

Hicks Acquisition CO I Inc.  
Form 10-K  
March 11, 2009

**Table of Contents**

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

**FORM 10-K**

(Mark One)

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

**For the fiscal year ended December 31, 2008.**

**OR**

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

**For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number 001-33704**

**HICKS ACQUISITION COMPANY I, INC.**

(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

20-8521842  
(I.R.S. Employer  
Identification Number)

100 Crescent Court, Suite 1200  
Dallas, TX 75201  
(Address, including zip code, of principal executive offices)  
(214) 615-2300  
(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act:

<b>Title of Each Class</b>	<b>Name of Each Exchange on Which Registered</b>
Units consisting of one share of Common Stock and one Warrant	NYSE Alternext US (formerly, American Stock Exchange)
Common Stock included in Units, par value \$0.0001 per share	NYSE Alternext US (formerly, American Stock Exchange)
Warrants included in Units, exercisable for Common Stock at an exercise price of \$7.50 per share	NYSE Alternext US (formerly, American Stock Exchange)

Securities Registered Pursuant to Section 12(g) of the Act: **None**

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

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

Edgar Filing: Hicks Acquisition CO I Inc. - Form 10-K

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

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

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

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input checked="" type="checkbox"/>	Non-accelerated filer <input type="checkbox"/>	Smaller reporting company <input type="checkbox"/>
(Do not check if a smaller reporting company)			

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No   
The aggregate market value of the voting common stock held by non-affiliates of the registrant as of the close of business on June 30, 2008, the last business day of the most recently completed second fiscal quarter, was \$512,808,000.

The number of shares of the registrant's common stock outstanding as of March 10, 2009 was 69,000,000.

**DOCUMENTS INCORPORATED BY REFERENCE**

None.

**TABLE OF CONTENTS**

<u>PART I</u>	2
<u>ITEM 1. BUSINESS</u>	2
<u>ITEM 1A. RISK FACTORS</u>	9
<u>ITEM 1B. UNRESOLVED STAFF COMMENTS</u>	26
<u>ITEM 2. PROPERTIES</u>	26
<u>ITEM 3. LEGAL PROCEEDINGS</u>	26
<u>ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS</u>	26
<u>PART II</u>	27
<u>ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES</u>	27
<u>ITEM 6. SELECTED FINANCIAL DATA</u>	30
<u>ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	31
<u>ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u>	34
<u>ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA</u>	34
<u>ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE</u>	34
<u>ITEM 9A(T). CONTROLS AND PROCEDURES</u>	34
<u>ITEM 9B. OTHER INFORMATION</u>	35
<u>PART III</u>	36
<u>ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE</u>	36
<u>ITEM 11. EXECUTIVE COMPENSATION</u>	40
<u>ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS</u>	41
<u>ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE</u>	42
<u>ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES</u>	45
<u>PART IV</u>	46
<u>ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES</u>	46
<u>EX-31</u>	
<u>EX-32</u>	

**Table of Contents**

**CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

The statements contained in this report that are not purely historical are forward-looking statements. Our forward-looking statements include, but are not limited to, statements regarding our management's expectations, hopes, beliefs, intentions or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words anticipates, believe, continue, could, would, estimate, expect, intend, might, plan, possible, potential, predicts, project, should, would and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements in this report may include, for example, statements about:

our ability to complete our initial business combination;

our success in retaining or recruiting, or changes required in, our officers, key employees or directors following our initial business combination;

our officers and directors allocating their time to other businesses and potentially having conflicts of interest with our business or in approving our initial business combination, as a result of which they would then receive expense reimbursements;

our potential ability to obtain additional financing to complete our initial business combination;

our pool of prospective target businesses;

the ability of our officers and directors to generate a number of potential investment opportunities;

our public securities' potential liquidity and trading;

the listing or delisting of our securities from NYSE Alternext US or the ability to have our securities listed on NYSE Alternext US or any other securities exchange following a business combination;

the use of proceeds not held in the trust account or available to us from interest income on the trust account balance; or

our financial performance.

The forward-looking statements contained in this report are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described below and under the heading "Risk Factors" beginning on page 9.

uncertainties as to the timing and closing of the Graham Transaction (as defined herein);

approval of the Graham Transaction by our stockholders;

the satisfaction of closing conditions to the Graham Transaction, including the receipt of regulatory approvals;

costs related to the Graham Transaction;

the diversion of management time on Graham Transaction-related issues;

other issues and risks related to the business of Graham Packaging including loss of customers, violations of purchase and customer contracts; decline in prices and loss of key management.

Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

**Table of Contents**

**PART I**

References to we, us or our company refer to Hicks Acquisition Company I, Inc., a Delaware corporation. References to our management or our management team refer to our officers and directors and references to our sponsor refer to HH-HACI, L.P., a Delaware limited partnership. References to our initial stockholders refer to our sponsor, William H. Cunningham, William A. Montgomery, Brian Mulroney and William F. Quinn.

**ITEM 1. BUSINESS**

**Company Overview**

We are a blank check company formed in Delaware on February 26, 2007 for the purpose of acquiring, or acquiring control of, through a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination one or more businesses or assets. Our efforts in identifying prospective target businesses will not be limited to a particular industry, but we will not complete a business combination with any entity engaged in the energy industry as its principal business or whose principal business operations are conducted outside of the United States or Canada. We intend to effect our initial business combination using cash from the proceeds of our initial public offering, our capital stock, debt or a combination of cash, stock and debt.

On October 3, 2007, we completed our initial public offering of 55,200,000 units with each unit consisting of one share of our common stock and one warrant, each to purchase one share of our common stock at an exercise price of \$7.50 per share. The units from the initial public offering were sold at an offering price of \$10.00 per unit, generating total gross proceeds of \$552 million. Simultaneously with the consummation of our initial public offering, we consummated the private sale of 7,000,000 warrants to our sponsor, HH-HACI, L.P., at a price of \$1.00 per warrant, generating gross proceeds of \$7,000,000. After deducting the underwriting discounts and commissions and the initial public offering expenses, approximately \$536.1 million of the proceeds from the initial public offering and the private placement was deposited into a trust account at JP Morgan Chase, N.A. with Continental Stock Transfer & Trust Company as trustee. Such funds will not be released from the trust account to us until the earlier of completion of our initial business combination or our liquidation although we may withdraw up to an aggregate of approximately \$6.6 million of the interest income accumulated on the funds for working capital requirements, in addition to any sums necessary to pay taxes. After the payment of approximately \$1.35 million in expenses relating to the initial public offering, \$250,000 of the net proceeds of the public offering and private placement was not deposited into a trust account and retained by us for working capital purposes. Through December 31, 2008, we have used approximately \$1.3 million of the net proceeds that were not deposited into the trust account to pay offering expenses while the remaining balance was used for general corporate purposes. The net proceeds deposited into the trust account remain on deposit in the trust account earning interest. As of December 31, 2008, there was \$539.8 million plus accrued interest of approximately \$388,000 held in the trust account. As of December 31, 2008, approximately \$3.8 million had been withdrawn from the trust account for taxes and approximately \$5.0 million had been withdrawn for working capital purposes.

We are not presently engaged in, and we will not engage in, any substantive commercial business until we consummate a business combination. We intend to utilize our cash, including the funds held in the trust account, capital stock, debt or a combination of the foregoing in effecting a business combination. A business combination may involve the acquisition of, or merger with, a company which does not need substantial additional capital but which desires to establish a public trading market for its shares, while avoiding what it may deem to be adverse consequences of undertaking a public offering itself. These include time delays, significant expense, loss of voting control and compliance with various Federal and state securities laws. In the alternative, we may seek to consummate a business combination with a company that may be financially unstable or in its early stages of development or growth.

On July 1, 2008, we entered into an Equity Purchase Agreement (the Purchase Agreement), with GPC Holdings, L.P., a Pennsylvania limited partnership ( GPCH ), Graham Packaging Corporation, a Pennsylvania corporation ( GPC ), Graham Capital Company, a Pennsylvania limited partnership, ( GCC ), Graham Engineering Corporation, a Pennsylvania corporation ( GEC and, together with GPCH, GCC and GPC, the Graham Family Holders ), BMP/Graham Holdings Corporation, a Delaware corporation ( BMP/GHC and, together with the Graham Family Holders, the Sellers ), GPC Capital Corp. II, a Delaware corporation ( Graham IPO Corp. ), Graham Packing





**Table of Contents**

limited partnership ( Graham Packaging ), and the other parties signatory thereto, pursuant to which through a series of transactions (collectively, the Graham Transaction ), our stockholders would acquire a majority of the outstanding common stock of Graham IPO Corp., par value \$0.01 per share (the Graham IPO Corp. Common Stock ), and Graham IPO Corp. would own, either directly or indirectly, 100% of the partnership interests of Graham Packaging Company, L.P., a Delaware limited partnership (the Operating Company ).

On January 27, 2009, we entered into a First Amendment (the Amendment ) to the Purchase Agreement. The Amendment stipulates that (i) we and Blackstone Capital Partners III Merchant Banking Fund L.P., as the Seller Representative, each have the right to terminate the Purchase Agreement by giving written notice to the other and (ii) each party is released from the Purchase Agreement s exclusivity provisions and is permitted to consider other possible transactions.

***Selection of a target business and structuring of our initial business combination***

Subject to the requirements that (i) our initial business combination have a fair market value of at least 80% of the initial amount held in the trust account (excluding deferred underwriting commissions of approximately \$17.4 million), and (ii) we will not enter into a business combination with any entity engaged in the energy industry as its principal business or whose principal business operations are conducted outside of the United States or Canada, our management will have virtually unrestricted flexibility in identifying and selecting one or more prospective target businesses. We will only consummate an initial business combination in which we become the controlling shareholder of the target. The key factor that we will rely on in determining controlling shareholder status would be our acquisition of more than half of the voting equity interests of the target company. We will not consider any transaction that does not meet such criteria.

We have not established any other specific attributes or criteria (financial or otherwise) for prospective target businesses. In evaluating a prospective target business, our management may consider a variety of factors, including one or more of the following:

financial condition and results of operations;

growth potential;

brand recognition and potential;

experience and skill of management and availability of additional personnel;

capital requirements;

stage of development of the business and its products or services;

existing distribution arrangements and the potential for expansion;

degree of current or potential market acceptance of the products or services;

proprietary aspects of products and the extent of intellectual property or other protection for products or formulas;

impact of regulation on the business;

regulatory environment of the industry;

seasonal sales fluctuations and the ability to offset these fluctuations through other business combinations, introduction of new products, or product line extensions;

costs associated with effecting the business combination;

industry leadership, sustainability of market share and attractiveness of market sectors in which target business participates; and

macro competitive dynamics in the industry within which the company competes.

