FORWARD INDUSTRIES INC
Form 10-Q
February 10, 2009

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 December 31, 2008.

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: 0-6669

FORWARD INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

New York	**13-1950672**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

1801 Green Rd., Suite E, Pompano Beach, FL 33064

(Address of principal executive offices, including zip code)

(954) 419-9544

(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 twelve 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. [**X**] Yes [ ] No

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).

[ ] Large accelerated filer	[ ] Accelerated filer
[ ] Non-accelerated filer (Do not check if a smaller reporting company)	[**X**] Smaller reporting company

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

The number of shares outstanding of the registrant s common stock, par value $0.01 per share, at the latest practical date February 9, 2009, was 7,923,189 shares.

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Forward Industries, Inc.

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Note Regarding Use of Certain Terms

In this Quarterly Report on Form 10-Q, unless the context otherwise requires, the following terms have the meanings assigned to them as set forth below:

"we", "our", and the "Company" refer to Forward Industries, Inc., a New York corporation, together with its consolidated subsidiaries;
Forward or Forward Industries refers to Forward Industries, Inc.;
common stock refers to the common stock, $.01 par value per share, of Forward Industries, Inc.;
"Koszegi" refers to Forward Industries wholly owned subsidiary Koszegi Industries, Inc., an Indiana corporation;
Forward HK refers to Forward Industries wholly owned subsidiary Forward Industries HK, Ltd., a Hong Kong corporation;
Forward Innovations refers to Forward Industries wholly owned subsidiary Forward Innovations GmbH, a Swiss corporation; Forward APAC refers to Forward Industries wholly owned subsidiary Forward Asia Pacific Limited, a Hong Kong corporation; GAAP refers to accounting principles generally accepted in the United States;
Commission refers to the United States Securities and Exchange Commission;
Exchange Act refers to the United States Securities Exchange Act of 1934, as amended;

2009 Quarter refers to the three months ended December 31, 2008;

2008 Quarter refers to the three months ended December 31, 2007;

Fiscal 2009 refers to our fiscal year ending September 30, 2009;

Fiscal 2008 refers to our fiscal year ended September 30, 2008;
Europe refers to the countries included in the European Union and also, in the context of the Motorola License territory, the following countries: Norway, Switzerland, Croatia, Russia, Ukraine, Albania, Belarus, Bosnia-Herzegovina,, Macedonia, and Uzbekistan;
APAC Region refers to the Asia Pacific Region, consisting of Australia, New Zealand, Hong Kong, Taiwan, China, South Korea, Japan, Singapore, Malaysia, Thailand, Indonesia, India, the Philippines and Vietnam;

Americas refers to the geographic area encompassing North, Central, and South America

OEM refers to Original Equipment Manufacturer of certain consumer electronic products that are our customers

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

Forward Industries, Inc.

CONSOLIDATED BALANCE SHEETS

	December 31, 2008 (Unaudited)	September 30, 2008
Assets		
Current assets:		
Cash and cash equivalents	$18,403,988	$19,862,426
Accounts receivable, net	4,906,185	3,659,553
Inventories, net	1,695,969	1,363,862
Prepaid expenses and other current assets	638,751	586,632
Deferred tax asset	107,921	49,449
Total current assets	25,752,814	25,521,922
Property, plant, and equipment, net	230,044	124,854
Deferred tax asset	406,600	359,681
Other assets	95,323	98,259
Total Assets	$26,484,781	$26,104,716
Liabilities and shareholders equity		
Current liabilities:		
Accounts payable	$2,673,512	$2,206,630
Accrued expenses and other current liabilities	260,774	189,827
Total current liabilities	2,934,286	2,396,457
Commitments and contingencies		
Shareholders equity:		
Preferred stock, par value $0.01 per share; 4,000,000 shares authorized;	--	--

no shares issued..		
Common stock, par value $0.01 per share; 40,000,000 shares authorized,		
8,621,932 shares issued (including 706,410 held in treasury)......................	86,219	86,219
Capital in excess of par value...	15,940,143	15,893,480
Treasury stock, 706,410 shares at cost	(1,260,057)	(1,260,057)
Retained earnings..	8,784,190	8,988,617
Total shareholders' equity...	23,550,495	23,708,259
Total liabilities and shareholders equity..	$26,484,781	$26,104,716

The accompanying notes are an integral part of the consolidated financial statements.

