

EMAGIN CORP
Form S-1/A
February 03, 2009

As filed with the Securities and Exchange Commission on February 2, 2009

Registration No. 333-144865

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON D.C. 20549

FORM S-1 /A

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

eMagin Corporation
(Name of small business issuer in its charter)

Delaware
(State or other Jurisdiction of
Incorporation or Organization)

3679
(Primary Standard Industrial
Classification Code Number)

56-1764501
(I.R.S. Employer
Identification No.)

10500 N.E. 8 th Street, Suite 1400,
Bellevue, WA 98004
(425)-749-3600
(Address and telephone number of principal executive offices and principal place of business)

Andrew G. Sculley, Chief Executive Officer
eMagin Corporation
10500 N.E. 8 th Street, Suite 1400,
Bellevue, WA 98004
(425)-749-3600
(Name, address and telephone number of agent for service)

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APPROXIMATE DATE OF PROPOSED SALE TO THE PUBLIC:
From time to time after this Registration Statement becomes effective.

If any securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box: x

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price (1)	Amount of registration fee (2)
Common Stock, \$0.001 par value per share	2,438,096	\$ 0.56	\$ 1,365,334	\$ 53.66

- (1) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(c) and Rule 457(g) under the Securities Act of 1933, using the average of the sale prices as reported on the OTCBB on January 5, 2009 which was \$0.56 per share.
- (2) The registrant previously paid a filing fee in the amount of \$113.00.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

PRELIMINARY PROSPECTUS SUBJECT TO COMPLETION, DATED February 2, 2009
eMagin Corporation

2,438,096 SHARES OF

COMMON STOCK

This prospectus relates to the resale by the selling stockholder of up to 2,438,096 shares of common stock, consisting of (i) 1,000,000 shares issuable upon the exercise of common stock purchase warrants, and (ii) 1,428,572 shares issued upon conversion of the Stillwater Note (as described herein) representing \$500,000 of the principal amount of the Stillwater Note, and (iii) 9,524 shares issued for accrued and unpaid interest under the Stillwater Note. As disclosed below, 50% of the outstanding principal and accrued and unpaid interest on the Stillwater Note was converted into shares of common stock on July 23, 2007 and the remaining 50% of the outstanding principal and accrued and unpaid interest on the Stillwater Note was converted into shares of common stock on December 22, 2008. The selling stockholders may sell common stock from time to time in the principal market on which the stock is traded at the prevailing market price or in negotiated transactions. We will pay the expenses of registering these shares.

Our common stock is listed on the Over-The-Counter Bulletin Board under the symbol "EMAN". The last reported sales price per share of our common stock as reported by the Over-The-Counter Bulletin Board on January 5, 2009 was \$0.60.

Investing in these securities involves significant risks. See "Risk Factors" beginning on page 10.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this Prospectus is truthful or complete. Any representation to the contrary is a criminal offense. You should read this prospectus carefully before you invest.

The date of this prospectus is February __, 2009

The information in this Prospectus is not complete and may be changed. This Prospectus is included in the Registration Statement that was filed by eMagin Corporation with the Securities and Exchange Commission. The selling stockholders may not sell these securities until the registration statement becomes effective. This Prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the sale is not permitted.

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PROSPECTUS SUMMARY

The following summary highlights selected information contained in this prospectus. This summary does not contain all the information you should consider before investing in the securities. Before making an investment decision, you should read the entire prospectus carefully, including the “risk factors” section, the financial statements and the notes to the financial statements.

We design, develop, manufacture, and market virtual imaging products which utilize OLEDs, or organic light emitting diodes, OLED-on-silicon microdisplays and related information technology solutions. We integrate OLED technology with silicon chips to produce high-resolution microdisplays smaller than one-inch diagonally which, when viewed through a magnifier, create virtual images that appear comparable in size to that of a computer monitor or a large-screen television. Our products enable our original equipment manufacturer, or OEM, customers to develop and market improved or new electronic products. We believe that virtual imaging will become an important way for increasingly mobile people to have quick access to high resolution data, work, and experience new more immersive forms of communications and entertainment.