## **Table of Contents**

These criteria are not intended to be exhaustive, and our management may consider additional factors it deems to be relevant. Any evaluation relating to the merits of a particular initial business combination may be based, to the extent relevant, on the above factors as well as other considerations our management deems relevant to our business objective. In evaluating a prospective target business, we will conduct an extensive due diligence review which will encompass, among other things, meetings with incumbent management and employees, document reviews, interviews of customers and suppliers, inspection of facilities, as well as review of financial and other information which will be made available to us.

The time required to select and evaluate a target business and to structure and complete our initial business combination, and the costs associated with this process, are not currently ascertainable with any degree of certainty. Any costs incurred with respect to the identification and evaluation of a prospective target business with which a business combination is not ultimately completed will result in our incurring losses and will reduce the funds we can use to complete another business combination. As of December 31, 2008, \$5.0 million of the \$6.6 million in trust interest income available to us for working capital expenses had been withdrawn by us from our trust account. We will not pay any finders or consulting fees to members of our management team, or any of their respective affiliates, for services rendered to or in connection with a business combination.

### ***Fair market value of target business or businesses***

In order to constitute our initial business combination, a business combination must satisfy the threshold fair market value requirement of at least 80% of the initial amount held in the trust account (excluding \$17.4 million held in the trust account representing the underwriters' deferred commission). Our board of directors will determine the fair market value based on standards generally accepted by the financial community. If our board of directors is not able to independently determine the fair market value of our initial business combination, we will obtain an opinion from an unaffiliated, independent investment banking firm which is subject to oversight by the Financial Industry Regulatory Authority as to the fair market value. We will seek to have any such opinion provide that our stockholders would be entitled to rely upon such opinion. The willingness of an investment banking firm to provide for such reliance would be a factor considered by us in selecting an independent investment banking firm. If no opinion is obtained, our public stockholders will be relying solely on the judgment of our board of directors.

### ***Opportunity for stockholder approval of our initial business combination***

Prior to the completion of our initial business combination, we will submit a business combination to our stockholders for approval, even if the nature of the acquisition is such as would not ordinarily require stockholder approval under applicable law or regulations. In connection with our initial business combination, we will also submit to our stockholders for approval a proposal to amend our amended and restated certificate of incorporation to provide for our corporate life to continue perpetually following the consummation of such business combination. Any vote to extend our corporate life to continue perpetually following the consummation of our initial business combination will be taken only if such business combination is approved. We will only consummate our initial business combination if (i) the business combination is approved by a majority of votes cast by our public stockholders at a duly held stockholders meeting, (ii) an amendment to our amended and restated certificate of incorporation to provide for our perpetual existence is approved by holders of a majority of our outstanding shares of common stock and (iii) public stockholders owning no more than 30% (minus one share) of our outstanding shares of common stock sold in our initial public offering both vote against the business combination and exercise their conversion rights. This may have the effect of making it easier for us to have a business combination approved over stockholder dissent than other blank check companies with a business purpose similar to ours. Similar blank check companies generally will not consummate a business combination if public stockholders holding more than 20% of their outstanding shares of common stock exercise their conversion rights.

In connection with seeking the approval of our stockholders for any business combination, we will furnish our stockholders with proxy solicitation materials prepared in accordance with the Securities Exchange Act of 1934, as amended, (the "Securities Exchange Act") which, among other things, will include a description of the operations of target candidates and audited historical financial statements of the target candidates.

In connection with the vote required for any initial business combination, our initial stockholders have agreed to vote all of the founder's shares in accordance with the majority of the shares of common stock voted by the public stockholders and to vote any shares purchased during or after our initial public offering and held by it in favor of our

initial business combination. Our initial stockholders have also agreed that they will vote all shares of the company owned by them

**Table of Contents**

in favor of an amendment to our amended and restated certificate of incorporation to provide for our perpetual existence in connection with a vote to approve our initial business combination.

***Conversion rights***

At the time we seek stockholder approval of our initial business combination, each public stockholder will have the right to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (before payment of deferred underwriting commissions and including interest earned on their pro rata portion of the trust account, net of income taxes payable on such interest and net of interest income of up to \$6.6 million on the trust account previously released to us to fund our working capital requirements) if our initial business combination is approved and completed. Our initial stockholders will not have such conversion rights with respect to founder's shares. The actual per-share conversion price will be equal to the per share amount of \$9.71 initially deposited in the trust account (plus any interest earned on the proceeds in the trust account in excess of the amount released to us for working capital purposes, net of taxes payable on such interest, on such amount per share). As this amount is lower than our \$10.00 per unit initial public offering price and it may be less than the market price of the common stock on the date of repurchase, there may be a disincentive on the part of public stockholders to exercise their conversion rights. As of December 31, 2008, \$5.0 million of the \$6.6 million in trust interest income available to us for working capital expenses had been withdrawn by us from our trust account.

An eligible public stockholder who wishes to exercise its conversion rights may request conversion of its shares at any time after the mailing to our stockholders of the proxy statement and prior to the vote taken with respect to a proposed business combination at a meeting held for that purpose, but the request will not be granted unless the public stockholder votes against our initial business combination, our initial business combination is approved and completed, the public stockholder holds its shares through the closing of our initial business combination and the public stockholder follows the specific procedures for conversion that will be set forth in the proxy statement relating to the stockholder vote on a proposed initial business combination. Following the approval of our initial business combination by our stockholders and until the completion of our initial business combination or termination of the definitive agreement relating to the proposed initial business combination, any transfer of shares owned by a public stockholder who has requested to exercise its conversion rights will be blocked. If a public stockholder votes against our initial business combination but fails to properly exercise its conversion rights, such public stockholder will not have its shares of common stock converted. Any request for conversion, once made, may be withdrawn at any time up to the date of the meeting of stockholders being held for the purpose of approving the initial business combination. It is anticipated that the funds to be distributed to public stockholders who elect conversion will be distributed promptly after completion of our initial business combination. Public stockholders who exercise their conversion rights will still have the right to exercise any warrants they still hold.

We may require public stockholders to tender their certificates to our transfer agent prior to the meeting or to deliver their shares to the transfer agent electronically using the Depository Trust Company's DWAC (Deposit/Withdrawal At Custodian) System. We will notify investors on a Current Report on Form 8-K and in our proxy statement related to the initial business combination if we impose this requirement. Traditionally, in order to perfect conversion rights in connection with a blank check company's business combination, a holder could simply vote against a proposed business combination and check a box on the proxy card indicating such holder was seeking to exercise their conversion rights. After the business combination was approved, the company would contact such stockholder to arrange for him or her to deliver his certificate to verify ownership. As a result, the stockholder then had an option window after the consummation of the business combination during which he or she could monitor the price of the stock in the market. If the price rose above the conversion price, he or she could sell his shares in the open market before actually delivering his or her shares to the company for cancellation in consideration for the conversion price. Thus, the conversion right, to which stockholders were aware they needed to commit before the stockholder meeting, would become a put right surviving past the consummation of the business combination until the converting holder delivered his certificate. The requirement for physical or electronic delivery prior to the meeting ensures that a converting holder's election to convert is irrevocable once the business combination is approved.

If we elect to require physical delivery of the share certificates, we would expect that stockholders would have to comply with the following steps. If the shares are held in street name, stockholders must instruct their account

executive at the stockholders' bank or broker to withdraw the shares from the stockholders' account and request that a physical certificate be issued in the stockholders' name. Our transfer agent will be available to assist with the process. No later than the day prior to the stockholder meeting, the written instructions stating that the stockholder wishes to convert his or her shares into a pro rata share of the trust account and confirming that the stockholder has held the shares since the record date and will continue to hold them through the stockholder meeting and the closing of our business combination must be presented to our transfer agent. Certificates that have not been tendered in accordance with these procedures by the day prior to the stockholder meeting will not be converted into cash. In the event that a stockholder tenders his or her shares and decides prior to the

**Table of Contents**

stockholder meeting that he or she does not want to convert his or her shares, the stockholder may withdraw the tender. In the event that a stockholder tenders shares and our business combination is not completed, these shares will not be converted into cash and the physical certificates representing these shares will be returned to the stockholder.

We will not consummate a business combination if holders of more than 30% (minus one share) of our outstanding shares of common stock sold in our initial public offering exercise their conversion rights. This may have the effect of making it easier for us to have a business combination approved over stockholder dissent than other blank check companies with a business purpose similar to ours. Similar blank check companies generally will not consummate a business combination if public stockholders holding more than 20% of their outstanding shares of common stock exercise their conversion rights.

If a vote on our initial business combination is held and our initial business combination is not approved, we may continue to try to consummate our initial business combination with a different target until September 28, 2009.

***Liquidation if no business combination***

Our amended and restated certificate of incorporation provides that our corporate existence will automatically cease on September 28, 2009, except for the purposes of winding up our affairs and liquidating pursuant to Section 278 of the Delaware General Corporation Law. This has the same effect as if our board of directors and stockholders had formally voted to approve our dissolution pursuant to Section 275 of the Delaware General Corporation Law. Limiting our corporate existence to a specified date as permitted by Section 102(b)(5) of the Delaware General Corporation Law removes the necessity to obtain formal stockholder approval of our dissolution and liquidation and to file a certificate of dissolution with the Delaware Secretary of State. Instead, we will notify the Delaware Secretary of State in writing on the termination date that our corporate existence is ceasing, and include with such notice payment of any franchise taxes then due to or assessable by the state. We view this provision terminating our corporate life by September 28, 2009, as an obligation to our stockholders and will not take any action to amend or waive this provision to allow us to survive for a longer period of time except in connection with the consummation of our initial business combination.

