

REEDS INC
Form 10-K/A
April 15, 2013

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

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

For the fiscal year ended December 31, 2012

Commission File Number 000-32501

REED'S, INC.

(Exact name of registrant as specified in its charter)

Delaware

State or other jurisdiction of incorporation or organization

35-2177773

I.R.S. Employer Identification Number

13000 South Spring Street

Los Angeles, California

Address of principal executive offices

90061

Zip Code

(310) 217-9400

Registrant's telephone number, including area code

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

| Title of Class | Name of each exchange where registered |
|--|---|
| Common Stock, \$.0001 par value per share | NYSE MKT |

Securities registered pursuant to Section 12(g) of the Act: None

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark 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.

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 definition of "large accelerated filer," "accelerated filer" and "small reporting company" in Rule 12b-2 of the Exchange Act.

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Large Accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates (excluding voting shares held by officers and directors) as of June 30, 2012 was \$26,080,000

12,500,833 common shares, \$.001 par value, were outstanding on March 13, 2013.

Explanatory Note

In this Amendment No. 1 to Form 10-K (the “Amendment”), we are amending *Part III, Item 12, Security Ownership of Certain Beneficial Owners, Management and Related Stockholder Matters* of our Form 10-K for the period ended December 31, 2012, originally filed on March 25, 2013 (“Form 10-K”) to correct an error.

Except as expressly noted herein, this Amendment does not amend any other information set forth in the Form 10-K, and we have not updated disclosures contained therein to reflect any events that occurred subsequent to the date of such Form 10-K. In addition, in connection with the filing of this Amendment and pursuant to Rule 12b-15 of the Securities Exchange Act of 1934, as amended, the certifications of our Chief Executive Officer and Chief Financial Officer are attached as exhibits to this Amendment.

Item 12. Security Ownership of Certain Beneficial Owners, Management and Related Stockholder Matters

The following table reflects, as of March 7, 2013, the beneficial common stock ownership of: (a) each of our directors, (b) each of our current named executive officers, (c) each person known by us to be a beneficial holder of 5% or more of our common stock, and (d) all of our executive officers and directors as a group.

Except as otherwise indicated below, the persons named in the table have sole voting and investment power with respect to all shares of common stock held by them. Unless otherwise indicated, the principal address of each listed executive officer and director is 13000 South Spring Street, Los Angeles, California 90061.

| Named Beneficial Owner | Number of Shares Beneficially Owned | Percentage of Shares Beneficially Owned (1) |
|--|--|--|
| Directors and Named Executive Officers | | |
| Christopher J. Reed ⁽²⁾ | 2,415,475 | 19.3 |
| Judy Holloway Reed ⁽²⁾ | 2,415,475 | 19.3 |
| Mark Harris ⁽³⁾ | 9,363 | * |
| Daniel S.J. Muffoletto, N.D. | 0 | * |
| Michael Fischman | 0 | * |
| James Linesch ⁽⁴⁾ | 112,921 | * |
| Thierry Foucaut ⁽⁵⁾ | 70,049 | * |

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| | | |
|---|-----------|------|
| Directors and executive officers as a group (7 persons) | 2,607,808 | 20.7 |
|---|-----------|------|

5% or greater stockholders

| | | |
|----------------------------|---------|-----|
| Robert Reed ⁽⁶⁾ | 800,000 | 6.4 |
|----------------------------|---------|-----|

* Less than 1%.

Beneficial ownership is determined in accordance with the rules of the SEC. Shares of common stock subject to options or warrants currently exercisable or exercisable within 60 days of March 8, 2012 are deemed outstanding for computing the percentage ownership of the stockholder holding the options or warrants but are not deemed (1) outstanding for computing the percentage ownership of any other stockholder. Unless otherwise indicated in the footnotes to this table, we believe stockholders named in the table have sole voting and sole investment power with respect to the shares set forth opposite such stockholder's name. Percentage of ownership is based on approximately 12,500,833 shares of common stock outstanding as of March 8, 2012.

Christopher J. Reed and Judy Holloway Reed are husband and wife. The same number of shares of common stock is shown for each of them, as they may each be deemed to be the beneficial owner of all of such shares. Consists (2) of 2,384,225 shares of common stock and options to purchase 31,250 shares of common stock. Does not include options to purchase up to 43,750 shares of common stock, which vest over two years.

- (3) The address for Mr. Harris is 160 Barranca Road, Newbury Park, California 91320.
- (4) Consists of 73,338 shares of common stock and options to purchase 39,583 shares of common stock. Does not include options to purchase 45,417 shares of common stock vesting over two years.
- (5) Consists of 51,299 shares of common stock and options to purchase up to 18,750 shares of common stock. Does not include options to purchase up to 31,250 shares of common stock, which vest over two years.

Robert Reed is the trustee of the Reed Family Irrevocable Trust One and the Reed Family Irrevocable Trust Two.

(6) Each trust owns 400,000 shares of common stock. As sole Trustee, Robert Reed holds voting and dispositive power over all of these shares.