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Forward Industries, Inc.

CONSOLIDATED STATEMENTS OF OPERATIONS

	(UNAUDITED) Three Months Ended December 31,	
	2008	**2007**
Net sales...	$5,306,642	$4,953,090
Cost of goods sold...	4,362,639	3,835,270
Gross profit...	944,003	1,117,820
Operating expenses:		
Selling...	676,088	779,705
General and administrative...	666,034	934,924
Total operating expenses...	1,342,122	1,714,629
Loss from operations...	(398,119)	(596,809)
Other income:		
Interest income...	118,945	239,619
Other (expense) income, net...	(30,641)	13,497
Total other income...	88,304	253,116
Loss before benefit from income taxes...	(309,815)	(343,693)
Benefit from income taxes...	(105,391)	(56,629)
Net loss	($204,424)	$ (287,064)
Net loss per common and common equivalent share		
Basic...	($0.03)	($0.04)
Diluted...	($0.03)	($0.04)
Weighted average number of common and common equivalent shares outstanding		
Basic...	7,915,522	7,855,439
Diluted...	7,915,522	7,855,439

The accompanying notes are an integral part of the consolidated financial statements.

Forward Industries, Inc.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	(Unaudited) Three Months Ended December 31,	
	2008	**2007**
Operating activities:		
Net loss	($204,424)	($287,064)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Deferred income taxes	(105,391)	178
Provision for obsolete inventory	86,794	129,524
Share-based compensation	46,660	14,396
Depreciation and amortization	19,767	16,580
Provision for bad debt expense	--	(20,033)
Changes in operating assets and liabilities:		
Accounts receivable	(1,246,632)	229,826
Inventories	(418,901)	(412,564)
Prepaid expenses and other current assets	(52,119)	2,182
Other assets	2,936	(19,871)
Accounts payable	466,882	1,271,992
Accrued expenses and other current liabilities	70,947	124,079
Net cash (used in) provided by operating activities	**(1,333,481)**	1,049,225
Investing activities:		
Purchases of property, plant, and equipment	(124,957)	(18,892)
Net cash used in investing activities	**(124,957)**	(18,892)
Financing activities:		
Net cash provided by (used in) financing activities	**--**	**--**
Net (decrease) increase in cash and cash equivalents	**(1,458,438)**	1,030,333
Cash and cash equivalents at beginning of period	**19,862,426**	20,267,791
Cash and cash equivalents at end of period	**$18,403,988**	$21,298,124

The accompanying notes are an integral part of the consolidated financial statements.

Forward Industries, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(UNAUDITED)

NOTE 1 OVERVIEW

Forward Industries, Inc. was incorporated under the laws of the State of New York and began operations in 1961. The Company is engaged in the design, marketing, and distribution of custom-designed, soft-sided carrying cases and other carry solutions products made from leather, nylon, vinyl, and other synthetic fabrics. The cases and other products are used primarily by consumers for the protection and transport of portable electronic devices such as medical devices and cellular phones. The Company markets its products as a direct seller to original-equipment-manufacturers (OEMs) and as a distributor to retailers and wholesalers. Sales to OEM customers are made in Europe, the APAC Region, and the Americas. Sales to retailers and distributors are made in the United States, Canada, and Europe.

In the opinion of management, the accompanying consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial position and results of operations and cash flows for the interim periods presented herein, but are not necessarily indicative of the results of operations for the full fiscal year ending September 30, 2009. These financial statements should be read in conjunction with the Company's audited consolidated financial statements included in its annual report on Form 10-K for the fiscal year ended September 30, 2008, and with the disclosures and risk factors presented herein and therein, respectively.