If we are unable to consummate our initial business combination by September 28, 2009, as soon as practicable thereafter we will adopt a plan of distribution in accordance with Section 281(b) of the Delaware General Corporation Law. Section 278 of the Delaware General Corporation Law provides that our existence will continue for at least three years after its expiration for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against us, and of enabling us gradually to settle and close our business, to dispose of and convey our property, to discharge our liabilities and to distribute to our stockholders any remaining assets, but not for the purpose of continuing the business for which we were organized. Our existence will continue automatically even beyond the three-year period for the purpose of completing the prosecution or defense of suits begun prior to the expiration of the three-year period, until such time as any judgments, orders or decrees resulting from such suits are fully executed. Section 281(b) will require us to pay or make reasonable provision for all then-existing claims and obligations, including all contingent, conditional, or unmatured contractual claims known to us, and to make such provision as will be reasonably likely to be sufficient to provide compensation for any then-pending claims and for claims that have not been made known to us or that have not arisen but that, based on facts known to us at the time, are likely to arise or to become known to us within 10 years after the date of dissolution. Under Section 281(b), the plan of distribution must provide for all of such claims to be paid in full or make provision for payments to be made in full, as applicable, if there are sufficient assets. If there are insufficient assets, the plan must provide that such claims and obligations be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of legally available assets. Any remaining assets will be available for distribution to our stockholders. We will distribute to all of our public stockholders, in proportion to their respective equity interests, an aggregate sum equal to the amount in the trust account, inclusive of any interest, plus any remaining net assets (subject to our obligations under Delaware law to provide for claims of creditors as described below).

We anticipate notifying the trustee of the trust account to begin liquidating such assets promptly after our dissolution and anticipate it will take no more than 10 business days to effectuate such distribution. Our initial stockholders have waived their rights to participate in any liquidation distribution with respect to the founder's shares. There will be no distribution from the trust account with respect to our warrants, which will expire worthless. We will

pay the costs of liquidation from our remaining assets outside of the trust account. If the assets remaining outside of the trust account are insufficient to pay such liquidation costs, we will pay the remaining liquidation costs from the proceeds of the trust account prior to distributing the funds in the trust account to our public stockholders. In such event, the initial per-share liquidation price could be less than the \$9.71 per-share liquidation price described below.



**Table of Contents**

If we do not complete our initial business combination by September 28, 2009 and expend all of the net proceeds of our initial public offering, other than the proceeds deposited in the trust account, and without taking into account interest, if any, earned on the trust account, the initial per-share liquidation price would be \$9.71, or \$0.29 less than our per-unit initial public offering price of \$10.00. The per share liquidation price includes approximately \$17.4 million in deferred underwriting commissions that would also be distributable to our public stockholders.

The proceeds deposited in the trust account could, however, become subject to the claims of our creditors (which could include vendors and service providers we have engaged to assist us in any way in connection with our search for a target business and that are owed money by us, as well as target businesses themselves) which could have higher priority than the claims of our public stockholders. Thomas O. Hicks, our founder and chairman of the board, has agreed that he will be liable to us if and to the extent any claims by a third party for services rendered or products sold, or by a prospective target business, reduce the amounts in the trust account, except as to (i) any claims by a third party who executed a waiver (even if such waiver is subsequently found to be invalid and unenforceable) of any and all rights to seek access to the funds in the trust account, or (ii) any claims under our indemnity of the underwriters of our initial public offering against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the Securities Act). In the event that this indemnity obligation arose and Mr. Hicks did not comply with such obligation, we believe that we would have an obligation to seek enforcement of the obligation and that our board of directors would have a fiduciary duty to seek enforcement of such obligation on our behalf. In the event Mr. Hicks has liability to us under this indemnification arrangement, we cannot assure you that he will have the assets necessary to satisfy those obligations. Accordingly, the actual per-share liquidation price could be less than \$9.71, plus interest, due to claims of creditors. Additionally, if we are forced to file a bankruptcy case or an involuntary bankruptcy case is filed against us which is not dismissed, the proceeds held in the trust account could be subject to applicable bankruptcy law, and may be included in our bankruptcy estate and subject to the claims of third parties with priority over the claims of our stockholders. To the extent any bankruptcy claims deplete the trust account, we cannot assure you we will be able to return to our public stockholders at least \$9.71 per share.

Under the Delaware General Corporation Law, stockholders may be held liable for claims by third parties against a corporation to the extent of distributions received by them in a dissolution. If the corporation complies with certain procedures set forth in Section 280 of the Delaware General Corporation Law intended to ensure that it makes reasonable provision for all claims against it, including a 60-day notice period during which any third-party claims can be brought against the corporation, a 90-day period during which the corporation may reject any claims brought, and an additional 150-day waiting period before any liquidating distributions are made to stockholders, any liability of stockholders with respect to a liquidating distribution is limited to the lesser of such stockholder's pro rata share of the claim or the amount distributed to the stockholder, and any liability of the stockholder would be barred after the third anniversary of the dissolution. However, we do not intend to comply with those procedures since, as stated above, it is our intention to make liquidating distributions to our stockholders as soon as reasonably possible after September 28, 2009 in the event our initial business combination has not been consummated. As such, our stockholders could potentially be liable for any claims to the extent of distributions received by them (but no more) and any liability of our stockholders may extend beyond the third anniversary of such date. Because we will not be complying with Section 280, Section 281(b) of the Delaware General Corporation Law requires us to adopt a plan that will provide for our payment, based on facts known to us at such time, of (i) all existing claims, (ii) all pending claims and (iii) all claims that may be potentially brought against us within the subsequent 10 years. Accordingly, we would be required to provide for any claims of creditors known to us at that time or those that we believe could be potentially brought against us within the subsequent 10 years prior to our distributing the funds in the trust account to our public stockholders. As a result, if we liquidate, the per-share distribution from the trust account could be less than \$9.71 due to claims or potential claims of creditors. However, because we are a blank check company, rather than an operating company, and our operations will be limited to searching for prospective target businesses to acquire, the most likely claims, if any, to arise would be from our vendors and service providers (such as accountants, lawyers, investment bankers, etc.) and potential target businesses.

If we are forced to file a bankruptcy case or an involuntary bankruptcy case is filed against us which is not dismissed, any distributions received by stockholders could be viewed under applicable debtor/creditor and/or

bankruptcy laws as either a preferential transfer or a fraudulent conveyance. As a result, a bankruptcy court could seek to recover all amounts received by our stockholders. Furthermore, because we intend to distribute the then-remaining proceeds held in the trust account, this may be viewed or interpreted as giving preference to our public stockholders over any potential creditors with respect to access to or distributions from our assets. Furthermore, our board of directors may be viewed as having breached its fiduciary duties to our creditors and/or may have acted in bad faith, and thereby exposed itself and our company to claims of punitive damages, by paying public stockholders from the trust account prior to addressing the claims of creditors. We cannot assure you that claims will not be brought against us for these reasons.

## **Table of Contents**

### **Competition**

In identifying, evaluating and selecting a target business for a business combination, we may encounter intense competition from other entities having a business objective similar to ours, including other blank check companies, private equity groups and leveraged buyout funds, and operating businesses seeking strategic acquisitions. Many of these entities are well established and have extensive experience identifying and effecting business combinations directly or through affiliates. Moreover, many of these competitors possess greater financial, technical, human and other resources than us. Our ability to acquire larger target businesses will be limited by our available financial resources. This inherent limitation gives others an advantage in pursuing the acquisition of a target business.

Furthermore:

our obligation to seek stockholder approval of a business combination or obtain necessary financial information may delay the completion of a transaction;

our obligation to repurchase for cash shares of common stock held by our public stockholders who vote against the business combination and exercise their conversion rights may reduce the resources available to us for a business combination;

we will not consummate a business combination if holders of more than 30% (minus one share) of our outstanding shares of common stock sold in our initial public offering exercise their conversion rights;

our outstanding warrants, and the future dilution they potentially represent, may not be viewed favorably by certain target businesses; and

the requirement to acquire one or more businesses or assets that have a fair market value equal to at least 80% of the balance of the trust account at the time of the acquisition (excluding deferred underwriting commissions of approximately \$17.4 million) could require us to acquire the assets of several businesses at the same time, all of which sales would be contingent on the closings of the other sales, which could make it more difficult to consummate the initial business combination.

Any of these factors may place us at a competitive disadvantage in successfully negotiating a business combination.

### **Employees**

We currently have seven officers. These individuals are not obligated to devote any specific number of hours to our matters but they intend to devote as much of their time as they deem necessary to our affairs until we have completed our initial business combination. The amount of time they will devote in any time period will vary based on whether a target business has been selected for our initial business combination and the stage of the business combination process the company is in. We do not intend to have any full time employees prior to the consummation of our initial business combination.

### **Available Information**

We are required to file Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q with the Securities and Exchange Commission (the SEC), on a regular basis, and are required to disclose certain material events (e.g., changes in corporate control, acquisitions or dispositions of a significant amount of assets other than in the ordinary course of business and bankruptcy) in a current report on Form 8-K. The public may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street N.E., Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. The SEC's Internet website is located at <http://www.sec.gov>.

**Table of Contents**

**ITEM 1A. RISK FACTORS**

In addition to the other information included in this report, the following risk factors should be considered in evaluating our business and future prospects. The risk factors described below are not necessarily exhaustive and you are encouraged to perform your own investigation with respect to our company and our business. You should also read the other information included in this report, including our financial statements and the related notes.

**Risks Related to Our Business**

***We are a newly formed development stage company with no operating history and no revenues, and you have no basis on which to evaluate our ability to achieve our business objective.***

We are a recently formed development stage company with no operating results. Because we lack an operating history, you have no basis upon which to evaluate our ability to achieve our business objective of completing our initial business combination with one or more target businesses. If we fail to complete a business combination, we will never generate any operating revenues.

***We may not be able to consummate a business combination within the required timeframe, in which case our corporate existence would cease and we would liquidate our assets.***

Pursuant to our amended and restated certificate of incorporation, we must complete our initial business combination by September 28, 2009. If we fail to consummate our initial business combination within such time period, our corporate existence will cease and we will liquidate and wind up. The foregoing requirements are set forth in Article IX of our amended and restated certificate of incorporation and, until the consummation of our initial business combination, may not be eliminated without the vote of our board and the vote of 100% of the shares of our outstanding voting stock cast at a meeting of the stockholders at which a quorum is present. We may not be able to find suitable target businesses within such time period. In addition, our negotiating position and our ability to conduct adequate due diligence on any potential target may be reduced as we approach the deadline for the consummation of our initial business combination.