PART IV

Item 15. Exhibits and Financial Statements

(a) 1. Financial Statements

See Index to Financial Statements in Item 8 of the Form 10-K, which is incorporated herein by reference.

2. Financial Statement Schedules

All other financial statement schedules have been omitted because they are either not applicable or the required information is shown in the financial statements or notes thereto.

3. Exhibits

See the Exhibit Index, which follows the signature page of this Amendment No. 1, which is incorporated herein by reference.

(b) Exhibits

See Item 15(a) (3) above.

(c) Financial Statement Schedules

See Item 15(a) (2) above.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

REED'S, INC.

Date: April 12, 2013

a Delaware corporation

By: /s/ Christopher J. Reed

Christopher J. Reed

Chief Executive Officer

In accordance with the Exchange Act, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|--|----------------|
| /s/ CHRISTOPHER J. REED Christopher J. Reed | Chief Executive Officer, President and Chairman of the Board of Directors (Principal Executive Officer) | April 12, 2013 |
| /s/ JAMES LINESCH James Linesch | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | April 12, 2013 |
| /s/ JUDY HOLLOWAY REED Judy Holloway Reed | Director | April 12, 2013 |
| /s/ MARK HARRIS Mark Harris | Director | April 12, 2013 |
| /s/ DANIEL S.J. MUFFOLETTO | Director | April 12, 2013 |

Daniel S.J. Muffoletto

/s/ MICHAEL FISHMAN

Director

Michael Fishman

April 12,
2013

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EXHIBIT INDEX

- 3.1 Certificate of Incorporation of Reed's, Inc. as filed September 7, 2001 (Incorporated by reference to Exhibit 3.1 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
- 3.2 Certificate of Amendment of Certificate of Incorporation of Reed's, Inc. as filed September 27, 2004 (Incorporated by reference to Exhibit 3.2 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
- 3.3 Certificate of Amendment of Certificate of Incorporation of Reed's, Inc. as filed December 18, 2007 (Incorporated by reference to Exhibit 3.3 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
- 3.4 Certificate of Designations, Preferences and Rights of Series A Preferred Stock of Reed's, Inc. as filed October 12, 2004 (Incorporated by reference to Exhibit 3.3 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
- 3.5 Certificate of Correction to Certificate of Designations as filed November 10, 2004 (Incorporated by reference to Exhibit 3.4 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))

- 3.6 Amended Certificate of Designation of Series B Convertible Preferred Stock, filed December 4, 2009 (filed herewith)
- 3.7 Bylaws of Reed's Inc., as amended (Incorporated by reference to Exhibit 3.1 to Reed's, Inc.'s Current Report on Form 8-K filed December 19, 2012)
- 4.1 Form of common stock certificate (Incorporated by reference to Exhibit 4.1 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
- 4.2 Form of Series A preferred stock certificate (Incorporated by reference to Exhibit 4.2 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))

- 10.1 Waiver to Loan and Security Agreement dated January 5, 2009 (Incorporated by reference to Exhibit 10.19 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
- 10.2* 2001 Stock Option Plan (Incorporated by reference to Exhibit 4.3 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
- 10.3 Reed's Inc. Master Brokerage Agreement between Reed's, Inc. and Reed's Brokerage, Inc. dated May 1, 2008 (Incorporated by reference to Exhibit 10.21 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
- 10.4* 2007 Stock Option Plan (Incorporated by reference to Exhibit 10.22 to Reed's, Inc.'s Form 10K filed March 27, 2009)
- 10.5* 2009 Consultant Stock Plan (Incorporated by reference to Exhibit 4.1 to Reed's, Inc.'s Registration Statement on Form S-8 (File No. 333-157359))
- 10.6* 2010 Incentive Stock Plan (Incorporated by reference to Exhibit 4.1 to Reed's, Inc.'s Registration Statement on Form S-8 (File No. 333-165906))
- 10.7* 2010-2 Incentive Stock Plan (Incorporated by reference to Exhibit 4.1 to Reed's, Inc.'s Registration Statement on Form S-8 (File No. 333-166575))
- 10.8

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- Loan and Security Agreement between PMC Financial Services Group, LLC and Reed's, Inc. dated November 8, 2011 (Incorporated by reference to Exhibit 10.15 to Reed's, Inc.'s Form 10Q as filed November 14, 2011)
- 14.1 Code of Ethics (Incorporated by reference to Exhibit 14.1 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-157359))
21. Subsidiaries of Reed's, Inc. (Incorporated by reference to Exhibit 21 to Reed's, Inc.'s Form 10K filed March 25, 2013)
- 23.1 Consent of Weinberg & Co., P.A. (Incorporated by reference to Exhibit 21 to Reed's, Inc.'s Form 10K filed March 25, 2013)
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 101 Interactive Data File Formatted in XBRL (Extensible Business Reporting Language (Incorporated by reference to Exhibit 101 to Reed's, Inc.'s Form 10K filed March 25, 2013))

* Indicates a management contract or compensatory plan or arrangement.

In accordance with SEC Release 33-8238, Exhibit 32.1 and 32.2 are being furnished and not filed.

Furnished herewith. XBRL (Extensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections.