

TOP SHIPS INC.  
Form 20-F  
June 29, 2009

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

FORM 20-F

(Mark One)

REPORT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

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

For the fiscal year 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 \_\_\_\_\_

OR

SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report \_\_\_\_\_

Commission file number 000-50859

TOP SHIPS INC.

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

Republic of the Marshall Islands

(Jurisdiction of incorporation or organization)

1 Vas. Sofias and Meg. Alexandrou Str, 15124 Maroussi, Greece

(Address of principal executive offices)

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(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

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Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class	Name of each exchange on which registered
Common Stock par value \$0.01 per share	NASDAQ Global Select Market

Securities registered or to be registered pursuant to Section 12(g) of the Act.

NONE

(Title of class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

NONE

(Title of class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

As of December 31, 2008, 29,901,048 shares of Common Stock, par value \$0.01 per share.

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

Yes                      No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

Yes                      No

Note – Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

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



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Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes                      No

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

Large accelerated filer | |              Accelerated filer | X |              Non-accelerated filer | |

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

X U.S. GAAP

International Financial Reporting Standards as issued by the International Accounting Standards Board

Other

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow:

Item	Item
17	18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes                      No X

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Matters discussed in this report may constitute forward-looking statements. The Private Securities Litigation Reform Act of 1995 provides safe harbor protections for forward-looking statements in order to encourage companies to provide prospective information about their business. Forward-looking statements include statements concerning plans, objectives, goals, strategies, future events or performance, and underlying assumptions and other statements, which are other than statements of historical facts.

TOP SHIPS INC. desires to take advantage of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 and is including this cautionary statement in connection with this safe harbor legislation. This report and any other written or oral statements made by us or on our behalf may include forward-looking statements, which reflect our current views with respect to future events and financial performance. When used in this report, the words "anticipate," "believe," "expect," "intend," "estimate," "forecast," "project," "plan," "potential," "may," "should," and similar expressions identify forward-looking statements.

The forward-looking statements in this report are based upon various assumptions, many of which are based, in turn, upon further assumptions, including without limitation, management's examination of historical operating trends, data contained in our records and other data available from third parties. Although we believe that these assumptions were reasonable when made, because these assumptions are inherently subject to significant uncertainties and contingencies which are difficult or impossible to predict and are beyond our control, we cannot assure you that we will achieve or accomplish these expectations, beliefs or projections.

In addition to these assumptions and matters discussed elsewhere herein and in the documents incorporated by reference herein, important factors that, in our view, could cause actual results to differ materially from those discussed in the forward-looking statements include the strength of world economies and currencies, general market conditions, including fluctuations in charterhire rates and vessel values, changes in demand in the shipping market, including the effect of changes in OPEC's petroleum production levels and worldwide oil consumption and storage, changes in regulatory requirements affecting vessel operating including requirements for double hull tankers, changes in TOP SHIPS INC.'s operating expenses, including bunker prices, dry-docking and insurance costs, changes in governmental rules and regulations or actions taken by regulatory authorities, changes in the price of our capital investments, potential liability from pending or future litigation, general domestic and international political conditions, potential disruption of shipping routes due to accidents, political events or acts by terrorists, and other important factors described from time to time in the reports filed by us with the Securities and Exchange Commission, or the SEC.

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PART I

ITEM 1. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS

Not Applicable.

ITEM 2. OFFER STATISTICS AND EXPECTED TIMETABLE

Not Applicable.

ITEM 3. KEY INFORMATION

Unless the context otherwise requires, as used in this report, the terms "Company," "we," "us," and "our" refer to TOP SHIPS INC. and all of its subsidiaries, and "TOP SHIPS INC." refers only to TOP SHIPS INC. and not to its subsidiaries. We use the term deadweight ton or dwt, in describing the size of vessels. Dwt, expressed in metric tons each of which is equivalent to 1,000 kilograms, refers to the maximum weight of cargo and supplies that a vessel can carry.



## A. Selected Financial Data

The following table sets forth the selected historical consolidated financial data and other operating data of TOP SHIPS INC. and its predecessors for the years ended December 31, 2004, 2005, 2006, 2007 and 2008. The following information should be read in conjunction with Item 5 "Operating and Financial Review and Prospects" and the consolidated financial statements and related notes included herein. The following selected historical consolidated financial data of TOP SHIPS INC. and its predecessors in the table are derived from our consolidated financial statements and notes thereto which have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP, and have been audited for the years ended December 31, 2004 and 2005 by Ernst & Young (Hellas) Certified Auditors Accountants S.A, or Ernst and Young, and for the years ended December 31, 2006, 2007 and 2008 by Deloitte, Hadjipavlou, Sofianos & Cambanis S.A., or Deloitte, both independent registered public accounting firms.

