

LORAL SPACE & COMMUNICATIONS INC.

Form SC 13D/A

December 04, 2008

Table of Contents

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 13D**

**Under the Securities Exchange Act of 1934
(Amendment No. 12)***

Loral Space & Communications Inc.

(Name of Issuer)

Common Stock, Par Value \$.01 Per Share

(Title of Class of Securities)

543881106

(CUSIP Number)

Doron Lipshitz, Esq.

O Melveny & Myers LLP

7 Times Square

New York, New York 10036

(212) 326-2000

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

December 3, 2008

(Date of Event which Requires Filing
of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box o.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Continued on following pages

Table of Contents

Page 2 of 23 Pages

NAMES OF REPORTING PERSONS:

MHR CAPITAL PARTNERS MASTER ACCOUNT LP

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

WC

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Anguilla, British West Indies

SOLE VOTING POWER:

7

NUMBER OF 2,390,900

SHARED VOTING POWER:

SHARES BENEFICIALLY OWNED BY **8**

0

EACH REPORTING PERSON **9** SOLE DISPOSITIVE POWER:
2,390,900

WITH **10** SHARED DISPOSITIVE POWER:
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
2,390,900

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
11.1%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
PN

Table of Contents

NAMES OF REPORTING PERSONS:

MHR ADVISORS LLC

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

AF

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 2,687,277

SHARES SHARED VOTING POWER:
BENEFICIALLY **8**
OWNED BY 0

EACH REPORTING PERSON	9	SOLE DISPOSITIVE POWER: 2,687,277
WITH	10	SHARED DISPOSITIVE POWER: 0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:

2,687,277

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):

o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):

12.4%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):

OO

Table of Contents

NAMES OF REPORTING PERSONS:

MHR INSTITUTIONAL PARTNERS LP

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 2,120,249

SHARED VOTING POWER:

8

SHARES BENEFICIALLY OWNED BY 0

EACH REPORTING PERSON **9** SOLE DISPOSITIVE POWER:
2,120,249

WITH **10** SHARED DISPOSITIVE POWER:
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
2,120,249

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
10.5%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
PN

Table of Contents

NAMES OF REPORTING PERSONS:

MHR INSTITUTIONAL ADVISORS LLC

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 2,630,350

SHARED VOTING POWER:

SHARES BENEFICIALLY OWNED BY **8**

0

EACH REPORTING PERSON **9** SOLE DISPOSITIVE POWER:
2,630,350

WITH **10** SHARED DISPOSITIVE POWER:
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
2,630,350

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
13.0%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
OO

Table of Contents

NAMES OF REPORTING PERSONS:

MHR INSTITUTIONAL PARTNERS II LP

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 1,596,626

SHARED VOTING POWER:

SHARES BENEFICIALLY OWNED BY **8**

0

EACH REPORTING PERSON	9	SOLE DISPOSITIVE POWER: 1,596,626
WITH	10	SHARED DISPOSITIVE POWER: 0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:

1,596,626

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):

o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):

7.6%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):

PN

Table of Contents

Page 7 of 23 Pages

NAMES OF REPORTING PERSONS:

MHR INSTITUTIONAL PARTNERS IIA LP

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 4,022,473

SHARES SHARED VOTING POWER:
BENEFICIALLY **8**
OWNED BY 0

EACH REPORTING PERSON **9** SOLE DISPOSITIVE POWER:
4,022,473

WITH **10** SHARED DISPOSITIVE POWER:
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
4,022,473

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
18.4%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
PN

Table of Contents

NAMES OF REPORTING PERSONS:

MHR INSTITUTIONAL ADVISORS II LLC

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

N/A

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 5,619,099

SHARED VOTING POWER:

SHARES BENEFICIALLY OWNED BY **8**

0

EACH REPORTING PERSON **9** SOLE DISPOSITIVE POWER:
5,619,099

WITH **10** SHARED DISPOSITIVE POWER:
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
5,619,099

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
24.9%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
OO

Table of Contents

NAMES OF REPORTING PERSONS:

MHR INSTITUTIONAL PARTNERS III LP

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

WC

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 8,252,692

SHARED VOTING POWER:

SHARES BENEFICIALLY OWNED BY **8**

0

EACH REPORTING PERSON **9** SOLE DISPOSITIVE POWER:
8,252,692

WITH **10** SHARED DISPOSITIVE POWER:
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
8,252,692

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
29.6%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
PN

Table of Contents

NAMES OF REPORTING PERSONS:

MHR INSTITUTIONAL ADVISORS III LLC

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

AF

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 8,252,692

SHARED VOTING POWER:

SHARES BENEFICIALLY OWNED BY **8**

0

EACH REPORTING PERSON	9	SOLE DISPOSITIVE POWER: 8,252,692
WITH	10	SHARED DISPOSITIVE POWER: 0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:

8,252,692

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):

o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):

29.6%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):

OO

Table of Contents

NAMES OF REPORTING PERSONS:

MHR FUND MANAGEMENT LLC

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

AF

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

Delaware

SOLE VOTING POWER:

7

NUMBER OF 19,189,418

SHARED VOTING POWER:

SHARES BENEFICIALLY OWNED BY **8**

0

EACH REPORTING PERSON **9** SOLE DISPOSITIVE POWER:
19,189,418

WITH **10** SHARED DISPOSITIVE POWER:
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
19,189,418

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
60.9%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
OO

Table of Contents

Page 12 of 23 Pages

NAMES OF REPORTING PERSONS:

MARK H. RACHESKY, M.D.

1

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2

(a)

(b)

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4

AF

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5

CITIZENSHIP OR PLACE OF ORGANIZATION:

6

United States of America

SOLE VOTING POWER:

7

NUMBER OF 19,204,418

SHARED VOTING POWER:

SHARES BENEFICIALLY OWNED BY **8**

0

EACH REPORTING PERSON **9** SOLE DISPOSITIVE POWER:
19,204,418

WITH **10** SHARED DISPOSITIVE POWER:
0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:
19,204,418

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):
60.9%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):
IN; HC

TABLE OF CONTENTS

Item 3. Source and Amount of Funds or Other Consideration

Item 5. Interest in Securities of the Issuer

SIGNATURES

Table of Contents

Page 13 of 23 Pages

This Statement on Schedule 13D (this Statement) further amends and supplements, as Amendment No. 12, the Schedule 13D filed on November 30, 2005 (the Original 13D), which was amended on October 19, 2006 by Amendment No. 1 to the Original 13D (Amendment No. 1), on October 30, 2006 by Amendment No. 2 to the Original 13D (Amendment No. 2), on February 28, 2007 by Amendment No. 3 to the Original 13D (Amendment No. 3), on March 21, 2007 by Amendment No. 4 to the Original 13D (Amendment No. 4), on August 9, 2007 by Amendment No. 5 to the Original 13D (Amendment No. 5), on August 31, 2007 by Amendment No. 6 to the Original 13D (Amendment No. 6), on November 2, 2007 by Amendment No. 7 to the Original 13D (Amendment No. 7), on July 17, 2008 by Amendment No. 8 to the Original 13D (Amendment No. 8), on October 22, 2008 by Amendment No. 9 to the Original 13D (Amendment No. 9), on November 12, 2008 by Amendment No. 10 to the Original 13D (Amendment No. 10) and on November 21, 2008 by Amendment No. 11 to the Original 13D (Amendment No. 11) and, together with the Original 13D, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6, Amendment No. 7, Amendment No. 8, Amendment No. 9 and Amendment No. 10, the Schedule 13D), and relates to the common stock, par value \$0.01 per share (the Common Stock), of Loral Space & Communications Inc. (the Issuer). Capitalized terms used in this Statement but not defined herein shall have the respective meanings given to such terms in Amendment No. 11.

Table of Contents

Page 14 of 23 Pages

Item 3. Source and Amount of Funds or Other Consideration.

The source of funds for the purchases reported in this Statement was the working capital of Master Account, Capital Partners (100) and Institutional Partners III.

Table of Contents

Page 15 of 23 Pages

Item 5. Interest in Securities of the Issuer

Item 5 is hereby amended by deleting such Item in its entirety and replacing it with the following:

The percentages set forth below are calculated based on information contained in the Issuer's Form 10-Q for the quarterly period ended September 30, 2008, which disclosed that there were 20,287,692 shares of Common Stock outstanding as of October 31, 2008. In all circumstances, the conversion or exchange of the convertible securities described herein and reported as being beneficially owned by certain of the Reporting Persons into shares of Common Stock will be subject to the Voting Limitation as further described in Item 4 to Amendment No. 5. All references in this Item 5(a) to * shall be references to such Voting Limitation. As described in Item 4 to Amendment No. 10, on November 10, 2008, the Court issued an Implementing Order providing for the reformation of the Purchase Agreement to cancel the Preferred Stock purchased by MHR pursuant thereto and issue 9,505,673 shares of Non-Voting Common Stock in lieu thereof.

(a) (i) Master Account may be deemed the beneficial owner of 2,390,900 shares of Common Stock held for its own account (approximately 11.1%* of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) 1,104,000 shares of Common Stock, (B) 165,770 shares of Common Stock that may be obtained by Master Account upon conversion of shares of Series A-1 Preferred Stock and (C) 1,121,130 shares of Common Stock that may be obtained by Master Account upon conversion of shares of Series B-1 Preferred Stock.

(ii) Capital Partners (100) may be deemed the beneficial owner of 296,377 shares of Common Stock held for its own account (approximately 1.5%* of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) 147,637 shares of Common Stock, (B) 19,180 shares of Common Stock that may be obtained by Capital Partners (100) upon conversion of shares of Series A-1 Preferred Stock and (C) 129,560 shares of Common Stock that may be obtained by Capital Partners (100) upon conversion of shares of Series B-1 Preferred Stock.

(iii) Advisors may be deemed the beneficial owner of 2,687,277 shares of Common Stock (approximately 12.4%* of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) 1,104,000 shares of Common Stock held for the account of Master Account, (B) 165,770 shares of Common Stock that may be obtained by Master Account upon conversion of shares of Series A-1 Preferred Stock, (C) 1,121,130 shares of Common Stock that may be obtained by Master Account upon conversion of shares of Series B-1 Preferred Stock, (D) 147,637 shares of Common Stock held for the account of Capital Partners (100), (E) 19,180 shares of Common Stock that may be obtained by Capital Partners (100) upon conversion of shares of Series A-1 Preferred Stock and (F) 129,560 shares of Common Stock that may be obtained by Capital Partners (100) upon conversion of shares of Series B-1 Preferred Stock.

(iv) Institutional Partners may be deemed the beneficial owner of 2,120,249 shares of Common Stock held for its own account (approximately 10.5% of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act).

Table of Contents**Page 16 of 23 Pages**

(v) MHRA may be deemed the beneficial owner of 205,097 shares of Common Stock held for its own account (approximately 1.0% of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act).

(vi) MHRM may be deemed the beneficial owner of 305,004 shares of Common Stock held for its own account (approximately 1.5% of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act).

(vii) Institutional Advisors may be deemed the beneficial owner of 2,630,350 shares of Common Stock (approximately 13.0% of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) 2,120,249 shares of Common Stock held for the account of Institutional Partners, (B) 205,097 shares of Common Stock held for the account of MHRA and (C) 305,004 shares of Common Stock held for the account of MHRM.

(viii) Institutional Partners II may be deemed the beneficial owner of 1,596,626 shares of Common Stock held for its own account (approximately 7.6%* of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) 958,336 shares of Common Stock, (B) 82,230 shares of Common Stock that may be obtained by Institutional Partners II upon conversion of shares of Series A-1 Preferred Stock and (C) 556,060 shares of Common Stock that may be obtained by Institutional Partners II upon conversion of shares of Series B-1 Preferred Stock.

(ix) Institutional Partners IIA may be deemed the beneficial owner of 4,022,473 shares of Common Stock held for its own account (approximately 18.4%* of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) 2,414,383 shares of Common Stock, (B) 207,140 shares of Common Stock that may be obtained by Institutional Partners IIA upon conversion of shares of Series A-1 Preferred Stock and (C) 1,400,950 shares of Common Stock that may be obtained by Institutional Partners IIA upon conversion of shares of Series B-1 Preferred Stock.

(x) Institutional Advisors II may be deemed the beneficial owner of 5,619,099 shares of Common Stock (approximately 24.9%* of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) 958,336 shares of Common Stock held for the account of Institutional Partners II, (B) 82,230 shares of Common Stock that may be obtained by Institutional Partners II upon conversion of shares of Series A-1 Preferred Stock, (C) 556,060 shares of Common Stock that may be obtained by Institutional Partners II upon conversion of shares of Series B-1 Preferred Stock, (D) 2,414,383 shares of Common Stock held for the account of Institutional Partners IIA, (E) 207,140 shares of Common Stock that may be obtained by Institutional Partners IIA upon conversion of shares of Series A-1 Preferred Stock and (F) 1,400,950 shares of Common Stock that may be obtained by Institutional Partners IIA upon conversion of shares of Series B-1 Preferred Stock.

