

TOP SHIPS INC.
Form 20-F
June 18, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 20-F

(Mark One)

REPORT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

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

For the fiscal year ended December 31, 2009

OR

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

For the transition period from _____ to _____

OR

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

Date of event requiring this shell company report _____

Commission file number 000-50859

TOP SHIPS INC.

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

Republic of the Marshall Islands

(Jurisdiction of incorporation or organization)

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(Address of principal executive offices)

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(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

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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 whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See the definitions of "large accelerated filer" and "accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP

International Financial Reporting Standards as issued by the International Accounting Standards Board

Other

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow:

Item 17

Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes

No

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Matters discussed in this report may constitute forward-looking statements. The Private Securities Litigation Reform Act of 1995 provides safe harbor protections for forward-looking statements in order to encourage companies to provide prospective information about their business. Forward-looking statements include statements concerning plans, objectives, goals, strategies, future events or performance, and underlying assumptions and other statements, which are other than statements of historical facts.

TOP SHIPS INC. desires to take advantage of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 and is including this cautionary statement in connection with this safe harbor legislation. This report and any other written or oral statements made by us or on our behalf may include forward-looking statements, which reflect our current views with respect to future events and financial performance. When used in this report, the words "anticipate," "believe," "expect," "intend," "estimate," "forecast," "project," "plan," "potential," "may," "should," and similar expressions identify forward-looking statements.

The forward-looking statements in this report are based upon various assumptions, many of which are based, in turn, upon further assumptions, including without limitation, management's examination of historical operating trends, data contained in our records and other data available from third parties. Although we believe that these assumptions were reasonable when made, because these assumptions are inherently subject to significant uncertainties and contingencies which are difficult or impossible to predict and are beyond our control, we cannot assure you that we will achieve or accomplish these expectations, beliefs or projections.

In addition to these assumptions and matters discussed elsewhere herein and in the documents incorporated by reference herein, important factors that, in our view, could cause actual results to differ materially from those discussed in the forward-looking statements include the strength of world economies and currencies, general market conditions, including fluctuations in charterhire rates and vessel values, changes in demand in the shipping market, including the effect of changes in OPEC's petroleum production levels and worldwide oil consumption and storage, changes in regulatory requirements affecting vessel operating including requirements for double hull tankers, changes in TOP SHIPS INC.'s operating expenses, including bunker prices, dry-docking and insurance costs, changes in governmental rules and regulations or actions taken by regulatory authorities, changes in the price of our capital investments, potential liability from pending or future litigation, general domestic and international political conditions, potential disruption of shipping routes due to accidents, political events or acts by terrorists, and other important factors described from time to time in the reports filed by us with the Securities and Exchange Commission, or the SEC.

PART I

ITEM 1. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS

Not Applicable.

ITEM 2. OFFER STATISTICS AND EXPECTED TIMETABLE

Not Applicable.

ITEM 3. KEY INFORMATION

Unless the context otherwise requires, as used in this report, the terms "Company," "we," "us," and "our" refer to TOP SHIPS INC. and all of its subsidiaries, and "TOP SHIPS INC." refers only to TOP SHIPS INC. and not to its subsidiaries. We use the term deadweight ton or dwt, in describing the size of vessels. Dwt, expressed in metric tons each of which is equivalent to 1,000 kilograms, refers to the maximum weight of cargo and supplies that a vessel can carry.

A. Selected Financial Data

The following table sets forth the selected historical consolidated financial data and other operating data of TOP SHIPS INC. for the years ended December 31, 2005, 2006, 2007, 2008 and 2009. The following information should be read in conjunction with Item 5 "Operating and Financial Review and Prospects" and the consolidated financial statements and related notes included herein. The following selected historical consolidated financial data of TOP SHIPS INC. are derived from our consolidated financial statements and notes thereto which have been prepared in accordance with U.S. generally accepted accounting principles, or GAAP, and have been audited for the year ended December 31, 2005 by Ernst & Young (Hellas) Certified Auditors Accountants S.A, or Ernst and Young, and for the years ended December 31, 2006, 2007, 2008 and 2009 by Deloitte, Hadjipavlou, Sofianos & Cambanis S.A., or Deloitte, both independent registered public accounting firms.

Year Ended December 31,

U.S.Dollars in thousands, except per share data and average daily results

STATEMENT OF OPERATIONS DATA

	2005	2006	2007	2008	2009
Revenues	\$244,215	\$310,043	\$252,259	\$257,380	\$107,979
Voyage expenses	36,889	55,351	59,414	38,656	3,372
Charter hire expense	7,206	96,302	94,118	53,684	10,827
Amortization of deferred gain on sale and leaseback of vessels and write-off of seller's credit	(837)	(8,110)	(15,610)	(18,707)	(7,799)
Lease termination expense					15,391
Vessel operating expenses	47,315	66,082	67,914	67,114	23,739
Dry-docking costs	10,478	39,333	25,094	10,036	4,602
General and administrative expenses	23,750	23,271	25,000	31,388	23,835
Gain on sale of vessels	(10,831)	(12,667)	(1,961)	(19,178)	-
Vessel Depreciation	47,055	35,266	27,408	32,664	31,585
Impairment on vessels	-	-	-	-	36,638
Total operating expenses	161,025	294,828	281,377	195,657	142,190
Operating income (loss)	83,190	15,215	(29,118)	61,723	(34,211)
Interest and finance costs	(19,430)	(27,030)	(19,518)	(25,764)	(13,969)
Loss on financial instruments	(747)	(2,145)	(3,704)	(12,024)	(2,081)
Interest income	1,774	3,022	3,248	1,831	235
Other income (expense), net	134	(67)	16	(127)	(170)
Net income (loss)	\$64,921	\$(11,005)	\$(49,076)	\$25,639	\$(50,196)
Earnings (loss) per share, basic and diluted	\$6.96	\$(1.16)	\$(4.09)	\$0.97	\$(1.78)
Weighted average common shares outstanding, basic	9,308,923	10,183,424	11,986,857	25,445,031	28,230,585
Weighted average common shares outstanding, diluted	9,310,670	10,183,424	11,986,857	25,445,031	28,230,585
Dividends declared per share	\$2.64	\$23.13	-	-	-

