only one project but an agreement was subsequently reached permitting Galt to bifurcate their selection between two projects, the SS *Gairsoppa* and HMS *Victory*. Galt will receive an amount equal to 50% of our net proceeds on the SS *Gairsoppa* project until they receive two times their initial investment of $7,512,500. Galt will also receive an amount equal to 50% of our net proceeds, if any, on the HMS *Victory* project until they receive two times their initial investment and thereafter will receive 7.5125% of our net proceeds from the HMS *Victory* project. During 2012, we recovered approximately 48 tons of silver from the SS *Gairsoppa* and commenced the refining process which allows us to sell this silver into London s bullion market on behalf of the United Kingdom Government. The proceeds received from the sale of silver into London s bullion market were allocated accordingly between us, Galt and the United Kingdom Government based on contractual terms. Based on our SS *Gairsoppa* expense recoupment, revenue and cash proceeds totaling just over $41 million in 2012, we amortized Galt s revenue participation right of $3,756,250 associated with the SS *Gairsoppa* into revenue in 2012. Based on contractual terms, $2,518,244 was paid to Galt in 2012. The remaining $12,506,755 is in Accrued expenses and other in our December 31, 2012 balance sheet and is due 45 days after the end of the year, see NOTE M.

**NOTE Q REDEEMABLE SERIES G PREFERRED STOCK**

During October 2010, we designated and issued 24 shares of our authorized preferred stock as Series G 8% Convertible Preferred Stock, par value $0.0001 per share (the Series G Preferred ) as further discussed below. In April 2011 and October 2011, we redeemed 3 and 20 shares, respectively, from certain holders of the Series G Preferred for cash of $757,500 and $5,065,556, respectively, under the terms and conditions of the Series G Preferred Certificate of Designation. At the time of redemption, the carrying value of these shares of Series G Preferred amounted to $558,926 and $5,000,000, respectively. We recorded the difference between the redemption values paid and the carrying values amounting to $198,574 and $65,556, respectively, as a deemed dividend in paid-in capital. See NOTE K for our accounting for the associated compound embedded derivative that had been bifurcated and classified in liabilities. As of December 31, 2012 and 2011, 0 and 1 share of Series G Convertible Preferred Stock remains outstanding, respectively.

Significant terms and conditions of the Series G Preferred are as follows:

***Dividends***. The holders of the Series G Preferred will generally be entitled to receive cash dividends at a rate of $20,000 per share per year (or 8%), payable semi-annually on April 1 and October 1 of each year, commencing April 1, 2011. The dividends will be cumulative and shall accrue, whether or not earned or declared, from and after the date of issue.

***Liquidation Preference***. In the event of any liquidation, dissolution, or winding up of Odyssey s affairs, each holder of the Series G Preferred then outstanding will be entitled to receive, before any payment or distribution will be made on Odyssey s common stock or any capital stock of Odyssey ranking junior to the Series G Preferred as to the payment of dividends or the distribution of assets, an amount per share of Series G Preferred equal to the sum of (a) $250,000 plus (b) any accrued but unpaid dividends.

***Voting Rights***. The holders of Series G Preferred will be entitled to one vote for each share of common stock into which the Series G Preferred is convertible and will be entitled to notice of meetings of stockholders. The holders of Series G Preferred will also be entitled to vote as a separate class with respect to certain matters. However, no holder may exercise its voting rights if doing so would result in the holder beneficially owning in excess of 9.9% of the outstanding common stock, unless waived by the holder.

***Conversion Rights***. At any time on or after April 15, 2011, any holder of shares of Series G Preferred may convert any or all of the shares into shares of common stock. Each share of Series G preferred will be convertible into the number of shares determined by dividing $250,000 by $1.785714, which we refer to as the conversion price. The number of shares of common stock issuable upon conversion of the Series G Preferred is subject to adjustment in certain events, as discussed in the next paragraph.

***Adjustments to Conversion Rights***. If Odyssey pays a dividend or makes a distribution on its common stock in shares of common stock, subdivides its outstanding common stock into a greater number of shares, or combines its outstanding common stock into a smaller number of shares, or if there is a reorganization, or a merger or consolidation of

54

Odyssey with or into any other entity which results in a conversion, exchange, or cancellation of the common stock, or a sale of all or substantially all of Odyssey s assets, then the conversion rights described above will be adjusted appropriately so that each holder of Series G Preferred will receive the securities or other consideration the holder would have received if the holder s Series G Preferred had been converted before the happening of the event. The conversion price in effect from time to time is also subject to downward adjustment if we issue or sell shares of common stock for a purchase price less than the conversion price or if we issue or sell shares convertible into or exercisable for shares of common stock with a conversion price or exercise price less than the conversion price for the Series G Preferred.

***Limitations Upon Conversion Rights***. No holder may convert shares of Series G Preferred if such conversion would result in the holder beneficially owning in excess of 9.9% of the outstanding common stock, unless waived by the holder. In addition, we will not issue any shares of common stock upon conversion of shares of Series G Preferred if the issuance of such shares of common stock would exceed the aggregate number of shares of common stock that we may issue upon conversion of all outstanding shares of Series G Preferred and the outstanding warrants offered hereby without breaching our obligations under the listing rules of the NASDAQ Stock Market relating to stockholder approval of certain issuances of securities.

***Redemption***. Odyssey has the option to redeem the Series G Preferred, in whole or in part, at any time after December 15, 2010 at a redemption price of 100% of the liquidation value. Commencing after March 31, 2011, the redemption price increases 1.0% each month without cap. Each holder will have the option to require Odyssey to redeem the Series G Preferred, in whole or in part, at any time after December 15, 2011 at a redemption price commencing at 109% of the liquidation value, which increases 1.0% each without cap such that, after December 15, 2011, the holder s and Odyssey s redemption prices will equal. In either case, the redemption price to be paid by Odyssey for each share of Series G Preferred will be the redemption prices referred to above plus accrued dividends. There is no sinking fund requirement for redemption of the Series G preferred stock.

