

PORTA SYSTEMS CORP
Form DEF 14C
December 08, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

SCHEDULE 14C

(RULE 14c-101)

SCHEDULE 14C INFORMATION

Information Statement Pursuant to Section 14(c)
of the Securities Exchange Act of 1934

Check the appropriate box:

- Preliminary Information Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
- Definitive Information Statement

PORTA SYSTEMS CORP.

(Name of Registrant as Specified in Its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
 - Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.
- (1) Title of each class of securities to which transaction applies:
 - (2) Aggregate number of securities to which transaction applies:
 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):
 - (4) Proposed maximum aggregate value of transaction:
 - (5) Total fee paid:
 - Fee paid previously with preliminary materials.
 - 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:

PORTA SYSTEMS CORP.
6851 Jericho Turnpike
Syosset, New York 11791

NOTICE IS HEREBY GIVEN, pursuant to Section 228(e) of the Delaware General Corporation Law, that the holders of more than a majority of the outstanding shares of common stock of Porta Systems Corp., a Delaware corporation, have taken the following actions without a meeting of stockholders:

- (1) The approval of an amendment to our certificate of incorporation which (i) effects a one-for-500 reverse split of our common stock and (ii) reduces our authorized capital stock to 100,000 shares of preferred stock and 100,000 shares of common stock.
- (2) The election of six directors to serve until the next annual meeting of stockholders and until their successors are elected and qualified;
- (3) The approval of the 2009 long-term incentive plan;
- (4) The approval of the selection of BDO Seidman, LLP as our independent registered accounting firm for the year ending December 31, 2009; and

These actions will become effective on or about the 20th day after this information statement is mailed to our stockholders.

The enclosed information statement contains information pertaining to the matters acted upon.

WE ARE NOT ASKING YOU FOR A PROXY,
AND YOU ARE REQUESTED NOT TO SEND US A PROXY

By order of the Board of
Directors

Michael A. Tancredi
Secretary

Syosset, New York
December 8, 2009

PORTA SYSTEMS CORP.
6851 Jericho Turnpike
Syosset, New York 11791
(516) 364-9300

INFORMATION STATEMENT

Action by Written Consent of Stockholders

GENERAL INFORMATION

WE ARE NOT ASKING YOU FOR A PROXY,
AND YOU ARE REQUESTED NOT TO SEND US A PROXY

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the transaction, passed upon the merits or fairness of the transaction, or passed upon the adequacy or accuracy of the disclosure in this information statement. Any representation to the contrary is a criminal offense.

This information statement is being furnished in connection with the action by written consent of stockholders taken without a meeting of proposals to approve the actions described in this information statement. We are mailing this information statement to our stockholders on or about December 11, 2009. No action is requested or required on your part.

SUMMARY TERM SHEET

The following summary term sheet highlights selected information from this information statement and may not contain all of the information that may be important to you. Accordingly, we encourage you to read this entire information statement, its appendices and the documents referred to or incorporated by reference in this information statement. Each item in this summary term sheet includes a caption reference directing you to a more complete description of that item.

Action Taken by Stockholder

We obtained stockholder consent to the following action:

- The approval of an amendment to our certificate of incorporation which (i) effects a one-for-500 reverse split of our common stock and (ii) reduces our authorized capital stock to 100,000 shares of preferred stock and 100,000 shares of common stock. See “Approval of the Amendment to our Certificate of Incorporation to (i) Effect a one-for-500 Reverse Split and (ii) Reduce our Authorized Capital Stock.”
- The election of the following six directors to serve until the next annual meeting of stockholders and until their successors are elected and qualified; William V. Carney, Marco M. Elser, Warren H. Esanu, Herbert H. Feldman, Edward B. Kornfeld, Michael A. Tancredi. See “Election of Directors.”
- The approval of our 2009 long-term incentive plan. See “Approval of 2009 Long-Term Incentive Plan.”

The approval of the selection of BDO Seidman, LLP as our independent registered public accounting firm for the year ending December 31, 2009. See “Approval of the Selection of Independent Accounting Firm.”

Shares of common stock outstanding on the date that we received stockholder approval (See “Questions and Answers Concerning the Stockholder Action Taken.”)

