

Edgar Filing: Darwin Professional Underwriters Inc - Form 10-K/A

Darwin Professional Underwriters Inc

Form 10-K/A

August 28, 2008

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K/A
Amendment No. 1**

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

For the fiscal year ended December 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 number: 001-32883

DARWIN PROFESSIONAL UNDERWRITERS, INC.

(Exact name of registrant as specified in its charter)

Delaware

03-0510450

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

*(I.R.S. Employer
Identification Number)*

9 Farm Springs Road, Farmington, CT

06032

(Address of principal executive offices)

(Zip Code)

*Registrant's telephone number, including area code: **860-284-1300***

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Name of each exchange on which registered

Common Stock, \$0.01 par value

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: **Not applicable**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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 ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

Large accelerated filer ☐ Accelerated filer ☒

Smaller Reporting Company ☐

Non-accelerated filer ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company. Yes ☐ No ☒

As of February 25, 2008, **17,025,051** shares, par value \$0.01 per share, of Common Stock of the registrant were outstanding. The aggregate market value (based upon the closing price of these shares on the NYSE as of June 29, 2007) of the shares of Common Stock of registrant held by non-affiliates was approximately \$156,282,000.

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**Darwin Professional Underwriters, Inc.
EXPLANATORY NOTE**

Darwin Professional Underwriters, Inc. (Darwin or the company) is filing this Amendment No. 1 to its Annual Report on Form 10-K for the fiscal year ended December 31, 2007, as originally filed with the Securities and Exchange Commission on February 29, 2008 (the Original Report), solely for the purpose of amending and supplementing Part II and Part III of the Original Report. This amendment changes the Original Report only by including information required by Part II, Item 9A, and by Part III, Item 10, which had been inadvertently omitted from the Original Report. This Amendment No. 1 continues to speak as of the date of the Original Report, and the company has not updated the disclosure contained herein to reflect events that have occurred since the filing of the Original Filing. Accordingly, this Amendment No. 1 should be read in conjunction with the Original Report.

As required by Rule 12b-15, Darwin s principal executive officer and principal financial officer are providing Rule 13a-14(a) certifications in connection with this Amendment No. 1 on Form 10-K/A. Since financial statements are not contained in the Amendment No. 1, the Company is not furnishing Rule 13a-14(b) certifications in connection herewith.

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PART II

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

Darwin maintains disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (Exchange Act)) that are designed to ensure that information required to be disclosed in the Company's reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures. The Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of December 31, 2007. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of the Company's disclosure controls and procedures provide reasonable assurance that the Company's disclosure controls and procedures are effective to accomplish their objectives.

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control system was designed to provide reasonable assurance to our management and Board of Directors regarding the preparation and fair presentation of financial statements for external purposes.

We carried out an evaluation, under the supervision and with the participation of our management, including our CEO and CFO, of the effectiveness of our internal control over financial reporting based on the framework in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on that evaluation, our management, including our CEO and CFO, concluded that, as of December 31, 2007, our internal control over financial reporting was effective. Our independent registered public accounting firm that audited the consolidated financial statements included in this Form 10-K Report has also audited the effectiveness of our internal control over financial reporting. We note that all internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Change in Internal Control over Financial Reporting

During the third quarter of 2006, the Company created and staffed its own internal audit function, reporting directly to the Audit Committee of the Board of Directors, which is expected to plan and perform a number of the internal audits previously performed by Alleghany's internal audit staff. In connection with the evaluation required by Rule 13a-15(d) or Rule 15d-15(d) under the Exchange Act (the Rules), the Company's management, with the participation of the Chief Executive Officer and Chief Financial Officer, concluded that other than as stated in the immediately preceding sentence, there was no change in the Company's internal control over financial reporting (as that term is defined in the Rules) that occurred during the quarter ended December 31, 2007 that materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

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NYSE CEO Certification

On April 3, 2007, we filed with the NYSE the certification of our President and Chief Executive Officer, under Rule 5.3(m) of the NYSE Bylaws, which certified that he was not then aware of any violation by us of the NYSE corporate governance listing standards.

PART III

Item 10. Directors, Executive Officers and Corporate Governance of the Registrant.

The information called for by this Item and not provided herein will be contained in the Company's Proxy Statement for the 2008 Annual Meeting of Stockholders (the "2008 Proxy Statement"), which the Company intends to file by or before April 29, 2008, the 120th day following the end of the Company's fiscal year ended December 31, 2007, and such information is incorporated by reference.