Our first commercial product, the SVGA+ (Super Video Graphics Array of 800x600 picture elements plus 52 added columns of data) OLED microdisplay was initially offered for sampling in 2001, and our first SVGA-3D (Super Video Graphics Array plus built-in stereovision capability) OLED microdisplay was shipped in early 2002. These products are being applied or considered for near-eye and headset applications in products such as entertainment and gaming headsets, handheld Internet and telecommunication appliances, viewfinders, and wearable computers to be manufactured by OEM customers for military, medical, industrial, and consumer applications. We market our products globally.

In 2006 we introduced our OLED-XL technology, which provides longer luminance half life and enhanced efficiency of eMagin's SVGA+ and SVGA-3D product lines. We are in the process of completing development of 2 additional OLED microdisplays, namely the SVGA 3DS (SVGA 3D shrink, a smaller format SVGA display with a new cell architecture with embedded features) and an SXGA (1280 x 1024 picture elements).

In January 2005 we announced the world's first personal display system to combine OLED technology with head-tracking and 3D stereovision, the Z800 3DVisor(tm), which was first shipped in mid-2005. This product was recognized as a Digital Living Class of 2005 Innovators, and received the Consumer Electronics Association's coveted Consumer Electronics Show (CES) 2006 Best of Innovation Awards for the entire display category as well as a Design and Innovations Award for the electronic gaming category. In February 2007 the Z800 3DVisor, as integrated in Chatten Associates' head-aimed remote viewer, was recognized as one of Advanced Imaging's Solutions of the Year.

We believe that our OLED-on-silicon microdisplays offer a number of advantages over current liquid crystal microdisplays, including greatly increased system level power efficiency, less weight and wider viewing angles. Using our active matrix OLED technology, many computer and video electronic system functions can be built directly into the OLED-on-silicon microdisplay, resulting in compact systems with expected lower overall system costs relative to alternative microdisplay technologies. We have developed our own technology to create high performance OLED-on-silicon microdisplays and related optical systems and we have licensed certain fundamental OLED and display technology from Eastman Kodak.

As the first to exploit OLED technology for microdisplays, and with the support of our partners and the development of our intellectual property, we believe that we enjoy a significant advantage in the commercialization of this display technology for virtual imaging. We believe we are the only company to sell full-color active matrix small molecule OLED-on-silicon microdisplays.

eMagin Corporation was created through the merger of Fashion Dynamics Corporation ("FDC"), which was organized on January 23, 1996 under the laws of the State of Nevada and FED Corporation ("FED"), a developer and manufacturer of optical systems and microdisplays for use in the electronics industry. FDC had no active business operations other than to acquire an interest in a business. On March 16, 2000, FDC acquired FED. The merged company changed its name to eMagin Corporation. Following the merger, the business conducted by eMagin is the business conducted by FED prior to the merger.

Our website is located at www.emagin.com and our e-commerce site is www.3dvisor.com. The contents of our website are not part of this Prospectus.

The Offering

Common stock offered by selling stockholders	Up to 2,438,096 shares, consisting of the following:
	· 1,438,096 shares of common stock, consisting of (i) 1,428,572 shares issued upon conversion of the Stillwater Note representing \$500,000 of the principal amount of the Stillwater Note and (ii) 9,524 shares issued for accrued and unpaid interest under the Stillwater Note.*
	· up to 1,000,000 shares of common stock issuable upon the exercise of common stock purchase warrants at an exercise price of \$0.48 per share.
Common Stock to be outstanding after the offering	16,736,459 shares**
Use of proceeds	We will not receive any proceeds from the sale of the common stock; however we will receive proceeds from the exercise of our warrants.
Over-The-Counter Bulletin Board Symbol	EMAN