On January 1, 2009 the Company adopted ASC 260-10-45-61A "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities" (formerly known as FSP FASB 03-6-1). Upon adoption of the new guidance, unvested share-based payment awards that contain rights to receive non-forfeitable dividends or dividend equivalents (whether paid or unpaid) are participating securities and, thus, should be included in the two-class method of computing earnings per share (EPS). This standard was applied retroactively to all periods presented and reduced basic EPS by \$0.01 and \$0.04 for the twelve months ended December 31, 2005 and 2008, respectively. When it was retroactively applied to the years ended December 31, 2006 and 2007, EPS data was not affected due to the fact that the Company incurred a net loss and non-vested shares do not participate in losses.

Year Ended December 31,

U.S. Dollars in thousands, except per share data and average daily results

	2005	2006	2007	2008	2009
BALANCE SHEET DATA					
Current assets	\$67,574	\$72,799	\$102,161	\$57,088	\$3,787
Total assets	970,386	490,885	776,917	698,375	675,149
Current liabilities, including current portion of long-term debt	76,143	45,416	153,290	386,934	427,953
Total long-term debt, including current portion	564,103	218,052	438,884	342,479	399,087
Common Stock	280	108	205	283	311
Stockholders' equity	359,147	161,198	211,408	292,051	247,196
FLEET DATA					
Total number of vessels at end of period	27.0	24.0	23.0	12.0	13.0
Average number of vessels(1)	21.7	26.7	22.4	18.8	13.7
Total calendar days for fleet(2)	7,905	9,747	8,176	6,875	5,008
Total available days for fleet(3)	7,635	8,837	7,562	6,610	4,813
Total operating days for fleet(4)	7,436	8,634	7,032	6,099	4,775
Total time charter days for fleet	5,567	6,223	4,720	4,729	2,841
Total bareboat charter days for fleet	-	-	-	335	1,934
Total spot market days for fleet	1,869	2,411	2,312	1,035	-
Fleet utilization(5)	97.4	% 97.7	% 93.0	% 92.3	% 99.2
AVERAGE DAILY RESULTS					
Time charter equivalent(6)	\$27,881	\$29,499	\$27,424	\$35,862	21,907
Vessel operating expenses(7)	5,985	6,780	8,307	9,762	4,740
General and administrative expenses(8)	3,004	2,388	3,058	4,566	4,759

- (1) Average number of vessels is the number of vessels that constituted our fleet (including leased vessels) for the relevant period, as measured by the sum of the number of days each vessel was a part of our fleet during the period divided by the number of calendar days in that period.
- (2) Calendar days are the total days the vessels were in our possession for the relevant period. Calendar days are an indicator of the size of our fleet over the relevant period and affect both the amount of revenues and expenses that we record during that period.
- (3) Available days are the number of calendar days less the aggregate number of days that our vessels are off-hire due to scheduled repairs or scheduled guarantee inspections in the case of newbuildings, vessel upgrades or special surveys and the aggregate amount of time that we spend positioning our vessels. Companies in the shipping industry generally use available days to measure the number of days in a period during which vessels should be capable of generating revenues. We determined to use available days as a performance metric, for the first time, in the second quarter and first half of 2009. We have determined to adjust the calculation method of utilization to include available days in order to be comparable with shipping companies that calculate utilization using operating days divided by available days.

- (4) Operating days are the number of available days in a period less the aggregate number of days that our vessels are off-hire due to unforeseen circumstances. The shipping industry uses operating days to measure the aggregate number of days in a period during which the vessels actually generate revenue.
- (5) Fleet utilization is calculated by dividing the number of operating days during a period by the number of available days during that period. The shipping industry uses fleet utilization to measure a company's efficiency in finding suitable employment for its vessels and minimizing the number of days that its vessels are off-hire for reasons other than scheduled repairs or scheduled guarantee inspections in the case of newbuildings, vessel upgrades, special or intermediate surveys and vessel positioning. We used a new calculation method for fleet utilization, for the first time, in the second quarter and first half of 2009. In all prior filings and reports, utilization was calculated by dividing operating days by calendar days. We have determined to adjust the calculation method in order to be comparable with most shipping companies, which calculate utilization using operating days divided by available days.
- (6) Time charter equivalent rate, or TCE rate, is a measure of the average daily revenue performance of a vessel on a per voyage basis. Our method of calculating TCE rate is consistent with industry standards and is determined by dividing time charter equivalent revenues or TCE revenues by operating days for the relevant time period. TCE revenues are revenues minus voyage expenses. Voyage expenses primarily consist of port, canal and fuel costs that are unique to a particular voyage, which would otherwise be paid by the charterer under a time charter contract, as well as commissions. TCE revenues and TCE rate, which are non-GAAP measures, provide additional meaningful information in conjunction with shipping revenues, the most directly comparable GAAP measure, because it assists the Company's management in making decisions regarding the deployment and use of its vessels and in evaluating their financial performance.
- (7) Daily vessel operating expenses, which include crew costs, provisions, deck and engine stores, lubricating oil, insurance, maintenance and repairs are calculated by dividing vessel operating expenses by fleet calendar days for the relevant time period.
- (8) Daily general and administrative expenses are calculated by dividing general and administrative expenses by fleet calendar days for the relevant time period.