NOTE 2 ACCOUNTING POLICIES

Accounting estimates

Preparing the Company's financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

Basis of presentation

The accompanying consolidated financial statements include the accounts of Forward Industries, Inc. ("Forward") and its wholly owned subsidiaries (together, the "Company"). All significant intercompany transactions and balances have been eliminated in consolidation.

Revenue Recognition

In accordance with the requirements of Staff Accounting Bulletin (SAB) No. 104, Revenue Recognition in Financial Statements, the Company generally recognizes revenue from product sales to customers when: products that do not require further services by the Company are shipped, there are no uncertainties surrounding customer acceptance, and collectibility is reasonably assured.

Forward Industries, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(UNAUDITED)

NOTE 2 ACCOUNTING POLICIES (CONTINUED)

Supplier Rebates

Emerging Issues Task Force (EITF) Issue No. 02-16, Accounting by a Customer (Including a Reseller) for Certain Consideration Received from a Vendor, permits recognition of a rebate or refund of a specified amount of cash consideration that is payable if the customer completes a specified cumulative level of purchases. The Company entered into agreements with several of its suppliers that granted the Company a rebate based on its level of purchases made during fiscal quarters prior to October 1, 2008. In lieu of a cash payment from these suppliers the Company received a credit memo. The Company reduced accounts payable to the supplier, inventory, and cost of goods sold each quarter as the Company earned the rebates. For the three-month period ended December 31, 2007, the cumulative amount of such quarterly rebate was approximately $102,000. The quarterly rebate is net of amounts allocated to unsold inventories and are reflected in the accompanying consolidated statement of operations as a reduction of cost of goods sold for the three-month period ended December 31, 2007. No such rebates were agreed to or recorded for the three-month period ended December 31, 2008.

Foreign Currency Transactions

The functional currency of the Company's wholly owned foreign subsidiaries is the U.S. dollar. Foreign currency transactions may generate receivables or payables that are fixed in terms of the amount of foreign currency that will be received or paid. Fluctuations in exchange rates between the functional currency and the currency in which a transaction is denominated increases or decreases the expected amount of functional currency cash flows upon settlement of the transaction. These increases or decreases in expected functional currency cash flows are foreign currency transaction gains or losses that are included in other income (expense), net in the accompanying consolidated statements of operations. The net (losses) gains from foreign currency transactions were approximately ($31,000) and $10,000 for the three-month periods ended December 31, 2008 and 2007, respectively.

Comprehensive (Loss) Income

For the three month periods ended December 31, 2008 and 2007, the Company did not have any components of comprehensive (loss) income other than net (loss) income.

Recent Accounting Pronouncements

In December 2007, the FASB issued FASB Statement No. 141 (revised 2007), Business Combinations ("SFAS 141(R)"). SFAS 141(R) requires that the fair value of the purchase price of an acquisition including the issuance of equity securities be determined on the acquisition date; requires that all assets, liabilities, non-controlling interests, contingent consideration, contingencies, and in-process research and development costs of an acquired business be recorded at fair value at the acquisition date; requires that acquisition costs generally be expensed as incurred; requires that restructuring costs generally be expensed in periods subsequent to the acquisition date; and requires that changes in deferred tax asset valuation allowances and acquired income tax uncertainties after the measurement period be reflected in income tax expense. SFAS 141(R) also expands disclosures related to business combinations. SFAS 141(R) must be applied prospectively to business combinations occurring after the beginning of the Company's fiscal year 2010, except that business combinations consummated prior to the effective date must apply SFAS 141(R) income tax requirements immediately upon adoption.

Forward Industries, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(UNAUDITED)

NOTE 3 INVENTORIES

Inventories consist primarily of finished goods and are stated at the lower of cost (determined by the first-in, first-out method) or market. Based on management s estimates, an allowance is made to reduce excess, obsolete, slow-moving, or otherwise un-saleable inventories to net realizable value. The allowance is established through charges to cost of goods sold on the Company s consolidated statements of operations. Reserved inventory that is disposed of is charged against the allowance. Management s estimates in determining the adequacy of the allowance are based upon several factors, including analyses of inventory levels, historical loss trends, sales history, and projections of future sales demand. The Company s estimates of the allowance, as well as recoveries of reserved inventory, may change from time to time based on management s assessments, and such changes could be material. At December 31, 2008 and September 30, 2008, the allowances for obsolete inventory were approximately $228,000 and $168,000, respectively.