On October 11, 2010, we issued (i) 20 shares of Series G Preferred, plus warrants to purchase 1,530,000 shares of our common stock for cash of $5,050,000 and (ii) 4 shares of Series G Preferred, plus warrants to purchase 270,000 shares of our common stock to settle certain promissory notes with a carrying value of $928,481. We have accounted for the Series G Preferred and warrants issued for cash as a financing transaction, wherein the net proceeds that we received was allocated to the financial instruments issued. We have accounted for the Series G Preferred and warrants issued in settlement of the promissory notes as an exchange, wherein we have recorded the financial instruments issued at their fair values and extinguished the promissory notes resulting in an extinguishment loss.

The following table summarizes the allocation for each of these transactions as of October 11, 2010:

| | Financing | Exchange | Total |
|---|---|---|---|
| Redeemable preferred stock (1) | $ 2,747,476 | $ 888,997 | $ 3,636,473 |
| Compound embedded derivatives (2) | 1,389,114 | 261,318 | 1,650,432 |
| Warrant derivatives (2) | 913,410 | 161,190 | 1,074,600 |
| Extinguishment loss | | (383,023) | (383,023) |
| | $ 5,050,000 | $ 928,482 | $ 5,978,482 |

(1) The fair value of the redeemable preferred stock was estimated based upon its forward cash flow value, at a credit-risk adjusted market interest rate, as enhanced by the fair value of the conversion feature. Credit-risk adjusted rates used to discount the cash flow component ranged from 3.98% to 4.89% over our estimated period to redemption, which is October 2013. The fair value of the conversion feature is reflected in the compound embedded derivative line of the table.

(2) See NOTE K for information related to the valuation of these financial instruments both on the inception date of the transactions and at December 31, 2012.

Prior to making the above accounting allocation, we evaluated the Series G Preferred and the warrants for proper classification under ASC 480 - Distinguishing Liabilities from Equity and ASC 815 - Derivatives and Hedging.

**Series G Preferred**:

ASC 480 generally requires liability classification for financial instruments that are certain to be redeemed, represent obligations to purchase shares of stock or represent obligations to issue a variable number of common shares. We concluded that the Series G Preferred was not within the scope of ASC 480 because none of the three conditions for liability classification was present.

ASC 815 generally requires the analysis embedded terms and features that have characteristics of derivatives to be evaluated for bifurcation and separate accounting in instances where their economic risks and characteristics are not clearly and closely related to the risks of the host contract. However, in order to perform this analysis we were first required to evaluate the economic risks and characteristics of the Series G Preferred in its entirety as being either akin to equity or akin to debt. Our evaluation concluded that the Series G was more akin to a debt-like contract largely due to the fact that the financial instrument is mandatorily redeemable for cash at the option of the holder and has a return in the form of a dividend that operates similarly with an interest rate on debt. Other features of the Series G Preferred that operate like equity, such as the conversion option and voting feature, did not afford sufficient evidence, in our view, to offset the weight of the primary debt-like features; that is, the redemption feature and the dividend feature. Accordingly, based upon this conclusion the clear and close relationship of embedded derivative features was made relative to a debt-like contract.

The material embedded derivative features consisted of the conversion option and related down-round anti-dilution protection, the Company s redemption privilege, and the holder s redemption privilege. The conversion option and related anti-dilution protection, bearing risks of equity, were not clearly and closely related to the debt-like Series G Preferred and required bifurcation. The redemption features, although generally bearing risks of debt, such as credit and interest risk, were not clearly and closely related to the Series G Preferred because the Series G Preferred was deemed to be issued at a substantial discount and there are scenarios, however improbable or remote, that the redemption features as designed could double the investor s initial rate of return. Current accounting principles that are also provided in ASC 815 do not permit an issuer to account separately for individual derivative terms and features that require bifurcation and liability classification. Rather, such terms and features must be and were bundled together and fair valued as a single, compound embedded derivative.

Redeemable preferred stock represents preferred stock that is either redeemable for cash on a specific date or contingently redeemable for cash for events that are not within the control of management. Redeemable preferred stock is required to be classified outside of stockholders equity (in the mezzanine section). Because the Series G Preferred is redeemable at the holder s option, we are required to record the residual from our allocation to the mezzanine section. This amount is further subject to accretion to the redemption value over the term to the earliest redemption date using the effective method. Accretion during the year ended December 31, 2011 amounted to $1,789,403 and there has been no further accretion during the year ended December 31, 2012.

Dividends on the Series G Preferred are recorded when they are declared. Cumulative dividends from the inception date of the transactions to December 31, 2012 amounted to $530,556 of which none are in arrears on December 31, 2012.

***Warrants***:

The warrants issued in the financing and exchange transactions have terms of three years and an exercise price of $2.50. The contractual exercise price is subject to adjustment for both traditional recapitalization events and sales of common stock or other common stock linked contracts below the contractual exercise price. The latter is referred to as down-round anti-dilution protections. The warrants did not fall within the scope of ASC 480 under any of the three conditions referred to above. However, the warrants required derivative liability accounting because certain down-round anti-dilution protections are terms that are not consistent with the definition for financial instruments indexed to a company s own stock.

In November 2012, the exercise price of the warrants issued in connection with the Series G Convertible Preferred Stock adjusted from $2.50 to $2.4648 when we issued common stock at a lower price. The reduction in exercise price resulted in an increase in the fair value of the warrants of approximately $106,000.