On September 28, 2009, the date on which we received consent for the above items, there were 9,954,569 shares of common stock, par value \$0.01 per share, outstanding.

Effect of the Reverse Split on Stockholders (See “Questions and Answers Concerning the Stockholder Action Taken” and “Special Factors – Effects and Tax Consequences of the Reverse Split on our Other Stockholders”)

As a result of the reverse split:

- Each share of common stock will automatically become and be converted into 0.002 shares of common stock. This means that each 500 shares of common stock that you own will automatically become and be converted into one share of common stock.
- We will pay cash in lieu of fractional shares at the rate of \$48.25 per share after giving effect to the reverse split. This payment is equivalent to \$0.0965 per share prior to the reverse split.
- If you own less than 500 shares of common stock, you will receive cash in lieu of fractional shares, and you will cease to be a stockholder.
- If you hold stock in more than one account and you do not consolidate your accounts, each account will be treated separately. As a result, if you own less than 500 shares in each of several accounts but the total number of shares which you own is more than 500 shares, you will cease to be a stockholder at the effective time of the reverse split and you will receive cash in lieu of all of your fractional shares.
- If you hold your stock in street name (which is how your stock is held if you keep your stock in your brokerage or nominee account) you will receive cash and/or shares based on the number of shares held in the brokerage or nominee account. The shares, if any, and cash in lieu of fractional shares, will be determined separately for each account you hold in street name.
- The shares and cash in lieu of fractional shares will be separately determined for each brokerage firm who holds our stock either on its own behalf or on behalf of its customers. Each account in each brokerage firm will be treated as a separate account for determining how many shares and how much cash in lieu of fractional shares will be paid.
- We will have fewer than 300 stockholders. As a result we will terminate our registration under the Securities Exchange Act of 1934.

Action Required by Stockholders (See “Questions and Answers Concerning the Stockholder Action Taken.”)

You are not required to take any action before the reverse split becomes effective. Once the reverse split becomes effective, you will receive a transmittal letter for you to receive any shares and cash in lieu of fractional shares which are due to you as a result of the one-for-500 reverse split. The form of our letter to you is set forth in Appendix A to this information statement.

Funds for Payment of the Cash in Lieu of Fractional Shares (See “Questions and Answers Concerning the Stockholder Action Taken – Who is paying the cost of this information statement and the payments for fractional shares in the reverse split?”)

We estimate that the total cost to us to purchase fractional shares is approximately \$18,000, which we will pay from our cash available to us from continuing operations.

Accounting Consequences of the Reverse Split (See “Approval of the Amendment to our Certificate of Incorporation to (i) Effect a one-for-500 Reverse Split and (ii) Reduce our Authorized Capital Stock – Accounting Consequences of the Reverse Stock Split.”)

As a result of the reverse split:

- The number of outstanding shares of common stock will be reduced from 9,954,569 shares, which are outstanding on the date of this information, to approximately 19,600 shares. The exact number of shares outstanding after the reverse split will be determined following the effectiveness of the reverse split.
- The purchase of the fractional shares will be treated as the purchase of treasury stock and will be reflected in the stockholders’ equity section of our balance sheet as a reduction of additional paid-in capital in the amount of our payment in lieu of fractional shares, which is estimated at approximately \$18,000.

Tax Treatment of the Reverse Split (See “Special Factors – Effects and Tax Consequences of the Reverse Split to our Other Stockholders” and “Approval of the Amendment to our Certificate of Incorporation to (i) Effect a one-for-500 Reverse Split and (ii) Reduce our Authorized Capital Stock – Federal Income Tax Consequences of the Reverse Stock Split.”)

The combination and exchange of each 500 shares of the common stock into one share of new common stock should be a tax-free transaction, and the holding period and tax basis of the old common stock will be transferred to the new common stock received in exchange therefore. Provided that the old common stock is held as a capital asset, the cash paid to for fractional shares will be treated as a payment in redemption of the fractional shares and the stockholder will recognize a capital gain or loss, as the case may be, on the difference between your basis in the fractional share and the payment in lieu of the fractional share.

This discussion, which relates to United States residents, should not be considered as tax or investment advice, and the tax consequences of the reverse split may not be the same for all stockholders. You should consult your own tax advisors to know how federal, state, local and foreign tax laws affect you.

