CLST HOLDINGS, INC.
Form 10-K/A
November 05, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

(Mark One)

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

For the fiscal year ended November 30, 2008

OR

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

For the transition period from to

Commission File Number 0-22972

CLST HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**75-2479727**

(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
17304 Preston Road, Dominion Plaza, Suite 420 Dallas, Texas	**75252**
(Address of principal executive offices)	(Zip Code)

Registrant s telephone number including area code**(972) 267-0500**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
None	N/A

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value $0.01 per share

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes o No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes o No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes o No x

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. x

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer o	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company x

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

The aggregate market value of the registrant s common stock held by non-affiliates of the registrant as of May 31, 2008, the last business day of the Company s most recently completed second fiscal quarter, based on the closing sale price of $0.37 as reported on the OTC market, as compiled by Pink Sheets LLC, on May 31, 2008, was approximately $7,604,686.

On February 27, 2009, there were 23,649,282 outstanding shares of common stock, $0.01 par value per share.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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EXPLANATORY NOTE

We are filing this Amendment No. 1 on Form 10-K/A (***Form 10-K/A***) to our Annual Report on Form 10-K for the fiscal year ended November 30, 2008 originally filed with the SEC on March 2, 2009 (the ***Original Form 10-K***) in response to comments we have received from the SEC. For convenience, we have repeated the Original Form 10-K in its entirety.

This amendment does not reflect events occurring after the filing of the Original Form 10-K, and does not modify or update the disclosures therein in any way other than as required to reflect the matters described above.

CLST Holdings, Inc.

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PART I.

Special Cautionary Notice Regarding Forward-Looking Statements

Certain of the matters discussed in this Annual Report on Form 10-K/A may constitute forward-looking statements for purposes of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (as so amended the ***Exchange Act***), and, as such, may involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Company to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements. When used in this report, the words anticipates, estimates, believes, continues, expects, intends, may, might, could, should, likely, and si intended to be among the statements that identify forward-looking statements. When we make forward-looking statements, we are basing them on our management s beliefs and assumptions, using information currently available to us. Although we believe that the expectations reflected in the forward-looking statements are reasonable, these forward-looking statements are subject to risks, uncertainties and assumptions. Statements of various factors that could cause the actual results, performance or achievements of the Company to differ materially from the Company s expectations (***Cautionary Statements***) are disclosed in this report, including, without limitation, those discussed in the Item 1A, Risk Factors of this Form 10-K/A, those statements made in conjunction with the forward-looking statements and otherwise herein. All forward-looking statements attributable to the Company are expressly qualified in their entirety by the Cautionary Statements. We have no intention, and disclaim any obligation, to update or revise any forward-looking statements, whether as a result of new information, future results or otherwise.

Item 1. Business

CLST Holdings, Inc. (the ***Company***) was formed on April 1, 1993 as a Delaware corporation under the name of CellStar Corporation to hold the stock of National Auto Center, Inc. (***National Auto Center***), a company that is now an operating subsidiary. We operated in the wireless telecommunications industry through National Auto Center, which was originally formed in 1981 to distribute and install automotive aftermarket products and later, in 1984, began offering wireless communications products and services. In 1989, National Auto Center became an authorized distributor of Motorola wireless handsets in certain portions of the United States. National Auto Center entered into similar arrangements with Motorola in the Latin American Region in 1991. The terms CLST, the Company, we, our and us refer to CLST Holdings and its consolidated subsidiaries, unless the context suggests otherwise.

Sale of Operations in Fiscal 2007

On December 18, 2006, we entered into a definitive agreement (the ***U.S. Sale Agreement***) with a wholly owned subsidiary of Brightpoint, Inc., an Indiana corporation (***Brightpoint***), providing for the sale of substantially all of the Company s United States and Miami-based Latin American operations and for the buyer to assume certain liabilities related to those operations (the ***U.S. Sale***). Our operations in Mexico and Chile and other businesses or obligations of the Company were excluded from the transaction.

Our Board of Directors (the ***Board***) and Brightpoint unanimously approved the proposed transaction set forth in the U.S. Sale Agreement. The purchase price was $88 million in cash, subject to the Company s working capital and other terms of the agreement at closing, and also subject to adjustment based on changes in net assets from December 18, 2006 to the closing date.