* On July, 23 2007, Stillwater elected to convert \$252,166.50 of the Stillwater Note, then outstanding, representing \$250,000 of the principal amount of the Note due on July 23, 2007 and \$2,166.50 of accrued and unpaid interest into shares of common stock. Stillwater received 720,476 shares of the common stock at the conversion price of \$0.35. On December 22, 2008, Stillwater elected to convert the \$251,166.67 of the remaining Stillwater Note representing \$250,000 of the principal amount of the Note due on December 22, 2008 and \$1,166.67 of accrued and unpaid interest into shares of common stock. Stillwater received 717,620 shares of the common stock at the conversion price of \$0.35.

**The information above regarding the common stock to be outstanding after the offering is based on 15,736,459 shares of the Company's common stock outstanding as of January 5, 2009 and assumes the exercise of the warrants.

Recent Developments

As previously reported on a Form 8-K that was filed with the Securities and Exchange Commission on December 23, 2008, pursuant to a Securities Purchase Agreement (the "Securities Purchase Agreement") entered into on December 18, 2008 between the Company and Stillwater on December 22, 2008 (the "Closing"), the Company sold Stillwater for an aggregate purchase price of \$4,033,000 an aggregate of 4,033 shares of its Series B Convertible Preferred Stock (the "Preferred Stock"), which have a stated value of \$1,000 per share, a conversion price of \$0.75 per share and have the rights and preferences set forth in the Certificate of Designations of Series B Convertible Preferred Stock filed with the Secretary of State for the State of Delaware on December 19, 2008 (the "Certificate of Designations"), and warrants to purchase 1,875,467 shares of common stock at \$1.03 per share (the "Warrants"). The Warrants terminate on December 22, 2013.

Pursuant to the terms of the Securities Purchase Agreement, the Company used the proceeds from the sale of the Preferred Stock exclusively to repay \$4,033,000 of its Amended and Restated 8% Senior Secured Convertible Notes (the "Notes") which matured on December 22, 2008.

Pursuant to the Securities Purchase Agreement, the members of the Company's board of directors, and certain executive officers executed lockup agreements pursuant to which, subject to the terms of the lockup agreement, they are restricted from selling the Company's stock that they beneficially own for 180 days from the Closing.

On December 22, 2008, the Company entered into an Exchange Agreement (the "Exchange Agreement") with three holders ("Holders") of its outstanding Notes. Pursuant to the Exchange Agreement, on December 22, 2008, the Holders exchanged \$1,700,000 of their outstanding Notes and accrued and unpaid interest thereon and received 1,706 shares of the Preferred Stock (the amount of the outstanding principal and accrued and unpaid interest due on the Notes exchanged divided by \$1,000).

Pursuant to the Securities Purchase Agreement, the Company filed the Certificate of Designations with the State of Delaware on December 19, 2008. The Certificate of Designations designates 10,000 shares of its preferred stock as Series B Convertible Preferred Stock ("the Preferred Stock"). The Preferred Stock has a stated value of \$1,000 and has a conversion price of \$0.75 per share. The Preferred Stock does not pay interest. The holders of the Preferred Stock are not entitled to receive dividends unless the Company's Board of Directors declared a dividend for holders of its common stock and then the dividend shall be equal to the amount that such holder would have been entitled to receive if the holder converted its Preferred Stock into shares of its common stock. Each share of Preferred Stock has voting rights equal to (i) the number of shares of its common stock issuable upon conversion of such shares of Preferred Stock at such time (determined without regard to the shares of common stock so issuable upon such conversion in respect of accrued and unpaid dividends on such share of Preferred Stock) when the Preferred Stock votes together with its common stock or any other class or series of its stock and (ii) one vote per share of Preferred Stock when such vote is not covered by the immediately preceding clause. The Company may at its option redeem the Preferred Stock by providing the required notice to the holders of the Preferred Stock and paying an amount equal to \$1,000 multiplied by the number of shares for all of such holder's shares of outstanding Preferred Stock to be redeemed.