***If we liquidate before concluding our initial business combination, our public stockholders may receive less than \$10.00 per share on our liquidation and our warrants will expire worthless.***

If we are unable to complete our initial business combination and must liquidate, the per-share liquidation distribution may be less than \$10.00 because of the expenses of our initial public offering, our general and administrative expenses and the anticipated costs of seeking our initial business combination. If we were unable to conclude our initial business combination and expended all of the net proceeds of our initial public offering, other than the proceeds deposited in the trust account, and without taking into account interest, if any, earned on the trust account, net of income taxes payable on such interest and net of up to \$6.6 million in interest income on the trust account balance previously released to us to fund working capital requirements, the initial per-share liquidation amount would be \$9.71, or \$0.29 less than our per-unit initial public offering price of \$10.00. Furthermore, our outstanding warrants are not entitled to participate in a liquidating distribution and the warrants will therefore expire worthless if we liquidate before completing our initial business combination.

***If we are unable to consummate our initial business combination, our public stockholders will be forced to wait, at a minimum, until September 28, 2009 before receiving liquidation distributions.***

We have until September 28, 2009 to consummate our initial business combination. If we do not consummate our initial business combination during such time period, we will liquidate in accordance with our amended and restated certificate of incorporation. We have no obligation to return funds to public stockholders prior to such date unless we consummate our initial business combination prior thereto and only then in cases where public stockholders have sought conversion of their shares. Only after the expiration of this full time period will public stockholders be entitled to liquidation distributions if we are unable to complete our initial business combination. Further, we may not be able to disburse the funds in our trust account immediately following September 28, 2009, until we have commenced the liquidation process in accordance with our amended and restated certificate of incorporation and Delaware law. If we have not consummated our initial business combination by September 28, 2009, we will automatically liquidate and dissolve without need of a stockholder vote.

**Table of Contents**

***We may require stockholders who wish to convert their shares to comply with specific requirements for conversion that may make it more difficult for them to exercise their conversion rights prior to the deadline for exercising conversion rights.***

We may require public stockholders who wish to convert their shares to physically tender their stock certificates to our transfer agent prior to the stockholder meeting or to deliver their shares to the transfer agent electronically using the Depository Trust Company's DWAC (Deposit/Withdrawal At Custodian) System. In order to obtain a physical stock certificate, a stockholder's broker and/or clearing broker, DTC and our transfer agent will need to act to facilitate this request. It is our understanding that stockholders should generally allot at least two weeks to obtain physical certificates from the transfer agent. However, because we do not have any control over this process or over the brokers or DTC, it may take significantly longer than two weeks to obtain a physical stock certificate. If we elect to require physical tender and it takes longer than we anticipate to obtain a physical certificate, stockholders who wish to convert may be unable to obtain physical certificates by the deadline for exercising their conversion rights and thus will be unable to convert their shares.

***You will not be entitled to protections normally afforded to investors of blank check companies.***

Since the net proceeds of our initial public offering are intended to be used to complete an initial business combination with a target business that has not been identified, we may be deemed to be a "blank check" company under the United States securities laws. However, since our securities are listed on NYSE Alternext US, a national securities exchange, and we have net tangible assets in excess of \$5 million, we are exempt from rules promulgated by the SEC, to protect investors in blank check companies, such as Rule 419. Accordingly, investors will not be afforded the benefits or protections of those rules. Among other things, this means we will have a longer period of time to complete a business combination in some circumstances than do companies subject to Rule 419. Moreover, offerings subject to Rule 419 would prohibit the release of any interest earned on funds held in the trust account to us unless and until the funds in the trust account were released to us in connection with our consummation of an initial business combination.

***Because there are numerous companies with a business plan similar to ours seeking to effectuate business combinations, it may be more difficult for us to do so.***

There are a number of other blank check companies seeking initial business combinations. Furthermore, there are a number of additional offerings for blank check companies that are still in the registration process but have not completed initial public offerings and there are likely to be more blank check companies filing registration statements for initial public offerings after the date of this report and prior to our completion of a business combination. While some of those companies must complete a business combination in specific industries, a number of them may consummate a business combination in any industry they choose. Therefore, we may be subject to competition from these and other companies seeking to consummate a business plan similar to ours. Because of this competition, we cannot assure you that we will be able to effectuate a business combination within the required time periods.

***If the net proceeds of our initial public offering not being held in the trust account, together with the \$6.6 million of interest in the trust account which may be released to us for working capital purposes, are insufficient to allow us to operate until September 28, 2009, we may be unable to complete our initial business combination.***

We believe that the funds available to us outside of the trust account, plus the interest earned on the funds held in the trust account that may be available to us, will be sufficient to allow us to operate until September 28, 2009. However, we cannot assure you that our estimate will be accurate. We could use a portion of the funds available to us to pay fees to consultants to assist us with our search for a target business. We could also use a portion of the funds as a down payment or to fund a "no-shop" provision (a provision in letters of intent designed to keep target businesses from shopping around for transactions with other companies on terms more favorable to such target businesses) with respect to a particular proposed business combination, although we do not have any current intention to do so. If we entered into a letter of intent where we paid for the right to receive exclusivity from a target business and were subsequently required to forfeit such funds (whether as a result of our breach or otherwise), we might not have sufficient funds to continue searching for, or conduct due diligence with respect to, a target business. As of December 31, 2008, \$5.0 million of the \$6.6 million in trust interest income available to us for working capital expenses had been withdrawn by us from our trust account.



**Table of Contents**

***Subsequent to our consummation of our initial business combination, we may be required to take write-downs or write-offs, restructuring and impairment or other charges that could have a significant negative effect on our financial condition, results of operations and our stock price, which could cause you to lose some or all of your investment.***

Even if we conduct extensive due diligence on a target business with which we combine, we cannot assure you that this diligence will surface all material issues that may be present inside a particular target business, that it would be possible to uncover all material issues through a customary amount of due diligence, or that factors outside of the target business and outside of our control will not later arise. As a result of these factors, we may be forced to later write-down or write-off assets, restructure our operations, or incur impairment or other charges that could result in our reporting losses. Even if our due diligence successfully identifies certain risks, unexpected risks may arise and previously known risks may materialize in a manner not consistent with our preliminary risk analysis. Even though these charges may be non-cash items and not have an immediate impact on our liquidity, the fact that we report charges of this nature could contribute to negative market perceptions about us or our securities. In addition, charges of this nature may cause us to violate net worth or other covenants to which we may be subject as a result of assuming pre-existing debt held by a target business or by virtue of our obtaining post-combination debt financing.

***A decline in interest rates could limit the amount available to fund our search for a target business or businesses and complete our initial business combination since we will depend on interest earned on the trust account to fund our search, to pay our taxes and to complete our initial business combination.***

We depend on sufficient interest being earned on the proceeds held in the trust account to provide us with up to \$6.6 million of additional working capital we may need to identify one or more target businesses and to complete our initial business combination. A substantial decline in interest rates may result in our having insufficient funds available with which to structure, negotiate or close our initial business combination. In such event, we would need to borrow funds from our sponsor or management team to operate or may be forced to liquidate. Neither our sponsor nor our management team is under any obligation to advance funds in such circumstances.

***If third parties bring claims against us, the proceeds held in the trust account could be reduced and the per-share liquidation price received by stockholders may be less than approximately \$9.71 per share.***

Our placing of funds in the trust account may not protect those funds from third party claims against us. Although we will seek to have all vendors, prospective target businesses and other entities with which we do business execute agreements waiving any right, title, interest or claim of any kind in or to any monies held in the trust account, there is no guarantee that they will execute such agreements, and the execution of such an agreement is not a condition to our doing business with anyone. Even if they do execute such agreements, they would not be prevented from bringing claims against the trust account. There is also no guarantee that a court would uphold the validity of such waivers and, if a court failed to uphold the validity of such waivers, we would not be indemnified by Mr. Hicks.

Mr. Hicks, our founder and chairman of the board, has agreed that he will be liable to us if and to the extent any claims by a third party for services rendered or products sold, or by a prospective target business, reduce the amounts in the trust account, except as to (i) any claims by a third party who executed a waiver (even if such waiver is subsequently found to be invalid and unenforceable) of any and all rights to seek access to the funds in the trust account and (ii) any claims under our indemnity of the underwriters of our initial public offering against certain liabilities, including liabilities under the Securities Act. In the event that this indemnity obligation arose and Mr. Hicks did not comply with such obligation, we believe that we would have an obligation to seek enforcement of the obligation and that our board of directors would have a fiduciary duty to seek enforcement of such obligation on our behalf. Based on representations made to us by Mr. Hicks, we currently believe that Mr. Hicks is of substantial means and capable of funding his indemnity obligations, even though we have not asked him to reserve funds for such an eventuality. However, we cannot assure you that Mr. Hicks will be able to satisfy those obligations. Accordingly, the proceeds held in the trust account could be subject to claims which could take priority over those of our public stockholders and, as a result, the per-share liquidation amount would be less than \$9.71 due to claims of such creditors.

Additionally, if we are forced to file a bankruptcy case or an involuntary bankruptcy case is filed against us which is not dismissed, the proceeds held in the trust account could be subject to applicable bankruptcy law, and may

be included in our bankruptcy estate and subject to the claims of third parties with priority over the claims of our stockholders. To the extent any bankruptcy claims deplete the trust account, we cannot assure you we will be able to return to our public stockholders the liquidation amounts described in this report.



**Table of Contents**

***If we are deemed to be an investment company under the Investment Company Act, we may be required to institute burdensome compliance requirements and our activities may be restricted, which may make it difficult for us to complete a business combination.***

If we are deemed to be an investment company under the Investment Company Act of 1940, as amended, our activities may be restricted, including:

restrictions on the nature of our investments; and

restrictions on the issuance of securities,

each of which may make it difficult for us to complete a business combination.

In addition, we may have imposed upon us burdensome requirements, including:

registration as an investment company;

adoption of a specific form of corporate structure; and

reporting, record keeping, voting, proxy and disclosure requirements and other rules and regulations.