(xi) Institutional Partners III may be deemed the beneficial owner of 8,252,692 shares of Common Stock held for its own account (approximately 29.6%* of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the

Table of Contents

Page 17 of 23 Pages

Exchange Act). This number consists of (A) 702,742 shares of Common Stock, (B) 972,460 shares of Common Stock that may be obtained by Institutional Partners III upon conversion of shares of Series A-1 Preferred Stock and (C) 6,577,490 shares of Common Stock that may be obtained by Institutional Partners III upon conversion of shares of Series B-1 Preferred Stock.

(xii) Institutional Advisors III may be deemed the beneficial owner of 8,252,692 shares of Common Stock (approximately 29.6%* of the total number of shares of Common Stock outstanding calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) 702,742 shares of Common Stock held for the account of Institutional Partners III, (B) 972,460 shares of Common Stock that may be obtained by Institutional Partners III upon conversion of shares of Series A-1 Preferred Stock and (C) 6,577,490 shares of Common Stock that may be obtained by Institutional Partners III upon conversion of shares of Series B-1 Preferred Stock.

(xiii) Fund Management may be deemed the beneficial owner of 19,189,418 shares of Common Stock (approximately 60.9%* of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of all of the shares of Common Stock otherwise described in this Item 5(a) by virtue of Fund Management's investment management agreement with Master Account, Capital Partners (100), Institutional Partners, MHRA, MHRM, Institutional Partners II, Institutional Partners IIA and Institutional Partners III.

(xiv) Dr. Rachesky may be deemed the beneficial owner of 19,204,418 shares of Common Stock (approximately 60.9%* of the total number of shares of Common Stock outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Exchange Act). This number consists of (A) all of the shares of Common Stock otherwise described in this Item 5(a) by virtue of Dr. Rachesky's position as the managing member of each of Fund Management, Advisors, Institutional Advisors, Institutional Advisors II and Institutional Advisors III and (B) 15,000 restricted shares of Common Stock, 2,500 of which vested on May 22, 2007, 5,000 of which vested on May 22, 2008, 2,500 of which will vest on May 20, 2009, 2,500 of which will vest on May 22, 2009 and 2,500 of which will vest on May 20, 2010.

(b) (i) Master Account may be deemed to have (x) the sole power to direct the disposition of 2,390,900 shares of Common Stock which may be deemed to be beneficially owned by Master Account as described above, and (y) the sole power to direct the voting of 2,390,900 shares of Common Stock which may be deemed to be beneficially owned by Master Account as described above.

(ii) Capital Partners (100) may be deemed to have (x) the sole power to direct the disposition of 296,377 shares of Common Stock which may be deemed to be beneficially owned by Capital Partners (100) as described above, and (y) the sole power to direct the voting of 296,377 shares of Common Stock which may be deemed to be beneficially owned by Capital Partners (100) as described above.

(iii) Advisors may be deemed to have (x) the sole power to direct the disposition of 2,687,277 shares of Common Stock which may be deemed to be beneficially owned by Advisors as described above, and (y) the sole power to direct the voting of 2,687,277 shares of Common Stock which may be deemed to be beneficially owned by Advisors as described above.

Table of Contents

Page 18 of 23 Pages

(iv) Institutional Partners may be deemed to have (x) the sole power to direct the disposition of 2,120,249 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners as described above, and (y) the sole power to direct the voting of 2,120,249 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners as described above.

(v) MHRA may be deemed to have (x) the sole power to direct the disposition of 205,097 shares of Common Stock which may be deemed to be beneficially owned by MHRA as described above, and (y) the sole power to direct the voting of 205,097 shares of Common Stock which may be deemed to be beneficially owned by MHRA as described above.

(vi) MHRM may be deemed to have (x) the sole power to direct the disposition of 305,004 shares of Common Stock which may be deemed to be beneficially owned by MHRM as described above, and (y) the sole power to direct the voting of 305,004 shares of Common Stock which may be deemed to be beneficially owned by MHRM as described above.

(vii) Institutional Advisors may be deemed to have (x) the sole power to direct the disposition of 2,630,350 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors as described above, and (y) the sole power to direct the voting of 2,630,350 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors as described above.