**NOTE R STOCKHOLDERS DEFICIT**

**Common Stock**

During the three-month period ended September 30, 2012, we issued 741,971 shares of common stock, valued at $2,347,826, representing payment for principal on our Initial Note and Additional Note as described in NOTE I.

During the three-month period ended September 30, 2012, we issued 287,500 shares of common stock to four accredited investors upon exercise of 287,500 outstanding warrants. We also issued 140,000 shares of common stock for the conversion of 1 share of Series G Convertible Preferred Stock and 8,900 shares of common stock upon the exercise of stock options from the employee stock incentive plan.

During June 2011, we completed a public offering of 5,520,000 shares of our common stock at $3.05 per share, before underwriting discounts and commissions. This offering was conducted pursuant to an effective shelf registration statement, which is on file with the Securities and Exchange Commission.

During the three-month period ended June 30, 2011, we issued 46,000 shares of common stock to two accredited investors upon conversion of 46,000 outstanding warrants.

During our annual meeting of stockholders on June 1, 2011, an amendment to our Articles of Incorporation to increase the number of authorized shares of common stock from 100,000,000 to 150,000,000 was approved by the stockholders.

During the three-month period ended March 31, 2011, we issued 56,000 shares of common stock to two accredited investors upon exercise of 56,000 outstanding warrants.

**Convertible Preferred Stock**

We have 206,400 shares of Series D Convertible Preferred Stock issued and outstanding. Series D is convertible into common stock at a ratio of 1 to 1. The liquidation preference for Series D is $3.50 per share of common stock into which the Series D could then be converted. There are no other rights attached to these convertible instruments.

**Stock-Based Compensation**

We have two active stock incentive plans, the 1997 Stock Incentive Plan and the 2005 Stock Incentive Plan. The 1997 Stock Incentive Plan expired on August 17, 2007. As of that date, options cannot be granted from that Plan but any granted and unexercised options will continue to exist until exercised or they expire. The 2005 Stock Incentive Plan provides for the grant of incentive stock options, non-qualified stock options, restricted stock awards, restricted stock units and stock appreciation rights. We initially reserved 2,500,000 of our authorized but unissued shares of common stock for issuance under the Plan, and, at the time the Plan was adopted, not more than 500,000 of these shares could be used for restricted stock awards and restricted stock units. On January 16, 2008, the Board of Directors approved amendments to the Plan to add 2,500,000 shares of common stock to the Plan, to allow any number of shares to be used for restricted stock awards, to clarify certain other provisions in the Plan and to submit the amended Plan for stockholder approval. The amended Plan was approved at the annual meeting of stockholders on May 7, 2008. On June 3, 2010, the shareholders approved an amendment to the 2005 Stock Incentive Plan which resulted in the addition of 3,000,000 shares of common stock to the Plan. Any incentive option and non-qualified option granted under the Plan must provide for an exercise price of not less than the fair market value of the underlying shares on the date of grant, but the exercise price of any incentive option granted to an officer, director or eligible employee owning more than 10% of our outstanding common stock must not be less than 110% of fair market value on the date of the grant.

Share-based compensation expense recognized during the period is based on the value of the portion of share-based payment awards that is ultimately expected to vest. As share-based compensation expense recognized in the statement of operations is based on awards ultimately expected to vest, it can be reduced for estimated forfeitures. The ASC topic Stock Compensation requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The share based compensation charged against income for the periods ended December 31, 2012, 2011 and 2011 was $1,657,800, $1,796,628 and $2,137,136, respectively.

The weighted average estimated fair value of stock options granted during the fiscal years ended December 31, 2012, 2011 and 2010 were $1.45, $2.74 and $0.92, respectively. These amounts were determined using the Black-Scholes option-pricing model, which values options based on the stock price at the grant date, the expected life of the option, the estimated volatility of the stock, the expected dividend payments, and the risk-free interest rate over the life of the option. The assumptions used in the Black-Scholes model were as follows for stock options granted in the years ended December 31, 2012, 2011 and 2010:

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Risk-free interest rate | .39-.67% | 1.51-1.89% | .56-.67% |

| | | | |
|---|---|---|---|
| Expected volatility of common stock | 65.3-71.6% | 69.0-70.0% | 68.8-70.5% |
| Dividend yield | 0% | 0% | 0% |
| Expected life of options | 3.0-4.1 years | 3.0-4.1 years | 3-3.3 years |

The Black-Scholes option valuation model was developed for estimating the fair value of traded options that have no vesting restrictions and are fully transferable. Because option valuation models require the use of subjective assumptions, changes in these assumptions can materially affect the fair value of the options. Our options do not have the characteristics of traded options; therefore, the option valuation models do not necessarily provide a reliable measure of the fair value of our options.

Additional information with respect to both plans stock option activity is as follows:

| | Number of Shares | Weighted Average Exercise Price | |
|---|---|---|---|
| Outstanding at December 31, 2009 | 3,731,836 | $ | 3.89 |
| Granted | 271,500 | $ | 2.12 |
| Exercised | | $ | |
| Cancelled | (466,100) | $ | 3.87 |
| Outstanding at December 31, 2010 | 3,537,236 | $ | 3.78 |
| Granted | 633,835 | $ | 2.74 |
| Exercised | | $ | |
| Cancelled | (771,666) | $ | 3.50 |
| Outstanding at December 31, 2011 | 3,399,405 | $ | 3.78 |
| Granted | 771,969 | $ | 2.85 |
| Exercised | (15,150) | $ | 2.61 |
| Cancelled | (736,070) | $ | 4.42 |
| Outstanding at December 31, 2012 | 3,420,154 | $ | 3.31 |
| Options exercisable at December 31, 2010 | 3,032,194 | $ | 3.78 |
| Options exercisable at December 31, 2011 | 2,926,930 | $ | 3.79 |
| Options exercisable at December 31, 2012 | 2,754,227 | $ | 3.44 |