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The following table reflects reconciliation of TCE revenues to revenues as reflected in the consolidated statements of operations and calculation of the TCE rate (all amounts are expressed in thousands of U.S. Dollars, except for Average Daily Time Charter Equivalent amounts and Total Operating Days):

	2005	2006	2007	2008	2009
On a consolidated basis					
Revenues	\$244,215	\$310,043	\$252,259	\$257,380	\$107,979
Less:					
Voyage expenses	(36,889)	(55,351)	(59,414)	(38,656)	(3,372)
Time charter equivalent revenues	\$207,326	\$254,692	\$192,845	\$218,724	\$104,607
Total Operating days	7,436	8,634	7,032	6,099	4,775
Average Daily Time Charter Equivalent	\$27,881	\$29,499	\$27,424	\$35,862	\$21,907

	2005	2006	2007	2008	2009
Tanker Fleet					
Revenues	\$244,215	\$310,043	\$248,944	\$163,995	\$47,353
Less:					
Voyage expenses	(36,889)	(55,351)	(59,253)	(34,215)	(1,118)
Time charter equivalent revenues	\$207,326	\$254,692	\$189,691	\$129,780	\$46,235
Total Operating days	7,436	8,634	6,991	4,357	2,989
Average Daily Time Charter Equivalent	\$27,881	\$29,499	\$27,134	\$29,786	\$15,468

	2007	2008	2009
Drybulk Fleet			
Revenues	\$1,902	\$71,590	\$56,715
Less:			
Voyage expenses	(161)	(4,441)	(2,254)
Time charter equivalent revenues	\$1,741	\$67,149	\$54,461
Total Operating days	41	1,742	1,786
Average Daily Time Charter Equivalent	\$42,463	\$38,547	\$30,493

B. Capitalization and Indebtedness

Not Applicable.

C. Reasons for the Offer and Use of Proceeds

Not Applicable.

D. Risk Factors

The following risks relate principally to the industries in which we operate and our business in general. Any of the risk factors could materially and adversely affect our business, financial condition or operating results and the trading price of our common stock.

Risks Related to Our Industries

Disruptions in world financial markets and the resulting governmental action in the United States and other parts of the world could have a material adverse impact on our ability to obtain financing, our results of operations, financial condition and cash flows and could cause the market price of our common shares to decline.

Although the world economy is currently recovering from the second-worst downturn in the last 100 years, the future of this recovery still remains fragile. The effects of the downturn are still lingering as credit remains tight, demand for goods and services has not yet fully recovered and unemployment is high. Most major economies have been backing up this recovery via fiscal stimulus packages, liquidity injections and by decreasing interest rates. The credit markets in the United States and worldwide have experienced significant contraction, de-leveraging and reduced liquidity, and the United States federal government, state governments and foreign governments have implemented a broad variety of governmental action and/or new regulation of the financial markets. Securities and futures markets and the credit markets are subject to comprehensive statutes, regulations and other requirements. The Commission, other regulators, self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies, and may effect further changes in law or interpretations of existing laws.

A number of financial institutions have experienced financial difficulties and, in some cases, have entered bankruptcy proceedings or are in regulatory enforcement actions. The uncertainty surrounding the recovery of the credit markets in the United States and the rest of the world has resulted in reduced access to credit worldwide that is especially evident in our industry, the banking institutions of which have recently been forced to record heavy losses from troubled shipping loans. These difficulties may adversely affect the financial institutions that provide our credit facilities and may impair their ability to continue to perform under their financing obligations to us, which could have an impact on our ability to fund current and future obligations.

We face risks attendant to changes in economic environments, changes in interest rates, and instability in certain securities markets, among other factors. Major market disruptions and the current adverse changes in market conditions and regulatory climate in the United States and worldwide may adversely affect our business. The current market conditions may last longer than we anticipate. These recent and developing economic and governmental factors may have a material adverse effect on our results of operations, financial condition or cash flows and could cause the price of our common shares to further decline.

The international tanker and drybulk industries are both cyclical and volatile and this may lead to reductions and volatility in our charter rates when we re-charter our vessels, vessel values and our results of operations.

The international tanker and drybulk industries in which we operate are cyclical with attendant volatility in charter hire rates, vessel values and industry profitability. For both tankers and drybulk vessels, the degree of charter rate volatility among different types of vessels has varied widely. If we enter into a charter when charter rates are low, our revenues and earnings will be adversely affected. In addition, a decline in charter hire rates likely will cause the value of our vessels to decline. In the case of two of our tanker vessels, following the expiration of their charters in 2010 we anticipated that future hires would be at lower rates due to the adverse market conditions that have been prevailing in the product tanker market for most of 2009 and the first quarter of 2010. More specifically in March 2010, one of these vessels commenced a new two-year time charter agreement at a lower gross daily rate. We do not anticipate an improvement in product tanker hire rates in the immediate future and to this end we concluded that there was a need to write down the carrying value of these two vessels to their fair values. See "Item 5 – Operating and Financial Review and Prospects – Critical Accounting Policies-Impairment of long-lived assets" for more information on impairment.

Our current fleet deployment consists mainly of long term time charters and long term bareboat charters which significantly limits our exposure to charter rate volatility and its effect on our result of operations. Additionally, changes in spot rates in the tanker sector and the drybulk sector can affect the value of respective vessels at any given time despite the existence of long term employment contracts. Our ability to re-charter our vessels on the expiration or termination of their current time and bareboat charters and the charter rates payable under any renewal or replacement charters will depend upon, among other things, economic conditions in the tanker and drybulk market.

The factors affecting the supply and demand for our vessels are outside our control and are unpredictable. The nature, timing, direction and degree of changes in tanker and drybulk industry conditions are also unpredictable. Factors that influence demand for tanker and drybulk vessel capacity include:

- demand for refined petroleum products and crude oil for tankers and drybulk commodities for drybulk vessels;
- changes in crude oil production and refining capacity as well as drybulk commodity production and resulting shifts in trade flows for crude oil, petroleum product and drybulk commodities;
- the location of regional and global crude oil refining facilities and drybulk commodities markets that affect the distance refined petroleum products and crude oil or drybulk commodities are to be moved by sea;
- global and regional economic and political conditions;
- the location of regional and global crude oil refining facilities and drybulk commodities markets that affect the distance refined petroleum products and crude oil or drybulk commodities are to be moved by sea;
- environmental and other regulatory developments;
- currency exchange rates; and
- weather.