We do not believe that our anticipated principal activities will subject us to the U.S. Investment Company Act. The proceeds held in the trust account may be invested by the trustee only in U.S. government treasury bills with a maturity of 180 days or less or in money market funds meeting certain conditions under Rule 2a-7 under the Investment Company Act. Because the investment of the proceeds will be restricted to these instruments, we believe we will meet the requirements for the exemption provided in Rule 3a-1 promulgated under the Investment Company Act. If we were deemed to be subject to the Investment Company Act, compliance with these additional regulatory burdens would require additional expenses for which we have not allotted.

***Changes in laws or regulations, or a failure to comply with any laws and regulations, may adversely affect our business, investments and results of operations.***

We are subject to laws and regulations enacted by national, regional and local governments. In particular, upon admission, we will be required to comply with certain SEC and other legal requirements. Compliance with, and monitoring of, applicable laws and regulations may be difficult, time consuming and costly. Those laws and regulations and their interpretation and application may also change from time to time and those changes could have a material adverse effect on our business, investments and results of operations. In addition, a failure to comply with applicable laws or regulations, as interpreted and applied, by any of the persons referred to above could have a material adverse effect on our business and results of operations.

***Our stockholders may be held liable for claims by third parties against us to the extent of distributions received by them.***

Under Sections 280 through 282 of the Delaware General Corporation Law, stockholders may be held liable for claims by third parties against a corporation to the extent of distributions received by them in a dissolution conducted in accordance with the Delaware General Corporation Law. If the corporation complies with certain procedures set forth in Section 280 of the Delaware General Corporation Law intended to ensure that it makes reasonable provision for all claims against it, including a 60-day notice period during which any third-party claims can be brought against the corporation, a 90-day period during which the corporation may reject any claims brought, and an additional 150-day waiting period before any liquidating distributions are made to stockholders, any liability of stockholders with respect to a liquidating distribution is limited to the lesser of such stockholder's pro rata share of the claim or the amount distributed to the stockholder, and any liability of the stockholder would be barred after the third anniversary of the dissolution. However, it is our intention to make liquidating distributions to our stockholders as soon as reasonably possible after we liquidate; therefore, we do not intend to comply with those procedures.

Because we will not be complying with those procedures, we are required, pursuant to Section 281(b) of the Delaware General Corporation Law, to adopt a plan of distribution that will reasonably provide for our payment, based on facts known to us at such time, of (i) all existing claims including those that are contingent, (ii) all pending proceedings to which we are a party and (iii) all claims that may be potentially brought against us within the subsequent 10 years.



## **Table of Contents**

Accordingly, we would be required to provide for any creditors known to us at that time or those that we believe could be potentially brought against us within the subsequent 10 years prior to distributing the funds held in the trust to stockholders. However, because we are a blank check company, rather than an operating company, and our operations will be limited to searching for prospective target businesses to acquire, the most likely claims, if any, to arise would be from our vendors that we engage (such as accountants, lawyers, investment bankers, etc.) and potential target businesses. If our plan of distribution complies with Section 281(b) of the Delaware General Corporation Law, any liability of stockholders with respect to a liquidating distribution is limited to the lesser of such stockholder's pro rata share or the amount distributed to the stockholder. We cannot assure you that we will properly assess all claims that may be potentially brought against us. As such, our stockholders could potentially be liable for any claims to the extent of distributions received by them (but no more) and any liability of our stockholders may extend well beyond the third anniversary of the date of distribution. Accordingly, we cannot assure you that third parties will not seek to recover from our stockholders amounts owed to them by us.

If we are forced to file a bankruptcy case or an involuntary bankruptcy case is filed against us which is not dismissed, any distributions received by stockholders could be viewed under applicable debtor/creditor and/or bankruptcy laws as either a preferential transfer or a fraudulent conveyance. As a result, a bankruptcy court could seek to recover all amounts received by our stockholders. Furthermore, because we intend to distribute the then-remaining proceeds held in the trust account to our public stockholders promptly after our liquidation in the event our initial business combination has not been consummated by September 28, 2009, such distributions may be viewed or interpreted as giving preference to our public stockholders over any potential creditors with respect to access to or distributions from our assets. Also, our board of directors may be viewed as having breached its fiduciary duties to our creditors and/or acting in bad faith by paying public stockholders from the trust account prior to addressing the claims of creditors, which may expose the board and our company to claims of punitive damages. We cannot assure you that claims will not be brought against us for these reasons.

***Although we have agreed to file a registration statement registering the shares of common stock issuable upon exercise of the warrants prior to the time the warrants become exercisable, an effective registration statement may not be in place when an investor desires to exercise warrants, thus precluding such investor from being able to exercise his, her or its warrants and causing such warrants to expire worthless.***

No warrant held by public stockholders will be exercisable and we will not be obligated to issue shares of common stock unless, at the time such holder seeks to exercise such warrant, we have a registration statement under the Securities Act in effect covering the shares of common stock issuable upon the exercise of the warrants and a current prospectus relating to the common stock. Under the terms of the warrant agreement, we have agreed to use our best efforts to file and have a registration statement in effect covering shares of common stock issuable upon exercise of the warrants from the date the warrants became exercisable and to maintain a current prospectus relating to the common stock issuable upon exercise of the warrants until the expiration of the warrants. However, we cannot assure you that we will be able to do so, and if we do not maintain a current prospectus related to the common stock issuable upon exercise of the warrants, holders will be unable to exercise their warrants and we will not be required to settle any such warrant exercise, whether by net cash settlement or otherwise. If the prospectus relating to the common stock issuable upon the exercise of the warrants is not current, the warrants held by public stockholders may have no value, we will have no obligation to settle the warrants for cash, the market for such warrants may be limited, such warrants may expire worthless and, as a result, an investor may have paid the full unit price solely for the shares of common stock included in the units.

***An investor will only be able to exercise a warrant if the issuance of common stock upon such exercise has been registered or qualified or is deemed exempt under the securities laws of the state of residence of the holder of the warrants.***

No warrants will be exercisable and we will not be obligated to issue shares of common stock unless the common stock issuable upon such exercise has been registered or qualified or deemed to be exempt under the securities laws of the state of residence of the holder of the warrants. Because the exemptions from qualification in certain states for resales of warrants and for issuances of common stock by the issuer upon exercise of a warrant may be different, a warrant may be held by a holder in a state where an exemption is not available for issuance of common

stock upon an exercise and the holder will be precluded from exercise of the warrant. At the time that the warrants become exercisable (following the later of our completion of an initial business combination or September 28, 2009), we expect to either continue to be listed on a national securities exchange, which would provide an exemption from registration in every state, or we would register the warrants in every state (or seek another exemption from registration in such states). Accordingly, we believe holders in every state will be able to exercise their warrants as long as our prospectus relating to the common stock issuable upon exercise of the warrants is current. However, we cannot assure you of this fact. As a result, the warrants may be deprived of any value, the market for the warrants may be limited and the holders of warrants may not be able to exercise their warrants and they may expire worthless if the common stock issuable upon such exercise is not qualified or exempt from qualification in the jurisdictions in which the holders of the warrants reside.

**Table of Contents**

***Since we have not completed our initial business combination, you will be unable to currently ascertain the merits or risks of the industry or business in which we may ultimately operate.***

We may consummate our initial business combination with a company in any industry, other than with an entity that is engaged in the energy industry as its principal business, and are not limited to any particular type of business, although we will not consummate a business combination with any entity whose principal business operations are conducted outside the United States or Canada. To the extent we complete our initial business combination with a financially unstable company or an entity in its development stage, we may be affected by numerous risks inherent in the business operations of those entities. If we complete our initial business combination with an entity in an industry characterized by a high level of risk, we may be affected by the currently unascertainable risks of that industry. Although our management will endeavor to evaluate the risks inherent in a particular industry or target business, we cannot assure you that we will properly ascertain or assess all of the significant risk factors. Even if we properly assess those risks, some of them may be outside of our control or ability to affect. We also cannot assure you that an investment in our units will not ultimately prove to be less favorable to our investors than a direct investment, if an opportunity were available, in a target business.

***We may not obtain an opinion from an unaffiliated third party as to the fair market value of acquisition candidates or the fairness of the transaction to our stockholders.***

We are not required to obtain an opinion from an unaffiliated third party that the price we are paying is fair to our public stockholders. In addition, we are not required to obtain an opinion from an unaffiliated third party that any initial business combination we select has a fair market value of at least 80% of the initial amount held in the trust account (less deferred underwriting commissions), the threshold value to constitute our initial business combination.

If our board of directors is not able to independently determine the fair market value of our initial business combination, we will obtain an opinion from an unaffiliated, independent investment banking firm which is subject to oversight by the Financial Industry Regulatory Authority as to the fair market value. If no opinion is obtained, our public stockholders will be relying solely on the judgment of our board of directors.

***We may issue additional common or preferred shares to complete our initial business combination or under an employee incentive plan after consummation of our initial business combination, which would dilute the interest of our stockholders and likely present other risks.***

Our amended and restated certificate of incorporation authorizes the issuance of up to 225,000,000 shares of common stock, par value \$0.0001 per share, and 1,000,000 shares of preferred stock, par value \$0.0001 per share. We have 156,000,000 authorized but unissued shares of common stock available for issuance. We may issue a substantial number of additional shares of common or preferred stock to complete our initial business combination or under an employee incentive plan after consummation of our initial business combination. The issuance of additional shares of common or preferred stock:

may significantly dilute the equity interest of our investors;

may subordinate the rights of holders of common stock if preferred stock is issued with rights senior to those afforded our common stock;

could cause a change in control if a substantial number of common stock is issued, which may affect, among other things, our ability to use our net operating loss carry forwards, if any, and could result in the resignation or removal of our present officers and directors; and

may adversely affect prevailing market prices for our common stock and/or warrants.

***We are dependent upon Mr. Hicks and his loss could adversely affect our ability to operate.***

Our operations are dependent upon a relatively small group of individuals and, in particular, upon our founder and chairman of the board, Mr. Hicks. We believe that our success depends on the continued service of Mr. Hicks, at least until we have consummated a business combination. In addition, Mr. Hicks is not required to commit any specified amount of time to our affairs and, accordingly, will have conflicts of interest in allocating management time among various business activities, including identifying potential business combinations and monitoring the related

due diligence. We do not have an employment agreement with, or key-man insurance on the life of, Mr. Hicks. The unexpected loss of the services of Mr. Hicks could have a detrimental effect on us.