NOTE 4 DEBT

In March 2008, Forward and its wholly-owned U.S. subsidiary, Koszegi Industries, Inc., elected not to renew their credit facility with a U.S. bank that provided for a committed line of credit in the maximum amount of $3.0 million, including a $1.5 million sub-limit for letters of credit. Accordingly, this credit facility expired March 30, 2008. There were no borrowings or letter of credit obligations outstanding under this facility during either of the three month periods ended December 31, 2008 and December 31, 2007.

In 2003, Forward s wholly-owned Swiss subsidiary, Forward Innovations GmbH (Forward Innovations), established a credit facility with a Swiss bank that provides for an uncommitted line of credit in the maximum amount of $400,000. Amounts borrowed under the facility may be structured as a term loan or loans, with a maximum repayment period of 12 months, as a letter of credit facility, or as a guarantee facility, or any combination of the foregoing. Either party may terminate the facility at any time; however, such termination would not affect the stated maturity of any term loans outstanding. Amounts borrowed other than as a term loan must be settled quarterly or converted into term loans. In connection with this facility, Forward Innovations agreed to certain covenants. Amounts drawn under this credit facility bear interest at variable rates established by the Swiss bank (5.35% as December 31, 2008). At December 31, 2008, Forward Innovations is contingently liable to the Swiss bank in respect of a letter of credit issued on its behalf in the amount of €224,000 (equal to approximately $315,000 as at December 31, 2008) in favor of Forward Innovations freight forwarder and customs agent in connection with its logistics operations in The Netherlands. The effect of the issuance of the letter of credit is to reduce the availability of the credit line in an amount equal to the face amount of the letter of credit. See Note 10.

NOTE 5 SHAREHOLDERS EQUITY

Anti-takeover Provisions

The Company is authorized to issue up to 4,000,000 shares of "blank check" preferred stock. The Board of Directors has the authority and discretion, without shareholder approval, to issue preferred stock in one or more series for any consideration it deems appropriate, and to fix the relative rights and preferences thereof including their redemption, dividend and conversion rights.

Forward Industries, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(UNAUDITED)

Stock Repurchase

On September 27, 2002, the Company s Board of Directors authorized the repurchase of up to 400,000 shares of the Company s outstanding common stock (approximately 7% of the number of shares then outstanding). On January 21, 2004, the Company s Board increased the amount of shares authorized for repurchase to 486,200. Under these authorizations, as of December 31, 2008, the Company had repurchased an aggregate of 172,603 shares at a cost of approximately $0.4 million, but none during the 2009 Quarter, leaving a balance of 313,597 shares (approximately 4% of the shares outstanding at December 31, 2008) under those authorizations. Separately, on March 5, 2008, the Company accepted 72,917 outstanding shares of common stock from the Company s former Chairman of the Board and principal executive officer as consideration for his exercise of options to purchase 100,000 shares of common stock as part of a cashless exercise. See Note 9.

NOTE 6 OPERATING SEGMENT INFORMATION

The Company operates in a single segment: the supply of carrying solutions for portable electronic devices. This carrying-solution segment includes the design, marketing, and distribution of products to its customers that include manufacturers of consumer hand held wireless telecommunications and medical monitoring devices. The Company s carrying solution segment operates in geographic regions that include primarily the APAC, Americas, and Europe. Geographic regions are defined based primarily on the location of the customer. The following table presents net sales related to these geographic segments:

	(all amounts in thousands of dollars)		
	Three Months Ended December 31,		
	2008		**2007**
Americas..	$2,064		$1,524
APAC..	1,695		2,295
Europe	1,548		1,134
Total net sales...	**$5,307**		**$4,953**

NOTE 7 INCOME TAXES

The Company s income tax benefit consists of the following United States and foreign components.

