

SUNAIR SERVICES CORP
Form DEFA14A
February 19, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
(RULE 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION
PROXY STATEMENT PURSUANT TO SECTION 14(A) OF THE SECURITIES
EXCHANGE ACT OF 1934**

Filed by the registrant

Filed by a party other than the registrant

Check the appropriate box:

Preliminary proxy statement

Confidential, for Use of the Commission only (as permitted by Rule 14a-6(e)(2))

Definitive proxy statement

Definitive additional materials

Soliciting material pursuant to Rule 14a-11(c) or Rule 14a-12

SUNAIR SERVICES CORPORATION

(Name of Registrant as Specified in Its Charter)

Payment of filing fee (Check the appropriate box):

No fee required.

Fee computed on the table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:

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Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount previously paid:

(2) Form, schedule or registration statement no.:

(3) Filing party:

(4) Date Filed:

SUNAIR SERVICES CORPORATION
595 SOUTH FEDERAL HIGHWAY, SUITE 500
BOCA RATON, FLORIDA 33432
SUPPLEMENT TO PROXY STATEMENT

On January 28, 2009, Sunair Services Corporation (we, us or the Company) filed with the U.S. Securities and Exchange Commission (SEC) and mailed on February 2, 2009 to each shareholder entitled to vote at our 2009 Annual Meeting a definitive proxy statement (the Proxy Statement), a proxy card and our Annual Report on Form 10-K for our fiscal year ended September 30, 2008. The 2009 Annual Meeting will be held on March 18, 2009 at 11:00 a.m., Eastern time, at the Hilton Hotel, 100 Fairway Drive, Deerfield Beach, Florida 33441. At our 2009 Annual Meeting, our shareholders will be voting to elect seven (7) members to our Board of Directors who are named on pages 4-5 of our Proxy Statement, each to serve until the next Annual Meeting of Shareholders or until their successors have been duly elected and qualified. This supplement dated February 18, 2009 (Supplement) to our Proxy Statement is intended to provide you with additional information about (a) voting for substitute nominees and (b) the proxy agreements granted to Coconut Palm Capital Investors II, Ltd. (Coconut Palm) by its limited partners.

No Voting for Substitute Nominees page 4 of the Proxy Statement

On page 4 of the Proxy Statement, please delete the third paragraph under the caption Proposal No. 1 Election of Directors, which is as follows:

We have no reason to believe that any of the nominees will be unable to serve as director. However, in the event that any nominee should become unable or unwilling to serve as a director, the proxy will be voted for the election of the person or persons as shall be nominated by our Board of Directors.

Under the Exchange Act of 1934, the existence of an alternative nominee to the Board is considered to be material to a security holder's voting decision. Consequently, the Company will not use any proxies delivered to it by the Company's shareholders to vote for any persons that are not named in the Proxy Statement or any supplement to the Proxy Statement. If the Company were to nominate a person to serve on its Board of Directors at the 2009 Annual Meeting who is not currently named in the Proxy Statement, it would send its shareholders (i) a revised proxy statement or supplement which contains biographical and other information about the new nominee which is required by the applicable SEC laws and regulations and (ii) a revised proxy card.

Coconut Palm's Beneficial Ownership and Irrevocable Proxy granted to Coconut Palm by its Limited Partners

In an information statement filed by Michael Brauser, Dru Schmitt and Michael Herman (the Group or Dissident Group) with the SEC on February 2, 2009, the Group states that Sunair's Proxy Statement reference to Coconut Palm's beneficial ownership of 9,914,700 shares of the Company's common stock, which includes 5,000,000 shares of common stock underlying warrants, may not be correct and questions the validity of the proxy granted to Coconut Palm. The Dissident Group believes the irrevocable proxy granted to Coconut Palm is not valid and therefore this number may overstate the number of shares beneficially owned by Coconut Palm to the extent it includes shares and warrants owned by Michael Brauser, Dru Schmitt, Gregory Sturgis and Leon Brauser. The Coconut Palm partnership agreement provides that a limited partner must sign an irrevocable proxy in favor of Coconut Palm (Coconut Palm Proxy) upon redemption of a limited partnership interest.