(viii) Institutional Partners II may be deemed to have (x) the sole power to direct the disposition of 1,596,626 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners II as described above, and (y) the sole power to direct the voting of 1,596,626 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners II as described above.

(ix) Institutional Partners IIA may be deemed to have (x) the sole power to direct the disposition of 4,022,473 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners IIA as described above, and (y) the sole power to direct the voting of 4,022,473 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners IIA as described above.

(x) Institutional Advisors II may be deemed to have (x) the sole power to direct the disposition of 5,619,099 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors II as described above, and (y) the sole power to direct the voting of 5,619,099 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors II as described above.

(xi) Institutional Partners III may be deemed to have (x) the sole power to direct the disposition of 8,252,692 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners III as described above, and (y) the sole power to direct the voting of 8,252,692 shares of Common Stock which may be deemed to be beneficially owned by Institutional Partners III as described above.

(xii) Institutional Advisors III may be deemed to have (x) the sole power to direct the disposition of 8,252,692 shares of Common Stock which may be deemed to be beneficially

Table of Contents**Page 19 of 23 Pages**

owned by Institutional Advisors III as described above, and (y) the sole power to direct the voting of 8,252,692 shares of Common Stock which may be deemed to be beneficially owned by Institutional Advisors III as described above.

(xiii) Fund Management may be deemed to have (x) the sole power to direct the disposition of the 19,189,418 shares of Common Stock which may be deemed to be beneficially owned by Fund Management as described above, and (y) the sole power to direct the voting of 19,189,418 shares of Common Stock which may be deemed to be beneficially owned by Fund Management as described above.

(xiv) Dr. Rachesky may be deemed to have (x) the sole power to direct the disposition of the 19,204,418 shares of Common Stock which may be deemed to be beneficially owned by Dr. Rachesky as described above, and (y) the sole power to direct the voting of 19,204,418 shares of Common Stock which may be deemed to be beneficially owned by Dr. Rachesky as described above.

(c) The following table describes transactions in the Common Stock that were effected during the past sixty days or since the most recent filing of Schedule 13D, whichever is less, by the persons named in response to paragraph (a) of this Item 5:

Transaction Date	Reporting Person	Shares Acquired	Price Per Share (\$)	Description of Transaction
December 3, 2008	Master Account	1,043	\$8.5373	Open Market Purchase
December 3, 2008	Capital Partners (100)	142	\$8.5373	Open Market Purchase
December 3, 2008	Institutional Partners III	11,576	\$8.5373	Open Market Purchase

(d) (i) The partners of Master Account, including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Master Account in accordance with their partnership interests in Master Account.

(ii) The partners of Capital Partners (100), including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Capital Partners (100) in accordance with their partnership interests in Capital Partners (100).

(iii) The partners of Institutional Partners, including Institutional Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners in accordance with their partnership interests in Institutional Partners.

(iv) The partners of MHRA, including Institutional Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of MHRA in accordance with their partnership interests in MHRA.

(v) The partners of MHRM, including Institutional Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of MHRM in accordance with their partnership interests in MHRM.

(vi) The partners of Institutional Partners II, including Institutional Advisors II, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners II in accordance with their partnership interests in Institutional Partners II.

(vii) The partners of Institutional Partners IIA, including Institutional Advisors II, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the

Table of Contents

Page 20 of 23 Pages

securities held for the account of Institutional Partners IIA in accordance with their partnership interests in Institutional Partners IIA.

(viii) The partners of Institutional Partners III, including Institutional Advisors III, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners III in accordance with their partnership interests in Institutional Partners III.

(e) Not applicable.

SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

Date: December 3, 2008

MHR CAPITAL PARTNERS MASTER
ACCOUNT LP

By: MHR Advisors LLC,
its General Partner

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR ADVISORS LLC

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL PARTNERS LP

By: MHR Institutional Advisors LLC,
its General Partner

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL ADVISORS LLC

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL PARTNERS II LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL PARTNERS IIA LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL ADVISORS II LLC

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL PARTNERS III LP

By: MHR Institutional Advisors III LLC,
its General Partner

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL ADVISORS III LLC

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Vice President

MHR FUND MANAGEMENT LLC

By: /s/ Hal Goldstein

Name: Hal Goldstein
Title: Managing Principal

MARK H. RACHESKY, M.D.

By: /s/ Hal Goldstein, Attorney in Fact