**Table of Contents**

***Our ability to successfully effect our initial business combination and to be successful thereafter will be totally dependent upon the efforts of our key personnel, some of whom may join us following our initial business combination.***

Our ability to successfully effect our initial business combination is dependent upon the efforts of our key personnel. The role of our key personnel in the target business, however, cannot presently be ascertained. Although some of our key personnel may remain with the target business in senior management or advisory positions following a business combination, it is likely that some or all of the management of the target business will remain in place. While we intend to closely scrutinize any individuals we engage after a business combination, we cannot assure you that our assessment of these individuals will prove to be correct. These individuals may be unfamiliar with the requirements of operating a company regulated by the SEC, which could cause us to have to expend time and resources helping them become familiar with such requirements. This could be expensive and time-consuming and could lead to various regulatory issues which may adversely affect our operations.

***Our key personnel may negotiate employment or consulting agreements with a target business in connection with a particular business combination. These agreements may provide for them to receive compensation following a business combination and as a result, may cause them to have conflicts of interest in determining whether a particular business combination is the most advantageous.***

Our key personnel may be able to remain with the company after the consummation of a business combination only if they are able to negotiate employment or consulting agreements in connection with the business combination. Such negotiations would take place simultaneously with the negotiation of the business combination and could provide for such individuals to receive compensation in the form of cash payments and/or our securities for services they would render to the company after the consummation of the business combination. The personal and financial interests of such individuals may influence their motivation in identifying and selecting a target business. However, we believe the ability of such individuals to remain with the company after the consummation of a business combination will not be the determining factor in our decision as to whether or not we will proceed with any potential business combination. There is no certainty, however, that any of our key personnel will remain with the combined company after the consummation of a business combination. We cannot assure you that any of our key personnel will remain in senior management or advisory positions with the combined company. The determination as to whether any of our key personnel will remain with the combined company will be made at the time of our initial business combination.

***The officers and directors of an acquisition candidate may resign upon consummation of a business combination.***

The role of an acquisition candidate's key personnel upon the consummation of a business combination cannot be ascertained at this time. Although we contemplate that certain members of an acquisition candidate's management team will remain associated with the acquisition candidate following a business combination, it is possible that members of the management of an acquisition candidate will not wish to remain in place.

***Our officers and directors will allocate their time to other businesses thereby causing conflicts of interest in their determination as to how much time to devote to our affairs. This conflict of interest could have a negative impact on our ability to consummate a business combination.***

Our officers and directors are not required to commit their full time to our affairs, which could create a conflict of interest when allocating their time between our operations and their other commitments. We do not intend to have any full time employees prior to the consummation of a business combination. All of our executive officers are engaged in several other business endeavors and are not obligated to devote any specific number of hours to our affairs. If our officers' and directors' other business affairs require them to devote more substantial amounts of time to such affairs, it could limit their ability to devote time to our affairs and could have a negative impact on our ability to consummate a business combination. We cannot assure you that these conflicts will be resolved in our favor.

***Certain of our officers and directors are now, and all of them may in the future become, affiliated with entities engaged in business activities similar to those intended to be conducted by us and, accordingly, may have conflicts of interest in allocating their time and determining to which entity a particular business opportunity should be presented.***

Edgar Filing: Hicks Acquisition CO I Inc. - Form 10-K

Certain of our officers and directors are now, and all of them may in the future become, affiliated with entities, engaged in business activities similar to those intended to be conducted by us. In the event that any of our officers becomes aware of a business combination opportunity that falls within the line of business of any entity to which he or she has pre-existing fiduciary or contractual obligations, he or she may be required to present such business combination opportunity to such entity prior to presenting such business combination opportunity to us.



**Table of Contents**

Each of Mr. Hicks, Joseph B. Armes, our president, chief executive officer, chief financial officer and one of our directors, Eric C. Neuman, a senior vice president of our company, Robert M. Swartz, a senior vice president of our company, Christina Weaver Vest, a senior vice president of our company, Thomas O. Hicks, Jr., our secretary and one of our vice presidents, and Mack H. Hicks, a vice president of our company, is an officer, member or partner of Hicks Holdings LLC ( Hicks Holdings ) or Hicks Equity Partners LLC ( Hicks Equity Partners ). Hicks Holdings is a holding company for sports, real estate and private equity investments of Thomas O. Hicks and his family, and Hicks Equity Partners is an entity engaged in the private equity business. The controlling member and manager of Hicks Equity Partners is Thomas O. Hicks. Each of such officers will be required to offer all suitable business opportunities with a fair market value less than \$200 million to Hicks Holdings or Hicks Equity Partners prior to presenting them to us; provided that in order to minimize potential conflicts of interest which may arise from multiple corporate affiliations, each of our officers has agreed, until the earliest of our initial business combination, our liquidation or such time as he or she ceases to be an officer, to present to our company for our consideration, prior to presentation to any other entity, any business opportunity with a fair market value of \$200 million or more, subject to any pre-existing fiduciary or contractual obligations he or she might have. Each of our officers, other than Thomas O. Hicks, Jr., currently has certain relevant fiduciary duties or contractual obligations, which may take priority over his or her duties to us.

Our officers may become involved with subsequent blank check companies similar to our company, although they have agreed not to participate in the formation of, or become an officer or director of, any blank check company that may complete a business combination with an entity other than with an entity engaged in the energy industry as its principal business or whose principal business operations are conducted outside of the United States or Canada until we have entered into a definitive agreement regarding our initial business combination or we have failed to complete our initial business combination by September 28, 2009. As discussed above, our officers may become aware of business opportunities which may be appropriate for presentation to us and the other entities to which they owe certain fiduciary duties. Accordingly, they may have conflicts of interest in determining to which entity a particular business opportunity should be presented. We cannot assure you that these conflicts will be resolved in our favor or that a potential target business would not be presented to another entity prior to its presentation to us.

***Certain of our directors own shares of our common stock issued prior to our initial public offering and an entity affiliated with our officers owns shares of our common stock and warrants issued prior to our initial public offering and purchased additional warrants simultaneously with the closing of our initial public offering. These shares and warrants will not participate in liquidation distributions if our initial business combination is not consummated and, therefore, our officers and directors may have a conflict of interest in determining whether a particular target business is appropriate for our initial business combination.***

Certain members of our board of directors own shares of our common stock and warrants and all of our officers are affiliated with an entity that owns shares of our common stock or warrants. Our sponsor, HH-HACI, L.P., a Delaware limited partnership, purchased 10,000,000 founder s units (which were increased to 11,500,000 founder s units as a result of a stock split approved by our board of directors in July 2007 and later increased to 13,524,000 units after giving effect to the August 2007 transfer discussed below and a stock dividend declared by our board of directors in September 2007). In August 2007, our sponsor transferred an aggregate of 230,000 founder s units (which were increased to 276,000 units as a result of the September 2007 stock dividend) to William Cunningham, William Montgomery, Brian Mulrone and William F. Quinn, each of whom is a member of our board of directors. Our sponsor also purchased 7,000,000 sponsor warrants simultaneously with the closing of our initial public offering. Mr. Hicks is the sole member of HH-HACI GP, LLC, the general partner of our sponsor. In addition, Mr. Hicks, Mr. Armes, Mr. Neuman, Mr. Swartz, Ms. Vest, Thomas O. Hicks, Jr. and Mack H. Hicks are each limited partners of our sponsor. Our sponsor and each of Messrs. Cunningham, Montgomery, Mulrone and Quinn have waived their rights to receive distributions with respect to the founder s shares upon our liquidation if we are unable to consummate a business combination. Accordingly, the founder s shares, as well as the founder s warrants, will be worthless if we do not consummate our initial business combination by September 28, 2009. The sponsor warrants will also expire worthless if we fail to consummate our initial business combination within such time period. Furthermore, the \$7 million purchase price of the sponsor warrants will be held in the trust account and will be distributed to our public

stockholders in the event of our liquidation.

The personal and financial interests of our directors and officers may influence their motivation in timely identifying and selecting a target business and completing a business combination. Consequently, our directors and officers' discretion in identifying and selecting a suitable target business may result in a conflict of interest when determining whether the terms, conditions and timing of a particular business combination are appropriate and in our stockholders' best interest.

***NYSE Alternext US may delist our securities from quotation on its exchange, which could limit investors' ability to make transactions in our securities and subject us to additional trading restrictions.***

## Table of Contents

Our securities are listed on NYSE Alternext US (formerly, American Stock Exchange), a national securities exchange. However, we cannot assure you that our securities will continue to be listed on NYSE Alternext US in the future prior to an initial business combination. Additionally, in connection with our initial business combination, it is likely that NYSE Alternext US will require us to file a new initial listing application and meet its initial listing requirements as opposed to its more lenient continued listing requirements. We cannot assure you that we will be able to meet those initial listing requirements at that time.

If NYSE Alternext US delists our securities from trading on its exchange, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our securities;

- a determination that our common stock is a penny stock which will require brokers trading in our common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our common stock;

- a limited amount of news and analyst coverage for our company; and

- a decreased ability to issue additional securities or obtain additional financing in the future.

On February 10, 2009, we received a deficiency letter from NYSE Alternext US indicating that we are not in compliance with the annual stockholder meeting requirements of Section 704 of the NYSE Alternext US Company Guide (the Company Guide), because we did not hold an annual stockholders meeting during the year ended December 31, 2008. We have been afforded the opportunity to submit a plan to NYSE Alternext US by March 10, 2009, which we have done, advising NYSE Alternext US of actions taken, or to be taken, to bring us into compliance with Section 704 of the Company Guide (the Plan) by August 11, 2009.

We submitted our Plan on March 5, 2009, but if our Plan is not accepted by NYSE Alternext US, we may be subject to delisting procedures. NYSE Alternext US will evaluate our Plan and make a determination as to whether we have made a reasonable demonstration in the Plan of an ability to regain compliance with the continued listing standards by August 11, 2009 (the Plan Period). If our Plan is accepted, we should be able to continue listing during the Plan Period up to August 11, 2009. However, if we do not make progress consistent with the Plan during the Plan Period or we are not in compliance with the listing standards at the conclusion of the Plan Period, NYSE Alternext US staff may initiate delisting procedures as appropriate.