## Year Ended December 31,

Dollars in thousands, except per share data  
and average daily results

	2004	2005	2006	2007	2008
<b>INCOME STATEMENT DATA</b>					
Revenues	\$93,829	\$244,215	\$310,043	\$252,259	\$257,380
Voyage expenses	16,898	36,889	55,351	59,414	38,656
Charter hire expense	-	7,206	96,302	94,118	53,684
Amortization of deferred gain on sale and leaseback of vessels	-	(837)	(8,110)	(15,610)	(18,707)
Other vessel operating expenses	16,859	47,315	66,082	67,914	67,114
Dry-docking costs	7,365	10,478	39,333	25,094	10,036
General and administrative expenses (1)	8,579	23,818	23,016	24,824	31,473
Foreign currency (gains) losses, net	75	(68)	255	176	(85)
Gain on sale of vessels	(1,889)	(10,831)	(12,667)	(1,961)	(19,178)
Depreciation	13,108	47,055	35,266	27,408	32,664
Total operating expenses	60,995	161,025	294,828	281,377	195,657
Operating income (loss)	32,834	83,190	15,215	(29,118)	61,723
Interest and finance costs	(4,839)	(19,430)	(27,030)	(19,518)	(25,764)
Gain / (loss) on financial instruments	(362)	(747)	(2,145)	(3,704)	(12,024)
Interest income	481	1,774	3,022	3,248	1,831
Other income (expense), net	80	134	(67)	16	(127)
Net income (loss)	\$28,194	\$64,921	\$(11,005)	\$(49,076)	\$25,639
Earnings (loss) per share, basic and diluted	\$6.54	\$6.97	\$(1.16)	\$(4.09)	\$1.01
Weighted average common shares outstanding, basic	4,307,483	9,308,923	10,183,424	11,986,857	25,445,031
Weighted average common shares outstanding, diluted	4,307,483	9,310,670	10,183,424	11,986,857	25,445,031
Dividends declared per share	\$1.80	\$2.64	\$23.13	-	-



Dollars in thousands, except per share data  
and average daily results

	2004	2005	2006	2007	2008
<b>BALANCE SHEET DATA, at end of period</b>					
Current assets	\$ 141,051	\$ 67,574	\$ 72,799	\$ 102,161	\$ 57,088
Total assets	533,138	970,386	490,885	776,917	698,375
Current liabilities, including current portion of long-term debt	42,811	76,143	45,416	153,290	386,934
Total long-term debt, including current portion	194,806	564,103	218,052	438,884	342,479
Common Stock	278	280	108	205	283
Stockholders' equity	315,061	359,147	161,198	211,408	292,051

#### FLEET DATA

Total number of vessels at end of period	15.0	27.0	24.0	23.0	12.0
Average number of vessels (2)	9.6	21.7	26.7	22.4	18.8
Total voyage days for fleet (3)	3,215	7,436	8,634	7,032	6,099
Total time charter days for fleet	1,780	5,567	6,223	4,720	5,064
Total spot market days for fleet	1,435	1,869	2,411	2,312	1,035
Total calendar days for fleet (4)	3,517	7,905	9,747	8,176	6,875
Fleet utilization (5)	91.4%	94.1%	88.6%	86.0%	88.7%

#### AVERAGE DAILY RESULTS

Time charter equivalent (6)	\$ 23,929	\$ 27,881	\$ 29,499	\$ 27,424	\$ 35,862
Other vessel operating expenses (7)	4,794	5,985	6,780	8,307	9,762
General and administrative expenses (8)	2,439	3,013	2,361	3,036	4,578

- (1) General and administrative expenses include, sub-manager fees and other general and administrative expenses. During 2004, 2005, 2006, 2007 and 2008, we paid to the members of our senior management and to our directors' aggregate compensation of approximately \$4.4 million, \$8.1 million, \$4.2 million, \$4.8 million and \$5.6 million respectively.
- (2) Average number of vessels is the number of vessels that constituted our fleet for the relevant period, as measured by the sum of the number of days each vessel was a part of our fleet during the period divided by the number of calendar days in that period.
- (3) Total voyage days for fleet are the total days the vessels were in our possession for the relevant period net of off hire days associated with major repairs, dry-dockings or special or intermediate surveys.
- (4) Calendar days are the total days the vessels were in our possession for the relevant period including off hire days associated with major repairs, dry-dockings or special or intermediate surveys.
- (5) Fleet utilization is the percentage of time that our vessels were available for revenue generating voyage days, and is determined by dividing voyage days by fleet calendar days for the relevant period.



- (6) Time charter equivalent rate, or TCE rate, is a measure of the average daily revenue performance of a vessel on a per voyage basis. Our method of calculating TCE rate is consistent with industry standards and is determined by dividing time charter equivalent revenues or TCE revenues by voyage days for the relevant time period. TCE revenues are revenues minus voyage expenses. Voyage expenses primarily consist of port, canal and fuel costs that are unique to a particular voyage, which would otherwise be paid by the charterer under a time charter contract, as well as commissions. TCE revenues and TCE rate non-GAAP measures, provide additional meaningful information in conjunction with shipping revenues, the most directly comparable GAAP measure, because it assists Company's management in making decisions regarding the deployment and use of its vessels and in evaluating their financial performance.
- (7) Daily other vessel operating expenses, which includes crew costs, provisions, deck and engine stores, lubricating oil, insurance, maintenance and repairs is calculated by dividing other vessel operating expenses by fleet calendar days for the relevant time period.
- (8) Daily general and administrative expenses are calculated by dividing general and administrative expenses by fleet calendar days for the relevant time period.