The Company also entered into a Registration Rights Agreement with Stillwater to register for resale the shares of the common stock issuable upon conversion of the Preferred Stock sold in the offering and the shares of common stock issuable upon exercise of the warrants. Subject to the terms of the Registration Rights Agreement, the Company is required to file a registration statement (the "Registration Statement") on Form S-1 with the Securities and Exchange Commission (the "SEC") within 30 days following the date that the Company is permitted to file a registration statement by (i) the rules and regulations of the Securities and Exchange Commission and (ii) the agreements set forth on Schedule B to the Registration Rights Agreement, which as of December 18, 2008 prohibits the Company from filing the initial Registration Statement until certain other registration statements are filed. After filing the Registration Statement, the Company is to cause such Registration Statement to be declared effective under the Securities Act of 1933 (the "Act") as promptly as possible after the filing thereof, but in no event later than 90 days after the filing date (or no later than 120 days after the filing date in the event of SEC "full review" of the Registration Statement). The Holders of Notes that exchanged their Notes pursuant to the Exchange Agreement received the same registration rights as Stillwater.

Pursuant to the Securities Purchase Agreement, the Company claims an exemption from the registration requirements of the Act for the private placement of these securities pursuant to Section 4(2) of the Securities Act of 1933, as amended (the "Act") and/or Regulation D promulgated thereunder since, among other things, the transaction did not involve a public offering, the investors were accredited investors and/or qualified institutional buyers, the investors had access to information about the Company and their investment, the investors took the securities for investment and not resale, and the Company took appropriate measures to restrict the transfer of the securities.

Amendment of Stillwater Note Purchase Agreement - April 2007

As previously reported in the Form 8-K dated July 25, 2006, on July 21, 2006, eMagin Corporation (the "Company") entered into a Note Purchase Agreement (the "Stillwater Agreement") with Stillwater LLC ("Stillwater") which provides for the purchase and sale of a 6% senior secured convertible note in the principal amount of up to \$500,000 (the "Stillwater Note"), together with a warrant (the "Stillwater Warrant") to purchase 70% of the number of shares issuable upon conversion of the Stillwater Note, at the sole discretion of the Company by delivery of a notice to Stillwater on December 14, 2006. Interest payments from the Stillwater Note are to be made in cash, unless Stillwater elects to convert any portion of the principal of the Stillwater Note plus any accrued and unpaid interest for such principal amount.

As previously reported in the Form 8-K dated April 13, 2007, by way of amendment to the Stillwater Agreement, dated March 28, 2007 (the "Amendment"), the Company and Stillwater agreed to certain amendments to the Stillwater Agreement. Based upon the provisions of the Stillwater Agreement, Stillwater was bound to purchase the Stillwater Note and the Stillwater Warrant so long as the conditions to closing as set forth in the Stillwater Agreement were satisfied by the Company. However, prior to Stillwater's obligation to purchase the Stillwater Note and Stillwater Warrant, the Company received notice from the American Stock Exchange ("AMEX") that it was no longer in compliance with their listing requirements, and the Company was subsequently de-listed in March of 2007. Since compliance with the AMEX listing requirements was a condition of closing in the Stillwater Agreement, Stillwater was no longer obligated to purchase the Stillwater Note and Stillwater Warrant. Therefore, among other things, pursuant to the Amendment, the parties agreed to a new conversion price for the Stillwater Note of \$0.35 per share, a new exercise price for the Stillwater Warrant of \$0.48 per share, a new closing date, and amended certain closing conditions, including the following: on the closing date, (i) trading in securities on the New York Stock Exchange, Inc., the AMEX, Nasdaq, the Nasdaq Capital Market, the Over-The-Counter Bulletin Board, the Pink Sheets, LLC or any similar organization shall not have been suspended or materially limited, (ii) a general moratorium on commercial banking activities in the State of New York shall not have been declared by either federal or state authorities, and (iii) the Company has obtained waivers from all the note holders of the other notes or has executed an additional Allonge with the majority holders to amend Section 3.2 of the Note and other notes to provide that the Company maintain cash and cash equivalents balances of at least equal to \$200,000 from April 1, 2007 through and including May 15, 2007 and that subsequent to May 15, 2007 the Company maintain cash and cash equivalents balances of at least equal to \$600,000.