We explain in the Plan we submitted that, pursuant to our amended and restated certificate of incorporation, we must acquire, or acquire control of, through a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination one or more businesses or assets by September 28, 2009 pursuant to a transaction approved by our stockholders, or we will dissolve and liquidate. As a result, we must hold a stockholder meeting prior to September 28, 2009 at which such a transaction is approved, or we will liquidate. Accordingly, in our Plan we requested that NYSE Alternext US defer the required August 11, 2009 stockholder meeting until September 28, 2009. However, we cannot guarantee that NYSE Alternext US will accept our proposal to delay the required stockholder meeting date until September 28, 2009. In the event NYSE Alternext US does not grant the requested delayed date, we may be required to hold a stockholder meeting by August 11, 2009.

***We may only be able to complete one business combination with the proceeds of our initial public offering, which will cause us to be solely dependent on a single business, which may have a limited number of products or services.***

Our initial business combination must be with a target business having a fair market value of at least 80% of the balance in the trust account (excluding deferred underwriting discounts and commissions) at the time of such acquisition, although this may entail the simultaneous acquisitions of several businesses or assets at the same time. However, we may not be able to acquire more than one target business because of various factors, including the existence of complex accounting issues and the requirement that we prepare and file pro forma financial statements with the SEC that present operating results and the financial condition of several target businesses as if they had been operated on a combined basis. By consummating an initial business combination with only a single entity, our lack of diversification may subject us to numerous economic, competitive and regulatory developments. Further, we would

not be able to diversify our operations or benefit from the possible spreading of risks or offsetting of losses, unlike other entities which may have the resources to complete several business combinations in different industries or different areas of a single industry. Accordingly, the prospects for our success may be:

**Table of Contents**

solely dependent upon the performance of a single business, or

dependent upon the development or market acceptance of a single or limited number of products, processes or services.

This lack of diversification may subject us to numerous economic, competitive and regulatory developments, any or all of which may have a substantial adverse impact upon the particular industry in which we may operate subsequent to an initial business combination.

Alternatively, if we determine to simultaneously acquire several businesses or assets, which are owned by different sellers, we will need for each of such sellers to agree that our purchase of its business is contingent on the simultaneous closings of the other business combinations, which may make it more difficult for us, and delay our ability, to complete the initial business combination. With multiple business combinations, we could also face additional risks, including additional burdens and costs with respect to possible multiple negotiations and due diligence investigations (if there are multiple sellers) and the additional risks associated with the subsequent assimilation of the operations and services or products of the acquired companies in a single operating business. If we are unable to adequately address these risks, it could negatively impact our profitability and results of operations. We may seek to effect our initial business combination with one or more privately held companies, which may present certain challenges to us including the lack of available information about these companies.

In pursuing our acquisition strategy, we may seek to effect our initial business combination with a privately held company. By definition, very little public information exists about private companies, and we could be required to make our decision on whether to pursue a potential initial business combination on the basis of limited information. ***We may be dependent on a single business or asset that is likely to operate in a non-diverse industry or segment and which may have a limited number of products or services.***

The prospects for our success may be solely dependent upon the performance of a single business, property or asset that we acquire through our initial business combination. In this case, we will not be able to diversify our operations or benefit from the possible spreading of risks or offsetting of losses, unlike other entities which may have the resources to complete several business combinations in different industries or different areas of a single industry. ***The ability of our public stockholders to exercise their conversion rights may not allow us to consummate a desirable initial business combination or optimize our capital structure.***

When we seek the approval of our public stockholders for our initial business combination, each public stockholder will have the right to elect to convert its shares for cash if such public stockholder votes against our initial business combination and our initial business combination is approved and completed and the public stockholder holds its shares through the closing of our initial business combination. Such holder must both vote against such business combination and elect to convert its shares by notifying us of such election to convert at the appropriate time, as described in the proxy materials. We will be permitted to proceed with our initial business combination if we are able to confirm that we have sufficient funds to pay the consideration to close the business combination plus all sums due to our public stockholders who vote against the business combination and duly exercise their right to elect to convert their shares for cash. Therefore, we may not be able to consummate an initial business combination that requires us to use all of the funds held in the trust account as part of the purchase price, or we may be required to incur an amount of leverage that is not optimal for our business combination. In addition, we will not consummate an initial business combination if holders of more than 30% (minus one share) of our outstanding shares of common stock purchased in our initial public offering exercise their conversion rights. These restrictions may limit our ability to consummate the most attractive business combinations available to us.

***We may proceed with an initial business combination even if public stockholders owning up to 30% (minus one share) of the shares sold in our initial public offering exercise their conversion rights. This requirement may make it easier for us to have an initial business combination approved over stockholder dissent.***

We may proceed with an initial business combination as long as public stockholders owning no more than 30% (minus one share) of the shares sold in our initial public offering both vote against the business combination and exercise their conversion rights. Accordingly, public stockholders holding up to 16,559,999 shares of our common stock may both vote against the business combination and exercise their conversion rights, and we could still

consummate a proposed business combination. We have set the conversion percentage at 30% (minus one share) in order to reduce the likelihood that a small group of investors holding a block of our stock will be able to stop us from completing a business combination that is

**Table of Contents**

otherwise approved by a large majority of our public stockholders. However, this may have the effect of making it easier for us to have a business combination approved over stockholder dissent than other blank check companies. While there are some other offerings similar to ours which include conversion provisions greater than 20%, a 20% threshold is common for offerings similar to ours. Because we permit a larger number of stockholders to exercise their conversion rights, it may be easier for us to obtain stockholder approval of an initial business combination than other blank check companies.

Our initial business combination may require us to use substantially all of our cash to pay the purchase price. In such case, because we will not know how many stockholders may exercise such conversion rights, we may need to arrange third party financing to help fund our initial business combination in case a larger percentage of stockholders exercise their conversion rights than we expect. Additionally, even if our business combination does not require us to use substantially all of our cash to pay the purchase price, if a significant number of stockholders exercise their conversion rights, we will have less cash available to use in furthering our business plans following a business combination and may need to arrange third party financing. We have not taken any steps to secure third party financing for either situation. We cannot assure you that we will be able to obtain such third party financing on terms favorable to us or at all.

***Because of our limited resources and structure, we may not be able to consummate an attractive initial business combination.***

We expect to encounter intense competition from entities in addition to blank check companies having a business objective similar to ours, including venture capital funds, leveraged buyout funds and operating businesses competing for acquisitions. Many of these entities are well established and have extensive experience in identifying and effecting business combinations directly or through affiliates. Many of these competitors possess greater technical, human and other resources than we do and our financial resources will be relatively limited when contrasted with those of many of these competitors. While we believe that there are numerous potential target businesses that we could acquire with the net proceeds of our initial public offering, our ability to compete in acquiring certain sizable target businesses will be limited by our available financial resources. This inherent competitive limitation gives others an advantage in pursuing the acquisition of certain target businesses. Furthermore, the obligation we have to seek stockholder approval of our initial business combination may delay the consummation of a transaction. Additionally, our outstanding warrants, and the future dilution they potentially represent, may not be viewed favorably by certain target businesses. Any of these obligations may place us at a competitive disadvantage in successfully negotiating a business combination. If we are unable to consummate our initial business combination with a target business by September 28, 2009, we will be forced to liquidate.

***We may be unable to obtain additional financing to complete our initial business combination or to fund the operations and growth of a target business, which could compel us to restructure or abandon a particular business combination.***

Although we believe that the net proceeds of our initial public offering, including the interest earned on the proceeds held in the trust account that may be available to us for a business combination, will be sufficient to allow us to consummate our initial business combination, because we have not yet identified any prospective target business we cannot ascertain the capital requirements for any particular transaction. If the net proceeds of our initial public offering prove to be insufficient, either because of the size of our initial business combination, the depletion of the available net proceeds in search of a target business, or the obligation to repurchase for cash a significant number of shares from stockholders who elect conversion in connection with our initial business combination, we will be required to seek additional financing. We cannot assure you that such financing will be available on acceptable terms, if at all. To the extent that additional financing proves to be unavailable when needed to consummate our initial business combination, we would be compelled to either restructure the transaction or abandon that particular initial business combination and seek an alternative target business candidate. Even if we do not need additional financing to consummate our initial business combination we may require such financing to fund the operations or growth of the target business. The failure to secure additional financing could have a material adverse effect on the continued development or growth of the target business. None of our officers, directors or stockholders is required to provide any financing to us in connection with or after a business combination.

***Our sponsor, which is an entity controlled by Thomas O. Hicks, our founder and chairman of the board, controls a substantial interest in us and thus may influence certain actions requiring a stockholder vote.***

Our sponsor (an entity controlled by Mr. Hicks) owns 19.6% of our issued and outstanding shares of common stock and Mr. Hicks is required to purchase, directly or through a controlled affiliate, 2,000,000 co-investment units in connection with our initial business combination (a portion of which co-investment units may be assigned by Mr. Hicks in limited circumstances). Our board of directors is and will be divided into three classes, each of which will generally serve for a term of three years with only one class of directors being elected in each year. It may be unlikely that there will be an annual meeting of stockholders to elect new directors prior to the consummation of a business combination, in which case all of the



**Table of Contents**

current directors will continue in office until at least the consummation of the business combination. If there is an annual meeting, as a consequence of our staggered board of directors, only a minority of the board of directors will be considered for election and our sponsor, because of its ownership position, will have considerable influence regarding the outcome. Accordingly, our sponsor will continue to exert control at least until the consummation of our initial business combination. In the event that our initial stockholders purchase any additional shares of our common stock, they will vote any such shares acquired by them in favor of our initial business combination and in favor of an amendment to our amended and restated certificate of incorporation to provide for our perpetual existence in connection with a vote to approve our initial business combination. Furthermore, in the event that Mr. Hicks or our officers acquire shares of our common stock, we anticipate that they would vote such shares in favor of our initial business combination. Thus, additional purchases of shares of our common stock by our directors, officers or initial stockholders would likely allow them to exert additional influence over the approval of our initial business combination. Factors that would be considered in making such additional purchases would include consideration of the current trading price of our common stock. Another factor that would be taken into consideration would be that any such additional purchases would likely increase the chances that our initial business combination would be approved.