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The following table reflects reconciliation of TCE revenues to revenues as reflected in the consolidated statements of operations and calculation of the TCE rate (all amounts are expressed in thousands of U.S. dollars, except for Average Daily Time Charter Equivalent amounts and Total Voyage Days):

	2004	2005	2006	2007	2008
On a consolidated basis					
Revenues	\$93,829	\$244,215	\$310,043	\$252,259	\$257,380
Less:					
Voyage expenses	(16,898)	(36,889)	(55,351)	(59,414)	(38,656)
Time charter equivalent revenues	\$76,931	\$207,326	\$254,692	\$192,845	\$218,724
Total voyage days	3,215	7,436	8,634	7,032	6,099
Average Daily Time Charter Equivalent	\$23,929	\$27,881	\$29,499	\$27,424	\$35,862

	2004	2005	2006	2007	2008
Tanker Fleet					
Revenues	\$93,829	\$244,215	\$310,043	\$248,944	\$163,995
Less:					
Voyage expenses	(16,898)	(36,889)	(55,351)	(59,253)	(34,215)
Time charter equivalent revenues	\$76,931	\$207,326	\$254,692	\$189,691	\$129,780
Total voyage days	3,215	7,436	8,634	6,991	4,357
Average Daily Time Charter Equivalent	\$23,929	\$27,881	\$29,499	\$27,134	\$29,786

	2007	2008
Drybulk Fleet		
Revenues	\$1,902	\$71,590
Less:		
Voyage expenses	(161)	(4,441)
Time charter equivalent revenues	\$1,741	\$67,149
Total voyage days	41	1,742
Average Daily Time Charter Equivalent	\$42,463	\$38,547

B. Capitalization and Indebtedness

Not Applicable.

C. Reasons for the Offer and Use of Proceeds

Not Applicable.

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D. Risk Factors

The following risks relate principally to the industries in which we operate and our business in general. Any of the risk factors could materially and adversely affect our business, financial condition or operating results and the trading price of our common stock.

Risks Related to Our Industries

The international tanker and drybulk industries are both cyclical and volatile and this may lead to reductions and volatility in our charter rates when we re-charter our vessels, vessel values and our results of operations

The international tanker and drybulk industries in which we operate are cyclical with attendant volatility in charter hire rates, vessel values and industry profitability. For both tankers and drybulk vessels, the degree of charter rate volatility among different types of vessels has varied widely. If we enter into a charter when charter rates are low, our revenues and earnings will be adversely affected. In addition, a decline in charter hire rates likely will cause the value of our vessels to decline. Our current fleet deployment consists mainly of long term time charters and long term bareboat charters which limits significantly our exposure to charter rate volatility and its effect on our result of operations. We are nonetheless exposed to changes in spot rates for one of our drybulk vessels that do not have long term charter coverage. Additionally, changes in spot rates in the tanker sector and the drybulk sector can affect the value of respective vessels at any given time despite the existence of long term employment contracts. Our ability to re-charter our vessels on the expiration or termination of their current time and bareboat charters and the charter rates payable under any renewal or replacement charters will depend upon, among other things, economic conditions in the tanker and drybulk market.

The factors affecting the supply and demand for our vessels are outside our control and are unpredictable. The nature, timing, direction and degree of changes in tanker and drybulk industry conditions are also unpredictable. Factors that influence demand for tanker and drybulk vessel capacity include:

- demand for refined petroleum products and crude oil for tankers and drybulk commodities for drybulk vessels;
- changes in crude oil production and refining capacity as well as drybulk commodity production and resulting shifts in trade flows for crude oil, petroleum product and drybulk commodities;
- the location of regional and global crude oil refining facilities and drybulk commodities markets that affect the distance refined petroleum products and crude oil or drybulk commodities are to be moved by sea;
  - global and regional economic and political conditions;
- the location of regional and global crude oil refining facilities and drybulk commodities markets that affect the distance refined petroleum products and crude oil or drybulk commodities are to be moved by sea;
  - environmental and other regulatory developments;



- currency exchange rates; and
- weather.

The factors that influence the supply of oceangoing vessel capacity include:

- the number of newbuilding deliveries;
- the scrapping rate of older vessels;
- the price of steel;
- vessel casualties;
- potential conversion of vessels to alternative use;
- changes in environmental and other regulations that may limit the useful lives of vessels;
- port or canal congestion;
- the number of vessels that are out of service at a given time; and
- changes in global crude oil and drybulk commodity production.

The international tanker and drybulk shipping industries have experienced drastic downturns after experiencing historically high charter rates and vessel values in the recent past, and a continued downturn in these markets may have an adverse effect on our earnings, impair the carrying value of our vessels and affect compliance with our loan covenants.

The Baltic Drybulk Index, or BDI, a U.S. dollar daily average of charter rates issued by the London based Baltic Exchange (an organization providing maritime market information for the trading and settlement of physical and derivative contracts) that takes into account input from brokers around the world regarding fixtures for various routes, dry cargoes and various drybulk vessel sizes, declined from a high of 11,793 in May 2008 to a low of 663 in December 2008, which represents a decline of 94%. The BDI fell over 70% during the month of October alone. The decline in charter rates is due to various factors, including the lack of trade financing for purchases of commodities carried by sea, which has resulted in a significant decline in cargo shipments, and the excess supply of iron ore in China, which has resulted in falling iron ore prices and increased stockpiles in Chinese ports. The decline in charter rates in the drybulk market also affects the value of our drybulk vessels, which follows the trends of drybulk charter rates, and earnings on our charters, and similarly, affects our cash flows, liquidity and compliance with the covenants contained in our loan agreements. The BDI has since risen to 4,026 as of June 17, 2009. However, there can be no assurance that the drybulk charter market will continue to experience recovery over the next several months and the market could decline from its current level.