The aggregate intrinsic values of options exercisable for the fiscal years ended December 31, 2012, 2011 and 2010 were $371,142, $133,750 and $106,000, respectively. The aggregate intrinsic values of options outstanding for the fiscal years ended December 31, 2012, 2011 and 2010 were $524,500, $169,500 and $180,360, respectively. The aggregate intrinsic values of options exercised during the fiscal years ended December 31, 2012, 2011 and 2010 are $14,475 $0 and $0, respectively, determined as of the date of the option exercise. Aggregate intrinsic value represents the positive difference between our closing stock price at the end of a respective period and the exercise price multiplied by the number of relative options. The total fair value of shares vested during the fiscal years ended December 31, 2012, 2011 and 2010 was $832,177, $1,145,112 and $1,286,522, respectively.

As of December 31, 2012, there was $955,224 of total unrecognized compensation cost related to unvested share-based compensation awards granted to employees under the option plans. That cost is expected to be recognized over a weighted-average period of 1.67 years.

The following table summarizes information about stock options outstanding at December 31, 2012:

**Stock Options Outstanding**

| Range of Exercise Prices | Number of Shares Outstanding | Weighted Average Remaining Contractual Life in Years | Weighted Average Exercise Price |
|---|---|---|---|
| $1.00 - $3.00 | 1,549,054 | 3.12 | $ 2.64 |
| $3.01 - $4.00 | 1,571,100 | 1.31 | $ 3.53 |
| $4.01 - $7.00 | 300,000 | .74 | $ 5.67 |
| | 3,420,154 | 2.08 | $ 3.31 |

The estimated fair value of each restricted stock award is calculated using the share price at the date of the grant. A summary of the status of the restricted stock awards as of December 31, 2012 and changes during the year ended December 31, 2012 is presented as follows:

| | Number of Shares | Weighted Average Grant Date Fair Value | |
|---|---|---|---|
| Unvested at December 31, 2011 | 109,540 | $ | 2.65 |
| Granted | 515,884 | $ | 3.91 |
| Vested | (446,617) | $ | 2.78 |
| Cancelled | | $ | |
| Unvested at December 31, 2012 | 178,807 | $ | 2.73 |

The fair value of restricted stock awards vested during the years ended December 31 2012, 2011 and 2010 was $1,286,257, $1,329,573 and $1,234,465, respectively. The fair value of unvested restricted stock awards remaining at the periods ended December 31, 2012, 2011 and 2010 is $514,964, $300,139 and $777,839, respectively. The weighted-average grant date fair value of restricted stock awards granted during the periods ended December 31, 2012, 2011 and 2010 were $3.91, $2.67 and $1.45, respectively. The weighted-average remaining contractual term of these restricted stock awards at the periods ended December 31, 2012, 2011 and 2010 are 1.0, 1.0 and .98 years, respectively. As of December 31, 2012, there was a total of $488,150 unrecognized compensation cost related to unvested restricted stock awards.

The following table summarizes our common stock warrants outstanding at December 31, 2012:

| Common Stock Warrants | Exercise Price | | Termination Date | |
|---|---|---|---|---|
| 100,000 | $ | 5.25 | | (A) |
| 2,016,500 | $ | 2.25 | 1/31/2013 | |
| 270,000 | $ | 2.25 | 8/20/2013 | |
| 1,725,000 | $ | 2.46 | 10/11/2013 | (B) |
| 525,000 | $ | 2.46 | 4/13/2014 | |
| 1,562,500 | $ | 3.60 | 11/9/2016 | |
| 6,199,000 | | | | |

(A): There were 100,000 Common Stock Warrants outstanding at December 31, 2009. These warrants were issued during the quarter ended September 30, 2005 at an exercise price of $5.25 per share to a vendor for services relating to a marketing program. These warrants become vested and earned based upon future performance of the program, and may not be exercised until vested and earned, therefore expense will not be recorded until the warrants are vested and earned. The warrants have a two-year exercise period commencing on the date when the warrants would be vested and earned. At December 31, 2010 these warrants have not been earned nor have they commenced with vesting.

(B): See NOTE Q.

**NOTE S INCOME TAXES**

As of December 31, 2012, we had consolidated income tax net operating loss ( NOL ) carryforwards for federal income tax purposes of approximately $133,000,000. The federal NOL carryforward from 1997 of $564,000 expired at the end of 2012. The federal NOL carryforwards from 1998 forward will expire in various years beginning in 2018 and ending through the year 2032. From 2018 through 2022, approximately $7.5 million of the NOL will expire, from 2023 through 2028, approximately $80.5 million of the NOL will expire, and from 2029 through 2032, approximately $45 million of the NOL will expire.