	Three Months Ended December 31,		
	2008		2007
U.S. Federal and State:			
Current...	$ --		$ --
Deferred...	(97,356)		(50,229)
Foreign:			
Current...	--		--
Deferred...	(8,035)		(6,400)
Income tax benefit...	**($105,391)**		**($56,629)**

The Company s effective tax rate does not approximate the statutory United States federal income tax rate primarily due to tax rate differentials in respect of United States state and foreign taxes.

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Forward Industries, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(UNAUDITED)

Effective June 2001, undistributed earnings of the Company s Swiss subsidiary are considered to be permanently invested; therefore, in accordance with SFAS No. 109, no provision for U.S. Federal and state income taxes on those earnings has been provided. At December 31, 2008, the Company s Swiss subsidiary had approximately $4,220,000 of accumulated undistributed earnings.

NOTE 8 LOSS PER SHARE

Basic per share data for each period presented is computed using the weighted-average number of shares of common stock outstanding during each period. Diluted per share data is computed using the weighted-average number of common and dilutive common-equivalent shares outstanding during each period. Dilutive common-equivalent shares consist of shares that would be issued upon the exercise of stock options and warrants, computed using the treasury stock method. For this purpose, the average quoted market prices on the NASDAQ SmallCap Market for the Company's common stock for the three-month periods ended December 31, 2008 and 2007, were $2.36 and $2.66, respectively. Loss per share data for the three month periods ended December 31, 2008 and 2007, excludes all outstanding common equivalent shares as inclusion of such shares would be anti-dilutive.

In accordance with the contingently issuable shares provision of SFAS 128, 100,331 and 21,999 shares of service-based common stock awards (restricted stock) were excluded from the calculation of diluted loss per share for the three month periods ended December 31, 2008 and 2007, respectively.

NOTE 9 STOCK BASED COMPENSATION

In May 2007, shareholders of the Company approved the 2007 Equity Incentive Plan (the 2007 Plan), which authorized the issuance of up to 400,000 shares of common stock to officers, employees, and non-employee directors of the Company upon the grant of restricted common stock and the exercise of stock options awarded to such persons. This plan was adopted by the Board of Directors in February 2007. The price at which restricted common stock may be granted and the exercise price of stock options granted may not be less than the fair market value of the common stock at the date of grant. The Company s Compensation Committee administers the plan. Op the indenture.

We must deliver to the trustee of your debt securities an officer s certificate and a legal opinion of our counsel stating that all conditions precedent to full defeasance, as set forth in the indenture, had been complied with.

Subordination Provisions

Upon any distribution of our assets upon our dissolution, winding up, liquidation, or reorganization, the payment of the principal of, premium, if any, and interest, if any, on the subordinated debt securities will be subordinated, to the extent provided in the subordinated indenture, as may be supplemented, in right of payment to the prior payment in full of all of our senior indebtedness. Our obligation to make payment of the principal of, premium, if any, and interest, if any, on the subordinated debt securities will not otherwise be affected. In addition, no payment on account of principal and premium, if any, sinking fund, or interest, if any, may be made on the subordinated debt securities at any time unless full payment of all amounts due in respect of the principal and premium, if any, sinking fund, and interest, if any, on our senior indebtedness has been made or duly provided for in money or money s worth.

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Notwithstanding the foregoing, unless all of our senior indebtedness has been paid in full, in the event that any payment or distribution made by us is received by the trustee or the holders of any of the subordinated debt securities, such payment or distribution must be paid over to the holders of our senior indebtedness or a person acting on their behalf, to be applied toward the payment of all our senior indebtedness remaining unpaid until all the senior indebtedness has been paid in full. Subject to the payment in full of all our senior indebtedness, the rights of the holders of the subordinated debt securities will be subrogated to the rights of the holders of our senior indebtedness.

By reason of this subordination, in the event of a distribution of our assets upon our insolvency, certain of our general creditors may recover more, ratably, than holders of the subordinated debt securities. The subordinated indenture provides that these subordination provisions will not apply to money and securities held in trust under the defeasance provisions of the subordinated indenture.