If the entire Stillwater Warrant is exercised for cash, the Company would receive \$480,000, which would be used for working capital and other corporate purposes. There cannot be any assurances that any of the Stillwater Warrant will be exercised. The closing for the sale of the Stillwater Note and Stillwater Warrant was completed on April 9, 2007 and the Company issued Stillwater the Stillwater Note in a 6% Senior Secured Convertible Note in the principal amount of \$500,000 and the Stillwater Warrant to purchase 1,000,000 shares of the Company's common stock at an exercise price of \$0.48 in accordance with the terms of the Stillwater Agreement and Amendment. Interest payments from the Stillwater Note are to be made in cash, unless Stillwater elects to convert any portion of the principal of the Stillwater Note plus any accrued and unpaid interest for such principal amount pursuant to the terms of the Stillwater Note. The principal of the Stillwater Note was due in installments as follows:

Principal Amount	Due Date*
\$ 250,000	July 23, 2007**
\$ 250,000	January 21, 2008 ***

* If the due date falls on a non-business day, the due date will be the next business day.

** As disclosed above, on July, 23 2007, Stillwater elected to convert \$252,166.50 of the Stillwater Note representing \$250,000 of the principal amount of the Stillwater Note due on July 23, 2007 and \$2,166.50 of accrued and unpaid interest into shares of common stock. Stillwater received 720,476 shares of the common stock at the conversion price of \$0.35 pursuant to the terms of the Stillwater Note.

*** As disclosed above, on December 22, 2008 Stillwater elected to convert \$251,166.67 of the remaining Stillwater Note representing \$250,000 of the principal amount of the Stillwater Note originally due on January 21, 2008 and extended to December 22, 2008 (as discussed below) and \$1,116.67 of accrued and unpaid interest into shares of common stock. Stillwater received 717,620 shares of common stock at a conversion price of \$0.35 pursuant to the terms of the Stillwater Note.

This prospectus covers the resale by Stillwater of the above-referenced common stock underlying the Stillwater Note and the Stillwater Warrant.

Amendment Agreements - July 2007

As previously reported in the Form 8-K of the Company dated as of July 25, 2006, the Company entered into several Note Purchase Agreements (the "Original Purchase Agreements"), including the Stillwater Agreement, to sell to certain qualified institutional buyers and accredited investors \$5,990,000 in principal amount 6% Senior Secured Convertible Notes Due July 21, 2007 and January 21, 2008 (the "Notes"), together with warrants (the "Warrants") to purchase 1,612,700 shares of the Company's common stock, par value \$0.001 per share at \$3.60 per share.

As previously reported in the Form 8-K of the Company dated as of July 25, 2007, by way of Amendment Agreements dated July 23, 2007 (the "Amendment Agreements") between the Company and each of the holders of the Notes, including Stillwater (each a "Holder" and collectively, the "Holders"), the Company agreed to issue each Holder an amended and restated Note for the outstanding Notes (the "Amended Notes") in the principal amount equal to the principal amount outstanding as of July 23, 2007 and an amended restated Warrant (the "Amended Warrants"). As part of the Amendment Agreements, the maturity date for the Amended Notes was extended to December 22, 2008. The outstanding principal and accrued and unpaid interest of Amended Notes were repaid on December 22, 2008 except

for those three Holders that elected to exchange their Amended Notes into Preferred Stock pursuant to the Exchange Agreement (as disclosed above). The changes to the Amended Warrants include the following:

- Except for the Stillwater Warrant whose exercise price was unchanged, the Amendment Agreements adjusted the exercise price of the Amended Warrants from \$3.60 to \$1.03 per share for 1,553,468 shares of common stock and requires the issuance of Warrants exercisable for an additional 3,831,859 shares of common stock at \$1.03 per share with an expiration date of July 21, 2011; and
- The Amended Warrants are subject to certain anti-dilution adjustment rights in the event the Company issues shares of its common stock or securities convertible into its common stock at a price per share that is less than the Strike Price, in which case the Strike Price shall be adjusted to the lower of (1) 138% of the price at which such common stock is issued or issuable and (2) the exercise price of warrants, issued in such transaction.

Pursuant to the Amendment Agreements, the Company filed a Certificate of Designations of Series A Senior Secured Convertible Preferred Stock (the "Certificate of Designations"). The Certificate of Designations designates 3,198 shares of the Company's preferred stock as Series A Senior Secured Convertible Preferred Stock (the "Preferred Stock"). Each share of the Preferred Stock has a stated value of \$1,000. The Preferred Stock is entitled to cumulative dividends which accrue at a rate of 8% per annum, payable on December 21, 2008. Each share of Preferred Stock has voting rights equal to (1) in any case in which the Preferred Stock votes together with the Company's common stock or any other class or series of stock of the Company, the number of shares of common stock issuable upon conversion of such shares of Preferred Stock at such time (determined without regard to the shares of common stock so issuable upon such conversion in respect of accrued and unpaid dividends on such share of Preferred Stock) and (2) in any case not covered by the immediately preceding clause one vote per share of Preferred Stock. The Certificate of Designations prohibits the Company from entering into a Fundamental Change without consent of the Holders and contains antidilution adjustments rights that are comparable to the antidilution adjustments contained in the Amended Notes. Pursuant to the Certificate of Designations, the Company was to redeem any shares of its outstanding shares of Series A Senior Secured Convertible Preferred Stock that were outstanding on December 21, 2008, however, no such shares were issued or outstanding on such date.

Pursuant to the Amendment Agreements, the Company was required to file a registration statement with the Securities and Exchange Commission by August 31, 2007 covering the resale of 100% of the sum of (a) the number of shares issuable upon conversion of the Amended Notes and Preferred Stock, and (b) the number of shares issuable upon exercise of the Warrants.

The summary of amendment terms contained herein does not include all information included in the Amendment Agreement, the Amended Notes, the Amended Warrants, the Certificate of Designations or the Ancillary Agreements and, consequently, is qualified in its entirety by reference to the entire text of the Amendment Agreements and the forms of the Amended Notes, Amended Warrants, Certificate of Designations, Amendment No. 1 to Pledge and Security Agreement, Amendment No. 1 to Patent and Trademark Security Agreement and Amendment No. 1 to Lockbox Agreement.

Securities Purchase Agreement – April 2008

As previously reported on a Form 8-K that was filed with the Securities and Exchange Commission on April 4, 2008, the Company entered into a Securities Purchase Agreement on April 2, 2008, (the "Purchase Agreement") pursuant to which it sold to certain qualified institutional buyers and accredited investors (the "Investors") an aggregate of 1,586,539 shares of the Company's common stock, par value \$0.001 per share (the "Shares"), and warrants to purchase an additional 793,273 shares of common stock, for an aggregate purchase price of \$1,650,000. The purchase price of the common stock was \$1.04 per share and the strike price of the corresponding warrant was \$1.30 per share. The warrants expire April 2, 2013.

The Company entered into a Registration Rights Agreement with the Investors to register the resale of the Shares sold in the offering and the shares of common stock issuable upon exercise of the warrants. Subject to the terms of the Registration Rights Agreement, the Company is required to file a registration statement on Form S-1 with the Securities and Exchange Commission (the "SEC") within 45 days of the closing, to use its best efforts to cause the registration statement to be declared effective under the Securities Act of 1933 (the "Act") as promptly as possible after the filing thereof, but in no event later than 90 days after the filing date and no later than 120 days after the filing date in the event of SEC review of the registration statement. The Company filed the registration statement within the 45 day period however the Company was notified that the registration statement was under review by the SEC. The Company failed to file the amended registration statement by August 2, 2008 which was the 120th day from the signing of the Purchase Agreement and therefore the registration statement is not effective.