Fairness of the Reverse Split (See “Special Factors – Reasons for the Reverse Split,” “Special Factors – Fairness of the Reverse Split” and “Approval of the Amendment to our Certificate of Incorporation to (i) Effect a one-for-500 Reverse Split and (ii) Reduce our Authorized Capital Stock – Reasons for the Reverse Split.”)

Our board, in approving the reverse split, believes that the reverse split is fair to us and to our stockholders, regardless of whether they receive cash in lieu of fractional shares or continue as stockholders.

No Appraisal Rights (See “Approval of the Amendment to our Certificate of Incorporation to (i) Effect a one-for-500 Reverse Split and (ii) Reduce our Authorized Capital Stock – No Appraisal Rights.”)

You will not have any rights of appraisal with respect to the reverse split, which means that you will not have any procedure to follow for you to challenge the valuation placed by us on your common stock in paying cash in lieu of fractional shares.

Effect of the Reverse Split on Officers, Directors and Affiliates (See “Special Factors – Effect of the Reverse Split on our Affiliates” and “Approval of the Amendment to our Certificate of Incorporation to (i) Effect a one-for-500 Reverse

Split and (ii) Reduce our Authorized Capital Stock – Effect of Reverse Split on Affiliates.”)

- 3 -

As a result of the reverse split, Gate Systems Holdings LTD, the holder of 7,038,236 shares of common stock, representing 70.7% of our outstanding common stock, will hold 14,076 shares of common stock, which will represent approximately 71.8% of our outstanding common stock after the reverse split. Gate Systems is a wholly-owned subsidiary of Cheyne Special Situations Fund, L.P. ("Cheyne"), which is the holder of our senior debt.

Edward B. Kornfeld, our chief executive officer and a director, owns 253,368 shares of common stock, representing 2.5% of our common stock. Following the reverse split, Mr. Kornfeld will hold 506 shares of common stock, which will represent approximately 2.6% of our outstanding common stock after the reverse split.

Marco M. Elser, a director, beneficially owns 114,403 shares of common stock, representing approximately 1.1% of our common stock. These shares are held by Watersfield Ltd., of which Mr. Elser has joint voting and dispositive power. Following the reverse split, Mr. Elser will beneficially own 228 shares of common stock, which will represent approximately 1.1% of our outstanding common stock after the reverse split. Mr. Elser also beneficially owned shares issuable upon exercise of warrants, as discussed in the following paragraph.

No other officer or director owns as much as 1% of our outstanding common stock.

In addition to the shares owned by officers and directors, four of our directors hold options and warrants to purchase a total of 366,093 shares of common stock at exercise price ranging from \$0.022 per share to \$2.03. As a result of the reverse split, these warrants and options will entitle the holders to purchase approximately 732 shares of common stock at exercise prices ranging from \$11.00 to \$1,015.00 per share.

QUESTIONS AND ANSWERS CONCERNING THE STOCKHOLDER ACTION TAKEN

What action was taken by written consent?

We obtained stockholder consent to the following action:

- The approval of an amendment to our certificate of incorporation which (i) effects a one-for-500 reverse split of our common stock and (ii) reduces our authorized capital stock to 100,000 shares of preferred stock and 100,000 shares of common stock.
- The election of the following six directors to serve until the next annual meeting of stockholders and until their successors are elected and qualified; William V. Carney, Marco M. Elser, Warren H. Esanu, Herbert H. Feldman, Edward B. Kornfeld, Michael A. Tancredi;
- The approval of our 2009 long-term incentive plan;
- The approval of the selection of BDO Seidman, LLP as our independent registered public accounting firm for the year ending December 31, 2009; and

What vote was obtained to elect directors and to approve the other proposals described in this information statement?

We obtained the consent of the holder of 7,038,236 shares of common stock, representing 70.7% of our outstanding common stock, on September 28, 2009. As a result, we have obtained all stockholder approval necessary under the Delaware General Corporation Law for the approval of the amendment to our certificate of incorporation, the election of directors, approval of the appointment of BDO Seidman, LLP as our independent registered accounting firm for 2009 and the approval of the 2009 long-term incentive plan.

The consent was given by Gate Systems, a wholly owned subsidiary of Cheyne, the holder of our senior debt.

- 4 -

How many shares of common stock were outstanding when the consent was obtained?

On September 28, 2009, the date on which we received stockholder approval of the matters described in this information statement, we had 9,954,569 shares of common stock outstanding.

What are the effects of the reverse split?

Each share of common stock will become 0.002 share of common stock. As a result, if you own less than 500 shares of common stock, you will cease to be a stockholder.

- We will pay cash for fractional shares.
- We will have fewer than 300 stockholders.

We will terminate our registration under the Securities Exchange Act of 1934. Upon the filing of the notice of termination of registration under the Securities Exchange Act, we will no longer be subject to the reporting obligations under the Securities Exchange Act.

For more information on the reverse split, see “Special Factors” and “Approval of the Amendment to our Certificate of Incorporation to (i) Effect a One-for-500 Reverse Split and (ii) Reduce our Authorized Capital Stock.”

If you hold your stock in your brokerage account, how will your shares be treated?

If you hold your stock in a brokerage account or otherwise in a nominee account, the number of shares that you will receive and the cash in lieu of fractional shares will be based on the number of shares in your account, as reported to us by your broker. If you advised your broker that the broker is not authorized to provide us with your name, then your broker will not provide us with your name, but will provide us with the number of shares held in each of your accounts.

How will your stock be treated if you hold your common stock in more than one account?

If you hold stock in more than one account or more than one name, each account will be treated separately. For example, if shares are held in the names of Jon Doe, Jonathan Doe and Jon P. Doe, each account will be treated separately. If you have less than 500 shares in each of these accounts, you will receive cash in lieu of fractional shares for all of your accounts. Similarly, if you have accounts at different brokerage firms, each account will be treated separately.

Can you combine your accounts so that all of your shares are in one account?

You can combine your accounts either by yourself or through your brokerage firm.

If you hold shares in brokerage accounts, you should discuss with your broker the method of combining your account. If you hold shares in your own name, you should contact our transfer agent to obtain information as to combining your accounts.

Can you divide your accounts so that you will receive cash in respect of all of your shares?

Yes. We will pay cash in lieu of fractional shares to each stockholder of record and each stockholder who holds shares in a brokerage or nominee account on the effective date of the reverse split. Whether you divide or combine

your accounts, each account which is treated as a separate account on the effective date of the reverse split will be treated separately in determining what shares or cash in lieu of fractional shares is due to you.

- 5 -

Who is our transfer agent?

Our transfer agent is American Stock Transfer & Trust Company, 6201 15th Avenue, Brooklyn, New York 11219. The phone number for stockholder services at our transfer agent is: (800) 937-5449 or (718) 921-8124.

Why did we choose to adopt a reverse stock split?

Our board of directors and our largest stockholder approved the reverse split in order to enable us to reduce the number of our stockholders and to terminate the registration of our common stock under the Securities Exchange Act. We have a large number of stockholders who own small quantities of our common stock, and more than 70% of our stock is owned by Gate Systems, the wholly-owned subsidiary of the holder of our senior debt.

On the effective date of the reverse split, each 500 shares of common stock will automatically be combined and changed into one share of common stock, which means that each share will be converted into 0.002 shares of common stock. No fractional shares of new common stock will be issued to any stockholder as a result of the reverse split. We will pay the holders of fractional shares the value of their fractional shares, which we determined to be \$48.25 per share of common stock, after giving effect to the reverse split.

As a result of the reverse split, we will have fewer than 300 stockholders of record, and we will be able to terminate the registration of our common stock under the Securities Exchange Act. Upon filing a certification and notice of termination of registration under the Securities Exchange Act, we will no longer be required to file the annual, quarterly and current reports which we are presently required to file and we will not be subject to provisions of the Sarbanes-Oxley Act of 2002, including those relating to the attestation by our independent auditor as to our internal controls over financial reporting.

How did we determine the amount that we will pay for fractional shares?