Based on the Company's records, the number of shares owned by members of the Dissident Group which are subject to the Coconut Palm Proxy is as follows: Michael Brauser and Betsy Brauser, as tenants by the entireties 600,000 shares; SIG Investment Group, LLC 400,000 shares, the Joseph Q. DiMartini Revocable Trust UTA dated February 6, 1998 150,000 shares, Joseph Q. DiMartini 2002 Irrevocable Trust 50,000 shares and the Dru Schmitt Revocable Trust U/A 10/27/97 600,000 shares. The Company believes that Gregory Sturgis and Leon Brauser are or were members of SIG Investment Group, LLC and received their shares from this entity.

The Company believes the Coconut Palm Proxy is valid and disagrees with the Dissident Group's position. Section 607.0724 of the Florida Business Corporation Act (FBCA) provides that an issuer acting in good faith, is authorized to determine the validity of a proxy appointment. Accordingly, pursuant to the FBCA, the Company is the initial entity responsible for determining the validity of the Coconut Palm Proxy.

Adverse Consequences if the Dissident Group Obtains the Required Consents

In the Information Statement that the Dissident Group filed with the SEC on February 2, 2009, they seek to remove six of the seven members of the Company's current Board of Directors and replace them with their nominees. If the Dissident Group is successful, it would result in the removal of six members of a highly competent and experienced Board of Director and replacement of them with a Board with minimal experience serving as directors of a public company. The depth of the current Board of Directors is clear by review of their experience. Two of the members, Dr. Arnold Heggstad and Steven P. Oppenheim, Esq., have served on the Company's Board since March 2003 and January 2004, respectively. Both agreed to continue their service to the Company after Coconut Palm's investment in the Company, have detailed knowledge of the Company's business and are financial experts serving on the Company's audit committee. Dr. Heggstad is the Holloway Professor of Finance and Entrepreneurship at the University of Florida and has been at the University since 1974. Dr. Heggstad has served as Chairman, Department of Finance, Insurance and Real Estate, Associate Dean, College of Business Administration, Director of the Center for Financial Institutions, Executive Director, University of Florida Research Foundation, Associate Vice-President of Entrepreneurial Programs in the Office of Research. Dr. Heggstad is a Director of Intrepid Capital Management, Inc. Mr. Oppenheim is the President and owner of Oppenheim & Associates provides strategic planning to international clients. Mr. Oppenheim holds a Juris Doctor Degree and maintained his own law firm from 1975 until 2000. Mr. Oppenheim also holds a Bachelor of Business Administration in Accounting from the University of Miami, and from 1973 to 1975 he was tax supervisor with the public accounting firm of Coopers & Lybrand. Mr. Oppenheim serves in various officer capacities for several multinational companies or affiliates involving U.S. business. He serves as a Director of the International Advertising Association and as a Director of the British American Chamber of Commerce. He previously served as a Director of the French-American Chamber of Commerce, Italy-America Chamber of Commerce, and European-American Chamber of Commerce.

In addition, four of our directors, Joseph DiMartino, Robert Griffin, Richard Rochon and Mario Ferrari have extensive experience serving on the Boards of public companies. Mr. DiMartino has been the Chairman of the Board and a Director of The Dreyfus Family of Mutual Funds in New York City since January 1995. Mr. DiMartino served as President, Chief Operating Officer and Director of The Dreyfus Corporation from October 1982 until December 1994. Mr. DiMartino also has served since 1997 as a Director and Chairman of the Compensation Committee of Century Business Services, Inc., and also serves as a Director of The Newark Group and the Muscular Dystrophy Association. Mr. DiMartino is a 1965 graduate of Manhattan College and attended New York University's Graduate School of Business. Mr. Griffin, who also serves on our Audit Committee, has held numerous positions of responsibility in the financial sector, including Head of Investment Banking, Americas and Management Committee Member for Barclay's Capital from 2000 to 2002, and prior to that as the Global Head of Financial Sponsor Coverage for Bank of America Securities from 1998 to 2000 and Group Executive Vice President of Bank of America from 1997 to 1998. Mr. Griffin also currently serves as a Director of Builders FirstSource, Inc. and Commercial Vehicle Group, Inc., and serves on their audit committees. Mr. Rochon has served as a Director of Devcon International Corp., a publicly-held company that provides electronic security and construction services, since July 2004, and as Chairman and Chief Executive Officer of Coconut Palm Acquisition Company, a publicly held special purpose acquisition company, from September 2005 until June 2007. Previously, from 1987 to 2002, Mr. Rochon served as President of Huizenga Holdings, Inc, a management and holding company owned by H. Wayne Huizenga, whose investments included Blockbuster Entertainment Corporation, Republic Waste Industries, Inc., AutoNation, Inc., and Boca Resorts, Inc. Mr. Rochon joined Huizenga Holdings in 1985 as Treasurer and was promoted to President in 1987. Mr. Rochon served as Vice Chairman of Huizenga Holdings and as sole Director for many of Huizenga Holdings private and public portfolio companies, including as a Director of AutoNation, Inc., the NHL's Florida Panthers and the NFL's Miami Dolphins. Mr. Rochon previously served as Vice Chairman of Boca Resorts, Inc, an owner and operator of luxury resort properties in Florida, from November 1996 to December 2004, while serving as President