As the registration statement was not effective within the grace periods (“Event Date”), the Company must pay partial liquidated damages (“damages”) in cash to each Investor equal to 2% of the aggregate purchase price paid by each Investor under the Purchase Agreement on the Event Date and each monthly anniversary of the Event Date (or on a pro-rata basis for any portion of a month) until the registration statement is effective. The Company is not liable for any damages with respect to the warrants or warrant shares. The maximum damages payable to each Investor is 36% of the aggregate purchase price. If the Company fails to pay the damages to the Investors within 7 days after the date payable, the Company must pay interest at a rate of 15% per annum to each Investor which accrues daily from the date payable until damages are paid in full. The Company estimated \$399 thousand to be the maximum potential damages that the Company may be required to pay the Investors if the registration statement is not effective within three years of the signing of the agreement. The Company estimated \$186 thousand to be a reasonable estimate of the potential damages that may be due to the Investors based on the anticipated filing date.

The Company claims an exemption from the registration requirements of the Act for the private placement of these securities pursuant to Section 4(2) of the Act and/or Regulation D promulgated thereunder since, among other things, the transaction did not involve a public offering, the investors were accredited investors and/or qualified institutional buyers, the investors had access to information about the company and their investment, the investors took the securities for investment and not resale, and the Company took appropriate measures to restrict the transfer of the securities.

Moriah Capital Loan Agreement and Amendments

As previously reported on a Form 8-K that was filed with the Securities and Exchange Commission on August 10, 2007, the Company and Moriah Capital LP (“Moriah”) entered into a Loan and Security Agreement, dated as of August 7, 2007 (the “Loan and Security Agreement”), which was amended as of January 30, 2008 by Amendment No. 1 and on March 18, 2008 by Amendment No. 2 (collectively, the “Original Agreement”).

As previously reported on a Form 8-K that was filed with the Securities and Exchange Commission on August 26, 2008, the Company and Moriah entered into Amendment No. 3 to the Loan and Security Agreement dated August 20, 2008 (the “Amendment No. 3”). Pursuant to Amendment No. 3, the Company issued Moriah an Amended and Restated Convertible Revolving Loan Note (the “Amended Note”). The maturity date of the Amended Note has been extended to August 7, 2009 and the maximum amount that the Company can borrow pursuant to the Amended Note was increased to \$3,000,000. The maturity date of the original revolving loan note had previously been extended to August 20, 2008.

Pursuant to Amendment No. 3, the Company issued Moriah a warrant, which terminates on August 7, 2013, to purchase up to 370,000 shares of the Company’s common stock at an exercise price of \$1.30 per share. In connection with Amendment No. 3, the Company paid Moriah \$85,000 in fees. As previously reported, pursuant to Original Agreement, the Company issued Moriah warrants to purchase up to 1,000,000 shares of the Company’s common stock at an exercise price of \$1.50 per share.

