

GLOWPOINT, INC.  
Form DEF 14A  
April 28, 2015

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT  
SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934  
(Amendment No. )

Filed by the Registrant  [X]  
Filed by a party other than the Registrant  [ ]

Check the appropriate box:

[ ] Preliminary Proxy Statement  [ ] Confidential, for Use of the  
 [X] Definitive Proxy Statement Commission Only (as permitted  
 [ ] Definitive Additional Materials by Rule 14a-6(e)(2))  
 [ ] Soliciting Material under  
Rule 14a-11(c) or Rule 14a-12

GLOWPOINT, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- [X] No fee required.
- [ ] Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.
- (1) Title of each class of securities to which transaction applies:
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Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
- (1) Amount Previously Paid:
  - (2) Form, Schedule or Registration Statement No.:
  - (3) Filing Party:

(4) Date Filed:

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GLOWPOINT, INC.  
1776 Lincoln Street, Suite 1300  
Denver, Colorado 80203

April 28, 2015

Dear Stockholder:

We are pleased to invite you to the 2015 Annual Meeting of Stockholders (the "Annual Meeting") of Glowpoint, Inc. (the "Company"), which will be held at 9:00 a.m. MDT on May 28, 2015, at our offices located at 1776 Lincoln Street, Suite 1300, Denver, Colorado 80203.

At the Annual Meeting, you will be asked to: (i) elect five members of our Board of Directors to serve until our next annual meeting of stockholders, or until their respective successors are duly elected and qualified; (ii) ratify the appointment of EisnerAmper LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2015; and (iii) transact other business as may properly come before the meeting.

The enclosed Notice and Proxy Statement contain complete information about the matters to be considered at the Annual Meeting. We are also enclosing our 2014 Annual Report on Form 10-K, which was filed with the Securities and Exchange Commission on March 5, 2015. Copies of these materials are available for review at [www.glowpoint.com/investor-relations](http://www.glowpoint.com/investor-relations) or may be mailed to you free of charge by requesting a copy from us at 303-640-3838 or mailing a request to the Glowpoint Investor Relations department located at Glowpoint, Inc., 1776 Lincoln Street, Suite 1300, Denver, Colorado 80203. This Proxy Statement and our 2014 Annual Report on Form 10-K are also available for viewing, printing and downloading at [www.proxyconnect.com/glowpoint](http://www.proxyconnect.com/glowpoint).

We hope you will be able to attend the Annual Meeting in person. Whether or not you expect to attend, we urge you to complete, date, sign and return the proxy card in the enclosed envelope or submit your proxy by telephone or internet, so that your shares will be represented and voted at the Annual Meeting.

Sincerely,

Peter Holst  
President and Chief Executive Officer

GLOWPOINT, INC.  
1776 Lincoln Street, Suite 1300  
Denver, Colorado 80203

NOTICE OF THE 2015 ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD MAY 28, 2015

To our Stockholders:

The 2015 Annual Meeting of Stockholders (the "Annual Meeting") of Glowpoint, Inc. (the "Company"), will be held at 9:00 a.m. MDT on May 28, 2015, at Glowpoint Inc.'s offices, located at 1776 Lincoln Street, Suite 1300, Denver, Colorado 80203, for the following purposes:

1. To elect five members of our Board of Directors to serve until our next annual meeting of stockholders, or until their respective successors are duly elected and qualified;
2. To ratify the appointment of EisnerAmper LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2015; and
3. To transact other business as may properly come before the Annual Meeting.

WHO MAY VOTE:

Stockholders of record of our Common Stock, \$0.0001 par value per share, and of our Series A-2 Convertible Preferred Stock, par value \$0.0001 per share, as of the close of business on April 23, 2015 are entitled to vote at the Annual Meeting, or any adjournment or postponement thereof. A list of stockholders will be available at the Annual Meeting and during the 10 days prior to the Annual Meeting at our principal executive offices located at 1776 Lincoln Street, Suite 1300, Denver CO 80203.

All stockholders are cordially invited to attend the Annual Meeting. Whether you plan to attend the Annual Meeting or not, we urge you to vote and submit your proxy by internet, telephone or mail to ensure the presence of a quorum. You may change or revoke your proxy at any time before it is voted at the Annual Meeting.

By order of the Board of Directors,

David Clark  
Chief Financial Officer and Corporate Secretary

WE URGE YOU TO COMPLETE, SIGN, DATE AND RETURN PROMPTLY THE ACCOMPANYING PROXY CARD OR TO VOTE BY TELEPHONE OR INTERNET

GLOWPOINT, INC.  
1776 Lincoln Street, Suite 1300  
Denver, Colorado 80203

PROXY STATEMENT

FOR THE 2015 ANNUAL MEETING OF STOCKHOLDERS

This Proxy Statement (this "Proxy Statement"), along with the accompanying Notice of the 2015 Annual Meeting of Stockholders (the "Notice"), contains information about the 2015 Annual Meeting of Stockholders (the "Annual Meeting") of Glowpoint, Inc., including any adjournments or postponements of the Annual Meeting. We are holding the Annual Meeting at 9:00 a.m. MDT on May 28, 2015, at Glowpoint, Inc.'s offices located at 1776 Lincoln Street, Suite 1300, Denver, Colorado 80203. Directions to the Annual Meeting can be obtained by telephoning us at 303-640-3838. In this Proxy Statement, we refer to Glowpoint, Inc. as "we," "our," "us" or the "Company."

This Proxy Statement relates to the solicitation of proxies by our Board of Directors (the "Board of Directors" or the "Board") for use at the Annual Meeting.

On or about April 28, 2015, we will send this Proxy Statement, the attached Notice and the enclosed proxy card to all stockholders entitled to vote at the Annual Meeting. Although not part of the Proxy Statement, we will also send along with this Proxy Statement our 2014 Annual Report on Form 10-K, which includes our financial statements for the fiscal year ended December 31, 2014.

Important Notice Regarding the Availability of Proxy Materials for Our  
Annual Meeting to Be Held on May 28, 2015

This Proxy Statement and our 2014 Annual Report on Form 10-K are available for viewing, printing and downloading at <http://www.proxyconnect.com/glowpoint>. We are providing a copy of our Annual Report on Form 10-K for the year ended December 31, 2014 with the accompanying proxy materials. Additionally, you can find a copy of our Annual Report on Form 10-K, which includes our financial statements for the fiscal year ended December 31, 2014, on the website of the Securities and Exchange Commission (the "SEC") at <http://www.sec.gov> or on our website at <http://www.glowpoint.com/investor-relations>.

## RECORD DATE; VOTING SECURITIES; QUORUM

Only holders of record of our Common Stock, \$0.0001 par value per share ("Common Stock"), and our Series A-2 Convertible Preferred Stock, par value \$0.0001 per share ("Series A-2 Preferred Stock"), as of the close of business on April 23, 2015 (the "Record Date") are entitled to vote at the Annual Meeting. As of the Record Date, 35,693,430 shares of Common Stock were issued and outstanding and 53 shares of Series A-2 Preferred Stock were issued and outstanding.

Each holder of Common Stock is entitled to cast one vote per share of Common Stock held by such holder on each matter to be presented at the Annual Meeting. Each holder of Series A-2 Preferred Stock is entitled to vote on each matter to be presented at the Annual Meeting on an as converted basis up to 4.99% of (i) the Common Stock issuable upon conversion of the Series A-2 Preferred Stock held by such holder in accordance with the terms of the Certificate of Designations, Preferences and Rights of the Series A-2 Preferred Stock (the "Certificate of Designations"), plus (ii) all other shares of Common Stock beneficially owned by such holder, unless such holder has waived such holder's right to vote with respect to any or all of such holder's Series A-2 Preferred Stock in accordance with the Certificate of Designations, in which case such holder is not entitled to vote such Series A-2 Preferred Stock in respect of any matter to be presented at the Annual Meeting. As of the Record Date, each share of Series A-2 Preferred Stock was convertible into 2,513 shares of Common Stock.

A quorum is present at the Annual Meeting if a majority of the shares of our capital stock issued and outstanding and entitled to vote on the Record Date are represented in person or by proxy. If a quorum is not present, the Annual Meeting may be adjourned from time to time until a quorum is obtained.

## VOTING PROCEDURES; REQUIRED VOTES

The shares represented by the proxies received, properly dated and executed or authenticated, in the case of voting by telephone or internet, and not revoked will be voted at the Annual Meeting in accordance with the instructions of the stockholders.

Telephone and internet voting facilities for stockholders of record will be available 24 hours a day and will close at 11:59 p.m. Eastern Time on May 27, 2015.

If your shares are held in "street name" (held in the name of a bank, broker or other holder of record), you will receive instructions from the holder of record. You must follow the instructions of the holder of record in order for your shares to be voted. Telephone and internet voting also will be offered to stockholders owning shares through certain banks and brokers. If your shares are not registered in your own name and you plan to vote your shares in person at the Annual Meeting, you should contact your broker or agent to obtain a legal proxy or broker's proxy card and bring it to the Annual Meeting in order to vote.

Abstentions will be treated as shares that are present and entitled to vote, while broker "non-votes" will be treated only as shares that are present for purposes of determining the presence of a quorum. An abstention is the voluntary act of not voting by a stockholder who is present in person or by proxy at the Annual Meeting and entitled to vote. A broker "non-vote" occurs when a broker nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary power for that particular item and has not received instructions from the beneficial owner.

Proposal No. 1: Pursuant to our by-laws, a plurality of the votes duly cast at the Annual Meeting is required for the election of directors. This means that the nominees receiving the highest number of affirmative votes will be elected to fill the director positions available. Accordingly, votes withheld will not affect the outcome of the election.

Additionally, the election of directors is not a matter on which a broker or other nominee is allowed to vote without specific instructions from you.

Proposal No. 2: Pursuant to our by-laws, the vote of the holders of a majority of the total number of votes of our capital stock represented in person or by proxy and entitled to vote at the Annual Meeting, voting as a single class, is required for the ratification of the selection of EisnerAmper LLP as our independent registered public accounting firm for the fiscal year ending

December 31, 2015. A properly executed proxy marked "ABSTAIN" will not be voted, although it will be counted as present and entitled to vote for purposes of the Proposal. Accordingly, an abstention will have the effect of a vote against the Proposal. Additionally, the ratification of the appointment of the independent registered public accounting firm for the fiscal year ending December 31, 2015 is a matter on which a broker or other nominee is allowed to vote, even if the broker or other nominee does not receive voting instructions from you.

Stockholders have the option to vote by telephone or internet by following the instructions on the attached proxy card. **WE ENCOURAGE YOU TO RECORD YOUR VOTE BY TELEPHONE OR INTERNET.** These voting methods are convenient, and save significant postage and processing costs. In addition, when you vote by telephone or internet prior to the meeting date, your vote is recorded immediately and there is no risk that postal delays will cause your vote to arrive late and therefore not be counted.

#### SOLICITATION AND REVOCATION

After you have submitted a proxy, you may change your vote at any time before the proxy is exercised by submitting a notice of revocation or a proxy bearing a later date. Regardless of whether you voted using a traditional proxy card or by telephone or internet, you may use any of these methods to change your vote. You may change your vote either by submitting a proxy card prior to the date of the Annual Meeting or by voting again prior to the time at which the telephone and internet voting facilities close by following the procedures applicable to those methods of voting. In each event, the later submitted vote will be recorded and the earlier vote revoked. You may also revoke a proxy by voting in person at the Annual Meeting. Your attendance at the Annual Meeting will not by itself constitute revocation of a proxy.

We will bear the cost of the solicitation of proxies from our stockholders, including the cost of preparing, assembling and mailing the proxy solicitation materials. In addition to solicitation by mail, our directors, officers and employees may solicit proxies from stockholders by telephone or other electronic means or in person, but no such person will be specifically compensated for such services. We will cause brokerage houses and other custodians, nominees and fiduciaries to forward solicitation materials to the beneficial owners of stock held of record by such persons. We will reimburse such custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses in doing so. We have engaged American Stock Transfer and Trust Company to aid in the distribution of the proxy materials and will reimburse their related reasonable out-of-pocket expenses.

#### SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the beneficial ownership of our capital stock as of April 23, 2015 by each of the following:

- each person (or group within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) known by us to own beneficially more than 5% of any class of our voting securities;
- the executive officers named in the Summary Compensation Table under "Executive Compensation" below;
- each of our directors and director nominees; and
- all of our directors and executive officers as a group.

The amounts and percentages are based on 35,693,430 shares of Common Stock and 53 shares of Series A-2 Preferred Stock issued and outstanding as of April 23, 2015. As used in this table, "beneficial ownership" means the sole or shared power to vote or direct the voting or to dispose or direct the disposition of any security. A person is considered the beneficial owner of securities that can be acquired within 60 days of such date through the exercise or conversion of any option, warrant or other derivative security. Shares of Common Stock subject to options, warrants or other derivative securities which are currently exercisable, convertible or exercisable or convertible within such 60 days are



considered outstanding for computing the ownership percentage of the person holding such options, warrants or other derivative security, but are not considered outstanding for computing the ownership percentage of any other person.

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Name and Address of Beneficial Owners <sup>(1)</sup>	Common Stock Amount and Nature of Beneficial Ownership <sup>(2)</sup>		Percent of Class	
Executive Officers and Directors:				
Peter Holst	1,491,803	(3)	4.2	%
David Clark	157,857	(4)	*	
Gary Iles	-		*	
Kenneth Archer	97,936	(5)	*	
James H. Cohen	7,444	(6)	*	
David Giangano	-		*	
Patrick J. Lombardi	7,444	(6)	*	
James S. Lusk	134,811	(7)	*	
All directors and executive officers as a group (8 people)	1,897,295		5.3	%
Greater than 5% Owners:				
Main Street Capital Corporation 1300 Post Oak Boulevard, Houston, TX 77056	7,711,517	(8)	21.6	%
Sandra and Norman Pessin JTWROS	7,035,059	(9)	19.7	%
Jason T. Adelman Cipher Capital Partners LLC, c/o Rothschild 1251 Avenue of the Americas, Suite 936, New York, NY 10020	3,474,988	(10)	9.7	%

\* Less than 1%

(1) Unless otherwise noted, the address of each person listed is c/o Glowpoint, Inc., 1776 Lincoln Street, Suite 1300, Denver, CO 80203.

(2) Unless otherwise indicated by footnote, the named persons have sole voting and investment power with respect to the shares of Common Stock beneficially owned.

(3) Includes 913,157 shares of Common Stock, 528,646 shares of Common Stock subject to stock options presently exercisable or exercisable within 60 days, and 50,000 shares of unvested restricted Common Stock.

(4) Includes 53,690 shares of Common Stock, 54,167 shares of Common Stock subject to stock options presently exercisable or exercisable within 60 days and 50,000 shares of unvested restricted Common Stock.

(5) Includes 12,500 shares of Common Stock, 79,167 shares of Common Stock subject to stock options presently exercisable or exercisable within 60 days and 6,269 shares of unvested restricted Common Stock.

(6) Includes 7,444 shares of unvested restricted Common Stock.

(7) Includes 38,750 shares of Common Stock, 89,792 shares of Common Stock subject to stock options presently exercisable or exercisable within 60 days and 6,269 shares of unvested restricted Common Stock.

(8) Based on ownership information from an amendment to Schedule 13D filed on December 31, 2014. Includes 7,645,414 shares of Common Stock directly owned by Main Street Capital Corporation ("MSCC"), 47,741 shares of Common Stock owned by MSCC's subsidiary Main Street Mezzanine Fund LP and 18,362 shares of Common Stock owned by MSCC's subsidiary Main Street Capital II, LP. MSCC may be deemed to share voting and investment power with its subsidiaries, Main Street Mezzanine Fund LP and Main Street Capital II, LP, with respect to the 47,741 and 18,362 shares of Common Stock, respectively, owned by such subsidiaries.

(9) Based on ownership information from an amendment to Schedule 13D filed on December 31, 2014.

(10)

Based on ownership information from an amendment to Schedule 13G/A filed on January 12, 2015 by Jason T. Adelman, which states that (i) Mr. Adelman beneficially owns, and shares voting and investment power with respect to, 2,497,600

shares of Common Stock held in joint tenancy with Mr. Adelman's spouse; and (ii) of the 3,474,988 shares of Common Stock beneficially owned by Mr. Adelman, 377,398 shares of Common Stock are held in trusts for Mr. Adelman's minor children.

The issued and outstanding shares of our Series A-2 Preferred Stock are held by David Robinson and Bamdad Bastani, who hold 31.6 shares representing 60.0% of the class and 21.1 shares representing 40.0% of the class, respectively.

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## PROPOSAL NO. 1

## ELECTION OF DIRECTORS

Directors to be elected are to serve until the next annual meeting of stockholders or until their respective successors are duly elected and qualified. The number of directors is determined from time to time by our Board of Directors and is currently six members. James H. Cohen notified the Board of his intention to resign from the Board of Directors immediately prior to the Annual Meeting. The Board has taken action so that upon Mr. Cohen's resignation the number of members of our Board of Directors will automatically decrease from six directors to five directors. The nominees who will stand for election are Kenneth Archer, David Giangano, Peter Holst, Patrick J. Lombardi and James S. Lusk, all of whom are currently members of our Board of Directors. The five nominees receiving the highest number of affirmative votes will be elected as directors. In the event any nominee is unable or unwilling to serve as a nominee, the Board of Directors may select a substitute nominee. If a substitute nominee is selected, proxies will be voted in favor of such nominee. Our Board of Directors has no reason to believe that any of the named nominees will be unable or unwilling to serve as a nominee or as a director if elected. Proxies cannot be voted for a greater number of persons than the number of nominees named.

## Director Nominees

The following table sets forth information with respect to our director nominees.

Name	Age	Position with Company
Kenneth Archer <sup>(2)(3)</sup>	57	Director, Chairman of the Nominating Committee
David Giangano <sup>(1)(2)</sup>	53	Director
Peter Holst	46	Director, Chief Executive Officer and President
Patrick J. Lombardi <sup>(1)</sup>	67	Director, Chairman of the Board
James S. Lusk <sup>(1)(2)(3)</sup>	59	Director, Chairman of the Audit Committee, Chairman of the Compensation Committee

(1) Member of the Audit Committee

(2) Member of the Compensation Committee

(3) Member of the Nominating Committee

## Nominee Biographies

Kenneth Archer, Director. Mr. Archer joined our Board of Directors in June 2010. Mr. Archer is currently the Vice President of Global Sales Enablement for Hewlett-Packard and previously served as the Americas Vice President of Channels and Alliances for the Technology Services Business from November 2011 to March 2014. From June 2009 to October 2011, Mr. Archer was CEO of TriNET Systems, a provider of global design, implementation and support services for communication and networking solutions from Avaya, Extreme, Juniper, and Nectar Networks. From April 2008 to June 2009, Mr. Archer was President of Prime Communications, an Avaya Gold Business Partner, until it was acquired by TriNET Systems in June 2009. Prior to Prime Communications, Mr. Archer was Vice President of North American Channels for Avaya commencing in July 2005, where he was responsible for the channel strategy, program, operations, and partner management team, and spent 24 years before that at Hewlett-Packard working in various roles within the channels program. He previously served on the Board of Directors of Juma Technology Corp. (OTCBB:JUMT), a leading IP convergence firm specializing in managed services, and previously served on the Board of PRG Group, Inc. (PRGJ.PK), the former holding company of Prime Communications. Mr. Archer graduated with a BS in Marketing from West Chester University of Pennsylvania and received an Executive MBA Management degree from Fairleigh Dickinson University in New Jersey.



In considering Mr. Archer as a director of the Company, the Board reviewed his specialized experience and extensive knowledge in sales and marketing (specifically in building and establishing a channel sales program and strategy) in the communications and networking industries, and also his leadership experience as a chief executive.

David Giangano, Director. Mr. Giangano joined our Board of Directors in February 2015. Mr. Giangano co-founded Nectar Services Corp. in 2007 and is currently Nectar's President and CEO. Nectar is a leader in the development of network monitoring and management software for voice, video, data, and advanced applications for the Unified Communications (UC) industry. Mr. Giangano developed Nectar's world-class channel program where he oversaw Nectar's complete go-to-market strategy, global channel and OEM partner programs. Nectar's channel partner and OEM presence currently spans over 100 countries and is also augmented by numerous Alliance partnerships. In 2002, Mr. Giangano founded Juma Technology, an Avaya Platinum Business Partner specializing in IP convergence. There he established a reputation as the industry leader in Voice & Data IP Convergence. Earlier in his career, Mr. Giangano spent 10 years with Northrop Grumman Corporation as a Senior Design Engineer in the R&D group and as a Project Leader on various military and commercial programs. Mr. Giangano holds multiple patents in such disciplines as data encryption, data acquisition and digital signal processing. His technical writings have been published in NASA and Institute of Electrical and Electronics Engineers (IEEE) journals and magazines. Mr. Giangano earned a Bachelor of Science in Engineering from Fairleigh Dickinson University.

In considering Mr. Giangano as a director of the Company, the Board reviewed his specialized experience and knowledge in sales and marketing in the communications and networking industries, and also his leadership experience as a chief executive.

Peter Holst, Chief Executive Officer and Director. Prior to being named President and CEO in January 2013, Mr. Holst served as the Company's Senior Vice President for Business Development since October 1, 2012. Prior to joining the Company, Mr. Holst served as the Chief Executive Officer of Affinity VideoNet, Inc. ("Affinity") from June 1, 2008 until October 1, 2012, when the Company acquired Affinity. Prior to joining Affinity, Mr. Holst served as the President and Chief Operating Officer of Raindance Communications. Mr. Holst holds a degree in Business Administration from the University of Ottawa.

In considering Mr. Holst as a director of the Company, the Board reviewed his extensive knowledge and expertise in the communications as a service industry, and the leadership he has shown in his positions with prior companies.

Patrick J. Lombardi, Chairman of the Board. Mr. Lombardi joined our Board of Directors in April 2014, and has served as Chairman since joining the Board. From 1996 to March 2013, Mr. Lombardi was a self-employed consultant to the telecommunications industry. From 1981 to 1996, Mr. Lombardi worked for Jones International, Ltd. and subsidiaries, serving as Group President and holding several senior management positions for subsidiaries of Jones. Mr. Lombardi formerly served on the Boards of Directors for Jones Intercable, Inc., Bell Cablemedia plc and Raindance Communications, Inc. Mr. Lombardi holds a B.B.A. degree in Accounting from the University of Notre Dame and is a certified public accountant.

In considering Mr. Lombardi as a director of the Company, the Board reviewed his extensive expertise and knowledge regarding the telecommunications industry, as well as the prior directorships and executive positions he has held with public companies. Mr. Lombardi qualifies as an "audit committee financial expert" under the applicable SEC rules and accordingly contributes to the Board of Directors his understanding of corporate finance and his skills in analyzing and evaluating financial statements.

James S. Lusk, Director. Mr. Lusk joined our Board of Directors in February 2007. From 2007 until April 2015, Mr. Lusk was Executive Vice President and Chief Financial Officer of ABM Industries Incorporated (NYSE:ABM), a leading provider of facility solutions with revenues of approximately \$5 billion and 118,000 employees deployed

throughout the United States and various international locations. Prior to joining ABM, he served as Vice President, Business Services and Chief Operating Officer for the Europe, Middle East and Africa region for Avaya from 2005 to 2007. Mr. Lusk has also served as Chief Financial Officer, Treasurer of BioScrip/MIM, President of Lucent Technologies' Business Services division, and interim Chief Financial Officer and Corporate Controller of Lucent Technologies. Mr. Lusk earned his B.S. (Economics), cum laude, from the Wharton School,

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University of Pennsylvania, and his M.B.A (Finance) from Seton Hall University. He is a CPA and was inducted into the AICPA Business and Industry Leadership Hall of Fame in 1999.