There is no active market for our common stock. On October 1, 2009, the date that the amendment to our certificate of incorporation which effects the reverse split was approved by the board of directors, the last reported sales price for our common stock was \$0.055 per share, which related to a reported sale on August 13, 2009. There were no reported sales of our common stock during the period between August 14, 2009 and October 1, 2009. The board of directors determined that the fair value of the common stock would be the average of the daily average of the closing bid and asked prices for our common stock for the month of September 2009, which was \$0.0965 per share. After giving effect to the reverse split, this fair value per share of common stock would be \$48.25, which is computed by multiplying \$0.0965 by 500.

How did we determine the ratio for the reverse split?

The one-for-500 ratio for the reverse split was based on an analysis of our outstanding stock and was intended to result in our common stock being owned by less than 300 stockholders in order that we can terminate our registration under the Securities Exchange Act.

Why do we want to terminate the registration of our common stock?

The decision by our board of directors and principal stockholder to approve the reverse split was made after carefully considering our long-term goals and our current operating environment, including our cash requirements. We estimate that we will realize significant cost savings, in the range of \$300,000 per year, resulting from the elimination of reporting obligations, including the incremental cost of compliance with the auditor attestation requirements of Section 404 of the Sarbanes Oxley Act. We believe that the Sarbanes-Oxley legislation and continued reporting

pursuant to the Exchange Act do not provide any discernable benefit to us or our stockholders because of the significant costs of compliance, our very low stock price and the lack of an active market in our common stock. We believe that we and our stockholders are much better served by applying our financial and management resources to our growth.

- 6 -

We have previously reported in our filings with the SEC that our audited financial statements for the year ended December 31, 2008 were prepared assuming that we will continue as a going concern and, accordingly, do not include any adjustments that might result from the outcome of the uncertainties described in the financial statements. The audit opinion included in our December 31, 2008 Form 10-K annual report contained an explanatory paragraph regarding our ability to continue as a going concern. The factors which resulted in the explanatory paragraph are continuing. We believe that, in order for us to continue in business, we need to devote our financial and other resources to our business, and the elimination of the expenses required for a public reporting company is an important step in that direction. However, we cannot assure you that the elimination of these expenses will, by themselves, be sufficient to enable us to either operate profitably or continue in business.

Did we appoint any representative to act on behalf of stockholders who are not affiliates of the Company?

The action described in this information statement was approved by the board of directors and the holder of more than 70% of our common stock. The board did not appoint any person to act as representative for the other stockholders.

Did we consider other alternatives to the reverse split?

No. We did not consider any alternatives to the reverse split. Our board believed that in order to reduce the number of stockholders so that we would have less than 300 stockholders, the reverse split would be the best alternative. We believed that the best way to reach this objective was to reduce the number of stockholders by means of a reverse split. The ratio of the reverse split was based on a number which we felt confident would reduce the number of our stockholders to less than 300 stockholders.

Who is paying the cost of this information statement and the payments for fractional shares in the reverse split?

We will pay for preparing, printing and mailing this information statement. Only one information statement will be delivered to multiple stockholders sharing an address, unless contrary instructions are received from one or more of such stockholders. Upon receipt of a written request at the address noted above, we will deliver a single copy of this information statement and future stockholder communication documents to any stockholders sharing an address to which multiple copies are now delivered. We estimate our legal, transfer agent, printing, mailing and related costs associated with this information statement will be approximately \$35,000. In addition, we will be paying our stockholders who have fractional shares for the value of the fractional shares, based on a per share value of \$48.25, after giving effect to the reverse split. We estimate that we will pay out stockholders approximately \$18,000 for their fractional shares. We will pay the costs associated with this information statement as well as the cash in lieu of fractional shares from cash available to us from continuing operations.

When will the above actions become effective?

This information statement is first being mailed or furnished to our stockholders on or about December 11, 2009 and the actions described in this information statement will become effective on or about the 20th day thereafter.

Where can you get copies of this proxy statement and any other material that we have filed with the SEC in connection with the reverse split?

We make all of our filings with the SEC, including this information statement and the Schedule 13E-3 relating to the reverse split, on the SEC's EDGAR system. This information is available through the SEC's website at www.sec.gov.

We also maintain copies of our filings with the SEC on our corporate website. You can obtain access to these filings at www.portasystems.com/SECFilings/index.html.