In May 2006, the Company adopted a Code of Business Conduct and Ethics that applies to our executive officers, including our Chief Executive Officer and Chief Financial Officer. A copy of the Code of Business Conduct and Ethics is filed as an Exhibit to this Annual Report on Form 10-K. The Code of Business Conduct and Ethics is posted on the Company's website at www.darwinpro.com under the Investor Relations tab, and a copy may also be obtained, free of charge, upon request mailed to our corporate Secretary.

Board of Directors. The Board of Directors presently has nine members. The names and ages of our directors and biographical information (including information they have furnished as to principal occupation and other directorships held) is furnished in the 2008 Proxy Statement, at pages 8 and 9.

Executive Officers. The executive officers of Darwin and their ages as of February 29, 2008, were:

Robert J. Asensio. 51 years old. Mr. Asensio has been Chief Information Officer since 2003. Prior to joining DPUI, Mr. Asensio was Vice President of Information Technology at The Chubb Corporation from July 1999 to June 2003. Prior to joining The Chubb Corporation, Mr. Asensio was Assistant Vice President of Information Technology at Executive Risk Inc. from April 1993 until its acquisition by The Chubb Corporation in July 1999.

Paul C. Martin. 55 years old. Mr. Martin has been Senior Vice President and Chief Actuary since 2003. Prior to joining DPUI, Mr. Martin was Senior Vice President - Product Development at XL Vianet from July 2000 to April 2003.

David J. Newman. 53 years old. Mr. Newman has been Chief Underwriting Officer since 2003. Prior to joining DPUI, Mr. Newman was in private consulting for 15 months and prior to that was Chief Executive Officer of Odyssey Reinsurance Corporation's London Market Division, and the Active Underwriter of Syndicate 1218 at Lloyd's as well as a director of Newline Underwriting Management Ltd. from 1996 to January 2002.

Paul F. Romano. 49 years old. Mr. Romano has been Senior Vice President-Underwriting since 2003. Prior to joining DPUI, Mr. Romano was Vice President at Executive Risk Inc. from July 1996 until its acquisition by The Chubb Corporation in July 1999. From July 1999 to 2003, Mr. Romano was Senior

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Vice President responsible for the Health Care Industry Division of Chubb Specialty Insurance and later served as Managing Director of Chubb & Son and manager of Chubb's office operations in Simsbury, Connecticut.

Mark I. Rosen. 56 years old. Mr. Rosen has been Senior Vice President and General Counsel since 2003. From February 2002 until joining DPUI, he was a founder and Senior Vice President of OneBeacon Professional Partners, a subsidiary of the White Mountains Insurance Group. Previously, Mr. Rosen was Senior Vice President and Chief Legal Officer of Executive Risk Inc. from 1991 until its acquisition by The Chubb Corporation in July 1999, and Senior Vice President of Chubb until July 2001. Mr. Rosen was retired from July 2001 to February 2002.

John L. Sennott, Jr. 42 years old. Mr. Sennott has been Senior Vice President, Chief Financial Officer and a director of the Company since 2003. Mr. Sennott is a CPA who served as Controller of Executive Risk Inc. from 1998 until its acquisition by the Chubb Corporation in July 1999, and he continued in that position at Executive Risk until 2001. Mr. Sennott was the principal of Beacon Partners from 2001 to 2003.

Stephen J. Sills. 59 years old. Mr. Sills, a former senior executive with The Chubb Corporation, founded the Company and has been its President, Chief Executive Officer and chairman of its Board of Directors since 2003.

PART IV

Item 15. Exhibits and Financial Statement Schedules

The following are filed as part of this Amendment No. 1.

(b) Exhibits.

31.1 Rule 13a-14(a)/15d-14a Certificate of the Company's Principal Executive Officer

31.2 Rule 13a-14(a)/15d-14a Certificate of the Company's Principal Financial Officer

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has caused this Amendment No. 1 to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: August 28, 2008

DARWIN PROFESSIONAL UNDERWRITERS, INC.

(Registrant)

By: /s/ Stephen J. Sills

August 28, 2008

Stephen J. Sills
President
(Principal Executive Officer)

By: /s/ John L. Sennott, Jr.

August 28, 2008

John L. Sennott, Jr.
Executive Vice President
(Principal Financial Officer)

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31.1 Rule 13a-14(a)/15d-14a Certificate of the Company's Principal Executive Officer

31.2 Rule 13a-14(a)/15d-14a Certificate of the Company's Principal Financial Officer

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