When we refer to senior indebtedness in this prospectus, we are referring to the principal of (and premium, if any) and unpaid interest on:

- our indebtedness (including indebtedness of others guaranteed by us), other than subordinated debt securities, whenever created, incurred, assumed, or guaranteed, or money borrowed, unless the instrument creating or evidencing such indebtedness or under which such indebtedness is outstanding provides that such indebtedness is not senior or prior in right of payment to the subordinated debt securities; and

- renewals, extensions, modifications, and refundings of any of such indebtedness.

If this prospectus is being delivered in connection with the offering of a series of subordinated debt securities, the accompanying prospectus supplement or the information incorporated by reference will set forth the approximate amount of our senior indebtedness outstanding as of a recent date.

Information Concerning the Trustee

We will identify the trustee with respect to any debt securities in the prospectus supplement relating to the debt securities. We may conduct banking and other transactions with the trustee in the ordinary course of business.

Governing Law

Unless by their terms they provide otherwise, the indenture and the debt securities will be governed by, and construed in accordance with, the law of the State of New York.

Description of Warrants

General

We may issue warrants for the purchase of common stock, preferred stock, or debt securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants. The warrant agent will not have any obligation or relationship of agency or

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trust for or with any holders or beneficial owners of the warrants. This summary of certain provisions of the warrants is not complete. For the complete terms of a particular series of warrants, you should refer to the prospectus supplement and the warrant agreement for that series of warrants.

Debt Warrants

The prospectus supplement relating to a particular issue of warrants to purchase debt securities will describe the terms of the debt warrants, including the following:

- the title of the debt warrants;
- the offering price for the debt warrants, if any;
- the aggregate number of the debt warrants;
- the designation and terms of the debt securities, including any conversion rights, purchasable upon exercise of the debt warrants;
- the principal amount of debt securities that may be purchased upon exercise of a debt warrant and the exercise price for the warrants, which may be payable in cash, securities, or other property;
- the dates on which the right to exercise the debt warrants will commence and expire;
- if applicable, the minimum or maximum amount of the debt warrants that may be exercised at any one time;
- whether the debt warrants represented by the debt warrant certificates or debt securities that may be issued upon exercise of the debt warrants will be issued in registered or bearer form;
- information with respect to book-entry procedures, if any;
- the currency or currency units in which the offering price, if any, and the exercise price are payable;
- if applicable, a discussion of material United States federal income tax considerations;
- the antidilution provisions of the debt warrants, if any;
- the redemption or call provisions, if any, applicable to the debt warrants;

- any provisions with respect to the holder s right to require us to repurchase the warrants upon a change in control; and

- any additional terms of the debt warrants, including terms, procedures, and limitations relating to the exchange, exercise, and settlement of the debt warrants.

Debt warrant certificates will be exchangeable for new debt warrant certificates of different denominations. Debt warrants may be exercised at the corporate trust office of the warrant agent or any other office indicated in the prospectus supplement. Prior to the exercise of their debt warrants, holders of debt warrants will not have any of the rights of holders of the debt securities purchasable upon exercise and will not be entitled to payment of principal or any premium, if any, or interest on the debt securities purchasable upon exercise.

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Stock Warrants

The prospectus supplement relating to a particular series of warrants to purchase our common stock or preferred stock will describe the terms of the warrants, including the following:

- the title of the warrants;
- the offering price for the warrants, if any;
- the aggregate number of the warrants;
- the number of warrants outstanding as of the date specified in the applicable prospectus supplement;
- the designation and terms of the common stock or preferred stock that may be purchased upon exercise of the warrants;
- the number of shares of common stock or preferred stock that may be purchased upon exercise of a warrant and the exercise price for the warrants;
- the dates on which the right to exercise the warrants shall commence and expire;
- if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;
- if applicable, any provisions for changes or adjustments to the exercise price of the warrants;
- the currency or currency units in which the offering price, if any, and the exercise price are payable;
- if applicable, a discussion of material United States federal income tax considerations;
- the antidilution provisions of the warrants, if any;
- the redemption or call provisions, if any, applicable to the warrants;
- any provisions with respect to holder s right to require us to repurchase the warrants upon a change in control; and

- any additional terms of the warrants, including terms, procedures, and limitations relating to the exchange, exercise, and settlement of the warrants.