Also on December 18, 2006, we entered into a definitive agreement (the ***Mexico Sale Agreement***) with Soluciones Inalámbricas, S.A. de C.V. (***Wireless Solutions***) and Prestadora de Servicios en Administración y Recursos Humanos, S.A. de C.V. (***Prestadora***), two affiliated Mexican companies, providing for the sale of all of the Company s Mexico operations (the ***Mexico Sale***). The Mexico Sale was a stock acquisition of all of the outstanding shares of the Company s Mexican subsidiaries, and included our interest in Comunicación Inalámbrica Inteligente, S.A. de C.V. (***CII***), our joint venture with Wireless Solutions. Our Board unanimously approved the proposed transaction set forth in the Mexico Sale Agreement. Under the terms of the transaction, we received $20 million in cash, and were required to receive our pro rata share of CII profits from January 1, 2007, up to the consummation of the transaction, within 150 days from the closing date. We have not received any pro-rata share of the CII profits and other terms required as of 150 days from the closing date. A demand for payment of up to $1.7 million and other required terms of the agreement was sent to the purchasers on September 11, 2007. While we believe that CII was profitable and therefore the purchasers owe the Company its pro rata share, the purchasers are disputing this claim. We continue to pursue the amounts we believe we are due, but at this time the purchasers are not responding to or cooperating with our demands. Currently we cannot make any estimates regarding future amounts we may be able to collect or the timing of any collections on this matter.

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We filed a proxy statement with the Securities and Exchange Commission (the ***SEC***) on February 20, 2007, which more fully describes the U.S. sale and Mexico Sale transactions. Both of the transactions were subject to customary closing conditions and the approval of our stockholders, and the transactions were not dependent upon each other. On March 28, 2007, our stockholders approved the U.S. Sale, the Mexico Sale and the name change to CLST Holdings, Inc.

The U.S. Sale closed on March 30, 2007. At closing, $53.6 million was received and $11.5 million was included in accounts receivable other in the accompanying balance sheet for August 31, 2007; $8.8 million of which was placed in an escrow account and subject to any indemnity claims by the buyers of the Company s U.S. business. A portion of the proceeds from the sale was used to pay off the Company s bank debt (see footnote 9). We recorded a pre-tax gain of $52.7 million on the transaction during the twelve months ended November 30, 2007. Brightpoint asserted total claims for indemnity against the escrow of approximately $1.4 million. The Company objected to these claims. Brightpoint also proposed negative adjustments to the net working capital of approximately $1.4 million, which these claims for adjustment were largely the same as the claims for indemnity asserted against the escrow account. As of November 30, 2007, we had received approximately $7.6 million of the amounts held in the escrow account, which such amount included accrued interest. On December 21, 2007, we entered into a Letter Agreement (the ***Letter Agreement***) with Brightpoint which settled the dispute concerning the additional escrow amount. All currently outstanding disputes between the parties regarding the determination of the purchase price under the U.S. Sale Agreement have been resolved, and payments of funds in respect thereof were made in accordance with the terms described in the Letter Agreement. Pursuant to the Letter Agreement, in January 2008 we received approximately $3.2 million from Brightpoint plus accrued interest and less transition expenses, and approximately $1.4 million from the escrow agent. These amounts were the final amounts received under the U.S. Sale Agreement.

The Mexico Sale closed on April 12, 2007, and we recorded a loss on the transaction of $7.0 million primarily due to accumulated foreign currency translation adjustments as well as expenses related to the transaction. We had approximately $9.1 million of accumulated foreign currency translation adjustments related to Mexico. As the proposed sale did not meet the criteria to classify the operations as held for sale under SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets , as of February 28, 2007, we recognized the $9.1 million as a charge upon the closing of the Mexico Sale.

On March 22, 2007, we signed a letter of intent to sell our operations in Chile to a group that included local management for approximately book value. On June 11, 2007, we completed the sale of our operations in Chile. The purchase price and cash transferred from the operations in Chile prior to closing totaled $2.5 million, and we recorded a pre-tax gain of $0.6 million on the transaction during the quarter ending August 31, 2007. With the completion of the sale of our operations in Chile, we no longer have any operating locations outside of the U.S.