The Baltic Dirty Tanker Index, a U.S. dollar daily average of charter rates issued by the London based Baltic Exchange that takes into account input from brokers around the world regarding crude oil fixtures for various routes various tanker vessel sizes, declined from a high of 2,347 in July 2008 to a low of 453 in mid-April 2009, which represents a decline of 80%. The Baltic Clean Tanker Index has fallen over 1,160 points, or 77%, since the early summer of 2008. The decline in charter rates is due to various factors, including the significant fall in demand for crude oil and petroleum products, the consequent rising inventories of crude oil and petroleum products in the United States and in other industrialized nations and the corresponding reduction in oil refining, the dramatic fall in the price of oil in 2008, and the restrictions on crude oil production that the Organization of Petroleum Exporting Countries (OPEC) and other non-OPEC oil producing countries have imposed in an effort to stabilize the price of oil.

If the current low charter rates in the tanker and drybulk market continue through a significant period, our earnings may be adversely affected and we may have to record impairment adjustments to the carrying values of our fleet, and we may not be able to maintain compliance with the financial covenants in our loan agreements even though we have received waivers for certain breaches as discussed in "Item 5 – Operating and Financial Review And Prospects - Tabular Disclosure of Contractual Obligations – Long term debt". In such a situation, unless our lenders were willing to provide modifications to waivers of covenant compliance or modifications to our covenants, in order to remain viable, we would sell vessels in our fleet and/or seek to raise additional capital in the equity markets. Our lenders' interests may be different from ours, and we may not be able to obtain our lenders' permission or waivers when needed. This may limit our ability to continue to conduct our operations, finance our future operations, make acquisitions or pursue business opportunities. A decline in charter rates could have a material adverse effect on our business, financial condition and results of operations.

Compliance with environmental laws or regulations may adversely affect our operations.

The shipping industry in general and our business and the operation of tankers and drybulk vessels in particular, are affected by a variety of governmental regulations in the form of numerous international conventions, national, state and local laws and international, national and local regulations in force in the jurisdictions in which such tankers and drybulk vessels operate, as well as in the country or countries in which such tankers and drybulk vessels are registered. These regulations include:

- the United States Oil Pollution Act of 1990, or OPA, which imposes strict liability for the discharge of oil into the 200-mile United States exclusive economic zone, the obligation to obtain certificates of financial responsibility for vessels trading in United States waters and the requirement that newly constructed tankers that trade in United States waters be constructed with double-hulls;

- the International Convention on Civil Liability for Oil Pollution Damage of 1969, as amended in 2000, or the CLC, entered into by many countries (other than the United States) relating to strict liability for pollution damage caused by the discharge of oil;

- the International Maritime Organization, or IMO (the United Nations agency for maritime safety and the prevention of pollution by ships), International Convention for the Prevention of Pollution from Ships, 1973, as modified by the related Protocol of 1978 relating thereto, or the MARPOL Convention, which has been updated through various amendments, with respect to strict technical and operational requirements for tankers;

- the IMO International Convention for the Safety of Life at Sea, or SOLAS Convention, with respect to crew and passenger safety;



the International Convention on Load Lines, 1966, or LL Convention, with respect to the safeguarding of life and property through limitations on load capability for vessels on international voyages; and

- the United States Marine Transportation Security Act of 2002, or MTSA.

More stringent maritime safety rules have been imposed in Europe as a result of the oil spill off the coast of France in November 2002 relating to the loss of the M/T Prestige, a 26-year old single-hull tanker owned by a company not affiliated with us. Additional laws and regulations may also be adopted that could limit our ability to do business or increase the cost of our doing business and that could have a material adverse effect on our operations. In addition, we are required by various governmental and quasi-governmental agencies to obtain certain permits, licenses, certificates and financial assurances with respect to our vessel operations. In the event of war or national emergency, our tankers and drybulk vessels may be subject to requisition by the government of the flag flown by the tanker or drybulk vessel without any guarantee of compensation for lost profits. We believe our vessels are maintained in good condition in compliance with present regulatory requirements, are operated in compliance with applicable safety/environmental laws and regulations and are insured against usual risks for such amounts as our management deems appropriate. Our vessels' operating certificates and licenses are renewed periodically during each vessel's required annual survey. However, government regulation of tankers and drybulk vessels, particularly in the areas of safety and environmental impact, may change in the future and require us to incur significant capital expenditures on our ships to keep them in compliance.

Under local, national and foreign laws, as well as international treaties and conventions, we could incur material liabilities, including cleanup obligations, natural resource damages and third-party claims for personal injury or property damages, in the event that there is a release of petroleum or other hazardous substances from our vessels or otherwise in connection with our current or historic operations. We could also incur substantial penalties, fines and other civil or criminal sanctions, including in certain instances seizure or detention of our vessels, as a result of violations of or liabilities under environmental laws, regulations and other requirements.