Holders of equity warrants will not be entitled:

- to vote, consent, or receive dividends;
- receive notice as stockholders with respect to any meeting of stockholders for the election of our directors or any other matter; or
- exercise any rights as stockholders of the Company.

As set forth in the applicable prospectus supplement, the exercise price and the number of shares of common stock or preferred stock purchasable upon exercise of a warrant will be subject to adjustment in certain events, including the issuance of a stock dividend to any holders of common stock, a stock split, reverse stock split, combination, subdivision or reclassification of common stock, and such other events, if any, specified in the applicable prospectus supplement.

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Plan of Distribution

We may sell the securities separately or together:

- through one or more underwriters or dealers in a public offering and sale by them;
- directly to investors;
- through agents; or
- through a combination of any of these methods of sale.

We may sell the securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed from time to time;
- at market prices prevailing at the times of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.

We will set forth in a prospectus supplement the terms of the offering of securities, including:

- the name or names of any agents or underwriters, if any;
- the purchase price of the securities being offered and the proceeds we will receive from the sale;
- any over-allotment options under which underwriters may purchase additional securities from us;
- any agency fees or underwriting discounts and other items constituting agents or underwriters compensation;
- any discounts or concessions allowed or reallowed or paid to dealers; and
- any securities exchanges on which such securities may be listed.

If we use underwriters for a sale of securities, the underwriters will acquire the securities for their own account. The underwriters may resell the securities in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. The underwriters will be obligated to purchase all the securities of the series offered if they purchase any of the securities of that series. We may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement naming the underwriter the nature of any such relationship.

One or more firms, referred to as remarketing firms, may also offer or sell the securities, if the prospectus supplement so indicates, in connection with a remarketing arrangement upon their purchase. Remarketing firms will act as principals for their own accounts or as agents for Odyssey. These remarketing firms will offer or sell the securities pursuant to the terms of the securities. The prospectus supplement will identify any remarketing firm and the terms of its agreement, if any, with Odyssey and will describe the remarketing firm s compensation. Remarketing firms may be deemed to be underwriters in connection with the securities they remarket. Remarketing firms may be entitled under agreements that may be entered into with Odyssey to indemnification by us against certain civil liabilities, including liabilities under the Securities Act, and may be customers of, engage in transactions with, or perform services for us in the ordinary course of business.

We may determine the price or other terms of the securities offered under this prospectus by use of an electronic auction. We will describe how any auction will determine the price or any other terms, how potential investors may participate in the auction, and the nature of the obligations of the underwriter, dealer, or agent in the applicable prospectus supplement.

Underwriters, dealers, or agents may receive compensation in the form of discounts, concessions, or commissions from us or our purchasers (as their agents in connection with the sale of securities). These underwriters, dealers, or agents may be considered to be underwriters under the Securities Act. As a result, discounts, commissions, or profits on resale received by the underwriters, dealers, or agents may be treated as underwriting discounts and commissions. The prospectus supplement will identify any such underwriter, dealer, or agent, and describe any compensation received by them from us. Any initial public offering price and any discounts or concessions allowed or reallowed or paid to dealers may be changed from time to time.

We may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we must pay for solicitation of these contracts in the prospectus supplement.

Underwriters, dealers, and agents may be entitled to indemnification by us against certain civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments made by the underwriters, dealers, or agents, under agreements between us and the underwriters, dealers, and agents.

We may grant underwriters who participate in the distribution of securities an option to purchase additional securities to cover over-allotments, if any, in connection with the distribution.

All debt securities will be new issues of securities with no established trading market. Underwriters involved in the public offering and sale of debt securities may make a market in the debt securities. However, they are not obligated to make a market and may discontinue market-making activity at any time. No assurance can be given as to the liquidity of the trading market for any debt securities.

Underwriters or agents and their associates may be customers of, engage in transactions with, or perform services for us in the ordinary course of business.