Prior Business

Prior to the sale of our operations and assets through these various transactions, the Company was a leading distributor of wireless products and provider of distribution and value-added logistics services to the wireless communications industry, serving network operators, agents, resellers, dealers, and retailers with operations in the North American and Latin American Regions. We provided comprehensive logistics solutions and facilitated the distribution of handsets, related accessories and other wireless products from leading manufacturers to network operators, agents, resellers, dealers and retailers. We also provided activation services in Mexico and Chile that generated new subscribers for wireless carriers. When the Company was operating in the wireless communications industry, we derived substantially all of our revenues from net product sales, which included sales of handsets and other wireless communications products. We also derived revenues from value-added services, including activations, residual commissions, and prepaid wireless services, none of which accounted for 10% or more of consolidated revenues in fiscal 2007. Value-added service revenues include fulfillment service fees, handling fees and assembly revenues.

Our business concentrated primarily on distribution and logistics. We delivered handsets and related accessories from the manufacturers to carriers, other distributors, retailers, and consumers. We assisted the manufacturers in expanding their distribution network and customer base. Our fulfillment, kitting, packaging, and other services assisted the carriers in getting the handsets ready for use by their subscribers. Our distribution services included purchasing, selling, warehousing, picking, packing, shipping and just-in-time delivery of wireless handsets and accessories. We also offered one of the industry s first completely integrated asset recovery and logistics services, our Omnigistics® (patent pending) supply chain management system. In addition, we offered value-added services, including Internet-based supply chain services via our OrderStar® system (patent pending), Internet-based tracking and reporting, inventory management, marketing, prepaid wireless products, product fulfillment, kitting and customized packaging, private labeling, light assembly, accounts receivable management and end-user support services. We also provided wireless activation services and operated retail

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locations in certain markets from which we sold wireless communications products and accessories directly to the public. Both Omnigistics® and OrderStar® were included in the U.S. sale to Brightpoint.

Our customers included large carriers, rural carriers, agents, mobile virtual network operators (MVNOs), big box and small retailers, distribution companies, and insurance warranty providers. We marketed our products to wholesale purchasers using, among other methods, direct sales strategies, the Internet, strategic account management, trade shows and trade journal advertising. We offered a variety of name brand products, comprehensive forward and reverse logistics solutions, highly-responsive customer service, merchandising and marketing elements and access to hard-to-find products to potential new and existing customers. During fiscal 2006, the Company maintained or acquired agreements with such manufacturers as Motorola, LG Electronics MobileComm U.S.A., Inc. (***L.G.***), Nokia, Inc. (***Nokia***), Kyocera Wireless Corp. (***Kyocera***), Palm, Inc. (***Palm***) and Pantech Co., Ltd. (***Pantech***).

Prior to the sale of our U.S., Mexico and Chile operations, our customer base consisted of Dobson Cellular Systems, Inc., Telefonica Moviles Colombia, S.A., Radio Movil Dipsa S.A. de C.V. and Claro Chile S.A. as well as manufacturers such as Motorola, LG Electronics MobileComm U.S.A., Inc., Nokia, Inc., Kyocera Wireless Corp. and Palm, Inc.

2008 Business

For most of 2008, we had no significant operations and the majority of our efforts were associated with winding down the remaining entities and other activities related to the prior business. Even though the primary Latin American operations were sold during 2007, in 2008 we collected more than $400,000 from a previously written-off note receivable. The Brightpoint transaction closed on March 30, 2007, yet in 2008 we resolved all escrow amounts and finalized all working capital adjustments which resulted in excess of $4.5 million of collected cash. There were numerous administrative matters related to the prior business that were resolved favorably during 2008. We applied for and collected more than $500,000 in insurance refunds related to the prior business. We, with our tax professionals, filed and received tax refunds of nearly $1.1 million. In total, the Company, during 2008, collected nearly $7 million related to our prior business.

At the end of 2007, we had eight non-operating U.S. entities and four non-operating foreign entities, including one each in the United Kingdom, Sweden, the Netherlands, and the Philippines. The Company also has two dormant entities in El Salvador and Guatemala that never conducted operations.