from March 1998 until January 2002. In addition, Mr. Rochon has been a Director of Bancshares of Florida, a full-service commercial bank, from 2002 until February 2007, and a Director of Century Business Services, a diversified services company, since 1996. From 1979 until 1985 Mr. Rochon was employed as a certified public accountant by the public accounting firm of Coopers & Lybrand. L.L.P. Mr. Rochon received his B.S. in Accounting from Binghamton University (formerly State University of New York at Binghamton) in 1979 and his Certified Public Accounting designation in 1981. Finally, Mr. Ferrari has served as a director of publicly held Devcon International Corp. since July 2004. Mr. Ferrari also serves as Chief Strategic Officer of Equity Media Holdings Corporation. From June 2000 to June 2002, Mr. Ferrari was an investment banker with Morgan Stanley & Co. In October, 1997, Mr. Ferrari co-founded PowerUSA, LLC, a retail renewable energy services company and was a managing member until September 1999. Mr. Ferrari received his B. S., magna cum laude, in Finance and International Business from Georgetown University in 2000.

The remaining director, Mr. Charles P. Steinmetz is one of the most respected people in the pest control industry. Mr. Steinmetz was the majority owner of Middleton from 1977 until it was purchased by SSPH. Mr. Steinmetz also served in various capacities with Orkin Exterminating Company (1961-1973) and Truly Nolen, Inc. (1974-1977), and led the build-up and sale of All America Termite and Pest Control, Inc. (1982-1997), which at the time of sale was the largest privately owned pest control company in the United States with 125 locations throughout Florida, Georgia, Alabama, North and South Carolina, Louisiana, Tennessee, Mississippi, Arizona and Texas. Mr. Steinmetz received his B.S. in Agriculture, major in Entomology, from the University of Florida.

The impact of the Dissident Group's consent will result in the disruption of the positive working relationship between the Board of Directors and current management which has a coherent strategy to operate during this challenging economic period. The 13D's filed by the Dissident Group provide that the Dissident Group seeks to cause the Company to be sold. The Board has retained Hyde Park Capital, a well respected investment banking firm, to assist the Board in exploring, in a deliberate and organized approach, strategic alternatives for the Company.

Proxy Statement and Supplement

This Supplement modifies and supersedes our Proxy Statement with respect to the subjects discussed. In all other respects, the Proxy Statement continues to be accurate and complete and is incorporated herein by reference. Your decision about how to vote at our upcoming Annual Meeting should be guided by both the Proxy Statement and the Supplement.

Board's Recommendation

The Board of Directors urges you to read the Proxy Statement and this Supplement and to vote FOR the election of all of the nominated directors named in pages 4-5 of the Proxy Statement.

Additional Information

THE COMPANY'S SHAREHOLDERS ARE ENCOURAGED TO READ THE PROXY STATEMENT, SUPPLEMENT AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE BECAUSE THOSE DOCUMENTS CONTAIN, OR WILL CONTAIN, IMPORTANT INFORMATION ABOUT THE COMPANY. The Company's shareholder may also obtain a free copy of this Supplement, the Proxy Statement, and other documents filed by the Company with the SEC, at the SEC's web site at <http://www.sec.gov>. The Supplement and the Proxy Statement is also available at <http://www.amstock.com/ProxyServices/ViewMaterials.asp>. Free copies of the Company's filings may also be obtained by directing a request to Sunair Services Corporation, 595 South Federal Highway, Suite 500, Boca Raton, FL 33432, Attention: Corporate Secretary.

Voting Instructions

In the Proxy Statement that was mailed to you on February 2, 2009, we enclosed a proxy card. Please complete and properly sign the proxy card and return it to us. If you have any questions or need any assistance voting your shares, please do not hesitate to contact our Corporate Secretary at Sunair Services Corporation, 595 South Federal Highway, Suite 500, Boca Raton, FL 33432.

February 18, 2009