In considering Mr. Lusk as a director of the Company, the Board reviewed his extensive expertise and knowledge regarding finance and accounting matters, as well as compensation, risk assessment and corporate governance. Mr. Lusk qualifies as an “audit committee financial expert” under the applicable SEC rules and accordingly contributes to the Board of Directors his understanding of generally accepted accounting principles and his skills in auditing, as well as in analyzing and evaluating financial statements.

#### Board Recommendation

The Board of Directors recommends that the stockholders vote FOR the election of each nominee for director to serve until our next annual meeting of stockholders, or until his successor is duly elected and qualified.

## CORPORATE GOVERNANCE

### Board of Directors

Our Board of Directors currently consists of six directors. The current Board members include five independent directors and our chief executive officer. The core responsibility of our Board of Directors is to exercise its business judgment to act in what it reasonably believes to be in the best interests of the Company and its stockholders. Further, members of the Board fulfill their responsibilities consistent with their fiduciary duty to the stockholders, and in compliance with all applicable laws and regulations. The primary responsibilities of the Board include:

• Oversight of management performance and assurance that stockholder interests are served;

• Oversight of the Company's business affairs and long-term strategy; and

• Monitoring adherence to the Company's standards and policies, including, among other things, policies governing internal controls over financial reporting.

Our Board of Directors met twelve times during the year ended December 31, 2014. During this period, each director attended 75% or more of the aggregate of (i) the total number of meetings of the Board of Directors held during the period for which he was a director and (ii) the total number of meetings of committees of the Board of Directors on which he served, held during the period for which he served. The Company does not have a policy with regard to directors' attendance at our annual meetings of stockholders. All of the directors who were members of the Board at such time attended the 2014 annual meeting of stockholders.

Our Board of Directors conducts its business through meetings of the Board and through activities of the standing committees, as further described below. The Board and each of the standing committees meets throughout the year on a set schedule and also holds special meetings and acts by written consent from time to time, as appropriate. Board agendas include regularly scheduled executive sessions of the independent directors to meet without the presence of management. The Board has delegated various responsibilities and authority to different committees of the Board, as described below. Members of the Board have access to all of our members of management outside of Board meetings.

### Director Independence

Our Board of Directors has determined that each of our current directors, other than Mr. Holst, qualifies as "independent" in accordance with the rules of the NYSE MKT. Because Mr. Holst is our chief executive officer and an employee of the Company, he does not qualify as independent.

The NYSE MKT independence definition includes a series of objective tests, such as that the director is not an employee of the Company and has not engaged in various types of business dealings with the Company. In addition, as further required by the NYSE MKT rules, the Board has made a subjective determination as to each independent director that no relationship exists which, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, the directors reviewed and discussed information provided by the directors and the Company with regard to each director's business and personal activities as they may relate to the Company and the Company's management.

### Board Committees

The Board has an audit committee, a compensation committee and a nominating committee. Each of the committees regularly report on their activities and actions to the full Board. The charters for the audit committee, the

compensation committee,

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and the nominating committee are available on the Company's website at [www.glowpoint.com/investor-relations](http://www.glowpoint.com/investor-relations). The contents of our website are not incorporated by reference into this document for any purpose.

#### Audit Committee

The audit committee currently consists of James S. Lusk (chair), David Giangano and Patrick J. Lombardi. Our Board of Directors has determined that all members of the audit committee are "independent" within the meaning of the listing standards of NYSE MKT and the SEC rules governing audit committees. In addition, our Board of Directors has determined that each of Messrs. Lusk and Lombardi has the accounting and related financial management expertise to satisfy the requirements of an "audit committee financial expert," as determined pursuant to the rules and regulations of the SEC. The audit committee consults and meets with our independent registered public accounting firm, Chief Financial Officer and accounting personnel, reviews potential conflict of interest situations where appropriate, and reports and makes recommendations to the full Board of Directors regarding such matters. The audit committee met four times during the year ended December 31, 2014.

Please see "Report of the Audit Committee of the Board of Directors" below for additional information regarding the audit committee and the report of its members for the year ended December 31, 2014.

#### Compensation Committee

Our compensation committee currently consists of James S. Lusk (chair), Kenneth Archer, James H. Cohen and David Giangano. Each member of the compensation committee meets the applicable independence requirements of the NYSE MKT. The compensation committee met nine times during the year ended December 31, 2014.

The compensation committee is responsible for establishing and administering our executive compensation policies. The role of the compensation committee is to (i) formulate, evaluate and approve compensation of the Company's directors, executive officers and key employees, (ii) oversee all compensation programs involving the use of the Company's stock and (iii) produce, if required under applicable securities laws, a report on executive compensation for inclusion in the Company's proxy statement for its annual meeting of stockholders. The duties and responsibilities of the compensation committee under its charter include:

- annually reviewing and making recommendations to the Board with respect to compensation of directors, executive officers and key employees of the Company;
- annually reviewing and approving corporate goals and objectives relevant to Chief Executive Officer compensation, evaluating the Chief Executive Officer's performance in light of those goals and objectives, and recommending to the Board the Chief Executive Officer's compensation levels based on this evaluation;
- reviewing competitive practices and trends to determine the adequacy of the executive compensation program;
- approving and overseeing compensation programs for executive officers involving the use of the Company's stock;
- approving and administering cash incentives for executives, including oversight of achievement of performance objectives, and funding for executive incentive plans;
- annually performing a self-evaluation on the performance of the compensation committee; and
- making regular reports to the Board concerning the activities of the compensation committee.

During the year ended December 31, 2014, the Compensation Committee engaged Deloitte Consulting LLP to benchmark cash compensation and long-term incentives for the Company's executive officers. When appropriate, the compensation committee

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may, in carrying out its responsibilities, form and delegate authority to subcommittees. The Chief Executive Officer plays a role in determining the compensation of our other executive officers by evaluating the performance of those executive officers. The Chief Executive Officer's evaluations are then reviewed by the compensation committee. This process leads to a recommendation for any changes in salary, bonus terms and equity awards, if any, based on performance, which recommendations are then reviewed and approved by the compensation committee.

#### Nominating Committee

Our nominating committee currently consists of Kenneth Archer (chair), James S. Lusk and James H. Cohen. Each member of the nominating committee meets the independence requirements of the NYSE. The nominating committee is responsible for assessing the performance of our Board of Directors and making recommendations to our Board regarding nominees for the Board. The nominating committee met two times during the year ended December 31, 2014.

The nominating committee considers qualified candidates to serve as a member of our Board of Directors suggested by our stockholders. Nominees recommended by stockholders will be given appropriate consideration and evaluated in the same manner as other nominees. Stockholders can suggest qualified candidates for director by writing to our Corporate Secretary at 1776 Lincoln Street, Suite 1300, Denver, Colorado 80203. Stockholder submissions that are received in accordance with our by-laws and that meet the criteria outlined in the nominating committee charter are forwarded to the members of the nominating committee for review. Stockholder submissions must include the following information:

- a statement that the writer is our stockholder and is proposing a candidate for our Board of Directors for consideration by the nominating committee;
- the name of and contact information for the candidate;
- a statement of the candidate's business and educational experience;
- information regarding each of the factors set forth in the nominating committee charter sufficient to enable the nominating committee to evaluate the candidate;
- a statement detailing any relationship between the candidate and any of our customers, suppliers or competitors;
- detailed information about any relationship or understanding between the proposing stockholder and the candidate; and
- a statement that the candidate is willing to be considered and willing to serve as our director if nominated and elected.

In considering potential new directors, the nominating committee will review individuals from various disciplines and backgrounds. Among the qualifications to be considered in the selection of candidates are broad experience in business, finance or administration; familiarity with national and international business matters; familiarity with our industry; and prominence and reputation. While there is no formal policy with regard to consideration of diversity in identifying director nominees, the nominating committee will consider diversity in business experience, professional expertise, gender and ethnic background, along with various other factors when evaluating director nominees. The nominating committee will also consider whether the individual has the time available to devote to the work of our Board of Directors and one or more of its committees.

The nominating committee will also review the activities and associations of each candidate to ensure that there is no legal impediment, conflict of interest or other consideration that might hinder or prevent service on our Board of Directors. In making its selection, the nominating committee will bear in mind that the foremost responsibility of a director of a corporation is

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to represent the interests of the stockholders as a whole. The nominating committee will periodically review and reassess the adequacy of its charter and propose any changes to the Board of Directors for approval.

#### Contacting the Board of Directors

Any stockholder who desires to contact our Board of Directors, committees of the Board of Directors and individual directors may do so by writing to: Glowpoint, Inc., 1776 Lincoln Street, Suite 1300, Denver, Colorado 80203, Attention: David Clark, Corporate Secretary. Mr. Clark will direct such communication to the appropriate persons.

#### Board Leadership Structure and Role in Risk Oversight

At no time during the year ended December 31, 2014 was the chairman of our Board of Directors also our Chief Executive Officer. Although the Board does not have a policy regarding the separation of the roles of chairman of the Board and Chief Executive Officer, the Board believes it is in the best interests of the Company to make that determination based on the position and direction of the Company, and also the membership of the Board. This structure facilitates a greater role for the Board of Directors in the oversight of the Company, and allows the chief executive officer to focus on the management of the Company's day-to-day operations. Currently, Patrick J. Lombardi holds the position of chairman.

The Board has an active role, directly and through its committees, in the oversight of the Company's risk management efforts. The Board carries out this oversight role through several levels of review. The Board regularly reviews and discusses with members of management information regarding the management of risks inherent in the operation of the Company's business and the implementation of the Company's strategic plan, including the Company's risk mitigation efforts.

Each of the Board's committees also oversees the management of the Company's risks that are under each committee's areas of responsibility. For example, the audit committee oversees management of accounting, auditing, external reporting, internal controls and cash investment risks. The nominating committee oversees and assesses the performance of the Board and makes recommendations to the Board from time to time regarding nominees for the Board. The compensation committee oversees risks arising from compensation practices and policies. While each committee has specific responsibilities for oversight of risk, the Board is regularly informed by each committee about such risks. In this manner the Board is able to coordinate its risk oversight.

#### Executive Officers

The following table sets forth certain information regarding our current executive officers.

Name	Age	Position
Peter Holst	46	President and Chief Executive Officer
David Clark	46	Chief Financial Officer and Corporate Secretary
Gary Iles	51	Senior Vice President, Sales and Marketing

#### Biographies

Peter Holst, President and Chief Executive Officer. See "Nominee Biographies" above for Mr. Holst's biography.

David Clark, Chief Financial Officer. Mr. Clark joined the Company in March 2013 as Chief Financial Officer and leads our financial operations and investor relations, including financial planning and reporting, accounting, tax and treasury. Mr. Clark has more than 20 years of experience in finance and accounting. Prior to joining the Company,



Mr. Clark spent over eight years with Allos Therapeutics, a publicly traded biopharmaceutical company, serving from 2007 to 2012 as Vice President of Finance, Treasurer and acting CFO. While at Allos, Mr. Clark was responsible for oversight and management of all financial activities, including equity financings, strategic financial planning, and investor relations. Prior to Allos, Mr. Clark spent nearly

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four years with Seurat Company (formerly XOR Inc.), an e-commerce managed services company, serving most recently as CFO. Mr. Clark started his career and spent over seven years in the audit practice of PricewaterhouseCoopers LLP. Mr. Clark is an active Certified Public Accountant and received a Master of Accountancy and a B.S. in Accounting from the University of Denver.

Gary Iles, Senior Vice President, Sales and Marketing. Mr. Iles joined the Company in February 2015 as Senior Vice President, Sales and Marketing. Mr. Iles has more than 20 years' experience in the collaboration and telecommunications industry, serving in leadership roles within Product, Marketing, Sales, and IT. Before joining Glowpoint, Mr. Iles was the Global Vice President of Video Strategy and Services of Premiere Global Services, Inc. ("PGI") since January 2014. Prior to PGI, Mr. Iles was employed by ACT Conferencing ("ACT") from October 2007 through September 2013, serving most recently as Global Vice President of Marketing, Sales and Products. ACT was acquired by PGI in September 2013. During his past 8 years in the collaboration industry, Mr. Iles has been instrumental in charting strategic direction, developing cloud services and platforms, forging technology alliances, managing sales, product and marketing functions, and building channel partnerships. Earlier in his career, Mr. Iles held positions with telecommunication firms or consulted for Fortune companies including AT&T, British Telecom, Qwest Communications, IBM, Level 3 Communications and Lucent Technologies. Mr. Iles received a Master of International Business Studies from the Darla Moore School of Business at University of South Carolina and a bachelor degree from St. Edward's University in Austin, Texas.

## EXECUTIVE COMPENSATION

### Summary Compensation Table

The following table sets forth for the years ended December 31, 2014 and 2013 compensation awarded to, paid to, or earned by the Chief Executive Officer and our other two executive officers as of December 31, 2014 (the "Named Executive Officers").

Name and Principal Position	Year	Salary	Bonus	Stock Awards <sup>(4)</sup>	Option Awards <sup>(5)</sup>	All Other Compensation	Total
Peter Holst Chief Executive Officer and President <sup>(1)</sup>	2014	\$ 199,062	\$ 49,092	<sup>(6)</sup> \$—	\$—	\$ 129,680	<sup>(7)</sup> \$ 377,834
	2013	\$ 196,250	\$ 117,930	<sup>(8)</sup> \$ 402,911	<sup>(9)</sup> \$ 1,312,500	\$ 279,775	<sup>(10)</sup> \$ 2,309,366
David Clark Chief Financial Officer <sup>(2)</sup>	2014	\$ 224,277	\$ 27,655	<sup>(6)</sup> \$—	\$—	\$ 7,380	<sup>(11)</sup> \$ 259,312
	2013	\$ 169,231	\$ 41,250	<sup>(12)</sup> \$ 209,301	<sup>(13)</sup> \$ 113,500	\$ 3,201	<sup>(14)</sup> \$ 536,483
Scott Zumbahlen Former Senior Vice President, Sales <sup>(3)</sup>	2014	\$ 175,000	\$ 43,269	\$ 106,551	\$—	\$ 6,169	<sup>(15)</sup> \$ 330,989
	2013	\$ 27,933	\$—	\$—	\$—	\$—	\$ 27,933

(1) Mr. Holst joined the Company as Senior Vice President of Business Development on October 1, 2012 and was appointed as Chief Executive Officer on January 11, 2013.

(2) Mr. Clark joined the Company as Chief Financial Officer on March 25, 2013.

(3) Mr. Zumbahlen joined the Company as Senior Vice President, Sales on November 5, 2013. Mr. Zumbahlen initially received an annual base salary of \$175,000 and was eligible to receive a maximum annual incentive bonus equal to 100% of his base salary. Mr. Zumbahlen's employment with the Company terminated on February 4, 2015. Mr. Zumbahlen forfeited the stock award shown in the table above upon his termination.

(4) These amounts represent the aggregate grant date fair value for stock awards for fiscal years 2014 and 2013, respectively, computed in accordance with FASB ASC Topic 718. Please see Note 11 of the Notes to Consolidated

Financial Statements contained in our 2014 Annual Report on Form 10-K for an explanation of the assumptions made in valuing these awards.

(5) These amounts represent the aggregate grant date fair value for option awards for fiscal years 2014 and 2013, respectively, computed in accordance with FASB ASC Topic 718. Please see Note 11 of the Notes to Consolidated Financial Statements contained in our 2014 Annual Report on Form 10-K for an explanation of the assumptions made in valuing these awards.

(6) Represents a bonus earned for fiscal year 2014 performance which has not yet been paid as of the filing of this Proxy Statement.

Represents: (i) a January 2014 severance payment attributable to former employment with Affinity of \$125,000, (7)(ii) a Company matching contribution of \$2,400 under the Company's 401(k) Plan and (iii) \$2,280 of parking reimbursement.

Represents: (i) a cash payment of \$44,805 received in 2013 relating to achievement of certain performance (8)measures for the six-month period ended March 31, 2013 relating to the October 2012 acquisition of Affinity, and (ii) a \$73,125 bonus earned for fiscal year 2013 performance and paid in March 2014.

Represents: (i) a grant of 100,000 shares of restricted Common Stock in January 2013 in connection with Mr. Holst's appointment as Chief Executive Officer, (ii) issuance of 149,350 shares of Common Stock in 2013 relating (9)to achievement of certain performance measures for the six-month period ended March 31, 2013 relating to the acquisition of Affinity, and (iii) a March 2014 grant of 62,261 shares of restricted Common Stock that were earned for fiscal year 2013 performance.

Represents: (i) a cash payment of \$160,000 in April 2013 relating to a retention bonus the Company agreed to pay (10)in connection with the acquisition of Affinity, (ii) 2013 severance payments attributable to former employment with Affinity of \$115,000, and (iii) a Company matching contribution of \$4,775 under the Company's 401(k) Plan.

(11) Represents a Company matching contribution of \$5,100 under the Company's 401(k) Plan and \$2,280 of parking reimbursement.

(12) Represents a \$41,250 bonus earned for fiscal year 2013 performance and paid in March 2014.

Represents: (i) a grant of 100,000 shares of restricted Common Stock in March 2013 in connection with Mr. (13)Clark's appointment as Chief Financial Officer and (ii) a March 2014 grant of 35,121 shares of restricted Common Stock that were earned for fiscal year 2013 performance.

(14) Represents a Company matching contribution under the Company's 401(k) Plan.

(15) Represents a Company matching contribution of \$3,937 under the Company's 401(k) Plan and \$2,232 of parking reimbursement.

#### Agreements with Named Executive Officers

Peter Holst Employment Agreement. On January 14, 2013, the Board appointed Peter Holst as the Company's President and Chief Executive Officer, and as a member of the Board. In connection with his appointment, the Company entered into an employment agreement with Mr. Holst (the "Holst Employment Agreement"). The initial term of the Holst Employment Agreement, which is terminable at will by either party, expired on December 31, 2014 and renews for successive one-year terms if not otherwise terminated. Pursuant to the Holst Employment Agreement, Mr. Holst initially received an annual base salary of \$195,000 and is eligible to receive a maximum annual incentive bonus equal to 100% of his base salary, at the discretion of the compensation committee of the Board based on meeting certain financial and non-financial goals. The Company also issued to Mr. Holst, pursuant to the Company's 2007 Stock Incentive Plan (the "2007 Plan"): (i) 100,000 restricted shares of Common Stock and (ii) an option to purchase 875,000 shares of Common Stock. The option has a term of 10 years and an exercise price of \$1.98. Twenty-five percent of the option vested on January 13, 2014, with the remainder of each vesting in equal monthly installments for 36 months thereafter. Fifty percent of the restricted shares were vested as of January 13, 2015, with the remainder vesting in equal annual installments on the anniversary of the grant date. Any unvested options and shares of restricted Common Stock will vest in full upon a Change in Control or Corporate Transaction, as each term is defined in the 2007 Plan. Effective March 1, 2014, the Board increased Mr. Holst's annual base salary to \$199,875. Mr. Holst was awarded a bonus in March 2014, relating to fiscal year 2013 performance, of \$73,125 in cash and 62,261 shares of

restricted Common Stock. The 62,261 shares of restricted Common Stock vested on March 7, 2015. Mr. Holst earned a bonus for fiscal year 2014 of \$49,092 which has not yet been paid as of the filing of this Proxy Statement. In February 2015, Mr. Holst was awarded 1,250,000 restricted stock units, of which 250,000 vest on a time-based method (with vesting of 50% on January 1, 2017, 25% on January 1, 2018 and 25% on January 1, 2019) and 1,000,000 vesting on achievement of the Company's financial targets over a three-year period. Any unvested restricted stock units will vest in full upon a Change in Control or Corporate Transaction, as each term is defined in the 2014 Equity Incentive Plan.

Mr. Holst also received, as payment for historical severance amounts attributable to his employment with Affinity, \$240,000 (the "Affinity Severance Payment"). The Affinity Severance Payment reduced the Company's long-term debt obligation by reducing certain notes by the severance amount. Approximately \$115,000 of the Affinity Severance Payment was paid during the year ended December 31, 2013 and the remaining amount (\$125,000) was paid in January 2014. Mr. Holst also received in 2013 a cash payment of \$160,000 relating to a retention bonus the Company agreed to pay in connection with the acquisition of Affinity. Mr. Holst was also entitled to earn up to 150,000 shares of Common Stock and a cash bonus of up to \$45,000 for the six-month period ended March 31, 2013, if he achieved certain performance measures, pursuant to his original employment agreement with the Company; of which Mr. Holst actually earned and was issued 149,350 shares of Common Stock and \$44,805 as a cash bonus in June 2013.

**David Clark Employment Agreement.** On March 25, 2013, the Company entered into an employment agreement with David Clark (the "Clark Employment Agreement") in connection with his appointment as Chief Financial Officer of the Company. Pursuant to the Clark Employment Agreement, Mr. Clark initially received an annual base salary of \$220,000 and is eligible to receive a maximum annual incentive bonus equal to 50% of his base salary, at the discretion of the compensation committee of the Board, based on meeting certain financial and non-financial goals. As part of the Clark Employment Agreement, the Company issued to Mr. Clark, pursuant to the 2007 Plan, (i) 100,000 shares of restricted Common Stock and (ii) an option to purchase 100,000 shares of Common Stock. The option has a term of 10 years and an exercise price of \$1.51. Twenty-five percent of the option vested on March 25, 2014, with the remainder of each vesting in equal monthly installments for 36 months thereafter. Fifty percent of the restricted shares were vested as of March 25, 2015, with the remainder vesting in equal annual installments on the anniversary of the grant date. Any unvested options and shares of restricted Common Stock will vest in full upon a Change in Control or Corporate Transaction, as each term is defined in the 2007 Plan. Effective March 1, 2014, the Board increased Mr. Clark's annual base salary to \$225,133. Mr. Clark was awarded a bonus in March 2014, relating to fiscal year 2013 performance, of \$41,250 in cash and 35,121 shares of restricted Common Stock. Mr. Clark earned a bonus for fiscal year 2014 of \$27,655 which has not yet been paid as of the filing of this Proxy Statement. In February 2015, Mr. Clark was awarded 400,000 restricted stock units, of which 80,000 vest on a time-based method (with vesting of 50% on January 1, 2017, 25% on January 1, 2018 and 25% on January 1, 2019) and 320,000 vesting on achievement of the Company's financial targets over a three-year period. Any unvested restricted stock units will vest in full upon a Change in Control or Corporate Transaction, as each term is defined in the 2014 Equity Incentive Plan.

**Scott Zumbahlen Separation Agreement.** In connection with Mr. Zumbahlen's departure from the Company, the Company and Mr. Zumbahlen entered into a separation agreement dated as of February 9, 2015, effective as of February 17, 2015. Pursuant to the terms of the separation agreement, the Company paid Mr. Zumbahlen a severance payment in the aggregate amount of \$29,166.66, less applicable deductions and withholdings, which was the equivalent of two months of his salary in effect on the date of his separation. The separation agreement also contained a two-month non-competition agreement, a twelve-month non-solicitation agreement, a general release of claims against the Company by Mr. Zumbahlen, as well as other customary terms.

#### Outstanding Equity Awards at Fiscal Year-End

The table set forth below presents the number and values of exercisable and unexercisable options and unvested shares of restricted Common Stock held by the Named Executive Officers at December 31, 2014:

Name	Option Awards			Stock Awards		Market Value of Shares or Units of Stock That Have Not Vested
	Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	
Notes payable	1,759,229					\$ 5,000,000
Mortgage payable	2,988,044	3,123,839				\$ 4,927,286
	\$ 9,747,273	\$ 8,051,125				

**Revolving Credit Facility**

On February 7, 2008, we entered into a \$5 million revolving credit facility with Fifth Third Bank (the Bank). The credit facility has a floating interest rate equal to the Prime Rate plus fifty basis points (.50%), requires monthly payments of interest only and was originally due in full February 7, 2010, and a 90-day extension was granted until May 7, 2010. On April 23, 2010, the Bank renewed the credit facility which is due in full on April 23, 2011. The facility requires us to pay the Bank an unused line fee equal to one-half percent (0.50%) per annum of the unused portion of the credit line. The line of credit is secured by a restricted cash balance (See NOTE C) as well as approximately 28,500 coins recovered from the SS *Republic* shipwreck, which amount will be reduced over the term by the amount of coins sold. The modified borrowing base is equal to forty percent

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(40%) of the eligible coin inventory calculated on a rolling twelve-month wholesale average value. Odyssey is required to comply with a number of customary affirmative and negative covenants. The significant covenants include: maintaining insurance on the inventory; ensuring the collateral is free from encumbrances and without the consent of the Bank, the Company cannot merge or consolidate with or into any other corporation or entity nor can the Company enter into a material debt agreement with a third party.

**Notes Payable**

On August 20, 2010, we entered into individual purchase agreements with certain investors pursuant to which we issued and sold promissory notes in the aggregate principal amount of \$1,800,000 and warrants to purchase an aggregate of 270,000 shares of common stock. The notes bear interest at a rate equal to 5.0% per annum, and all principal and accrued interest thereunder is due and payable on or before December 18, 2010. If an event of default occurs, the notes will thereafter bear interest at a rate equal to 25% per annum. As of October 18, 2010, these notes were pre-paid and satisfied in their entirety. The warrants have an exercise price of \$2.25 per share of common stock and will be exercisable in accordance with their terms at any time on or before the close of business on August 20, 2013. These warrants represented a discount on the notes payable, therefore were valued using the Black-Scholes valuation method and bifurcated establishing a discount on notes payable for \$150,893 and a corresponding increase to paid-in-capital. The discount is being amortized to interest expense over the life of the note until October 18, 2010. The notes payable of \$1,800,000 at September 30, 2010 is shown net of the discount remaining which is \$40,771.

**Mortgage Payable**

On July 11, 2008, we entered into a mortgage loan with Fifth Third Bank. Pursuant to the Loan Agreement, we borrowed \$2,580,000. The loan bears interest at a variable rate equal to the prime rate plus three-fourths of one percent (0.75%) per annum. The loan matures on July 11, 2013, and requires us to make monthly principal payments in the amount of \$10,750 plus accrued interest. This loan is secured by a restricted cash balance (See NOTE C) as well as a first mortgage on our corporate office building. This loan contains customary representations and warranties, affirmative and negative covenants, conditions, and other provisions.

During May 2008, we entered into a mortgage loan in the principal amount of \$679,000 with The Bank of Tampa to purchase our conservation lab and storage facility. This obligation has a monthly payment of \$5,080 and a maturity date of May 14, 2015. Principal and interest payments are payable monthly. Interest is at a fixed annual rate of 6.45%. This debt is secured by the related mortgaged real property. The seller is carrying a second mortgage for \$100,000 with interest due monthly and \$25,000 of principal due each May commencing in May 2009. The interest is at a variable rate of 1.0% above the prime interest rate stated by BB&T, formerly Colonial Bank of Tampa. This obligation has a maturity date of May 14, 2012, and is also secured by the related mortgaged real property.

**NOTE J STOCKHOLDER S EQUITY****Common Stock**

On May 6, 2010, we issued 1,300,000 shares of common stock to one institutional investor upon conversion of 13 outstanding shares of our Series E Convertible Preferred Stock.

On April 20, 2010, we issued 600,000 shares of common stock to one institutional investor upon conversion of 600,000 outstanding shares of our Series D Convertible Preferred Stock.

On March 18, 2010, we issued 600,000 shares of common stock to one institutional investor upon conversion of 600,000 outstanding shares of our Series D Convertible Preferred Stock.

On February 12, 2010, we issued 500,000 shares of common stock to one institutional investor upon conversion of 500,000 outstanding shares of our Series D Convertible Preferred Stock.

During January 2010, we entered into individual purchase agreements with certain investors pursuant to which we sold an aggregate of 4,000,000 shares of Odyssey's common stock and warrants to purchase up to 2,400,000 shares of common stock to such investors. The common stock and warrants were sold as units, with each unit consisting of one share of common stock and a warrant to purchase 0.6 shares of common stock. The purchase price for each unit was \$1.565. The warrants have an exercise price of \$2.25 per share of common stock and are exercisable in accordance with their terms at any time on or before the close of business on January 29, 2013. The net proceeds to us from the registered direct public offering, after deducting placement agent fees and its offering expenses, and excluding the proceeds, if any, from the exercise of the warrants issued in the offering, were approximately \$6.1 million.



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On May 22, 2009, we issued and sold 1,720,000 shares of common stock at a price of \$2.965 per share, for an aggregate purchase price of \$5,100,000 in cash, pursuant to a Common Stock Purchase Agreement between the Company and three funds managed by two accredited investors. During the three-month period ended June 30, 2009, we issued 4,241,200 shares of common stock to two accredited investors upon conversion of 4,241,200 shares of Series D Convertible Preferred Stock.

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On January 28, 2009, we issued 250,000 shares of common stock to one accredited investor upon conversion of 250,000 shares of Series D Convertible Preferred Stock.

**Preferred Stock**

During January 2009, three accredited investors exercised warrants for the purchase of 197,600 shares of Series D Convertible Preferred Stock for an aggregate exercise price of \$790,400.

**Stock-Based Compensation**

We have two active stock incentive plans, the 1997 Stock Incentive Plan and the 2005 Stock Incentive Plan (the Plan). The 1997 Stock Incentive Plan expired on August 17, 2007. As of that date, options cannot be granted from that Plan but any granted and unexercised options will continue to exist until exercised or they expire. The Plan provides for the grant of incentive stock options, non-qualified stock options, restricted stock awards, restricted stock units and stock appreciation rights. We initially reserved 2,500,000 of our authorized but unissued shares of common stock for issuance under the Plan, and, at the time the Plan was adopted, not more than 500,000 of these shares could be used for restricted stock awards and restricted stock units. On January 16, 2008, the Board of Directors approved amendments to the Plan to add 2,500,000 shares of common stock to the Plan, to allow any number of shares to be used for restricted stock awards, to clarify certain other provisions in the Plan and to submit the amended Plan for stockholder approval. The amended Plan was approved at the annual meeting of stockholders on May 7, 2008. On June 3, 2010, the stockholders approved the addition of 3,000,000 shares to the Plan. Any incentive option and non-qualified option granted under the Plan must provide for an exercise price of not less than the fair market value of the underlying shares on the date of grant, but the exercise price of any incentive option granted to an eligible employee owning more than 10% of our outstanding common stock must not be less than 110% of fair market value on the date of the grant.

Share-based compensation expense recognized during the period is based on the value of the portion of share-based payment awards that is ultimately expected to vest. As share-based compensation expense recognized in the statement of operations is based on awards ultimately expected to vest, it will be reduced for forfeitures. The ASC topic Stock Compensation requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The share based compensation charged against income for the nine-month periods ended September 30, 2010 and 2009 was \$1,406,640 and \$1,629,182, respectively, and for the three-month periods ended September 30 2010 and 2009 was \$469,092 and \$414,091, respectively.

The weighted average estimated fair value of stock options granted during the three-month period ended September 30, 2010, was \$.84. We did not issue stock options in the three-month period ended September 30, 2009. The weighted average fair value of stock options granted is determined using the Black-Scholes option-pricing model, which values options based on the stock price at the grant date, the expected life of the option, the estimated volatility of the stock, the expected dividend payments, and the risk-free interest rate over the life of the option. The Black-Scholes option valuation model was developed for estimating the fair value of traded options that have no vesting restrictions and are fully transferable. Because option valuation models require the use of subjective assumptions, changes in or variations from these assumptions can materially affect the fair value of the options.

	September 30, 2010	September 30, 2009
Risk-free interest rate	.67%	
Expected volatility of common stock	70.54%	
Dividend yield	0%	
Expected life of options	3.3 years	

**NOTE K DEFERRED REVENUE**

During the three-month period ended June 30, 2010, we entered into two marine search services contracts associated with the Robert Frasier Marine, Ltd. projects. These contracts are comprised of two components: sale of research and search operations. Cash payments for the sale of research are received and recorded as revenue upon execution of the contract. Cash payments for search operations are normally 50% on contract, 40% upon arrival at the site and 10% upon completion; however, revenue is recognized over the contractual period when services are performed. The period of time a search operation contract is active varies but will generally last over several months and may be accelerated or extended depending upon operational factors. At September 30, 2010, we have a \$1,620,734 service obligation that will be recognized as

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revenue over the period of time the contractual services are provided. At December 31, 2009, related to another marine search services contract, we had deferred revenue of \$1,257,453 which was earned in 2010. For the three-month and nine-month periods ended September 30, 2010, we earned charter expedition revenue of \$679,132 and \$3,151,680, respectively, relating to these contracts.

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**Table of Contents****NOTE L CONCENTRATION OF CREDIT RISK**

We maintain our cash in three financial institutions. The Federal Deposit Insurance Corporation insures up to \$250,000 per legal entity per financial institution through December 31, 2013. On July 21, 2010, the Federal Deposit Insurance Corporation made the \$250,000 insurance limit permanent. Previously, our main financial institution participated in the Transaction Guarantee Program which provided unlimited coverage to checking deposit accounts that do not earn interest. On July 1, 2010, our main financial institution opted out of the Transaction Guarantee Program. At September 30, 2010, our uninsured cash balance was approximately \$1,600,000.

Our revolving credit facility and primary mortgage bear interest at variable rates and expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable rate indebtedness would increase even though the principal amount of such indebtedness remained the same. Interest on both of these debt instruments are equal to prime plus basis points as described in NOTE I. An increase in the prime rate could have an adverse effect on our operating cash flows and financial condition but we believe it would not be material.

**NOTE M SUBSEQUENT EVENTS**

On October 6, 2010, we entered into separate purchase agreements with certain investors pursuant to sell 24 shares of Series G 8% Convertible Preferred Stock, par value \$0.0001 per share, and warrants to purchase up to 1,800,000 shares of Odyssey's common stock to such investors. The Series G preferred stock and warrants were offered as units, with each unit consisting of one share of Preferred Stock and a Warrant to purchase 75,000 shares of common stock. The purchase price for each unit was \$250,000 (the Financing Arrangement). On October 12, 2010, we completed the Financing Arrangement which resulted in the sale of 24 units for cash proceeds of \$5,050,000 and the exchange for face value \$950,000 of 5.0% Promissory Notes, issued August 20, 2010 and due December 18, 2010 (also see NOTE I).

Our Series G Preferred Stock has a liquidation value of \$250,000 per share and provides for cumulative dividends of \$20,000 per share per annum (8% of the liquidation preference) payable upon declaration by our Board of Directors. The Series G Preferred Stock is convertible into shares of our common stock after April 11, 2011 at an initial conversion price of \$1.785714. The initial conversion price is subject to adjustment for changes in our capital structure and for sales or issuances of common stock or contracts linked to our common stock at amounts or conversion prices below the initial conversion price. The Series G Preferred Stock is redeemable for cash at our option after December 15, 2010. For the period from December 15, 2010 to March 31, 2011, the cash redemption price is 100% of the liquidation value. Subsequently, the redemption price increases at a rate of 1% of the liquidation value each month. The Series G Preferred Stock is also redeemable for cash at the option of the investors after December 15, 2011 at a redemption price equal to our redemption price. Accordingly, the initial redemption price to the investors on December 15, 2011 is \$272,500 per share (or 109% of the liquidation value). The Series G Preferred Stock votes with our common stock on an if-converted basis.