Dissolution proceedings in foreign countries can be cumbersome and lengthy. We have been diligently working to resolve outstanding matters and to complete all statutory and governmental requirements to dissolve our foreign entities. We dissolved our United Kingdom entity in 2008. Dissolution of our one Swedish entity cannot be commenced until the expiration of a contractual indemnity obligation on December 31, 2009, which arises out of the sale of the assets of this entity in 2002.

Dissolution proceedings are now underway in the Philippines and the Netherlands, where audits, tax claims, and longstanding lawsuits that prevented the commencement of dissolution proceedings have now been resolved. In the Philippines, we have resolved two outstanding lawsuits for which official court approval is pending. We also settled a 1999 tax claim and have applied for relief from taxes associated with a 2004 transaction. We are working to complete all other governmental requirements for dissolution of the Philippines entity by the end of 2009. In the Netherlands, we filed for value added tax (VAT) refunds, completed VAT tax audits that were required to be filed prior to filing for

dissolution, and have recently commenced the formal dissolution process.

Governmental requirements for closure are complicated in El Salvador and Guatemala, where we have one dormant entity in each country. We are working with local counsel in these countries to complete the process and have been advised to expect closure to take several more months or possibly more than one year to complete.

We believe at this time that we have resolved all known liabilities in our foreign entities, and in some cases have collected or will collect amounts resulting from the successful resolution of tax refunds of approximately $35,000 in the Netherlands and the return of the unused portion of a bond of $29,000 in the Philippines. We do not anticipate that the dissolution or closure of any of the remaining foreign entities will result in any significant liabilities.

Dissolution of most of our U.S. entities has been delayed on advice of legal counsel pending resolution of matters unrelated to the dissolutions. Audiomex Export Corp. is a party to our claim against the purchasers of our Mexico operations and will not be dissolved until resolution of that claim. Commencement of the dissolutions of CLST-NAC, Ltd., CLST Fulfillment, Ltd., CLST Fulfillment, Inc., and NAC Holdings, Inc. has been delayed pending resolution of a preference claim

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in a bankruptcy action filed by a former customer. The claim was dismissed in January 2009, which will allow us to move forward to close these entities in fiscal 2009.

National Auto Center, Inc. directly or indirectly conducted all of our historical discontinued operations, both foreign and domestic. As our former primary operating entity and a direct wholly owned subsidiary of CLST Holdings, Inc., we anticipate that it will not be dissolved until all matters in all other entities have been resolved and such other entities have been dissolved.

CLST International Corporation/SA and CLST International Corporation/Asia, both Delaware corporations, are holding companies for the entities in El Salvador and Guatemala, and the Philippines, respectively. As such, we believe that these two holding companies should not be dissolved or merged out of existence until their subsidiary entities have been dissolved.

During 2008 we, in conjunction with our tax accountants, performed a detailed review and analysis of the Company s historical tax net operating loss carryforwards (the ***NOLs***). We believe in many circumstances the NOLs, which amount to approximately $125 million and begin to expire after November 13, 2020, can be utilized to offset future income. However, in the event of a change in control, the NOLs would be impaired and result in only a fraction of their otherwise future potential tax savings. As of November 30, 2008, approximately 12% of the change in control had occurred historically. If additionally an approximately 38% change in control occurs in the future, as determined by IRS regulations, the Company could lose substantially all of the potential value of the NOLs.

CLST Asset I, LLC

On November 10, 2008, we, through CLST Asset I, LLC (***CLST Asset I***), a wholly owned subsidiary of CLST Financo, Inc. (***Financo***), which is one of our direct, wholly owned subsidiaries, entered into a purchase agreement to acquire all of the outstanding equity interests of FCC Investment Trust I (the ***Trust I***) from a third party for approximately $41.0 million (the ***Trust Purchase Agreement***). Our Board unanimously approved the transaction. Our acquisition of the Trust I was financed by approximately $6.1 million of cash on hand and by a non-recourse, term loan of approximately $34.9 million by an affiliate of the seller of the Trust I, pursuant to the terms and conditions set forth in the credit agreement, dated November 10, 2008, among Trust I, Fortress Credit CO LLC (***Fortress***), the lender, FCC Finance, LLC (***FCC***), as the initial servicer, the backup servicer, and the collateral custodian (the ***Trust Credit Agreement***). The Company, through its servicers, is now responsible for the collection of the receivables included in the Trust I portfolio through its wholly owned subsidiary Financo. Financo has historically conducted our financing business, including ownership of receivables generated by our businesses and providing internal financing to our other operating subsidiaries. We are engaging in the business of holding and collecting the receivables with the intention of generating a higher rate of return on our assets than we currently receive on our cash and cash equivalent balances.