The factors that influence the supply of oceangoing vessel capacity include:

- the number of newbuilding deliveries;
- the scrapping rate of older vessels;
- the price of steel;
- vessel casualties;
- potential conversion of vessels to alternative use;
- changes in environmental and other regulations that may limit the useful lives of vessels;
- port or canal congestion;
- the number of vessels that are out of service at a given time; and
- changes in global crude oil and drybulk commodity production.

The international tanker and drybulk shipping industries have experienced drastic downturns after experiencing historically high charter rates and vessel values in the recent past, and a continued downturn in these markets may have an adverse effect on our earnings, impair the carrying value of our vessels and affect compliance with our loan covenants.

The Baltic Drybulk Index, or BDI, a U.S. Dollar daily average of charter rates issued by the London-based Baltic Exchange (an organization providing maritime market information for the trading and settlement of physical and derivative contracts) that takes into account input from brokers around the world regarding fixtures for various routes, dry cargoes and various drybulk vessel sizes, steeply declined in 2008 but then rebounded in 2009, although not to pre-crisis levels. The BDI declined from a high of 11,793 in May 2008 to a low of 663 in December 2008, which represents a decline of 94%, but has since risen to 3,933 as of June 3, 2010. The decline in charter rates was due to various factors, including the lack of trade financing for purchases of commodities carried by sea, which resulted in a significant decline in cargo shipments, and the excess supply of iron ore in China, which resulted in falling iron ore prices and increased stockpiles in Chinese ports. The decline in charter rates in the drybulk market also affected the value of our drybulk vessels, which followed the trends of drybulk charter rates, and earnings on our charters, and similarly, affected our cash flows, liquidity and compliance with the covenants contained in our loan agreements. During 2009 and the beginning of 2010, the abovementioned factors affecting the BDI partially subsided, allowing for the recovery of rates and a recovery in drybulk vessel values.

The Baltic Dirty Tanker Index, a U.S. Dollar daily average of charter rates issued by the London based Baltic Exchange that takes into account input from brokers around the world regarding crude oil fixtures for various routes various tanker vessel sizes, after a steep decline that started in mid-2008 and lasted until the end of the third quarter 2009, has rebounded in the fourth quarter of 2009, although not to pre-crisis levels. The Baltic Dirty Tanker Index declined from a high of 2,347 in July 2008 to a low of 453 in mid-April 2009, which represents a decline of 80%, but has since risen to 911 as of June 3, 2010.

The Baltic Clean Tanker Index fell from 1,509 points as of June 19, 2008, to 345 points as of April 4, 2009, but has rebounded to 644 points as of June 3, 2010. The dramatic decline in charter rates was due to various factors, including the significant fall in demand for crude oil and petroleum products, the consequent rising inventories of crude oil and petroleum products in the United States and in other industrialized nations and the corresponding reduction in oil refining, the dramatic fall in the price of oil in 2008, and the restrictions on crude oil production that the Organization of Petroleum Exporting Countries (OPEC) and other non-OPEC oil producing countries have imposed in an effort to stabilize the price of oil. During 2009, the abovementioned factors affecting the Baltic Dirty and Clean Tanker Indices partially subsided, allowing for the recovery of rates and a stabilization of tanker vessel values.

If the charter rates in the tanker and drybulk market decline from their current levels, our future earnings may be adversely affected and we may have to record impairment adjustments to the carrying values of our fleet, and we may not be able to maintain compliance with the financial covenants in our loan agreements. We realized impairment charges of \$36.6 million during the fourth quarter of 2009. See "Item 5 – Operating and Financial Review and Prospects – Critical Accounting Policies – Impairment of long-lived assets". We are currently in discussions with our lenders in relation to covenant breaches. Our lenders' interests may be different from ours, and we may not be able to obtain our lenders' permission or waivers when needed. This may limit our ability to continue to conduct our operations, finance our future operations, make acquisitions or pursue business opportunities. A decline in charter rates could have a material adverse effect on our business, financial condition and results of operations. See "Item 5 – Operating and Financial Review and Prospects - Tabular Disclosure of Contractual Obligations – Long term debt" for relevant discussion of debt and respective covenants.

Rising fuel prices may adversely affect our business.

Fuel is a significant, if not the largest, operating expense for many of our shipping operations when our vessels are not under period charter. The price and supply of fuel is unpredictable and fluctuates based on events outside our control, including geopolitical developments, supply and demand for oil and gas, actions by OPEC and other oil and gas producers, war and unrest in oil producing countries and regions, regional production patterns and environmental concerns. Further, fuel may become much more expensive in future, which may reduce the profitability and competitiveness of our business versus other forms of transportation, such as truck or rail. Currently, all of our vessels are under period employment whereby the fuel cost is taken up by the charterer except for periods when the vessel is off-hire.

Compliance with environmental laws or regulations may adversely affect our operations.