For example, OPA affects all vessel owners shipping oil to, from or within the United States. OPA allows for potentially unlimited liability for owners, operators and bareboat charterers of vessels without regard to fault for oil pollution in United States waters. Similarly, the CLC, which has been adopted by most countries outside of the United States, imposes liability for oil pollution in international waters. OPA expressly permits individual states to impose their own liability regimes with regard to hazardous materials and oil pollution incidents occurring within their boundaries. Coastal states in the United States have enacted pollution prevention liability and response laws, many providing for unlimited liability.

Future accidents may be expected in the shipping industry, and such accidents or other events may be expected to result in the adoption of even stricter laws and regulations, which could limit our operations or our ability to do business and which could have a material adverse effect on our business and financial results.

Because the market value of our vessels may fluctuate significantly, we may incur losses when we sell vessels or we may be required to write down their carrying value, which will adversely affect our earnings.

Current market conditions have caused a decrease in the fair market value of our vessels. The fair market value of our vessels may increase and decrease depending on the following factors:

- general economic and market conditions affecting the international tanker and drybulk shipping industries;
  - prevailing level of charter rates;
  - competition from other shipping companies;
  - types, sizes and ages of vessels;
  - other modes of transportation;
    - cost of newbuildings;
    - price of steel;
  - governmental or other regulations; and
  - technological advances.

If we sell vessels at a time when vessel prices have fallen and before an impairment is identified, the sale may be at less than the vessel's carrying amount in our financial statements, or if vessel prices have fallen below the carrying amount in our financial statements, in which case we evaluate the asset for a potential impairment and may be required to write down the carrying amount of the vessels on our financial statements and incur a loss and a reduction in earnings, if the estimate of undiscounted cash flows, excluding interest charges, expected to be generated by the use of the asset is less than its carrying amount.

An increase in the supply of vessel capacity without an increase in demand for vessel capacity would likely cause charter rates and vessel values to decline, which could have a material adverse effect on our revenues and profitability.

The supply of vessels generally increases with deliveries of new vessels and decreases with the scrapping of older vessels, conversion of vessels to other uses, such as floating production and storage facilities, and loss of tonnage as a result of casualties. Currently there is significant new building activity with respect to virtually all sizes and classes of vessels. If the amount of tonnage delivered exceeds the number of vessels being scrapped, vessel capacity will increase. If the supply of vessel capacity increases faster than the demand for vessel capacity, the charter rates paid for our vessels as well as the value of our vessels could materially decline. Such a decline in charter rates and vessel values would likely have a material adverse effect on our revenues and profitability.

Our operating results from our tankers are subject to seasonal fluctuations, which may adversely affect our operating results.

Eight of the vessels in our combined fleet are tankers. We operate our tankers in markets that have historically exhibited seasonal variations in demand and, therefore, charter rates. This seasonality may result in quarter-to-quarter volatility in our operating results. The tanker sector is typically stronger in the fall and winter months in anticipation of increased consumption of oil and petroleum products in the northern hemisphere during the winter months. As a result, our revenues from our tankers may be weaker during the fiscal quarters ended June 30 and September 30, and, conversely, revenues may be stronger in fiscal quarters ended December 31 and March 31. This seasonality could materially affect our results from operations.

Disruptions in world financial markets and the resulting governmental action in the United States and in other parts of the world could have a material adverse impact on our results of operations, financial condition and cash flows, and could cause the market price of shares of our common stock to decline.

Over the last year, global financial markets have experienced extraordinary disruption and volatility following adverse changes in the global credit markets. The credit markets in the United States have experienced significant contraction, deleveraging and reduced liquidity, and governments around the world have taken significant measures in response to such events, including the enactment of the Emergency Economic Stabilization Act of 2008 in the United States, and may implement other significant responses in the future.

Securities and futures markets and the credit markets are subject to comprehensive statutes, regulations and other requirements. The U.S. Securities and Exchange Commission, or the SEC, other regulators, self-regulatory organizations and exchanges have enacted temporary emergency regulations and may take other extraordinary actions in the event of market emergencies and may effect permanent changes in law or interpretations of existing laws. Recently, a number of financial institutions have experienced serious financial difficulties and, in some cases, have entered into bankruptcy proceedings or are in regulatory enforcement actions. These difficulties have resulted, in part, from declining markets for assets held by such institutions, particularly the reduction in the value of their mortgage and asset-backed securities portfolios. These difficulties have been compounded by a general decline in the willingness by banks and other financial institutions to extend credit. In addition, these difficulties may adversely affect the financial institutions that provide our credit facilities and may impair their ability to continue to perform under their financing obligations to us, which could have an impact on our ability to fund current and future obligations, including our ability to take delivery of our newbuildings.

We face risks attendant to changes in economic environments, changes in interest rates and instability in securities markets around the world, among other factors. Major market disruptions and the current adverse changes in market conditions and regulatory climate in the United States and worldwide may adversely affect our business or impair our ability to borrow amounts under our credit facilities or any future financial arrangements. We cannot predict how long the current market conditions will last. However, these recent and developing economic and governmental factors may have a material adverse effect on our results of operations, financial condition or cash flows and could cause the price of shares of our common stock to decline significantly or impair our ability to make distributions to our shareholders.

Compliance with safety and other vessel requirements imposed by classification societies may be very costly and may adversely affect our business.