The repayment terms on the accounts are standardized, but are dependent on the form of agreement used by the originator. Customers are required to make monthly payments until the loans are paid in full. At the time of purchase of the Trust I portfolio, the remaining time to maturity was in a range of 8-10 years, not including prepayments, if any.

The cut-off date for the receivables acquired was October 31, 2008, with all collections subsequent to that date inuring to our benefit. As of October 31, 2008, the portfolio consisted of approximately 6,000 accounts with an aggregate outstanding balance of approximately $41.5 million and an average outstanding balance per account of approximately $6,900. These loans were primarily consumer home improvement loans of

which approximately 63% were secured with a second lien on the property, with the remainder being unsecured. Approximately 89% of the loans are in the Northeast with the remainder in Texas, Georgia and Missouri. As of October 31, 2008, the weighted average interest rate of the portfolio was 14.4%. We have the right to require the seller to repurchase any accounts, for the original purchase price applicable to such account, that do not satisfy certain specified eligibility requirements set out in the Trust Purchase Agreement. To date there has not been a determination that any receivables did not meet the eligibility requirements set out in the Trust Purchase Agreement.

The following table reflects the loan origination year for the Trust I Portfolio as of the purchase date:

Year of origination	**% of CLST Asset I**
2000 - 2004	8.4%
2005	8.1%
2006	17.3%
2007	36.4%
2008	29.8%
Total	100.0%

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CLST Asset Trust II, LLC

On December 12, 2008, we, through CLST Asset Trust II (the ***Trust II***), a newly formed trust wholly owned by CLST Asset II, LLC, a wholly owned subsidiary of Financo, entered into a purchase agreement, effective as of December 10, 2008, to acquire from time to time certain receivables, installment sales contracts and related assets owned by third parties (the ***Trust II Purchase Agreement***). The Trust II has committed to purchase, subject to certain limitations, from the sellers on or before February 28, 2009 receivables of at least $2 million pursuant to the Trust II Purchase Agreement. We or the sellers under the Trust II Purchase Agreement can terminate the Trust II Purchase Agreement at any time (with notice) after March 29, 2009. We have the right to require the sellers to repurchase any accounts, for the original purchase price applicable to such account plus interest accrued thereon, that do not satisfy certain specified eligibility requirements set out in the Trust II Purchase Agreement.

The purchases of receivables by the Trust II from the sellers under the Trust II Purchase Agreement and other approved sellers or dealers will be financed by cash on hand and by advances under a non-recourse, revolving facility provided by a third party lender. The terms and conditions of the revolver are set forth in the second amended and restated revolving credit agreement, effective as of December 10, 2008, among the Trust II, the originator, the co-borrowers (who are the sellers under the Trust II Purchase Agreement), the lender, the initial servicer, the backup servicer, the guarantor and the collateral custodian (the ***Trust II Credit Agreement***) and the letter agreement, effective as of December 10, 2008, among the Trust II, Financo, the originator, the co-borrowers, the initial servicer, and the guarantor (the ***Trust II Letter Agreement***).

Portfolio collections are distributed on a monthly basis. Absent an event of default, after payment of the servicing fee and other amounts, fees and expenses due under the Trust II Credit Agreement and the required principal, interest, unused commitment fee payments to the lenders under the Trust II Credit Agreement and fees due to the co-borrowers under the Letter Agreement, all remaining amounts from portfolio collections are paid to the Trust II and are available for distribution to CLST Asset II, LLC and subsequently to Financo.