Table of Contents

The components of the provision for income taxes (benefits) are attributable to continuing operations as follows:

| | 12 Month Period Ended December 31, 2012 | 12 Month Period Ended December 31, 2011 | 12 Month Period Ended December 31, 2010 |
|---|---|---|---|
| Current | | | |
| Federal | $ | $ | $ |
| State | | | |
| | $ | $ | $ |
| Deferred | | | |
| Federal | $ | $ | $ |
| State | | | |
| | $ | $ | $ |

Deferred income taxes reflect the net tax effects of the temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company s deferred tax assets and liabilities are as follows:

| | |
|---|---|
| Deferred tax assets: | |
| Net operating loss carryforwards | $ 47,918,148 |
| Capital loss carryforward | 384,826 |
| Accrued expenses | 62,613 |
| Deferred revenue | 991,848 |
| Reserve for accounts receivable | 2,086,933 |
| Reserve for inventory return | 128,569 |
| Stock option and restricted stock awards | 1,431,786 |
| Start-up costs | 107,053 |
| Excess of book over tax depreciation | 1,222,001 |
| Investment unconsolidated entity | 3,694,906 |
| Less: valuation allowance | (57,901,529) |
| | 127,154 |
| Deferred tax liability: | |
| Prepaid expenses | 57,907 |
| Property and equipment basis | 69,247 |
| | 127,154 |
| Net deferred tax asset | $ |

As reflected above, we have recorded a net deferred tax asset of $0 at December 31, 2012. As required by the Accounting for Income Taxes topic in the ASC, we have evaluated whether it is more likely than not that the deferred tax assets will be realized. Based on the available evidence, we have concluded that it is more likely than not that those assets would not be realizable without the recovery and rights of ownership or salvage rights of high value shipwrecks and thus a valuation allowance has been recorded as of December 31, 2012.

The change in the valuation allowance is as follow:

| | | | |
|---|---|---|---|
| December 31, 2012 | $ 57,901,529 | December 31, 2011 | $ 52,515,797 |
| December 31, 2011 | $ 52,515,797 | December 31, 2010 | $ 45,983,926 |
| Change in valuation allowance | $ 5,385,732 | Change in valuation allowance | $ 6,531,871 |

Table of Contents

Income taxes for the twelve month periods ended December 31, 2012, 2011 and 2010 differ from the amounts computed by applying the effective income tax rate of 34.0% to income taxes as a result of the following:

| | 12 Month Period Ended December 31, 2012 | 12 Month Period Ended December 31, 2011 | 12 Month Period Ended December 31, 2010 |
|---|---|---|---|
| Expected benefit | $ (6,180,388) | $ (5,516,605) | $ (7,936,643) |
| Effects of: | | | |
| State income taxes net of federal benefits | (181,423) | (205,521) | (190,311) |
| Nondeductible expenses | 17,994 | 17,657 | 15,606 |
| Stock options and restricted stock awards | 223,720 | 833,749 | 627,684 |
| Derivatives | 322,848 | (1,693,247) | 1,367,186 |
| Change in valuation allowance | 5,385,732 | 6,531,871 | 6,290,911 |
| Change in net operating loss | 832,408 | 3,564 | |
| Change in capital loss carryover estimate | (374,051) | | |
| Change in rate estimate | (42,925) | 23,798 | (174,913) |
| Other, net | (3,914) | 4,734 | 480 |
| Income tax provision (benefit) | $ | $ | $ |

During the twelve-month periods ended December 31, 2012 and 2011, we recognized certain tax benefits and (liabilities), prior to any valuation allowances, related to stock option plans in the amount of $230,721 and $860,721, respectively. If we did not have a full valuation allowance, such benefits would be recorded as an increase in the deferred tax asset and an increase in additional paid-in capital.

We have not recognized a material adjustment in the liability for unrecognized tax benefits and do not need to record any provision for accrued interest and penalties related to uncertain tax positions.

The earliest tax year still subject to examination by a major taxing jurisdiction is 2009.

**NOTE T MAJOR CUSTOMERS**

During the fiscal year ended December 31, 2012, we had three customers who accounted for 30.3%, 28.5% and 28.8% of our total revenue. For the fiscal year ended December 31, 2011, we had two customers who accounted for 18.4% and 71.6% of our total revenue.

**NOTE U COMMITMENTS AND CONTINGENCIES**

**Rights to Future Revenues, If Any**

We have sold the rights to share in future revenues, if any, with respect to the *Seattle* (formerly *Republic* ) and *Cambridge* projects and have recorded $887,500 as Deferred Income from Revenue Participation Rights (See NOTE P). We are contingently liable to share the future revenue of these projects only if revenue is derived from these specific projects.

To date, the only income derived from these projects resulted in a one-time revenue distribution payment of $12,986 to the holders of the *Cambridge* RPC s.

Revenue from the SS *Republic* shipwreck or its cargo is not subject to revenue sharing.

In addition, on May 26, 1998, we signed an agreement with a subcontractor that entitled it to receive 5% of the post finance cost proceeds from any shipwrecks in a predefined search area of the Mediterranean Sea. A shipwreck we have found, which we believe to be HMS *Sussex*, is located within the specified search area and we will be responsible to share future revenues, if any, from this shipwreck. On December 9, 2002, a Georgia limited liability company acquired the 5% interest from the subcontractor through a

foreclosure sale (see NOTE O).

In February 2011, we entered into a project syndication deal with Galt Resources LLC ( Galt ) for which they invested $7,512,500 representing rights to future revenues of any project of Galt s choosing. See NOTE P for further detail.

**Legal Proceedings**

On April 16, 2012, the Kingdom of Spain filed a motion with the district court for an award of attorney s fees and costs related to the *Black Swan* case. On November 15, 2012, the Magistrate Judge recommended to District Judge that Spain recover fees and costs related only to the period from February 10, 2012 through March 20, 2012 which amount to approximately $95,000. We are opposing the motion vigorously and have submitted substantial arguments in opposition. However, we cannot predict the court s ruling at this time.

The Company may be subject to a variety of claims and suits that arise from time to time in the ordinary course of business. Management currently believes that these claims and suits will not have a material adverse impact on its financial position or its results of operations.

**Other commitments and contingencies**

In January 2013, we entered into a 90 day firm time party charter agreement with a Norwegian company for a vessel to assist in the excavation of the *Gairsoppa* and *Mantola* sites. The charter is to commence around the May - June 2013 time frame, but the exact time will be mutually agreed to at a later time. The charter commitment is approximately 66 million NOK (Norwegian Kroner) which currently approximates $12.1 million. A payment of USD 1,500,000 is to be remitted 14 days prior to the start of the charter.

In January 2013, we entered into a purchase agreement for $1,741,500 with a vendor for deep-sea related marine equipment. Payments are due periodically from January to December 2013.

**Trends and Uncertainties**

Our current 2013 business plan estimates positive cash flow from operating activities. The plan contains assumptions which include that several of our planned projects are funded through project recoveries (Gairsoppa) and other financings, syndications or other partnership opportunities. The 2013 business plan expenses include a 90-day charter agreement which we recently executed with a company to provide a ship and equipment to conduct recovery operations on the *Gairsoppa* and *Mantola* projects similar to the work performed in 2012 where we monetized over $41 million of silver cash proceeds. One or more of these projected project recoveries, financing or partnership opportunities may not be realized which may require the need for additional cash. Based upon our current expectations, we believe our cash position will be sufficient to fund operating cash flows throughout the rest of 2013 taking into account our beginning cash balance, current cash flow expectations and revenues from multiple sources, including projected sales from recoveries, syndicated projects and other potential financing opportunities. We also anticipate renewing our term and mortgage loans with Fifth third Bank in July 2013. We have experienced several years of net losses resulting in a stockholders deficit. Our capacity to generate net income in future periods is dependent upon our success in recovering and monetizing shipwrecks, realizing capital gains from sale of interest in mineral exploration entities, generating income from shipwreck or mineral exploration charters or to generate income from other projects. However, it is likely that we could monetize a significant portion of the *Gairsoppa* and *Mantola* projects in 2013 which could fund our operations for future periods. If cash flow is not sufficient to meet our projected business plan requirements, we will be required to raise additional capital or curtail expenses. While we have been successful in raising the necessary funds in the past, there can be no assurance that we can continue to do so in 2013.

**NOTE V QUARTERLY FINANCIAL DATA UNAUDITED**

The following tables present certain unaudited consolidated quarterly financial information for each of the past eight quarters ended December 31, 2012 and 2011. This quarterly information has been prepared on the same basis as the Consolidated Financial Statements and includes all adjustments necessary to state fairly the information for the periods presented.

| | Fiscal Year Ended December 31, 2012 | | | |
|---|---|---|---|---|
| | Quarter Ending | | | |
| | March 31 | June 30 | September 30 | December 31 |
| Revenue - net | $ 2,899,752 | $ 1,426,631 | $ 946,097 | $ 7,925,035 |
| Gross profit | 2,865,563 | 1,336,739 | 891,860 | 7,867,816 |
| Net income (loss) | (5,481,799) | (15,590,350) | 3,802,983 | (914,947) |
| Basic and diluted net income per share | $ (0.08) | $ (0.21) | $ 0.05 | $ (0.01) |

| | Fiscal Year Ended December 31, 2011 | | | |
|---|---|---|---|---|
| | Quarter Ending | | | |
| | March 31 | June 30 | September 30 | December 31 |

| | | | | |
|---|---|---|---|---|
| Revenue - net | $ 2,094,103 | $ 6,744,569 | $ 5,939,873 | $ 948,687 |
| Gross profit | 1,920,527 | 6,692,008 | 5,842,755 | 856,959 |
| Net income (loss) | (5,174,035) | (1,930,553) | (5,137,997) | (3,982,723) |
| Basic and diluted net income per share | $ (0.09) | $ (0.07) | $ (0.07) | $ (0.05) |

Table of Contents

**NOTE W - SUBSEQUENT EVENTS**

On February 21, 2013, Odyssey Marine Exploration, Inc. ( Odyssey ), Odyssey Marine Enterprises, Ltd., (formed in 2013) a Bahamian company (the Enterprises ), and Oceanica Resources, S. de. R.L., (formed in 2013) a Panamanian company ( Oceanica ), entered into a Unit Purchase Agreement (the Purchase Agreement ) with Mako Resources, LLC (the Buyer ). Enterprises is an indirect, wholly owned subsidiary of ours. As of the date of the Purchase Agreement, Enterprises held 77.6 million of Oceanica s 100.0 million outstanding quotas (a unit of equity interest under Panamanian law).

Pursuant to the Purchase Agreement, Enterprises agreed to sell to the buyer up to 15.0 million of the quotas held by Enterprises for a purchase price of U.S.$1.00 per quota. The Buyer purchased the entire allotment of 15.0 million quotas for $15.0 million. The Purchase Agreement further provides that the Buyer is granted an option to purchase a number of additional quotas held by Enterprises equal to the number of quotas purchased by the Buyer. The options have an exercise price of U.S.$2.50 per quota and are exercisable at any time and from time to time through and until December 31, 2013.

**Table of Contents**

Schedule

SCHEDULE II VALUATION and QUALIFYING ACCOUNTS

**For the Fiscal Years of 2010, 2011 and 2012**

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES**

| | **Balance at Beginning of Year** | **Charged (Credited) to Expenses** | **Charged (Credited) to Other Accounts** | **Deductions** | **Balance at End of Year** |
|---|---|---|---|---|---|
| Deferred recovery cost reserve | | | | | |
| 2010 | 2,528,280 | 28,869 | | | 2,557,149 |
| 2011 | 2,557,149 | | | | 2,557,149 |
| 2012 | 2,557,149 | | | 2,557,149 | |
| Inventory reserve | | | | | |
| 2010 | 483,707 | | | 4,248 | 479,459 |
| 2011 | 479,459 | | | 87,256 | 392,203 |
| 2012 | 392,203 | | | 24,645 | 367,558 |
| Accounts receivable reserve | | | | | |
| 2010 | | 8,494,672 | | | 8,494,672 |
| 2011 | 8,494,672 | | | 2,104,079 | 6,390,593 |
| 2012 | 6,390,593 | | | 1,570,000 | 4,820,593 |

Table of Contents

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned thereunder duly authorized.

ODYSSEY MARINE EXPLORATION, INC.

Dated: March 12, 2013 By: /s/ GREGORY P. STEMM
**Chief Executive Officer**

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

| SIGNATURE | TITLE | DATE |
|---|---|---|
| /s/ GREGORY P. STEMM | Chief Executive Officer (Principal Executive Officer) | March 12, 2013 |
| **Gregory P. Stemm** | | |
| /s/ MICHAEL J. HOLMES | Chief Financial Officer | March 12, 2013 |
| **Michael J. Holmes** | (Principal Financial Officer) | |
| /s/ MARK D. GORDON | President and Chief Operating Officer | March 12, 2013 |
| **Mark D. Gordon** | | |
| /s/ JAY A. NUDI | Controller & Treasurer | March 12, 2013 |
| **Jay A. Nudi** | (Principal Accounting Officer) | |
| /s/ BRADFORD B. BAKER | Chairman of the Board | March 12, 2013 |
| **Bradford B. Baker** | | |
| /s/ DAVID J. SAUL | Director | March 12, 2013 |
| **David J. Saul** | | |
| /s/ MAX H. COHEN | Director | March 12, 2013 |
| **Max H. Cohen** | | |
| /s/ JON D. SAWYER | Director | March 12, 2013 |
| **Jon D. Sawyer** | | |

Table of Contents

**EXHIBITS INDEX**

| Exhibit Number | Description |
|---|---|
| 3.1 | Articles of Incorporation, as amended (incorporated by reference to Exhibit 3.1 to the Company s Annual Report on Form 10-KSB for the year ended February 28, 2001) |
| 3.2 | Bylaws (incorporated by reference to Exhibit 3.1 to the Company s Report on Form 8-K dated February 28, 2006) |
| 3.3 | Certificate of Designation of Series D Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company s Report on Form 8-K dated March 13, 2006) |
| 3.4 | Certificate of Amendment to Certificate of Designation of Series D Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company s Report on Form 8-K dated January 22, 2007) |
| 3.5 | Certificate of Amendment filed with the Nevada Secretary of State on June 6, 2011 (incorporated by reference to Exhibit 3.1 to the Company s Report on Form 8-K filed June 7, 2011) |
| 3.6 | Certificate of Designation of Series G Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company s Quarterly Report on Form 10-Q for the quarter ended September 30, 2010) |
| 3.7 | Amendment to Certificate of Designation of Series G Convertible Preferred Stock (incorporated by reference to Exhibit 3.2 to the Company s Quarterly Report on Form 10-Q for the quarter ended September 30, 2010) |
| 3.8 | Certificate of Correction to Amendment to Certificate of Designation of Series G Convertible Preferred Stock (incorporated by reference to Exhibit 3.3 to the Company s Quarterly Report on Form 10-Q for the quarter ended September 30, 2010) |
| 4.1 | Warrant to Purchase Series D Convertible Preferred Stock (D1) (incorporated by reference to Exhibit 10.12 to the Company s Annual Report on Form 10-K For the year ended December 31, 2006) |
| 4.2 | Warrant to Purchase Series D Convertible Preferred Stock (D2) (incorporated by reference to Exhibit 10.13 to the Company s Annual Report on Form 10-K For the year ended December 31, 2006) |
| 4.3 | Form of Warrant to Purchase Common Stock (incorporated by reference to Exhibit 4.1 to the Company s Report on Form 8-K filed January 26, 2010) |
| 4.4 | Reference is hereby made to Exhibit 10.19 |
| 4.5 | Form of Warrant to Purchase Common Stock 5% Notes (incorporated by reference to Exhibit 4.2 to the Company s Quarterly Report on Form 10-Q for the quarter ended September 30, 2010) |
| 4.6 | Form of Warrant to Purchase Common Stock - Modification to Series G Convertible Preferred Stock (incorporated by reference to Exhibit 99.2 to the Company s Report on Form 8-K dated April 20, 2011) |
| 10.1 | 1997 Stock Option Plan (incorporated by reference to Exhibit 10.5 to the Company s Annual Report on Form 10-KSB for the year ended February 28, 2001) |
| 10.2 | Partnering Agreement Memorandum Concerning the Shipwreck of HMS Sussex, dated September 27, 2002 (incorporated by reference to Exhibit 10.9 to the Company s Quarterly Report on Form 10-QSB For the quarter ended August 31, 2002) |
| 10.3 | 2005 Equity Incentive Plan (incorporated by reference to Exhibit 10.14 to the Company s Report on Form 8-K dated August 3, 2005) |
| 10.4 | Series D Convertible Preferred Stock Purchase Agreement (incorporated by reference to Exhibit 10.11 to the Company s Annual Report on Form 10-K for the year ended December 31, 2006) |
| 10.5 | Revolving Credit Loan and Security Agreement with Fifth Third Bank dated February 7, 2008 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K dated February 8, 2008) |
| 10.6 | Revolving Credit Note with Fifth Third Bank dated February 7, 2008 (incorporated by reference to Exhibit 10.2 to the Company s Report on Form 8-K dated February 8, 2008) |

| | |
|---|---|
| 10.7 | Loan Agreement with Fifth Third Bank dated July 11, 2008 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K dated July 17, 2008) |
| 10.8 | Commercial Promissory Note with Fifth Third Bank dated July 11, 2008 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K dated July 17, 2008) |
| 10.9 | Mortgage and Security Agreement with Fifth Third Bank dated July 11, 2008 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K dated July 17, 2008) |
| 10.10 | Form of Stock Purchase Agreement (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K filed January 26, 2010) |