The hull and machinery of every commercial vessel must be classed by a classification society authorized by its country of registry. The classification society certifies that a vessel is safe and seaworthy in accordance with the applicable rules and regulations of the country of registry of the vessel and the Safety of Life at Sea Convention. Our vessels are currently enrolled with the American Bureau of Shipping, Lloyd's Register of Shipping, Det Norske Veritas and Bureau Veritas each of which is a member of the International Association of Classification Societies.

A vessel must undergo annual surveys, intermediate surveys and special surveys. In lieu of a special survey, a vessel's machinery may be placed on a continuous survey cycle, under which the machinery would be surveyed periodically over a five-year period. Our vessels are on special survey cycles for hull inspection and continuous survey cycles for machinery inspection. Every vessel is also required to be dry docked every two to three years for inspection of the underwater parts of such vessel.

If a vessel does not maintain its class and/or fails any annual survey, intermediate survey or special survey, the vessel will be unable to trade between ports and will be unemployable, which will negatively impact our revenues and results from operations.

Our earnings may be adversely affected if we do not successfully employ our vessels.

Given current market conditions, we seek to deploy our vessels on time and bareboat charters in a manner that will help us achieve a steady flow of earnings. As of the date of this report, three of our tanker vessels and four of our drybulk vessels were contractually committed to time charters, and five of our tanker vessels and one of our drybulk vessels were contractually committed to bareboat charters. Although these period charters provide relatively steady streams of revenue as well as a portion of the revenues generated by the charterer's deployment of the vessels in the spot market or otherwise, our vessels committed to period charters may not be available for spot voyages during an upturn in the tanker or drybulk industry cycle, as the case may be, when spot voyages might be more profitable. The spot market is highly competitive, and spot market charter rates may fluctuate dramatically based on the supply and demand for the major commodities carried internationally by water as well as other factors. As of the date of this report, we did not have any vessels that were trading in the spot market. If we cannot continue to employ our vessels on profitable time charters or trade them in the spot market profitably, our results of operations and operating cash flow may suffer if rates achieved are not sufficient to cover respective vessel operating and financial expenses.

World events could adversely affect our results of operations and financial condition.

Terrorist attacks such as the attacks on the United States on September 11, 2001, the bombings in Spain on March 11, 2004 and in London on July 7, 2005 and the continuing response of the United States to these attacks, as well as the threat of future terrorist attacks in the United States or elsewhere, continue to cause uncertainty in the world financial markets and may affect our business, operating results and financial condition. The continuing conflict in Iraq may lead to additional acts of terrorism and armed conflict around the world, which may contribute to further economic instability in the global financial markets. These uncertainties could also adversely affect our ability to obtain any additional financing or, if we are able to obtain additional financing, to do so on terms favorable to us. In the past, political conflicts have also resulted in attacks on vessels, mining of waterways and other efforts to disrupt international shipping, particularly in the Arabian Gulf region. Acts of terrorism and piracy have also affected vessels trading in regions such as the South China Sea. Any of these occurrences could have a material adverse impact on our business, financial condition and results of operations.





Acts of piracy on oceangoing vessels have recently increased in frequency, which could adversely affect our business.

Acts of piracy have historically affected oceangoing vessels trading in regions of the world such as the South China Sea and the Gulf of Aden off the coast of Somalia. Throughout 2008 and 2009, the frequency of piracy incidents against commercial shipping vessels increased significantly, particularly in the Gulf of Aden. For example, in November 2008 the M/T Sirius Star, a tanker not affiliated with us, was captured by pirates in the Indian Ocean while carrying crude oil estimated to be worth \$100.0 million. Since the beginning of 2009, numerous tanker and drybulk vessels have fallen victim to piracy attacks off the coast of Somalia. For example, in February 2009, the M/V Saldanha, a drybulk vessel not affiliated with us, was seized by pirates while transporting coal through the Gulf of Aden.

If these piracy attacks result in regions in which our vessels are deployed being characterized by insurers as "war risk" zones, as the Gulf of Aden temporarily was in May 2008, or Joint War Committee (JWC) "war and strikes" listed areas, premiums payable for such insurance coverage could increase significantly and such insurance coverage may be more difficult to obtain. Crew costs, including those due to employing onboard security guards, could increase in such circumstances. In addition, while we believe the charterer remains liable for charter payments when a vessel is seized by pirates, the charterer may dispute this and withhold charter hire until the vessel is released. A charterer may also claim that a vessel seized by pirates was not "on-hire" for a certain number of days and it is therefore entitled to cancel the charter party, a claim that we would dispute. We may not be adequately insured to cover losses from these incidents, which could have a material adverse effect on us. In addition, detention hijacking as a result of an act of piracy against our vessels, or an increase in cost, or unavailability of insurance for our vessels, could have a material adverse impact on our business, financial condition, results of operations and cash flows.

Changes in the economic and political environment in China and policies adopted by the government to regulate its economy may have a material adverse effect on our business, financial condition and results of operations.