SPECIAL FACTORS

Purposes, Alternatives and Effects of the Reverse Split

The purpose of the reverse split is to reduce the number of record holders of our common stock so that we will have fewer than 300 stockholders of record. Following the reverse split, we will have fewer than 300 stockholders of record and we will be able to terminate our registration under the Securities Exchange Act. As a result of the termination of our registration under the Securities Exchange Act:

• We will not be required to file annual reports, quarterly and current reports which are due after we file the notice of termination of registration. We currently file annual reports on Form 10-K, which include our audited year-end financial statements, quarterly reports on Form 10-Q, which include unaudited quarterly and year-to-date financial statements, and current reports on Form 8-K, which report significant matters. If the reverse split becomes effective before March 30, 2010, we will not be required to file a Form 10-K for the year ended December 31, 2009.

• We will be required to give you notice of the meeting or notice of action taken without a meeting under the Delaware General Corporation Law, but we would not be required to provide you with the information that is required to be included in a proxy statement or an information statement.

• We would not be subject to provisions of the Sarbanes Oxley Act, which, among other provisions, would require us to obtain attestation by our independent auditors as to our internal controls over financial reporting.

• Our officers, directors and 10% stockholders would not be required to file beneficial ownership reports on Forms 3, 4 and 5.

• Holders who beneficially own 5% or more of our common stock would not be required to file statements of beneficial ownership on Schedules 13D or 13G.

• Although our stock would no longer be traded on the OTC Bulletin Board, it would be eligible for trading on the Pink Sheets.

However, many brokerage firms may have policies which discourage purchases and sales of stock of companies that are not reporting companies; however, our common stock is already affected by policies at many brokerage firms discourage transactions in low price stocks.

We did not consider any alternative structures other than a reverse split.

The ratio of one-for-500 was intended to enable us to be satisfied that, following the reverse split, we would have less than 300 stockholders of records, even if stockholders who hold shares in street name elected to hold their shares in their own names.

Reasons for the Reverse Split

Our board of directors considered many factors in unanimously approving the reverse split, including the following:

- The nature and limited extent of the trading in our common stock as well as the market value that the public markets are currently applying to us.
- The direct and indirect costs associated with the preparation and filing of our periodic reports with the SEC. We estimate that the costs associated with complying with the Sarbanes-Oxley Act, particularly as a result of the requirement for attestation by our independent auditors as to our internal controls over financial reporting, will be approximately \$300,000 per year. We consider these costs to be material to us in view of the results of our operations in recent periods.
- The fact that many other typical advantages of being a public company are not currently available to us, including enhanced access to capital and the ability to use equity securities to acquire other businesses because of both our recent history of losses and the low price and lack of trading volume in our stock.
- The current level of analyst coverage and minimal liquidity for our common stock under current and reasonably foreseeable market conditions.

The board also considered our financial resources and our dependence upon our senior lender, who, through its wholly-owned subsidiary, is the holder of more than 70% of our common stock. Because of our financial condition, we have no potential source of funding other than our senior lender, and our senior lender has indicated that it will not lend us any additional funds.

In addition to the significant time and cost savings resulting from termination of our registration under the Securities Exchange Act, the board believes that this action will allow our management to focus its attention and resources on building longer-term enterprise value.

In this connection, the board considered our relationship with Cheyne, which is the parent company of our 70% stockholder. At our 2008 annual meeting, for which we solicited proxies, our stockholders approved a one-for-11.11 reverse stock split. In our proxy statement, we said that the one-for-11.11 reverse split is crucial to our ability to continue in business because it is a condition to our implementation of our proposed debt restructuring plan. The debt restructuring plan was described in detail in the proxy statement. Pursuant to the debt restructuring:

• Cheyne, as the holder of our senior debt, converted notes in the principal amount of \$23,373,000 into a note for \$11,601,156 plus 7,038,236 shares of common stock, representing 70% of the common stock outstanding after giving effect to all of the issuances contemplated by the restructuring plan (the "Total Issuances"). These shares were issued in the name of Gate Systems.

• The maturity date of a working capital note to Cheyne in the principal amount of \$1,600,000 was extended to December 31, 2008. This note also constitutes senior debt.