Table of Contents

**EXHIBITS INDEX**

| Exhibit Number | Description |
| --- | --- |
| 10.11 | First Amendment to Revolving Credit Loan and Security Agreement with Fifth Third Bank dated April 20, 2010 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K dated April 26, 2010) |
| 10.12 | Renewal to Revolving Credit with Fifth Third Bank dated April 20, 2010 (incorporated by reference to Exhibit 10.2 to the Company s Report on Form 8-K dated April 26, 2010) |
| 10.13 | Share Subscription Agreement Dorado Ocean Resources dated April 28, 2010 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K filed May 4, 2010) |
| 10.14 | Form of Securities Purchase Agreement 5% Notes and Warrants dated August 20, 2010 (incorporated by reference to Exhibit 10.1 to the Company s Quarterly Report on Form 10-Q for the quarter ended September 30, 2010) |
| 10.15 | Form of Purchase Agreement of Series G Convertible Preferred Stock dated October 6, 2011 (incorporated by reference to Exhibit 10.1 to the Company s Quarterly Report on Form 10-Q for the quarter ended September 30, 2010) |
| 10.16 | Shipwreck Project Agreement with Gault Resources LLC dated February 11, 2011 (incorporated by reference to Exhibit 10.26 to the Company s Annual Report on Form 10-K For the year ended December 31, 2010) |
| 10.17 | Second Amendment to Revolving Credit Loan and Security Agreement dated May 4, 2011 (incorporated by reference to Exhibit 10.1 to the Company s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011) |
| 10.18 | Amendment to Real Estate Loan Agreement dated May 4, 2011 (incorporated by reference to Exhibit 10.2 to the Company s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011) |
| 10.19 | Form of Agreement Modification to Purchase Agreement of Series G Convertible Preferred Stock (incorporated by reference to Exhibit 99.1 to the Company s Report on Form 8-K filed April 20, 2011) |
| 10.20 | Form of Share Exchange Agreement between Neptune Minerals, Inc. and the stockholders of Dorado Ocean Resources Limited (incorporated by reference to Exhibit 3.1 to the Company s Report on Form 8-K filed June 7, 2011) |
| 10.21 | Debt Conversion Agreement between Odyssey Marine Exploration, Inc. and Neptune Minerals, Inc. (incorporated by reference to Exhibit 10.2 to the Company s Report on Form 8-K filed June 7, 2011) |
| 10.22 | Securities Purchase Agreement dated November 8, 2011 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K filed November 9, 2011) |
| 10.23 | Form of Senior Convertible Note (incorporated by reference to Exhibit 10.2 to the Company s Report on Form 8-K filed November 9, 2011) |
| 10.24 | Warrant to Purchase Common Stock dated November 8, 2011 (incorporated by reference to Exhibit 10.3 to the Company s Report on Form 8-K filed November 9, 2011) |
| 10.25 | Registration Rights Agreement dated November 8, 2011 (incorporated by reference to Exhibit 10.4 to the Company s Report on Form 8-K filed November 9, 2011) |
| 10.26 | Third Amendment to the Loan and Security Agreement with Fifth third Bank dated March 30, 2012 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K dated April 5, 2012) |
| 10.27 | Renewal, Advance and Consolidation Commercial Term Promissory Note dated March 30, 2012 (incorporated by reference to Exhibit 10.2 to the Company s Report on Form 8-K dated April 5, 2012) |
| 10.28 | Amendment Agreement dated April 25, 2012, to the Securities Purchase Agreement dated November 8, 2011 (incorporated by reference to Exhibit 10.5 to the Company s Report on Form 8-K dated April 26, 2012) |
| 10.29 | Form of Additional Note dated April 25, 2012 (incorporated by reference to Exhibit 10.6 to the Company s Report on Form 8-K dated April 26, 2012) |

| | |
|---|---|
| 10.30 | Additional Note dated May 10, 2012 (incorporated by reference to Exhibit 10.1 to the Company s Report on Form 8-K dated May 10, 2012) |
| 10.31 | Loan Agreement dated July 9, 2012, with Fifth Third Bank (incorporated by reference to Exhibit 10.1 to the company s Quarterly Report on form 10-Q for the quarter ended June 30, 2012) |
| 10.32 | Non-revolving Line of Credit Promissory Note dated July 9, 2012, with Fifth Third Bank (incorporated by reference to Exhibit 10.2 to the company s Quarterly Report on form 10-Q for the quarter ended June 30, 2012) |
| 10.33* | Unit Purchase Agreement dated February 21, 2013 with Mako Resources, LLC. (filed herewith electronically) |
| 21.1 | Subsidiaries of the Registrant (incorporated by reference to Exhibit 21 to the Company s Annual Report on Form 10-K For the year ended December 31, 2005) |
| 23.1 | Consent of Ferlita, Walsh, Gonzalez & Rodriguez, P.A., Independent Accountants (filed herewith electronically) |

* Portions of this exhibit have been omitted pursuant to a confidential treatment request. Omitted information has been filed separately with the Securities and Exchange Commission.

Table of Contents

**EXHIBITS INDEX**

| **Exhibit Number** | |
|---|---|
| 31.1 | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith electronically) |
| 31.2 | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith electronically) |
| 32.1 | Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350 (filed herewith electronically) |
| 32.2 | Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350 (filed herewith electronically) |
| 101.1 | XBRL Interactive Data File |