The Warrants were immediately exercisable by the investors at an initial exercise price of \$2.50 per share. The exercise price is subject to adjustment for changes in our capital structure and for sales or issuances of common stock or contracts linked to our common stock at amounts or exercise prices below the initial exercise price. The Warrants, which expire on October 11, 2013, do not extend voting or any other rights of a shareholder to the investors. We have agreed to maintain effectiveness of a Registration Statement that applies to common shares underlying the Warrants.

We will account for the Financing Arrangement in the period it was completed. We will account for exchange of Series G Preferred Stock and Warrants for Promissory Notes as an extinguishment of the Promissory Notes, wherein the financial instruments issued will be recorded at their fair values, the carrying values of our Promissory Notes will be removed from our accounts and the difference will be reflected as a gain or a loss upon extinguishment. At the time of filing of this report, we have not completed the calculation of the fair values of the financial instruments issued.

We will account for the sale of Series G Preferred Stock and Warrants for cash as a financing transaction, wherein the net proceeds that we received will be allocated to the financial instruments and other components issued. For purposes of our allocation, we have concluded that the Warrants do not achieve conditions necessary for their classification in our stockholders' equity. Accordingly, we will first allocate proceeds to the Warrants based upon their fair value. We have also concluded certain features embedded in the Series G Preferred Stock, including the conversion and redemption features, are required to be separated as a compound derivative financial instrument from the Series G Preferred Stock. Accordingly, we will next allocate proceeds to this compound derivative financial instrument based upon its fair value. We have not completed the calculation of fair values of the Warrants or the compound derivative financial instrument. The residual balance of the proceeds, after allocation to the Warrants and the compound derivative financial instrument, will be allocated to the Series G Preferred Stock.

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The Warrants and the compound derivative financial instrument are required to be classified in liabilities and measured at their fair values both initially and subsequently, with changes in fair value reflected in our income. The Series G Preferred Stock is required to be classified outside of stockholders' equity because it is a redeemable security. The residual value initially ascribed to

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the Series G Preferred Stock will be accreted to its redemption value, through charges to retained earnings using the effective interest method, over the period from issuance to the earliest redemption date of December 15, 2011. Also, following the issuance of the Series G Preferred Stock, charges for accretion and dividends, whether or not declared, will be reflected as a reduction to our income for purposes of computing income (loss) applicable to our common stockholders and income (loss) per common share.

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion will assist in the understanding of our financial position and results of operations. The information below should be read in conjunction with the financial statements, the related notes to the financial statements and our Annual Report on Form 10-K for the year ended December 31, 2009.

In addition to historical information, this discussion contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 regarding the Company's expectations concerning its future operations, earnings and prospects. On the date the forward-looking statements are made, the statements represent the Company's expectations, but the expectations concerning its future operations, earnings and prospects may change. The Company's expectations involve risks and uncertainties (both favorable and unfavorable) and are based on many assumptions that the Company believes to be reasonable, but such assumptions may ultimately prove to be inaccurate or incomplete, in whole or in part. Accordingly, there can be no assurances that the Company's expectations and the forward-looking statements will be correct. Please refer to the Company's most recent Annual Report on Form 10-K for a description of risk factors that could cause actual results to differ (favorably or unfavorably) from the expectations stated in this discussion. Odyssey disclaims any obligation to update any of these forward-looking statements except as required by law.

**Operational Update**

We have numerous shipwreck projects in various stages of development around the world. In order to protect the targets of our planned search or recovery operations, in some cases we will defer disclosing specific information relating to our projects until we have located a shipwreck or targets of interest and determined a course of action to protect our property rights.

Additional information regarding our announced projects may be found in our Annual Report on Form 10-K for the year ended December 31, 2009 and our Quarterly Reports on Form 10-Q for the quarters ending March 31, 2010 and June 30, 2010. Only projects with material status updates since those reports were filed are discussed below. We may have other projects in various stages of planning or execution that may not be disclosed for security or legal reasons until considered appropriate by management.

We may use our vessels, the *Odyssey Explorer* and *Ocean Alert*, or chartered vessels to conduct operations based on availability.

***Atlas* Search Project**

Between 2005 and 2010, we searched more than 5,000 square nautical miles of seabed in the western English Channel and the Western Approaches to the Channel, recording over 270 shipwrecks. The shipwrecks discovered include site 35-F, the *Marquise de Tourny*, and HMS *Victory* (1744). Additional high-value targets are believed to be within the *Atlas* search area, and search operations are currently underway in this area.

**HMS *Victory* Project**

We discovered and conducted a preliminary investigation of the shipwreck of Admiral Balchin's HMS *Victory* (which sank in 1744) during our 2008 *Atlas* season and we have been cooperating closely with the United Kingdom (UK) Ministry of Defence (the MOD) on the project. All activities at the site, including the recovery of two bronze cannon, have been conducted in accordance with protocols approved by the UK Government and Royal Navy officials. The *Victory* discovery was announced publicly February 2, 2009. On September 18, 2009, we announced an agreement with the UK Government on an 80% salvage award for the cannon recovered from the site. We have since received the cash payment as compensation under that agreement.

On March 25, 2010, the MOD and the Department for Culture Media and Sport published an official consultation document with a deadline for public submissions of June 30, 2010. Odyssey submitted a document to this process that included a proposal for additional archaeological work on the site. Although the UK is not a signatory to the United Nations Educational Scientific and Cultural Organization's (UNESCO) Convention for the Protection of Underwater Cultural Heritage (CPUCH) and therefore not bound by CPUCH, Odyssey's proposal is consistent with the archaeological principles of the Rules of CPUCH.



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### **Robert Fraser Projects ( *Enigma II* , *Firebrand*, *Shantaram* )**

In April 2010, we entered into agreements to provide project research and shipwreck search and survey services for a project code-named *Firebrand* associated with Robert Fraser Marine, Ltd. projects. Under the agreements, Odyssey furnished research related to *Firebrand* and its sinking and agreed to provide a research vessel, equipment and crew to search a specified area and inspect targets in that area. The contracts provided initial cash payments totaling approximately \$3.2 million (of which \$3.0 has been paid) as well as additional payments upon the sale of coins or artifacts from the *Firebrand* project. After repayment of salvage costs and fees, Odyssey will receive 75% of net revenue in aggregate until an additional £10.5 (approximately \$17 million) has been received and then 50% in aggregate of all further net revenue. Search operations have commenced on the *Firebrand* project and are currently underway.

In June 2010, we entered into agreements to provide project research and shipwreck search and survey services for a project code-named *Shantaram* associated with Robert Fraser Marine, Ltd. projects. Under the agreements, Odyssey furnished research related to *Shantaram* and its sinking and provided a research vessel, equipment and crew to search a specified area and inspect targets in that area. The contract provides for cash payments totaling approximately U.S. \$3.4 million representing initial cash payments of \$1.7 million and additional payments of approximately \$1.5 million within 30 days and \$0.2 million upon project completion, plus additional payments upon the sale of coins or artifacts from the *Shantaram* project. After the re-payment of salvage costs and fees, we will receive 75% of net revenue in aggregate until an additional £11.4 million (approximately \$18 million) has been received and then 50% in aggregate of all further net revenue. The survey of the *Shantaram* search block is complete. Targets of interest have been inspected by our remotely operated vehicle and several other targets remain to be inspected. An amount of approximately \$1.5 million remains due which we are still expecting to receive. In the event of non-payment, Odyssey has secured collateral which includes the right to receive an additional percentage of the net proceeds assuming the target shipwreck is located.

In September 2010, we executed agreements to provide supplementary project research and shipwreck search and survey services for a project code-named *Enigma II* associated with Robert Fraser Marine, Ltd. projects. As part of the agreements for the *Enigma II* project, Odyssey furnished research related to the anticipated location of the *Enigma II* and agreed to provide the research vessel, equipment and crew to search a specified area and inspect targets in that area. The contract provided for initial cash payments totaling approximately \$1.6 million to Odyssey, plus additional payments upon the sale of coins or artifacts from the *Enigma II* project. After the repayment of all recovery costs, Odyssey will receive 75% of net revenue in aggregate until an additional £5.2 million (approximately \$8 million) has been received and then 60% in aggregate of all further net revenue. Survey operations have been completed and targets of interest have been inspected with a remotely operated vehicle.

Based on preliminary results, there is evidence suggesting that at least one of the Robert Fraser Project target shipwrecks has been located. Additional analysis and investigation is currently underway.

We expect to execute additional agreements for subsea mineral exploration and other projects in the fourth quarter. To protect the security of the operations and search areas, specific location details for search projects are not being released at this time.

### **ET 409 Project**

In January 2010, Ethiopian Airlines Flight ET 409 crashed into the Mediterranean Sea shortly after take-off from Beirut International Airport in Lebanon. When ET 409 crashed, Lebanese authorities contacted Odyssey and asked the company to assist in the search and recovery efforts. The *Alert* returned to Beirut and was integrated into search operations that included the Lebanese Navy and Army, the US Navy (USS *Ramage*) and a German Navy ship, the *Laboe*.

Before the plane wreckage was discovered, the Government of Lebanon asked Odyssey to provide additional capabilities for more complex technical documentation of the site. Odyssey sent the *Odyssey Explorer*, which was based in the UK, to Lebanon to assist. We were paid \$1.4 million for the work completed to-date by the Lebanese government. We have also completed a video survey and photomosaic of the entire area of the wreckage and debris field under contract to the airline insurance company for a total contract price of \$ 1.5 million. This groundbreaking project is believed to be the largest underwater geo-spatially accurate photomosaic ever completed, and required stitching together over 50,000 individual high resolution photos. Additional aircraft recovery work at the site is pending until a thorough review of the photomosaic has been completed by the accident investigation team.

### ***Gairsoppa* Project**



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In January 2010, Odyssey was awarded the exclusive salvage contract for the cargo of the SS *Gairsoppa* by the United Kingdom (UK) Government Department for Transport. The contract was awarded after a competitive bid process and is for two years, which commenced immediately. The SS *Gairsoppa* was a British cargo steamer enlisted in the service of the United Kingdom for the Ministry of War Transport during World War II. It was torpedoed by a German U-Boat in February 1941 in the North Atlantic while reportedly carrying a significant cargo of silver.

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Odyssey will assume the risk, expense, and responsibility for the search, cargo recovery, documentation, and marketing of the cargo. If the salvage is successful, Odyssey will be compensated with a salvage award which consists of 80% of the net value of the recovered cargo after deduction of expenses of search and salvage. This project aligns with our strategy to focus on partnership projects with several governments that provide straightforward legal ownership arrangements.

Due to August and September hurricanes adversely affecting the North Atlantic and availability of equipment for our *Gairsoppa* search, we are currently planning to begin search operations in second quarter of 2011.

### **Subsea Mineral Mining and Exploration Project**

Odyssey currently owns 40.8% of Dorado Ocean Resources Ltd., a company created to bring together exclusive licenses and skills of world renowned deep-ocean geologist Dr. Timothy McConachy of Bluewater Metals, the deep-ocean survey and exploration expertise of Odyssey, and the offshore coring and mining expertise of Robert Goodden and Subsea Minerals.

We entered into a long-term charter agreement for a vessel, the *Dorado Discovery*, which underwent renovations and mobilization in Southeast Asia. The *Dorado Discovery* was deployed to the South Pacific in August to work on subsea mineral mining and exploration projects subject to a charter agreement with Dorado. We are providing proprietary expertise and personnel management to Dorado under contract on a commercially reasonable basis, and will continue to conduct operations to explore for deep-ocean SMS deposits in areas covered by exploration permits held by Dorado.

Preliminary results of our early exploration efforts are very encouraging. Operations to-date have supported reconnaissance of an epithermal gold deposit and two SMS (Seafloor Massive Sulfide) deposits. Detailed analyses of certain samples collected to-date indicate high gold, silver, lead and zinc content. However, much more work is needed to assess the commercial value, if any, of these deposits. We are in the very early stages of exploration of the Dorado tenements and remain excited about the prospects for this new venture.

### **Admiralty Legal Proceedings**

An Admiralty arrest is a legal process in which Odyssey seeks recognition from the Court of Odyssey's salvor-in-possession status for a specific shipwreck, site or cargo. It is the first legal step in establishing Odyssey's rights to ownership or to a salvage award. If Odyssey is able to confirm that any entity has a potential legitimate legal claim to any materials recovered from any shipwreck site, we will provide legal notice to any and all potential claimants and pursue prompt resolutions of all claims.

#### ***Black Swan* Arrest**

We filed our notice of appeal with the Federal District Court for the Middle District of Florida and Eleventh Circuit Court of Appeals on January 15, 2010, and filed the appeal with the Eleventh Circuit on May 11, 2010. Spain issued their reply to our appeal on July 19, 2010, and Odyssey's reply to Spain's response was filed on August 19, 2010. Our case has been scheduled for oral argument during the week of February 28, 2011 in Atlanta, Georgia.

In its initial brief, Odyssey argued that the district court erroneously dismissed the case by using flawed legal analysis and by failing to acknowledge or understand several major aspects of the case, including the issue of sovereign immunity. The opening brief also points out several erroneous factual findings and legal conclusions made by the district court including the following:

The district court did not conduct an evidentiary hearing on the disputed issues of fact, unquestioningly accepting testimony presented by Spain. This was a violation of due process for all of the claimants as well as Odyssey.

The district court erred in failing to recognize that the Defendant in the case (an *in rem* proceeding) was NOT Spain or a vessel owned by Spain. The actual Defendant in the case was the group of coins and artifacts (the *res* in this case) discovered and recovered by Odyssey.

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Descendant claimants have alleged to have ownership rights to the property recovered, claiming their ancestors placed it aboard the *Mercedes* (the vessel alleged by Spain to have been carrying the subject cargo) for shipment. The district court completely misunderstood their relationship to the property, referring to them as descendants of those aboard the *Mercedes*, rather than the descendants of property owners.

Despite undisputed evidence to the contrary, the district court erroneously found that the *Mercedes* was not engaged in commercial activity. The majority of coins aboard the *Mercedes* were privately owned and commercially shipped, and the gun decks of the *Mercedes* had been reconfigured to accommodate paying passengers and cargo. In fact, in the aftermath of the sinking of the *Mercedes*, Spain went on diplomatic record to protest to the British government that the *Mercedes* was carrying private cargo and passengers, and therefore the British attack was an unwarranted provocation. Longstanding law, as codified in the FSIA (Foreign Sovereign Immunities Act) and the SMCA (Sunken Military Craft Act) states a vessel is NOT entitled to foreign sovereign immunity if it was engaged in commercial acts.

The district court also failed to recognize that under well-established admiralty law, cargo may be separated from a vessel, and the cargo may be subdivided to determine competing claims of ownership and salvage

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The case is currently pending in the Eleventh Circuit Court of Appeals in Atlanta, Georgia. All of Odyssey's significant filings to date, including those made at the district court level, can be viewed at <http://www.shipwreck.net/blackswanlegal.php>.

**Critical Accounting Policies and Changes to Accounting Policies**

There have been no material changes in our critical accounting estimates since December 31, 2009, nor have we adopted any accounting policy that has or will have a material impact on our consolidated financial statements.

**Results of Operations**

The dollar values discussed in the following tables, except as otherwise indicated, are approximations to the nearest \$100,000 and therefore do not necessarily sum in columns or rows. For more detail refer to the Financial Statements in Part I, Item 1. For the three months ended September 30, 2010, we have shown Income From Operations of \$1.0 million which is the first quarter in several years whereby we have shown a profit from operations.

**Three months ended September 30, 2010, compared to three months ended September 30, 2009**

	Increase/(Decrease) (Dollars in millions)	2010 vs. 2009			
		2010	2009	\$	%
Artifact sales and other		\$	\$ .6	\$ (.6)	(94)%
Exhibit			.2	(.2)	(100)
Expedition charter		9.8		9.8	57,478
Total revenue		\$ 9.8	\$ .8	\$ 9.0	1,063%
Cost of sales			.2	(.2)	(86)
Marketing, general and administrative		2.2	2.1	.1	5
Operations and research		6.6	2.9	3.7	129
Total operating expenses		\$ 8.8	\$ 5.2	\$ 3.6	70%
Other income (expense)		\$ (2.3)	\$ (.1)	\$ (2.3)	(3,489)%

The explanations that follow are for the three months ended September 30, 2010, compared to the three months ended September 30, 2009.

**Revenue**

The increase in total revenue of \$9.0 million was primarily related to a \$9.8 million increase in expedition charter revenue associated with subsea mineral mining work in the South Pacific with Dorado Ocean Resources Ltd. (\$5.1 million), syndicated shipwreck search projects which include *Enigma II*, *Shantaram* and *Firebrand* (\$2.5 million), government and insurance company services in the wake of the airline accident in the Eastern Mediterranean (\$1.5 million) and other miscellaneous charter services (\$.7 million). We are currently working under a charter agreement with Dorado Ocean Resources Ltd. which will extend into the fourth quarter 2010 and longer. We are also planning other syndicated projects in the South Pacific in late 2010 and in 2011.

Odyssey's exhibit, *SHIPWRECK! Pirates & Treasure*, was not on display in the third quarter 2010, but opened at the Maryland Science Center in Baltimore on October 1, 2010. The exhibit will run through January 31, 2011, in the Legg Mason Gallery on the second floor of the science center. We have also seen a decline in artifact sales of \$.6 million in the third quarter 2010 which we believe is due to general economic conditions, availability of new product offerings and merger of two of our major distributors.

**Operating Expenses**

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Marketing, general and administrative expenses were \$2.2 million in 2010 as compared to \$2.1 million in 2009 primarily representing an increase in employee-related expenses offset in part by a decrease in outside professional services.

Operations and research expenses were \$6.6 million in 2010 as compared to \$2.9 million in 2009. The \$3.7 million increase was due to higher vessel - related expenses in 2010 versus 2009 primarily attributable to the volume of projects underway and the addition of our two chartered vessels. The *Dorado Discovery* comprised \$2.6 million of the increase and has recently completed renovations and mobilization in Southeast Asia and has been deployed to the South Pacific to work on subsea mineral mining and exploration projects under a charter agreement with Dorado Ocean Resources Ltd. Our second chartered vessel was deployed during the second quarter 2010 to work on the *Shantaram* project and has recently been sub-chartered to a third party which comprised \$1.4 million of the increase. These increases in vessel-related expenses were offset in part by decreases *Ocean Alert* expenses of \$.3 million while she is waiting to be deployed on the next project. We are currently anticipating several options for the *Ocean Alert* including charter, use on the recovery of the aircraft which crashed in the Easter Mediterranean and potential sale.

**Table of Contents****Other Income (Expense)**

Other income (expense) represents income from investments, interest expense on loans and gain (loss) on our equity investment in Dorado Ocean Resources Ltd. For the third quarter 2010, \$2.1 million represents our portion of the loss on the equity investment. See Note F of the Notes to the Consolidated Financial Statements.

**Nine months ended September 30, 2010, compared to nine months ended September 30, 2009**

	Increase/(Decrease) (Dollars in millions)	2010	2009	2010 vs. 2009	
				\$	%
Artifact sales and other		\$ .3	\$ 1.3	\$ (1.0)	(74)%
Exhibit		.1	.4	(.3)	(85)
Expedition charter		16.7	.2	16.5	10,157
Total revenue		\$ 17.1	\$ 1.9	\$ 15.2	810%
Cost of sales		.2	.5	(.4)	(69)
Marketing, general and administrative		6.7	6.9	(.2)	(2)
Operations and research		15.3	8.9	6.3	71
Total operating expenses		\$ 22.2	\$ 16.4	\$ 5.8	35%
Other income (expense)		\$ (2.8)	\$ (.2)	\$ (2.7)	(1,742)%

The explanations that follow are for the nine months ended September 30, 2010, compared to the nine months ended September 30, 2009.

**Revenue**

The increase in revenue of \$15.2 million was primarily related to a \$16.5 million increase in expedition charter revenue associated with several syndicated shipwreck search projects including *Enigma I and II*, *Shantaram* and *Firebrand* (\$8.0 million), subsea mineral mining work in the South Pacific with Dorado Ocean Resources Ltd. (\$5.1 million), government and insurance company services in the wake of the airline accident in the Eastern Mediterranean (\$2.9 million) and other miscellaneous charter and expedition services (\$.5 million). We are currently working under a charter agreement with Dorado Ocean Resources Ltd. which will extend into the fourth quarter 2010 and longer. We are also planning other syndicated projects in the South Pacific in late 2010 and in 2011.

Exhibit revenue decreased \$.3 million in 2010 because Odyssey's exhibit, *SHIPWRECK! Pirates & Treasure*, was on tour for one month in 2010 versus six months on two separate tours in 2009. The exhibit opened at the Maryland Science Center in Baltimore on October 1, 2010. The exhibit will run through January 31, 2011, in the Legg Mason Gallery on the second floor of the science center. Artifact and other sales decreased \$1.0 million in 2010 versus 2009 which we believe is due to general economic conditions, availability of new product offerings and merger of two of our major distributors.

**Operating Expenses**

Cost of sales for coins decreased 69% for 2010 versus 2009 primarily because of fewer coins sold in 2010. There is no cost of sales component associated with the exhibits and expedition charter revenues.

Marketing, general and administrative expenses were \$6.7 million in 2010 as compared to \$6.9 million in 2009. The decrease of \$.2 million was primarily attributable to lower professional services and depreciation expenses.

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Operations and research expenses were \$15.3 million in 2010 as compared to \$8.9 million in 2009. The \$6.3 million increase was due to higher vessel - related expenses in 2010 versus 2009 primarily attributable to the volume of projects underway and the addition of our two chartered vessels. The *Dorado Discovery* comprised \$3.7 million of the increase and has recently completed renovations and mobilization in Southeast Asia and has been deployed to the South Pacific to work on subsea mineral mining and exploration projects under a charter agreement with Dorado Ocean Resources Ltd. Our second chartered vessel was deployed during the second quarter 2010 to work on the *Shantaram* project and has recently been sub-chartered to a third party which comprised \$2.6 million of the increase.

**Table of Contents****Other Income (Expense)**

Other income (expense) represents income from investments, interest expense on loans and gain (loss) on our equity investment in Dorado Ocean Resources Ltd. For the nine months 2010, \$2.5 million represents our portion of the loss on the equity investment. See Note F of the Notes to the Consolidated Financial Statements.

**Liquidity and Capital Resources**

(Dollars in thousands)	2010	2009
<b>Summary of Cash Flows:</b>		
Net cash (used) by operating activities	\$ (7,485)	\$ (11,778)
Net cash (used) by investing activities	(1,549)	(524)
Net cash provided by financing activities	7,794	5,689
Net increase (decrease) in cash and cash equivalents	\$ (1,240)	\$ (6,613)
Beginning cash and cash equivalents	2,145	10,740
Ending cash and cash equivalents	\$ 906	\$ 4,128

**Discussion of Cash Flows**

Net cash used in operating activities for the first nine months of 2010 was \$7.5 million. This amount primarily reflected an operating loss of \$7.9 million offset in part by non-cash items including depreciation and loan discount amortization (\$1.7 million), share-based compensation (\$1.4 million) and loss from unconsolidated entity (\$2.4 million). Working capital changes also included an increase in accounts receivable of \$8.4 million (\$1.6 million represents the amount due on the *Shantaram* project, \$5.4 represents amount due from Dorado Ocean Resources, Ltd. and \$0.8 million due from an insurance adjuster in the wake of the airline accident in the Eastern Mediterranean ), an increase in accounts payable of \$2.8 million (\$1.7 million represents ship charters and fuel), an increase in deferred revenue of \$0.4 million (\$1.6 million representing deferred revenue outstanding on the *Firebrand* project offset by recognition of revenue for projects *Enigma* and *Shantaram* ), and other net sources of working capital of \$0.1 million. Net cash used in operating activities for the first nine months of 2009 was \$11.8 million. This amount primarily reflected an operating loss of \$14.7 million and non-cash items including depreciation and amortization (\$1.7 million) and share-based compensation (\$1.6 million), a decrease in inventory, accounts receivable and other assets (\$0.9 million), offset in part by a decrease in accounts payable and accrued expenses (\$1.3 million).

Cash flows used in investing activities for the first nine months of 2010 were \$1.5 million which primarily represented marine property and equipment purchases primarily for our business venture into subsea mineral mining and exploration. Cash flows used in investing activities was \$0.5 million for the first nine months in 2009 which primarily reflected the purchase of property and equipment for our marine operations group which included extensive capitalized upgrades to the *Ocean Alert* (\$0.3 million).

Cash flows provided by financing activities for the first nine months of 2010 were \$7.8 million which included \$6.2 million proceeds from the issuance and sale of common stock in January 2010 offset by fees related to the private offering of \$0.2 million and \$1.8 million proceeds from the issuance of promissory notes in August 2010. Cash flows provided by financing activities for the first nine months of 2009 were \$5.7 million which included \$5.1 million proceeds from the issuance and sale of common stock in May 2009 and \$0.8 million proceeds from the exercise of warrants to purchase preferred stock in the first quarter. Cash proceeds were offset in part by repayments of mortgage and loans payable of \$0.2 million.

**General Discussion 2010**

At September 30, 2010, we had cash and cash equivalents of \$0.9 million, a decrease of \$1.2 million from the December 31, 2009, balance of \$2.1 million.



*Equity-Related*

In November 2009, we invested \$500,000 for a 25% interest in SMM Project, LLC ( SMM ) to pursue opportunities in the exploration of deep-ocean gold and copper deposits. SMM purchased a majority interest in Bluewater Metals Pty, Ltd. ( Bluewater ), an Australian company with licenses for mineral exploration of approximately 150,000 square kilometers of ocean floor in territorial waters controlled by four different countries in the South Pacific. The focus will be on the exploration and monetization of gold and copper-rich Seafloor Massive Sulfide (SMS) deposits through a new business entity, Dorado Ocean Resources (DOR), which has acquired the remaining interest in Bluewater. Odyssey will dedicate certain marine assets, including a ship and related marine exploration technology, to the endeavor.

During January 2010, we entered into individual purchase agreements with certain investors pursuant to which we sold an aggregate of 4,000,000 shares of Odyssey s common stock and warrants to purchase up to 2,400,000 shares of common stock to

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such investors. The common stock and warrants were sold as units, with each unit consisting of one share of common stock and a warrant to purchase 0.6 shares of common stock. The purchase price for each unit was \$1.565. The warrants have an exercise price of \$2.25 per share of common stock and are exercisable in accordance with their terms at any time on or before the close of business on January 29, 2013. The net proceeds to us from the registered direct public offering, after deducting placement agent fees and its offering expenses, and excluding the proceeds, if any, from the exercise of the warrants issued in the offering, were approximately \$6.1 million.

On February 12, 2010, we issued 500,000 shares of common stock to one institutional investor. The shares of common stock were issued upon conversion of 500,000 outstanding shares of our Series D Convertible Preferred Stock that was originally purchased in January 2007.

On March 18, 2010, we issued 600,000 shares of common stock to one institutional investor. The shares of common stock were issued upon conversion of 600,000 outstanding shares of the Odyssey's Series D Convertible Preferred Stock which was originally purchased in May 2007.

On April 20, 2010, we issued 600,000 shares of common stock to one institutional investor. The shares of common stock were issued upon conversion of 600,000 outstanding shares of the Company's Series D Convertible Preferred Stock which was originally purchased in May 2007.

On April 30, 2010, SMM was acquired by DOR through a stock exchange agreement. We were issued 450 DOR shares in exchange for our surrendered shares in SMM. Additionally, we invested \$2 million dollars for 1,200 shares of DOR resulting in a 41.25% ownership of DOR. Under the terms of the Share Subscription Agreement, we have the option to pay for this investment in cash or by providing marine services to DOR over a three-year period.

On May 6, 2010, we issued 1,300,000 shares of common stock to one institutional investor. The shares of common stock were issued upon conversion of 13 outstanding shares of the Odyssey's Series E Convertible Preferred Stock which was originally purchased in September 2007. The Series E Convertible Preferred Stock was convertible into 100,000 shares common for every one share of preferred. As a result of the conversion, there are no longer any shares of Series E Convertible Preferred Stock outstanding and only 206,400 Series D which are convertible to common on a one-for-one basis.

On June 3, 2010, shareholders approved the proposal at the annual meeting to amend the 2005 Incentive Stock Plan by adding 3,000,000 shares of common stock to the Plan. An S-8 Registration was filed in August 2010 for the additional shares.

On August 20, 2010, we entered into individual purchase agreements with certain investors to issue and sell promissory notes in the principal amount of \$1.8 million and warrants to purchase an aggregate of 270,000 shares of common stock. The notes bear interest at a rate equal to 5.0% per annum, and all principal and accrued interest was due and payable on or before December 18, 2010. The warrants had an exercise price of \$2.25 per share of common stock and will be exercisable in accordance with their terms at any time on or before the close of business on August 20, 2013. All the notes were paid in full as of October 18, 2010.

On October 6, 2010, we entered into separate purchase agreements with certain investors pursuant to sell 24 shares of Series G 8% Convertible Preferred Stock, par value \$0.0001 per share, and warrants to purchase up to 1,800,000 shares of Odyssey's common stock to such investors. The Series G preferred stock and warrants were offered as units, with each unit consisting of one share of Preferred Stock and a Warrant to purchase 75,000 shares of common stock. The purchase price for each unit was \$250,000. The transaction closed on October 12, 2010, and we sold 20 of the units for cash, and four of the units were issued upon tender of an aggregate of \$1.0 million of principal amount of the promissory notes that Odyssey issued in August 2010 by the holders thereof. Accordingly, the net cash proceeds to Odyssey were approximately \$5.0 million. See NOTE M to the Consolidate Financial Statements for further information and the planned accounting for this transaction.

***Bank Credit Facility***

On April 23, 2010, we renewed our \$5.0 million revolving credit facility with Fifth Third Bank (the Bank). The original two-year \$5.0 million credit facility was entered into on February 7, 2008, and a 90-day extension was granted until May 7, 2010. The renewed credit facility has a floating interest rate equal to the Prime Rate plus one hundred and fifty basis points (1.50%), requires monthly payments of interest only, and is due in full April 23, 2011. The Company will also be required to pay the Bank an unused line fee equal to 0.50% per annum of the unused portion of the credit line.

The line of credit is secured by approximately 28,500 numismatic coins recovered from the SS *Republic* shipwreck, which amount will be reduced over the term by the amount of coins sold by the Company. The coins used as collateral are held by a custodian for the security of the Bank. The borrowing base is equal to forty percent (40%) of the eligible coin inventory valued on a rolling twelve-month wholesale average value. The Company is required to comply with a number of customary covenants.

**Trends and Uncertainties**

Based upon our current expectations, we believe our cash position should be sufficient to fund operating cash flows throughout the rest of 2010 taking into account our capital raises, expected revenues from multiple sources, including projected sales and syndicated projects, commercial salvage activities, surveys and our ability to realize our accounts receivable. While we

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have recovered more than 17 tons of silver coins and hundreds of gold coins and other artifacts from the *Black Swan* project, we will not be able to monetize any recovered cargo unless we are awarded title or a salvage award by the U.S. District Court. At the present time, we cannot determine how long that process may take, and there is no way to estimate the likelihood of receiving a salvage award from the U.S. District Court. We have also identified one potential high value target shipwreck, HMS *Victory*. However, unless there is an agreement with the U.K. government, we will not be able to conduct any archaeological recoveries on this project. If cash flow is not sufficient to meet our projected business plan requirements, we will be required to raise additional capital or curtail expenses. While we have been successful in raising the necessary funds in the past, there can be no assurance that we can continue to do so.

### **New Accounting Pronouncements**

As of September 30, 2010, the impact of recent accounting pronouncements on our business is not considered to be material.

### **Off-Balance Sheet Arrangements**

We do not engage in off-balance sheet financing arrangements. In particular, we do not have any interest in so-called limited purpose entities, which include special purpose entities (SPEs) and structured finance entities.

## **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. Our revolving credit facility and primary mortgage bear interest at variable rates and expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable rate indebtedness would increase even though the principal amount of such indebtedness remained the same. Interest on both of these debt instruments are equal to prime plus basis points as described in NOTE I. An increase in the prime rate could have an adverse effect on our operating cash flows and financial condition, but we believe it would not be material. We do not believe we have other material market risk exposure and have not entered into any market risk sensitive instruments to mitigate these risks or for trading or speculative purposes.

## **ITEM 4. CONTROLS AND PROCEDURES**

Odyssey maintains a set of disclosure controls and procedures designed to ensure that information required to be disclosed in reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms. As of the end of the period covered by this report, based on an evaluation carried out under the supervision and with the participation of Odyssey's management, including the chief executive officer (CEO) and chief financial officer (CFO), of the effectiveness of our disclosure controls and procedures, the CEO and CFO have concluded that Odyssey's disclosure controls and procedures are effective. There have been no significant changes in the Company's internal controls over financial reporting during the third quarter of 2010 that have materially affected, or are reasonably likely to materially affect, the Company's internal controls over financial reporting.

## **PART II. OTHER INFORMATION**

### **ITEM 1. Legal Proceedings**

The Company is not currently a party to any material litigation other than the admiralty proceedings described in this report. From time to time in the ordinary course of business, the Company may be subject to or may assert a variety of claims or lawsuits.

See the information set forth under the heading *Operational Update Admiralty Legal Proceedings* in Part I, Item 2 of this report for disclosure regarding certain admiralty legal proceedings in which Odyssey is involved. Such information is hereby incorporated by reference into this Part II, Item 1.

### **ITEM 1A. Risk Factors**

For information regarding risk factors, please refer to Item 1A in the Company's Annual Report on Form 10-K for the year ended December 31, 2009. There have been no material changes from the disclosure provided in the Form 10-K for the year ended December 31, 2009, with respect to the Risk Factors. Investors should consider the Risk Factors prior to making an investment decision with respect to the Company's securities.

**ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

**ITEM 3. Defaults Upon Senior Securities**

None.

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**ITEM 4. [Removed and Reserved]**

**ITEM 5. Other Information**

None.

**ITEM 6. Exhibits**

- 3.1 Certificate of Designation for the Series G 8% Convertible Preferred Stock (Filed herewith electronically)
- 3.2 Amendment to Certificate of Designation for the Series G 8% Convertible Preferred Stock (Filed herewith electronically)
- 3.3 Certificate of Correction to Amendment to Certificate of Designation for the Series G 8% Convertible Preferred Stock (Filed herewith electronically)
- 4.1 Reference is hereby made to Exhibit 10.1
- 4.2 Form of Warrant to Purchase Common Stock, dated October 11, 2010 (Filed herewith electronically)
- 10.1 Form of Securities Purchase Agreement, dated August 20, 2010, for 5% Notes and Warrants, which includes as Attachment A thereto a Form of Note and as Attachment B thereto a Form of Warrant (Filed herewith electronically)
- 10.2 Form of Purchase Agreement, dated October 6, 2010, for the Series G 8% Convertible Preferred Stock, including Amendment No. 1 thereto dated October 6, 2010 (Filed herewith electronically)
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Filed herewith electronically)
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Filed herewith electronically)
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350 (Filed herewith electronically)
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350 (Filed herewith electronically)

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ODYSSEY MARINE EXPLORATION, INC.

Date: November 4, 2010

By: /s/ Michael J. Holmes  
Michael J. Holmes, Chief Financial  
Officer and Authorized Officer