CLST Asset III, LLC

Effective February 13, 2009, we, through CLST Asset III, LLC (the ***Asset III***), a newly formed, wholly owned subsidiary of Financo, purchased certain receivables, installment sales contracts and related assets owned by Fair Finance Company, an Ohio corporation (***Fair***), James F. Cochran, Chairman and Director of Fair, and by Timothy S. Durham, Chief Executive Officer and Director of Fair and an officer, director and stockholder of our company (the ***Asset III Purchase Agreement***). Messrs. Durham and Cochran own all of the outstanding equity of Fair. In return for assets acquired under the Asset III Purchase Agreement, Asset III paid the sellers total consideration of $3,594,354 as follows:

(1) cash in the amount of $1,797,178 of which $1,417,737 was paid to Fair, $325,440 was paid to Mr. Durham and $54,000 was paid to Mr. Cochran,

(2) 2,496,077 newly issued shares of our common stock, par value $.01 per share (***Common Stock***) at a price of $0.36 per share, of which 1,969,077 shares of Common Stock were issued to Fair, 452,000 shares of Common Stock were issued to Mr. Durham and 75,000 shares of Common Stock were issued to Mr. Cochran and

(3) six promissory notes (the ***Notes***) issued by Asset III in an aggregate original stated principal amount of $898,588, of which two promissory notes in an aggregate original principal amount of $708,868 were issued to Fair, two promissory notes in an aggregate original principal amount of $162,720 were issued to Mr. Durham and two promissory notes in an aggregate original principal amount of $27,000 were issued to Mr. Cochran.

We received a fairness opinion of Business Valuation Advisors (***BVA***) stating that BVA is of the opinion that the consideration paid by us pursuant to the Asset III Purchase Agreement is fair, from a financial point of view, to our nonaffiliated stockholders. A copy of the fairness opinion has been attached to a Current Report on Form 8-K filed on February 20, 2009. The shares of Common Stock were issued by us in a transaction exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended. As additional inducement for Asset III to enter into the Asset III Purchase Agreement, Fair agreed to use its best efforts to facilitate negotiations to add Asset III or one of its affiliates as a

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co-borrower under one of Fair s existing lines of credit with access to at least $15,000,000 of credit for our own purposes.

Substantially all of the assets acquired by Asset III are in one of two portfolios. Portfolio A is a mixed pool of receivables from several asset classes, including health and fitness club memberships, membership resort memberships, receivables associated with campgrounds and timeshares, in-home food sales and services, buyers clubs, delivered products and home improvement and tuitions. Portfolio B is made up entirely of receivables related to the sale of tanning bed products. At least initially, Fair will continue to act as servicer for these receivables. Fair will receive no additional consideration for acting as servicer.

As of February 13, 2009, the portfolios of receivables acquired pursuant to the Asset III Purchase Agreement collectively consisted of approximately 3,000 accounts with an aggregate outstanding balance of approximately $3,709,500 and an average outstanding balance per account of approximately $1,015 for Portfolio A and approximately $5,740 for Portfolio B. The receivables were recorded at the fair value based on an evaluation prepared by Business Valuation Advisors upon which we relied. All the loans were originated by Fair between November 1998 and August 2009 and are unsecured loans. None of the loans purchased were in default. The loans have remaining terms of between 30 and 48 months and have an average interest rate of 14.4%. As of February 13, 2009, the weighted average interest rate of the portfolios exceeded 18%. The sellers are required to repurchase any accounts, for the outstanding balance (at the time of repurchase) of such account plus interest accrued thereon, that do not satisfy certain specified eligibility requirements set out in the Asset III Purchase Agreement. Additionally, each of the sellers is required to jointly and severally pay Asset III, up to the aggregate stated principal amount of the Notes issued to such seller, the outstanding balance of any receivable that becomes a defaulted receivable within the parameters of the Asset III Purchase Agreement.

Now that the Company has acquired these receivable portfolios, most of the activities of the Company with respect to the portfolios are conducted on its behalf by the servicers of these portfolios. The servicers, on behalf of the Company, receive payments from account debtors and pursue other collection activities with respect to the receivables, monitor collection disputes with individual account debtors, prepare and submit claims to the account debtors, maintain servicing documents, books and records relating to the receivables and prepare and provide reports to the lenders and the Company with respect to the receivables and related activity, maintain the security interest of the lenders in the receivables, and direct the collateral custodian to make payments out of the proceeds of the portfolios to, among others, the Company, the lenders, the servicers and/or backup servicers, and the collateral custodians pursuant to the terms of the relevant servicing agreements.