The shipping industry in general and our business and the operation of tankers and drybulk vessels in particular, are affected by a variety of governmental regulations in the form of numerous international conventions, national, state and local laws and international, national and local regulations in force in the jurisdictions in which such tankers and drybulk vessels operate, as well as in the country or countries in which such tankers and drybulk vessels are registered. These regulations include:

- the United States Oil Pollution Act of 1990, or OPA, which imposes strict liability for the discharge of oil into the 200-mile United States exclusive economic zone, the obligation to obtain certificates of financial responsibility for vessels trading in United States waters and the requirement that newly constructed tankers that trade in United States waters be constructed with double-hulls;

- the International Convention on Civil Liability for Oil Pollution Damage of 1969, as amended in 2000, or the CLC, entered into by many countries (other than the United States) relating to strict liability for pollution damage caused by the discharge of oil;

- the International Maritime Organization, or IMO (the United Nations agency for maritime safety and the prevention of pollution by ships), International Convention for the Prevention of Pollution from Ships, 1973, as modified by the related Protocol of 1978 relating thereto, or the MARPOL Convention, which has been updated through various amendments, with respect to strict technical and operational requirements for tankers;

- the IMO International Convention for the Safety of Life at Sea, or SOLAS Convention, with respect to crew and passenger safety;

- the International Convention on Load Lines, 1966, or LL Convention, with respect to the safeguarding of life and property through limitations on load capability for vessels on international voyages;

the United States Marine Transportation Security Act of 2002, or MTSA; and

The European Union Directive 1999/32/EC of 1999 as amended by Directive 2005/33/EC of 2005, regarding reductions in emissions of sulphur dioxide resulting from the combustion of petroleum-derived liquid fuels within Member States' territory, territorial seas and exclusive economic zones or pollution control zones.

Additional laws and regulations may also be adopted that could limit our ability to do business or increase the cost of our doing business and that could have a material adverse effect on our operations. In addition, we are required by various governmental and quasi-governmental agencies to obtain certain permits, licenses, certificates and financial assurances with respect to our vessel operations. In the event of war or national emergency, our tankers and drybulk vessels may be subject to requisition by the government of the flag flown by the tanker or drybulk vessel without any guarantee of compensation for lost profits. We believe our vessels are maintained in good condition in compliance with present regulatory requirements, are operated in compliance with applicable safety/environmental laws and regulations and are insured against usual risks for such amounts as our management deems appropriate. In relation to EU and US low-sulphur requirements our vessels are currently in the process of being in full compliance. Our vessels' operating certificates and licenses are renewed periodically during each vessel's required annual survey. However, government regulation of tankers and drybulk vessels, particularly in the areas of safety and environmental impact, may change in the future and require us to incur significant capital expenditures on our ships to keep them in compliance.

Under local, national and foreign laws, as well as international treaties and conventions, we could incur material liabilities, including cleanup obligations, natural resource damages and third-party claims for personal injury or property damages, in the event that there is a release of petroleum or other hazardous substances from our vessels or otherwise in connection with our current or historic operations. We could also incur substantial penalties, fines and other civil or criminal sanctions, including in certain instances seizure or detention of our vessels, as a result of violations of or liabilities under environmental laws, regulations and other requirements.

For example, OPA affects all vessel owners shipping oil to, from or within the United States. OPA allows for potentially unlimited liability for owners, operators and bareboat charterers of vessels without regard to fault for oil pollution in United States waters. Similarly, the CLC, which has been adopted by most countries outside of the United States, imposes liability for oil pollution in international waters. OPA expressly permits individual states to impose their own liability regimes with regard to hazardous materials and oil pollution incidents occurring within their boundaries. Coastal states in the United States have enacted pollution prevention liability and response laws, many providing for unlimited liability.

Future accidents may be expected in the shipping industry, and such accidents or other events may be expected to result in the adoption of even stricter laws and regulations, which could limit our operations or our ability to do business and which could have a material adverse effect on our business and financial results.

We are subject to international safety regulations and the failure to comply with these regulations may subject us to increased liability, may adversely affect our insurance coverage and may result in a denial of access to, or detention in, certain ports.

The operation of our vessels is affected by the requirements set forth in the IMO's International Management Code for the Safe Operation of Ships and Pollution Prevention, or ISM Code. The ISM Code requires shipowners, ship managers and bareboat charterers to develop and maintain an extensive "Safety Management System" that includes the adoption of a safety and environmental protection policy setting forth instructions and procedures for safe operation and describing procedures for dealing with emergencies. The failure of a shipowner or bareboat charterer to comply with the ISM Code may subject it to increased liability, may invalidate existing insurance or decrease available insurance coverage for the affected vessels and may result in a denial of access to, or detention in, certain ports. As of the date of this Annual Report, each of our vessels is ISM code-certified.

Compliance with safety and other vessel requirements imposed by classification societies may be very costly and may adversely affect our business.

The hull and machinery of every commercial vessel must be classed by a classification society authorized by its country of registry. The classification society certifies that a vessel is safe and seaworthy in accordance with the applicable rules and regulations of the country of registry of the vessel and the Safety of Life at Sea Convention. Our vessels are currently enrolled with Lloyd's Register of Shipping, Det Norske Veritas and Bureau Veritas each of which is a member of the International Association of Classification Societies.

A vessel must undergo annual surveys, intermediate surveys and special surveys. In lieu of a special survey, a vessel's machinery may be placed on a continuous survey cycle, under which the machinery would be surveyed periodically over a five-year period. Our vessels are on special survey cycles for hull inspection and continuous survey cycles for machinery inspection.

Most vessels are also dry-docked every 30 to 36 months for inspection of the underwater parts and for repairs related to such inspections. If any defects are found, the classification surveyor will issue a "recommendation" which must be rectified by the ship owner within prescribed time limits.

If a vessel does not maintain its class and/or fails any annual survey, intermediate survey or special survey, the vessel will be unable to trade between ports and will be unemployable, which will negatively impact our revenues and results from operations.

Climate change and greenhouse gas restrictions may adversely impact our operations and markets.

Due to concern over the risk of climate change, a number of countries and the IMO have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions. These regulatory measures may include, among others, adoption of cap and trade regimes, carbon taxes, increased efficiency standards, and incentives or mandates for renewable energy. In addition, although the emissions of greenhouse gases from international shipping currently are not subject to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which required adopting countries to implement national programs to reduce emissions of certain gases, a new treaty may be adopted in the future that includes restrictions on shipping emissions. Compliance with changes in laws, regulations and obligations relating to climate change could increase our costs related to operating and maintaining our vessels and require us to install new emission controls, acquire allowances or pay taxes related to our greenhouse gas emissions, or administer and manage a greenhouse gas emissions program. Revenue generation and strategic growth opportunities may also be adversely affected.

Adverse effects upon the oil and gas industry relating to climate change, including growing public concern about the environmental impact of climate change, may also adversely affect demand for our services. For example, increased regulation of greenhouse gases or other concerns relating to climate change may reduce the demand for oil and gas in the future or create greater incentives for use of alternative energy sources. Any long-term material adverse effect on the oil and gas industry could have a significant financial and operational adverse impact on our business that we cannot predict with certainty at this time.

Our vessels may suffer damage due to the inherent operational risks of the seaborne transportation industry and we may experience unexpected dry-docking costs, which may adversely affect our business and financial condition.

Our vessels and their cargoes will be at risk of being damaged or lost because of events such as marine disasters, bad weather, business interruptions caused by mechanical failures, grounding, fire, explosions and collisions, human error, war, terrorism, piracy and other circumstances or events. These hazards may result in death or injury to persons, loss of revenues or property, environmental damage, higher insurance rates, damage to our customer relationships, delay or rerouting. If our vessels suffer damage, they may need to be repaired at a dry-docking facility. The costs of dry-dock repairs are unpredictable and may be substantial. We may have to pay dry-docking costs that our insurance does not cover in full. The loss of earnings while these vessels are being repaired and repositioned, as well as the actual cost of these repairs, would decrease our earnings. In addition, space at dry-docking facilities is sometimes limited and not all dry-docking facilities are conveniently located. We may be unable to find space at a suitable dry-docking facility or our vessels may be forced to travel to a dry-docking facility that is not conveniently located to our vessels' positions. The loss of earnings while these vessels are forced to wait for space or to steam to more distant dry-docking facilities would decrease our earnings.

Because the market value of our vessels may fluctuate significantly, we may incur losses when we sell vessels or we may be required to write down their carrying value, which will adversely affect our earnings.

Current market conditions have caused a decrease in the fair market value of our vessels. The fair market value of our vessels may increase and decrease depending on the following factors:

- general economic and market conditions affecting the international tanker and drybulk shipping industries;
- prevailing level of charter rates;
- competition from other shipping companies;
- types, sizes and ages of vessels;
- other modes of transportation;
- cost of newbuildings;
- price of steel;
- governmental or other regulations; and
- technological advances.

If we sell vessels at a time when vessel prices have fallen, the sale may be at less than the vessel's carrying amount in our financial statements in which case we will realize a loss. Vessel prices can fluctuate significantly, and in the case where the market value falls below the carrying amount we evaluate the asset for a potential impairment and may be required to write down the carrying amount of the vessels on our financial statements and incur a loss and a reduction in earnings, if the estimate of undiscounted cash flows, excluding interest charges, expected to be generated by the use of the asset is less than its carrying amount. Such was the case for our two oldest tankers, which resulted in an impairment charge of \$36.6 million during the fourth quarter of 2009. See "Item 5 – Operating and Financial Review and Prospects - Critical Accounting Policies" for relevant discussion and analysis.

An over-supply of drybulk carrier and/or tanker capacity may lead to reductions in charter hire rates and profitability.

The market supply of drybulk carriers has been increasing, and the number of drybulk carriers on order is near historic highs. These newbuildings were delivered in significant numbers starting at the beginning of 2006 and continuing through 2010. As of December 31, 2009, newbuilding orders had been placed for an aggregate of approximately 57% of the existing global drybulk fleet, with deliveries expected during the next 36 months.

The market supply of tankers is affected by a number of factors such as demand for energy resources, oil and petroleum products, as well as strong overall economic growth in part of the world economy, including Asia. As of December 31, 2009, newbuilding orders have been placed for an aggregate of approximately 30% of the existing global tanker fleet.

An over-supply of drybulk carrier and/or tanker capacity may result in a reduction of charter hire rates. If such a reduction occurs, we may only be able to re-charter our vessels at reduced or unprofitable rates or we may not be able to charter these vessels at all upon the expiration or termination of our vessels' current charters.

Operating results from our tankers are subject to seasonal fluctuations, which may adversely affect our operating results.

Eight of the vessels in our combined fleet are tankers. We operate our tankers in markets that have historically exhibited seasonal variations in demand and, therefore, charter rates. This seasonality may result in quarter-to-quarter volatility in our operating results. The tanker sector is typically stronger in the fall and winter months in anticipation of increased consumption of oil and petroleum products in the northern hemisphere during the winter months. As a result, our revenues from our tankers may be weaker during the fiscal quarters ended June 30 and September 30, and, conversely, revenues may be stronger in fiscal quarters ended December 31 and March 31. This seasonality could materially affect our results of operations.

Our earnings may be adversely affected if we do not successfully employ our vessels.

Given current market conditions, we seek to deploy our vessels on time and bareboat charters in a manner that will help us achieve a steady flow of earnings. As of the date of this annual report, two of our tanker vessels and four of our drybulk vessels were contractually committed to time charters, and six of our tanker vessels and one of our drybulk vessels were contractually committed to bareboat charters. Although these period charters provide relatively steady streams of revenue as well as a portion of the revenues generated by the charterer's deployment of the vessels in the spot market or otherwise, our vessels committed to period charters may not be available for spot voyages during an upturn in the tanker or drybulk industry cycle, as the case may be, when spot voyages might be more profitable. The spot market is highly competitive, and spot market charter rates may fluctuate dramatically based on the supply and demand for the major commodities carried internationally by water as well as other factors. As of the date of this annual report, we did not have any vessels that were trading in the spot market. If we cannot continue to employ our vessels on profitable time charters or trade them in the spot market profitably, our results of operations and operating cash flow may suffer if rates achieved are not sufficient to cover respective vessel operating and financial expenses.

World events could adversely affect our results of operations and financial condition.