Any underwriter may engage in over-allotment, stabilizing transactions, short covering transactions, and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Short covering transactions involve purchases of the securities in the open market after the distribution is completed to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

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Any underwriters who are qualified market makers on the NASDAQ Stock Market may engage in passive market-making transactions in the securities on the NASDAQ Stock Market in accordance with Rule 103 of Regulation M, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the securities. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker s bid, however, the passive market maker s bid must then be lowered when certain purchase limits are exceeded.

Legal Matters

The validity of the securities offered by this prospectus will be passed upon by Akerman Senterfitt, Tampa, Florida.

Experts

The consolidated financial statements of Odyssey and its subsidiaries as of December 31, 2007 and 2008, and for each of the years in the three-year period ended December 31, 2008, incorporated in this prospectus by reference from our Annual Report on Form 10-K for the year ended December 31, 2008, have been audited by Ferlita, Walsh & Gonzalez, P.A., independent registered public accounting firm, as stated in their report which is incorporated herein by reference and has been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

Where You Can Find Additional Information

We have filed a registration statement on Form S-3 with the SEC relating to the common stock, the preferred stock, the debt securities, and the warrants offered by this prospectus. This prospectus does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto. We have omitted parts of the registration statement, as permitted by the rules and regulations of the SEC. Statements contained in this prospectus as to the contents of any contract or other document referred to are not necessarily complete and in each instance reference is made to the copy of such contract or other document filed as an exhibit to the registration statement, each such statement being qualified in all respects by such reference. For further information with respect to us and the common stock, the preferred stock, the debt securities, and the warrants offered hereby, reference is made to such registration statement, exhibits, and schedules.

We are subject to the information and periodic reporting requirements of the Exchange Act, and, in accordance therewith, file periodic reports, current reports, proxy statements, and other information with the SEC. Such periodic reports, current reports, proxy statements, other information, and a copy of the registration statement on Form S-3 may be inspected by anyone without charge and copies of these materials may be obtained upon the payment of the fees prescribed by the SEC, at the Public Reference Room maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The

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registration statement on Form S-3 and the periodic reports, current reports, proxy statements, and other information filed by us are also available through the Internet web site maintained by the SEC at the following address: http://www.sec.gov.

Documents Incorporated by Reference

The SEC allows us to incorporate by reference into this prospectus the information we file with it. This means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is considered to be a part of this prospectus, and later information we file with the SEC will automatically update and supersede this information. The following documents filed with the SEC (in each case, Commission File No. 001-31895) are incorporated by reference in this prospectus:

- our Annual Report on Form 10-K for the year ended December 31, 2008;
- our Quarterly Reports on Form 10-Q for the quarters ended March 31, June 30, and September 30, 2009;
- our Current Reports on Form 8-K filed with the SEC on May 26, June 4, July 24, and October 2, 2009;
- our Definitive Proxy Statement on Schedule 14A for our Annual Meeting of Stockholders held on May 27, 2009; and
- the description of our common stock contained in our Registration Statement on Form 8-A filed with the SEC on November 13, 2003, pursuant to Section 12 of the Exchange Act, including any subsequently filed amendments and reports updating such description.

We are also incorporating by reference any future filings we make with the SEC under Section 13(a), 13(c), 14, or 15(d) of the Exchange Act until this offering is completed, including those made between the date of filing of the initial registration statement and to the date of effectiveness of the registration statement, except for information furnished under Item 2.02 or Item 7.01 of our Current Reports on Form 8-K, which is not deemed to be filed and not incorporated by reference herein.

At your verbal or written request, we will provide you, without charge, a copy of any of the documents we have incorporated by reference into this prospectus but not delivered with the prospectus (other than exhibits to such documents, unless those exhibits are specifically incorporated by reference into the documents that this prospectus incorporates). If you want more information, write or call:

Michael J. Holmes, Chief Financial Officer

Odyssey Marine Exploration, Inc.

5215 West Laurel Street

Tampa, Florida 33607

(813) 876-1776

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24 Shares of Series G 8% Convertible Preferred Stock

Warrants to Purchase 1,800,000 Shares of Common Stock

Odyssey Marine Exploration, Inc.

Prospectus Supplement

October 8, 2010