Plan of Dissolution

As we have previously disclosed, the proxy statement we filed with the SEC on February 20, 2007 describes a proposal for a plan of dissolution, which provides for the complete liquidation and dissolution of the Company after the completion of the U.S. Sale (subject to abandonment by the Board in the exercise of their fiduciary duties). On March 28, 2007, our stockholders approved the plan of dissolution in addition to the U.S. Sale and the Mexico Sale. In the plan of dissolution approved by our stockholders, we stated that no distribution of proceeds from the U.S. Sale and Mexico Sale would be made until the investigation by the SEC was resolved. On June 26, 2007, we received a letter from the staff of the SEC giving notice of the completion of their investigation with no enforcement action recommended to the SEC. Therefore, on June 27, 2007, our Board declared a cash distribution of $1.50 per share on Common Stock to stockholders of record as of July 9, 2007. On July 19, 2007, we issued the $1.50 per share dividend in the total amount of $30.8 million. Then, on November 1, 2007 we paid an additional $0.60 per share dividend to stockholders which brings the cumulative dividends paid to stockholders to $2.10 per share or approximately $43.2 million. The amount and timing of any additional distributions paid to stockholders in connection with the liquidation and dissolution of the Company are subject to uncertainties and depend on the resolution of certain contingencies more fully described in the proxy statement and elsewhere in this Annual Report on Form 10-K/A.

We have continued to wind down aspects of our businesses, including dissolving some of our subsidiaries and continuing to try to collect our remaining non-cash assets. In addition, we have continued to review our liabilities and seek to satisfy or resolve those that we can in a favorable manner. See Item 1 Business 2008 Business above for further discussion with respect to our activities in this regard. We expect that it will take several years to implement the plan of dissolution because of the lengthy process of obtaining sufficient information regarding all of our liabilities to pay and appropriately provide for them as required under the plan of dissolution. Given this and the time necessary to complete the governmental requirements for dissolution, our Board focused on ways to generate higher returns on the Company s cash and other assets in order to better offset the Company expenses and to take advantage of the favorable tax treatment provided by our NOLs. Section 3 of the plan of dissolution states that we may not engage in any business activities except to the extent necessary to preserve the value of the Company s assets, wind up the Company s affairs, and distribute the Company s assets. As further described above under Item 1 Business 2008 Business, our Board determined to acquire several

portfolios of receivables with the intention of generating a higher rate of return on our assets than we were receiving on our cash and cash equivalents balances which were held in money market accounts or short term certificates of deposit, earning approximately 1% (current interest rates are now close to 0%). Our Board believed that each of these acquisitions would provide a better investment return for our stockholders when compared to the low interest rates available on our cash investments and other investment alternatives although the acquisition would involve a higher risk profile than traditional cash deposits and other cash equivalents positions. In addition, these investments offered the Company a way to utilize its NOLs. At the time we began looking at purchasing these portfolios during the second and third quarters of 2008, the credit markets became significantly impaired, and the viability of many banks and other financial institutions was in question. The Company s cash was held in one bank subject to the limited protection of FDIC coverage. The Board considered, among other things, spreading the Company s cash among over a dozen financial institutions. However, the Board did not believe spreading the Company s cash among many different banks to be practical or cost efficient. In addition, the Board considered various cash strategies including investing in a ladder of U.S. Treasury securities (securities of varying maturities) which would have resulted in higher yields than cash deposits, but would have required the Company to hold those securities in a brokerage firm and pay that firm a fee to arrange the transactions. The Board did not believe that the increased yield provided by a ladder of U.S. Treasury securities, after associated fees and administrative costs, was likely to be significantly better than that of cash deposits, and did not believe that interest from U.S. Treasury securities would allow the Company to use its NOLs to shield income from taxes. Finally, the Board was unsure how to assess the brokerage and custody risks associated with holding a ladder of U.S. Treasury securities through third parties, and felt that the risk was similar to that associated with commercial banks at the time.