Terrorist attacks such as the attacks on the United States on September 11, 2001, the bombings in Spain on March 11, 2004 and in London on July 7, 2005 and the continuing response of the United States to these attacks, as well as the threat of future terrorist attacks in the United States or elsewhere, continue to cause uncertainty in the world financial markets and may affect our business, operating results and financial condition. The continuing conflict in Afghanistan may lead to additional acts of terrorism and armed conflict around the world, which may contribute to further economic instability in the global financial markets. These uncertainties could also adversely affect our ability to obtain any additional financing or, if we are able to obtain additional financing, to do so on terms unfavorable to us. In the past, political conflicts have also resulted in attacks on vessels, mining of waterways and other efforts to disrupt international shipping, particularly in the Arabian Gulf region. Acts of terrorism and piracy have also affected vessels trading in regions such as the South China Sea. Any of these occurrences could have a material adverse impact on our business, financial condition and results of operations.

Acts of piracy on oceangoing vessels have recently increased in frequency, which could adversely affect our business.

Acts of piracy have historically affected oceangoing vessels trading in regions of the world such as the South China Sea and the Gulf of Aden off the coast of Somalia. Throughout 2008, 2009 and 2010, the frequency of piracy incidents against commercial shipping vessels increased significantly, particularly in the Gulf of Aden. Since the beginning of 2009, numerous tanker and drybulk vessels have fallen victim to piracy attacks off the coast of Somalia. For example, on December 28, 2009, the M/V Navios Apollon, a drybulk vessel not affiliated with us, was seized by pirates while transporting fertilizers 800 miles off the Somali coast.

If these piracy attacks result in regions in which our vessels are deployed being characterized by insurers as "war risk" zones, as the Gulf of Aden has been since May 2008, or Joint War Committee "war and strikes" listed areas, premiums payable for such insurance coverage could increase significantly and such insurance coverage may be more difficult to obtain. Crew costs, including those due to employing onboard security guards, could increase in such circumstances. In addition, while we believe the charterer remains liable for charter payments when a vessel is seized by pirates, the charterer may dispute this and withhold charter hire until the vessel is released. A charterer may also claim that a vessel seized by pirates was not "on-hire" for a certain number of days and it is therefore entitled to cancel the charter party, a claim that we would dispute. We may not be adequately insured to cover losses from these incidents, which could have a material adverse effect on us. In addition, detention hijacking as a result of an act of piracy against our vessels, or an increase in cost, or unavailability of insurance for our vessels, could have a material adverse impact on our business, financial condition, results of operations and cash flows.

Changes in the economic and political environment in China and policies adopted by the government to regulate its economy may have a material adverse effect on our business, financial condition and results of operations.

The Chinese economy differs from the economies of most countries belonging to the Organization for Economic Cooperation and Development, or OECD, in such respects as structure, government involvement, level of development, growth rate, capital reinvestment, allocation of resources, rate of inflation and balance of payments position. Prior to 1978, the Chinese economy was a planned economy. Since 1978, increasing emphasis has been placed on the utilization of market forces in the development of the Chinese economy. Annual and five-year plans, or State Plans, are adopted by the Chinese government in connection with the development of the economy. Although state-owned enterprises still account for a substantial portion of the Chinese industrial output, in general, the Chinese government is reducing the level of direct control that it exercises over the economy through State Plans and other measures. There is an increasing level of freedom and autonomy in areas such as allocation of resources, production, pricing and management and a gradual shift in emphasis to a "market economy" and enterprise reform. Limited price reforms were undertaken, with the result that prices for certain commodities are principally determined by market forces. Many of the reforms are unprecedented or experimental and may be subject to revision, change or abolition

based upon the outcome of such experiments. If the Chinese government does not continue to pursue a policy of economic reform the level of imports to and exports from China could be adversely affected by changes to these economic reforms by the Chinese government, as well as by changes in political, economic and social conditions or other relevant policies of the Chinese government, such as changes in laws, regulations or export and import restrictions, all of which could, adversely affect our business, operating results and financial condition.

A further economic slowdown in the Asia Pacific region could exacerbate the effect of recent slowdowns in the economies of the United States and the European Union and may have a material adverse effect on our business, financial condition and results of operations.

We anticipate a significant number of the port calls made mainly by our drybulk vessels will continue to involve the loading or discharging of drybulk commodities in ports in the Asia Pacific region. As a result, negative changes in economic conditions in any Asia Pacific country, particularly in China, may exacerbate the effect of recent slowdowns in the economies of the United States and the European Union and may have a material adverse effect on our business, financial position and results of operations, as well as our future prospects.

Before the global economic financial crisis that began in 2008, China had one of the world's fastest growing economies in terms of gross domestic product, or GDP, which had a significant impact on shipping demand. The economic crisis affected China as well, though to a much lesser extent, as was evidenced by the slowdown in GDP growth in the last quarter of 2008 and the first half of 2009. In 2009, the successful implementation of a \$586.0 billion stimulus package aimed in part at increasing investment and consumer spending and maintaining export growth helped propel China to pre-crisis levels of growth, as was evidenced by the fourth quarter GDP growth of 10.7% that helped raise the annual GDP growth for 2009 to 8.7%. However, fears of an overheated economy led the Chinese government to adopt restraining monetary measures, increasing the required deposits for commercial banks, in an effort to deflate a potential asset bubble. If the Chinese government keeps pursuing such restraining measures, that could impact the demand for shipping services and slow down the world recovery from the economic crisis. Our business, financial condition and, results of operations as well as our future prospects, will likely be materially and adversely affected by a further economic downturn in any of these countries.

Increased inspection procedures and tighter import and export controls could increase costs and disrupt our business.

International shipping is subject to various security and customs inspection and related procedures in countries of origin and destination. Inspection procedures can result in the seizure of, delay in the loading, offloading or delivery of, the contents of our vessels or the levying of customs duties, fines or other penalties against us. It is possible that changes to inspection procedures could impose additional financial and legal obligations on us. Furthermore, changes to inspection procedures could also impose additional costs and obligations on our customers and may, in certain cases, render the shipment of certain types of cargo uneconomical or impractical. Any such changes or developments may have a material adverse effect on our business, financial condition, and results of operations.