Pursuant to Amendment No. 3, the Company and Moriah entered into an Amended and Restated Securities Issuance agreement (the “Amended and Restated Securities Issuance Agreement”). In connection with a Securities Issuance Agreement, dated as of August 7, 2007 (the “Original Securities Issuance Agreement”), the Company issued Moriah 162,500 shares of the Company’s common stock (the “2007 Shares”). Pursuant to the Amended and Restated Securities Issuance Agreement, Moriah agreed to waive the Company’s obligation to buy back the 2007 Shares with respect to 125,000 of such shares and to defer the Company’s obligation to buy back 37,500 of such 2007 Shares (collectively, the “Put Waiver”). Pursuant to the Amended and Restated Securities Agreement, the Company is issuing Moriah 485,000 shares of its Common Stock (of which 125,000 shares were issued in consideration for the Put Waiver from Moriah and 360,000 shares were issued in lieu of the issuance to Moriah of the Contingent Issued Shares (as described in the Original Securities Issuance Agreement)). Additionally, pursuant to the Amended and Restated Securities Issuance Agreement, the Company has also granted Moriah a put option pursuant to which Moriah can sell to the Company 162,500 shares of its common stock issued under the Amended and Restated Securities Agreement for \$195,000, pro-rated for any portion thereof (the “2007 Put Price”). The 2007 Put Option shall automatically be deemed exercised by Moriah unless Moriah delivers written notice to the Company at any time between July 1, 2009 and August 1, 2009 that it does not wish to exercise the 2007 Put Option. The Company also granted Moriah a second put option pursuant to which Moriah can sell 360,000 of the shares issued to Moriah pursuant to the Amended and Restated Securities Purchase Agreement to the Company for \$234,000 (the “2008 Put Option”). The 2008 Put Option shall automatically be deemed exercised by Moriah unless Moriah delivers written notice to the Company at any time between July 1, 2009 and August 1, 2009 that Moriah does not wish to exercise the 2008 Put option in whole or in part.

Pursuant to Amendment No. 3, the Company and Moriah entered into an Amendment to Registration Rights Agreement (the “Amended Registration Rights Agreement”). Pursuant to the Amended Registration Rights Agreement, the Company agreed to use its best efforts to file a registration statement to register the 485,000 shares of the Company’s common stock issued pursuant to the Amended and Restated Securities Issuance Agreement and the shares of common stock issuable upon exercise of the Warrant, provided that the Company is permitted under applicable securities rules and regulations and after the certain other registration statements that the Company was obligated to file on behalf of selling shareholders have been declared effective.

On August 19, 2008, the Holders of the Amended Notes and the Investors in the Purchase Agreement consented to the Company's execution of the Amended Note, Amendment No. 3, Amended and Restated Securities Issuance Agreement, and the Amended Registration Rights Agreement. In consideration for the consent, a total of 144,000 shares of common stock were issued to the Holders and Investors based on individual participation in the Amended Notes and Securities Purchase Agreement on September 4, 2008.

The Company claims an exemption from the registration requirements of the Securities Act of 1933, amended (the "Act") for the private placement of the above-referenced securities pursuant to Section 4(2) of the Act since, among other things, these transactions did not involve a public offering and the Company took appropriate measures to restrict the transfer of the securities.

The foregoing description of Amendment No. 3 to the Loan and Security Agreement, the Amended and Restated Revolving Loan Note, the Amended and Restated Securities Issuance Agreement, and the Amendment to the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the entire text of the agreements.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following summary consolidated financial data should be read in conjunction with our consolidated financial statements and related notes and “Management’s Discussion and Analysis of Financial Condition and Results of Operations”. The statements of operations data for the years ended December 31, 2007, 2006, and 2005 and the balance sheet data at December 31, 2007 and 2006 are derived from our audited financial statements which are included in our Form 10-K/A filed with the Securities and Exchange Commission on January 13, 2009 and included elsewhere herein. The statements of operations data for the years ended December 31, 2004 and 2003 and the balance sheet data at December 31, 2005, 2004, and 2003 are derived from our audited financial statements which are not included herein. The statements of operations data for the nine months ended September 30, 2008 and 2007 and the balance sheet data at September 30, 2008 are derived from our unaudited condensed consolidated interim financial statements filed with the Securities and Exchange Commission on November 14, 2008. The balance sheet data at September 30, 2007 was derived from our unaudited condensed consolidated interim financial statements filed with the Securities and Exchange Commission on November 19, 2007. The historical results are not necessarily indicative of results to be expected for future periods. The following information is presented in thousands, except per share data.