We believe that the market conditions have changed for our Trust I portfolio. When we purchased Trust I, the historical default rate for the previous three years for our portfolio was approximately 4%. Our recent experience has seen the default rate increase to the 6-7% range; accordingly, we have been increasing our allowances to reflect this change.

Upon examination of Trust II and Asset III, we believe that the circumstances of these portfolios are different from those of Trust I. Trust II contains new originations with higher and more stringent credit requirements than the requirements for the Trust I portfolio. Therefore the Trust II portfolio has a very different risk profile when compared to Trust I. Asset III is protected from default risk by the terms of the purchase agreement with the seller of that portfolio. The sellers of the Asset III portfolio bear the majority of the default risk for receivables in that portfolio, and that risk is secured by our ability to offset against amounts we owe the sellers on the purchase price.

Management believes that the various measures being taken by the federal government and the Federal Reserve will ultimately have a positive impact on the credit markets and the economy in general. In addition, we continue to believe that, if needed, our portfolio assets could be sold, if properly marketed, whether through the use of reputable brokers or investment bankers, through an auction process or other strategies for maximizing proceeds from an asset disposition, for the then-current book value of the portfolios and within the timeframe necessary to complete the winding down of our Company, which will likely take the Company two, three, or more years in order to resolve all outstanding issues, including the dissolution of foreign subsidiaries, tax audits, and outstanding liabilities. This belief is based upon the following: (i) the portfolio balances will continue to decrease through note receivable collections; (ii) the default rates are expected to normalize with improving economic and market conditions; and (iii) the Company would expect to begin to market the portfolios a minimum of 12 months prior to any anticipated dissolution. Due to the lengthy process that will be necessary to complete the plan of dissolution, and due to the state of the credit markets at this time, our Board believes that sales of the Company s portfolio assets at this time would not be in the best interest of our Company or our stockholders.

Consistent with the plan of dissolution and their fiduciary duties, our Board and Executive Committee continue to consider both the timing of a filing of a certificate of dissolution and whether amending, modifying or abandoning the plan of dissolution and continuing to do business in one or more of our historical lines of business or related businesses or in a new line of business is in the best interests of the Company and its stockholders. Our Board has been reviewing potential acquisitions and the value of the Company s tax assets. It is possible that our Board of Directors will, in the exercise of its fiduciary duties, elect to abandon the plan of dissolution for a strategic alternative that it believes will maximize stockholder value. If our Board determines that it is in the best interest of the Company to pursue an acquisition, it will likely pursue a debt financing or equity issuance in order to finance such acquisition. It is unlikely our Board will make any further distributions to the Company s stockholders under the plan of dissolution while it considers the strategic alternatives available to the Company.

Governmental Regulations

Federal, state and municipal laws, rules, regulations and ordinances may limit our ability to recover and enforce our rights with respect to the receivables acquired by us. These laws include, but are not limited to, the following federal statutes

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and regulations promulgated thereunder and comparable statutes in states where consumers reside and/or where creditors are located:

- the Fair Debt Collection Practices Act;
- the Federal Trade Commission Act;
- the Truth-In-Lending Act;
- the Fair Credit Billing Act;
- the Equal Credit Opportunity Act; and
- the Fair Credit Reporting Act.

Financial Information

The Company s consolidated financial statements and accompanying notes for the last two fiscal years can be found in Part IV of this Annual Report on Form 10-K/A.

Competition

Our business of purchasing consumer receivables is highly competitive and fragmented, and we expect that competition from new and existing companies will increase. We compete with:

- other purchasers of consumer receivables, including third-party collection companies; and
- other financial services companies who purchase consumer receivables.

We are new to the business of purchasing receivables. Many of our competitors are larger and more established and have substantially greater financial, technological, personnel and other resources than we have, including greater access to capital markets. Companies with greater financial resources may elect at a future date to enter the consumer debt collection business, and current debt sellers may change strategies and cease selling debt portfolios in the future. Furthermore, as the unemployment rate and the number of bankruptcy filings continue to rise, we could face a more challenging collection environment as debtors have fewer resources available to satisfy their debt.

Since most of our receivables were bulk purchases with collateral, we will face another form of competition, which is some of our customers may be able to secure a lower cost loan from other sour