If our vessels call on ports located in countries that are subject to restrictions imposed by the U.S. government, that could adversely affect our reputation and the market for our common stock.

From time to time, vessels in our fleet may call on ports located in countries subject to sanctions and embargoes imposed by the U.S. government and countries identified by the U.S. government as state sponsors of terrorism. Although these sanctions and embargoes do not prevent our vessels from making calls to ports in these countries, potential investors could view such port calls negatively, which could adversely affect our reputation and the market for our common stock. In addition, certain institutional investors may have investment policies or restrictions that prevent them from holding securities of companies that have contracts with countries identified by the U.S. government as state sponsors of terrorism. The determination by these investors not to invest in or to divest our common shares may adversely affect the price at which our common shares trade. Investor perception of the value of our common stock may be adversely affected by the consequences of war, the effects of terrorism, civil unrest and governmental actions in these and surrounding countries.

Risks Related to Our Company

We are in breach of certain loan covenants contained in our loan agreements. If we are not successful in obtaining waivers and amendments with respect to covenants breached, our lenders may declare an event of default and accelerate our outstanding indebtedness under the relevant agreement, which would impair our ability to continue to conduct our business.

Our loan agreements require that we comply with certain financial and other covenants. As a result of the significant drop of drybulk asset values beginning in the fourth quarter of 2008 and the continuous fall of tanker asset values during 2009, especially product tankers, we were not in compliance with covenants relating to vessel values such as asset cover ratio for our product tankers, adjusted net worth and net asset value covenants as of December 31, 2009. In addition, we were in breach of EBITDA and minimum liquidity covenants with certain banks. A violation of these covenants constitutes an event of default under our credit facilities, which would, unless waived by our lenders, provide our lenders with the right to require us to post additional collateral, enhance our equity and liquidity, increase our interest payments, pay down our indebtedness to a level where we are in compliance with our loan covenants, sell vessels in our fleet, reclassify our indebtedness as current liabilities and accelerate our indebtedness and foreclose their liens on our vessels, which impairs our ability to continue to conduct our business. As a result of these breaches, our total indebtedness of \$404.3 million (excluding unamortized deferred financing fees of \$5.2 million) and financial instruments of \$13.8 million are presented within current liabilities in the accompanying December 31, 2009 consolidated balance sheet. The amounts of long term debt and financial instruments that have been reclassified and presented together with current liabilities amount to \$351.2 million and \$9.9 million, respectively.

As of the date of this annual report, we have no waivers for any of these covenant breaches. We are currently in discussion with our banks in relation to these covenant breaches. For more details on loans and relevant breaches see "Item 5 – Operating and Financial Review and Prospects – Tabular Disclosure of Contractual Obligations – Long term debt".

Breach of our loan covenants, without applicable waiver, entitles our lenders to accelerate our debt. If our indebtedness is accelerated, it would be very difficult in the current financing environment for us to refinance our debt or obtain additional financing and we could lose our vessels if our lenders foreclose their liens.

Our inability to comply with loan covenants under our loan agreements raises substantial doubt about our ability to continue as a going concern.

As discussed above, we are in breach of certain loan covenants contained in our loan agreements. As a result of these loan covenant breaches, our lenders may choose to accelerate our indebtedness. We believe that as long as we are able to meet our obligations as they fall due, our lenders will not accelerate our indebtedness.

Therefore, our ability to continue as a going concern is dependent on management's ability to successfully generate revenue to meet our obligations as they become due and have the continued support of our lenders. Our independent registered public accounting firm has issued its opinion, similar to its opinion included in our 2008 annual report, with an explanatory paragraph emphasizing that we have prepared our financial statements under the going concern assumption despite our covenants breaches and working capital deficit. Our financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of our inability to continue as a going concern. However, there is a material uncertainty related to events or conditions which raises significant doubt on our ability to continue as a going concern and, therefore, we may be unable to realize our assets and discharge our liabilities in the normal course of business.

If we need to receive waivers and/or amendments to our loan agreements in the future, our lenders may impose additional operating and financial restrictions on us and/or modify the terms of our existing loan agreements.

In connection with future waivers or amendments with our lenders, we may agree to additional restrictions on us. See "Item 5. Operating and Financial Review and Prospects – Liquidity and Capital Resources – Breach of Loan Covenants." Therefore, we may need to seek permission from our lenders in order to engage in some corporate actions. Our lenders' interests may be different from ours and we may not be able to obtain our lender's permission when needed, which could prevent us from pursuing a course of action that we deem necessary. In addition to the above restrictions, our lenders may require the payment of additional fees, require additional increase in margins, require prepayment of a portion of our indebtedness to them, or impose other conditions on the issuance of waivers, which could adversely affect our financial results and hinder our ability to raise capital.

Servicing current and future debt will limit funds available for other purposes and impair our ability to react to changes in our business.

To finance our fleet expansion program, we incurred secured indebtedness. We must dedicate a portion of our cash flow from operations to pay the principal and interest on our indebtedness. These payments limit funds otherwise available for working capital, capital expenditures and other purposes. As of December 31, 2009, we had total indebtedness of \$404.3 million (excluding unamortized deferred financing fees of \$5.2 million), and a ratio of indebtedness to total capital of approximately 62%. Our substantial level of indebtedness increases the possibility that we may be unable to generate cash sufficient to pay, when due, the principal of, interest on or other amounts due in respect of, our indebtedness. Our substantial debt could also have other significant consequences. For example, it could:

- increase our vulnerability to general economic downturns and adverse competitive and industry conditions;
- require us to dedicate a substantial portion, if not all, of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- place us at a competitive disadvantage compared to competitors that have less debt or better access to capital;
- limit our ability to raise additional financing on satisfactory terms or at all; and