The Chinese economy differs from the economies of most countries belonging to the Organization for Economic Cooperation and Development, or OECD, in such respects as structure, government involvement, level of development, growth rate, capital reinvestment, allocation of resources, rate of inflation and balance of payments position. Prior to 1978, the Chinese economy was a planned economy. Since 1978, increasing emphasis has been placed on the utilization of market forces in the development of the Chinese economy. Annual and five-year plans, or State Plans, are adopted by the Chinese government in connection with the development of the economy. Although state-owned enterprises still account for a substantial portion of the Chinese industrial output, in general, the Chinese government is reducing the level of direct control that it exercises over the economy through State Plans and other measures. There is an increasing level of freedom and autonomy in areas such as allocation of resources, production, pricing and management and a gradual shift in emphasis to a "market economy" and enterprise reform. Limited price reforms were undertaken, with the result that prices for certain commodities are principally determined by market forces. Many of the reforms are unprecedented or experimental and may be subject to revision, change or abolition based upon the outcome of such experiments. If the Chinese government does not continue to pursue a policy of economic reform the level of imports to and exports from China could be adversely affected by changes to these economic reforms by the Chinese government, as well as by changes in political, economic and social conditions or other relevant policies of the Chinese government, such as changes in laws, regulations or export and import restrictions, all of which could, adversely affect our business, operating results and financial condition.

A further economic slowdown in the Asia Pacific region could exacerbate the effect of recent slowdowns in the economies of the United States and the European Union and may have a material adverse effect on our business, financial condition and results of operations

We anticipate a significant number of the port calls made mainly by our drybulk vessels will continue to involve the loading or discharging of drybulk commodities in ports in the Asia Pacific region. As a result, negative changes in economic conditions in any Asia Pacific country, particularly in China, may exacerbate the effect of recent slowdowns in the economies of the United States and the European Union and may have a material adverse effect on our business, financial position and results of operations, as well as our future prospects. In recent years, China has been one of the world's fastest growing economies in terms of gross domestic product, which has had a significant impact on shipping demand. Through the end of the fourth quarter of 2008, growth in China's gross domestic product was approximately 4.2% lower than it was during the same period in 2007, and it is likely that China and other countries in the Asia Pacific region will continue to experience slowed or even negative economic growth in the near future. Moreover, the current economic slowdown in the economies of the United States, the European Union and other Asian countries may further adversely affect economic growth in China and elsewhere. China has recently announced a \$586.0 billion stimulus package aimed in part at increasing investment and consumer spending and maintaining export growth in response to the recent slowdown in its economic growth. Our business, financial condition and, results of operations as well as our future prospects, will likely be materially and adversely affected by a further economic downturn in any of these countries.

Increased inspection procedures and tighter import and export controls could increase costs and disrupt our business.

International shipping is subject to various security and customs inspection and related procedures in countries of origin and destination. Inspection procedures can result in the seizure of contents of our vessels, delays in the loading, offloading or delivery and the levying of customs duties, fines or other penalties against us. It is possible that changes to inspection procedures could impose additional financial and legal obligations on us. Furthermore, changes to inspection procedures could also impose additional costs and obligations on our customers and may, in certain cases, render the shipment of certain types of cargo uneconomical or impractical. Any such changes or developments may have a material adverse effect on our business, financial condition, and results of operations.

Our vessels call on ports located in countries that are subject to restrictions imposed by the United States government.

From time to time, our time charterers or bareboat charterers who make use of our vessels in our fleet may call on ports located in countries subject to sanctions and embargoes imposed by the United States government and countries identified by the United States government as state sponsors of terrorism. Although these sanctions and embargoes do not prevent our vessels from making calls to ports in these countries, potential investors could view such port calls negatively, which could adversely affect our reputation and the market for shares of our common stock. Investor perception of the value of shares of our common stock may be adversely affected by the consequences of war, the effects of terrorism, civil unrest and governmental actions in these and surrounding countries.

## Risks Related to Our Company

We are in breach of certain financial covenants contained in our loan agreements, have received notices from certain of our lenders regarding these covenant breaches, and if we are not successful in obtaining waivers and amendments with respect to covenants breached, our lenders may declare an event of default and accelerate our outstanding indebtedness under the relevant agreement, which would impair our ability to continue to conduct our business.

Our loan agreements require that we maintain certain financial and other covenants. The current low drybulk and tanker charter rates and respective drybulk and tanker vessel values have affected our ability to comply with covenants relating to vessel values such as asset cover ratio, adjusted net worth and net asset value covenants. A violation of these covenants constitutes an event of default under our credit facilities, which would, unless waived by our lenders, provide our lenders with the right to require us to post additional collateral, enhance our equity and liquidity, increase our interest payments, pay down our indebtedness to a level where we are in compliance with our loan covenants, sell vessels in our fleet, reclassify our indebtedness as current liabilities and accelerate our indebtedness and foreclose their liens on our vessels, which would impair our ability to continue to conduct our business. Our total indebtedness of \$342.5 million is presented within current liabilities in our audited consolidated balance sheet for the year ended December 31, 2008 included in this annual report as a result of cross-default provisions within our loan agreements. A cross-default provision means that if we are in default with regards to a specific loan then we are automatically in default of all our loans that contain such provisions. For this reason, we are not able to breakdown our debt obligations into current and long term, unless we are able to receive waivers for all covenants breaches. The amount of long term debt that has been reclassified from long term debt and presented together with current liabilities amounts to \$290.0 million.

Several of our lenders notified us that we are in breach of certain financial and other covenants relating to vessel values such as asset cover ratio, adjusted net worth and net asset value covenants (as defined by each bank) contained in our loan agreements. As of the date of this annual report, we have received certain waivers on these covenant breaches from HSH Nordbank and Alpha Bank until March 31, 2010. In addition, we are in the process of drafting amendments to our agreements with DVB and Emporiki Bank regarding covenant breaches and we are in negotiations with RBS with regards to covenant breaches. For more details on breaches and waivers see "Item 5 – Operating and Financial Review And Prospects - Tabular Disclosure of Contractual Obligations – Long term debt".

During 2009, we expect to be in breach of covenants relating to the minimum liquidity and EBITDA as defined by each bank.

Breach of our loan covenants, without applicable waiver, may entitle our lenders to accelerate our debt. If our indebtedness is accelerated, it would be very difficult in the current financing environment for us to refinance our debt or obtain additional financing and we could lose our vessels if our lenders foreclose their liens. Further, as discussed below, our independent registered public accounting firm has issued its opinion with an explanatory paragraph emphasizing that we have prepared our financial statements under the going concern assumption despite our covenants breaches and working capital deficit.

Our inability to comply with certain financial and other covenants under our loan agreements raises substantial doubt about our ability to continue as a going concern.

As discussed above, we are in breach of certain financial and other covenants contained in our loan agreements as a result of the decline in the drybulk and tanker charter markets and related decline in vessel values. We may be unable to meet the financial and other covenants contained in our loan agreements for the foreseeable future and our lenders may choose to accelerate our indebtedness. Therefore, our ability to continue as a going concern is dependent on management's ability to successfully generate revenue to meet our obligations as they become due and have the continued support of our lenders. Our independent registered public accounting firm has issued its opinion with an explanatory paragraph emphasizing that we have prepared our financial statements under the going concern assumption despite our covenants breaches and working capital deficit. Our financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of our inability to continue as a going concern. However, there is a material uncertainty related to events or conditions which raises significant doubt on our ability to continue as a going concern and, therefore, we may be unable to realize our assets and discharge our liabilities in the normal course of business.

If we need to receive waivers and/or amendments to our loan agreements in the future, our lenders may impose additional operating and financial restrictions on us and/or modify the terms of our existing loan agreements.

In addition to certain financial covenants relating to our financial position, operating performance and liquidity, in connection with future waivers or amendments that we may need, lenders may impose additional restrictions on us. See "Item 5. Operating and Financial Review and Prospects – Liquidity and Capital Resources – Breach of Loan Covenants." Therefore, we may need to seek permission from our lenders in order to engage in some corporate actions. Our lenders' interests may be different from ours and we may not be able to obtain our lender's permission when needed, which could prevent us from pursuing a course of action that we deem necessary. In addition to the above restrictions, our lenders may require the payment of additional fees, require prepayment of a portion of our indebtedness to them, or impose other conditions on the issuance of waivers, which could adversely affect our financial results and hinder our ability to raise capital.

Servicing current and future debt will limit funds available for other purposes and impair our ability to react to changes in our business.

To finance our fleet expansion program, we incurred secured indebtedness. We must dedicate a portion of our cash flow from operations to pay the principal and interest on our indebtedness. These payments limit funds otherwise available for working capital, capital expenditures and other purposes. As of December 31, 2008, we had total indebtedness of \$346.9 million (excluding unamortized deferred financing fees of \$4.4 million), and a ratio of indebtedness to total capital of approximately 54%. We will need to take on additional indebtedness as we expand our fleet, which could increase our debt to equity ratio. Our substantial level of indebtedness increases the possibility that we may be unable to generate cash sufficient to pay, when due, the principal of, interest on or other amounts due in respect of, our indebtedness. Our substantial debt could also have other significant consequences. For example, it could:

- increase our vulnerability to general economic downturns and adverse competitive and industry conditions;

• require us to dedicate a substantial portion, if not all, of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures and other general corporate purposes;



• limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;

• place us at a competitive disadvantage compared to competitors that have less debt or better access to capital;

• limit our ability to raise additional financing on satisfactory terms or at all; and

• adversely impact our ability to comply with the financial and other restrictive covenants in the indenture governing the notes and the credit agreements governing the debts of our subsidiaries, which could result in an event of default under such agreements.

Furthermore, our interest expense could increase if interest rates increase because some of the debt under the credit facilities of our subsidiaries is variable rate debt. If we do not have sufficient earnings, we may be required to refinance all or part of our existing debt, sell assets, borrow more money or sell more securities, none of which we can guarantee we will be able to do.

Our loan agreements contain restrictive covenants that may limit our liquidity and corporate activities.

Our loan agreements impose operating and financial restrictions on us. These restrictions may limit our ability to:

• incur additional indebtedness;

• create liens on our assets;

• sell capital stock of our subsidiaries;

• engage in mergers or acquisitions;

• pay dividends;

• make capital expenditures or other investments;

• change the management of our vessels or terminate or materially amend the management agreement relating to each vessel; and

• sell our vessels.

Therefore, we may need to seek permission from our lenders in order to engage in some corporate actions. Our lenders' interests may be different from ours, and we cannot guarantee that we will be able to obtain our lenders' permission when needed. This may prevent us from taking actions that are in our best interest.

If we fail to manage our planned growth properly, we may not be able to successfully expand our market share.

We intend to continue to grow our fleet. Our growth will depend on:

• locating and acquiring suitable vessels;

• identifying and consummating acquisitions or joint ventures;