***Our outstanding warrants may have an adverse effect on the market price of our common stock and make it more difficult to effect a business combination.***

Prior to our initial public offering, we issued 13,800,000 founder s warrants to our initial stockholders. We issued warrants to purchase 55,200,000 shares of our common stock as part of the units initially offered and, simultaneously with the closing of our initial public offering, we issued in a private placement sponsor warrants to purchase 7,000,000 shares of common stock. The founder s warrants and the sponsor warrants are identical to the warrants sold as part of the units in our initial public offering except that: (i) they will not be redeemable by us so long as they are held by, as applicable, our initial stockholders, our sponsor or their permitted transferees; (ii) they (including the common stock issuable upon exercise of these warrants) may not, subject to certain limited exceptions, be transferred, assigned or sold by the sponsor until 180 days after the completion of our initial business combination; and (iii) may be exercised by the holders on a cashless basis. In addition, the founder s warrants may not be exercised unless and until: (A) the last sale price of our common stock equals or exceeds \$13.75 for any 20 days within any 30 trading day period beginning 90 days after our initial business combination; and (B) there is an effective registration statement covering the shares of common stock issuable upon exercise of the warrants.

Thomas O. Hicks, our founder and chairman of the board, also committed to purchase, directly or through one of his controlled affiliates, 2,000,000 co-investment units consisting of an aggregate of 2,000,000 shares of common stock and warrants to purchase 2,000,000 shares of our common stock in a private placement that will occur immediately prior to our completion of our initial business combination, which will not occur until after the signing of a definitive business combination agreement and the approval of the initial business combination by holders of a majority of our outstanding shares of common stock sold in our initial public offering; provided that holders of no more than 30% (minus one share) of our outstanding shares of common stock sold in our initial public offering elect to exercise their conversion rights. The co-investment warrants will be identical to the warrants sold in our initial public offering, except that (i) they will not be redeemable by us so long as they are held by Thomas O. Hicks, the relevant controlled affiliate or their permitted transferees and (ii) with limited exceptions, they (including the common stock issuable upon exercise of these warrants) may not, subject to certain limited exceptions, be transferred, assigned or sold until 180 days after the completion of our initial business combination. To the extent we issue shares of common stock to effect our initial business combination, the potential for the issuance of a substantial number of additional shares upon exercise of these warrants could make us a less attractive acquisition vehicle in the eyes of a target business. Such securities, when exercised, will increase the number of issued and outstanding shares of our common stock and reduce the value of the shares issued to complete our initial business combination. Accordingly, our warrants may make it more difficult to effectuate our initial business combination or increase the cost of acquiring the target business. Additionally, the sale, or even the possibility of sale, of the shares underlying the warrants could have an adverse effect on the market price for our securities and on our ability to obtain future financing. If and to the extent these warrants are exercised, you may experience dilution to your holdings.

***Because we must furnish our stockholders with target business financial statements, we may not be able to complete an initial business combination with some prospective target businesses.***

We will provide stockholders with audited financial statements of the prospective target business as part of the proxy solicitation materials sent to stockholders to assist them in assessing the target business. In all likelihood, these financial statements will need to be prepared in accordance with United States generally accepted accounting principles. We cannot assure you that any particular target business identified by us as a potential acquisition candidate will have financial statements prepared in accordance with United States generally accepted accounting principles or that the potential target business will be able to prepare its financial statements in accordance with United States generally accepted accounting

**Table of Contents**

principles. To the extent that this requirement cannot be met, we may not be able to acquire the proposed target business. These financial statement requirements may limit the pool of potential target businesses with which we may combine.

***Compliance with the Sarbanes-Oxley Act of 2002 will require substantial financial and management resources and may increase the time and costs of completing an acquisition.***

Section 404 of the Sarbanes-Oxley Act of 2002 requires that we evaluate and report on our system of internal controls and requires that we have such system of internal controls audited beginning with our Annual Report on Form 10-K for the year ending December 31, 2008. If we fail to maintain the adequacy of our internal controls, we could be subject to regulatory scrutiny, civil or criminal penalties and/or stockholder litigation. Any inability to provide reliable financial reports could harm our business. Section 404 of the Sarbanes-Oxley Act also requires that our independent registered public accounting firm report on management's evaluation of our system of internal controls. A target company may not be in compliance with the provisions of the Sarbanes-Oxley Act regarding adequacy of their internal controls. The development of the internal controls of any such entity to achieve compliance with the Sarbanes-Oxley Act may increase the time and costs necessary to complete any such acquisition. Furthermore, any failure to implement required new or improved controls, or difficulties encountered in the implementation of adequate controls over our financial processes and reporting in the future, could harm our operating results or cause us to fail to meet our reporting obligations. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our stock.

***Under Delaware law, the requirements and restrictions relating to our initial public offering contained in our amended and restated certificate of incorporation may be amended, which could reduce or eliminate the protection afforded to our stockholders by such requirements and restrictions.***

Our amended and restated certificate of incorporation contains certain requirements and restrictions relating to our initial public offering that apply to us until the consummation of our initial business combination. Specifically, our amended and restated certificate of incorporation provides, among other things, that:

upon the closing of our initial public offering, approximately \$536.1 million (including \$7 million from the sale of the sponsor warrants and approximately \$17.4 million in deferred underwriting commissions), was placed into the trust account;

we shall submit any proposed business combination to our stockholders for approval prior to consummating our initial business combination;

our public stockholders will have the right to convert their shares of common stock into cash in accordance with the conversion rights described below;

public stockholders who exercise their conversion rights and vote against our initial business combination may convert their shares into a pro rata share of the aggregate amount then on deposit in the trust account;

we will consummate a business combination only if it has a fair market value equal to at least 80% of the initial amount held in trust (excluding deferred underwriting commissions of approximately \$17.4 million);

prior to our initial business combination, we may not issue additional stock that participates in any manner in the proceeds of the trust account, or that votes as a class with the common stock sold in our initial public offering on a business combination;

we will consummate our initial business combination only if: (i) the initial business combination is approved by a majority of votes cast by our public stockholders at a duly held stockholders meeting; (ii) an amendment to our amended and restated certificate of incorporation to provide for our perpetual existence is approved by holders of a majority of our outstanding shares of common stock; (iii) public stockholders owning no more than 30% (minus one share) of our outstanding shares of common stock sold in our initial

public offering both vote against the business combination and exercise their conversion rights; and (iv) we have confirmed that we have sufficient cash resources to pay both (x) the consideration required to close our initial business combination, and (y) the cash due to public stockholders who vote against the business combination and who exercise their conversion rights; and

## **Table of Contents**

if we do not consummate our initial business combination by September 28, 2009, our corporate purposes and powers will immediately thereupon be limited to acts and activities related to liquidating and winding up our affairs, including liquidation, and we will not be able to engage in any other business activities.

Our amended and restated certificate of incorporation requires that we obtain the vote of our board of directors and the unanimous vote of our stockholders, by a vote of all outstanding shares at a meeting of stockholders, to amend the above-described provisions. However, the validity of unanimous consent provisions under Delaware law has not been settled. This unanimous consent requirement is more stringent than the minimum stockholder consent requirement under Delaware law, and a court could conclude that the unanimous consent requirement constitutes a practical prohibition on amendment in violation of the stockholders' implicit rights to amend the corporate charter. In that case, the above-described provisions would be amendable without unanimous consent and any such amendment could reduce or eliminate the protection afforded to our stockholders.

***Provisions in our amended and restated certificate of incorporation may inhibit a takeover of us, which could limit the price investors might be willing to pay in the future for our common stock and could entrench management.***

Our amended and restated certificate of incorporation contains provisions that may discourage unsolicited takeover proposals that stockholders may consider to be in their best interests. These provisions include a staggered board of directors and the ability of the board of directors to designate the terms of and issue new series of preference shares, which may make more difficult the removal of management and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our securities.

***There may be tax consequences to our business combinations that may adversely affect us.***

While we expect to undertake any merger or acquisition so as to minimize taxes both to the acquired business and/or asset and us, such business combination might not meet the statutory requirements of a tax-free reorganization, or the parties might not obtain the intended tax-free treatment upon a transfer of shares or assets. A non-qualifying reorganization could result in the imposition of substantial taxes.

***We and Graham Packaging have incurred and expect to incur significant costs associated with the Graham Transaction, whether or not the Graham Transaction is completed and the incurrence of these costs will reduce the amount of cash available to be used for other corporate purposes. Further, if the Graham Transaction is not consummated, resources spent by us to research the Graham Transaction will have been wasted, which could materially adversely affect our subsequent attempts to locate and acquire or merge with another business.***

We and Graham Packaging have incurred, and expect to continue to incur, significant costs associated with the Graham Transaction. These expenses, coupled with reduced interest income attributable to recent decreases in interest rates, would reduce the amount of cash available to the Graham IPO Corp., as the surviving company, for other corporate purposes including the repayment of debt. As of December 31, 2008, \$5.0 million of the \$6.6 million in trust income available to us for working capital expenses had been withdrawn by us from our trust account.

Furthermore, declines in the financial markets occurring during the second half of 2008 and first quarter of 2009 may have the effect of making it more difficult to consummate the Graham Transaction. In the event the Graham Transaction is not consummated, the incurrence of costs relating to the Graham Transaction will have had the effect of reducing the amount of cash available to us for other corporate purposes, including pursuit of other potential business combinations.

If a decision is made to not complete the Graham Transaction, the costs incurred up to that point for the Graham Transaction likely would not be recoverable. Furthermore, we may fail to consummate the Graham Transaction for any number of reasons including those beyond our control, such as if the number of our public stockholders who vote against the Graham Transaction and opt to have us repurchase their stock represent more than 30% (minus one share) of the outstanding shares of our common stock sold in our initial public offering.

***If our due diligence investigation of Graham Packaging was inadequate, then stockholders of GPC following the Graham Transaction could lose some or all of their investment.***

Even though we conducted a due diligence investigation of Graham Packaging, we cannot be sure that this diligence surfaced all material issues that may be present inside Graham Packaging or its business, or that it would be possible to uncover all material issues through a customary amount of due diligence, or that factors outside of Graham Packaging and its business and outside of its control will not later arise. Even if our due diligence successfully identifies certain risks,



**Table of Contents**

unexpected risks may arise and previously known risks may materialize in a manner not consistent with our preliminary risk analysis.

***We, and after the Graham Transaction, GPC, may redeem its stockholders unexpired warrants prior to their exercise at a time that is disadvantageous to them, thereby making their warrants worthless.***

We have, and after any completion of the Graham Transaction, GPC, would have, the ability to redeem outstanding warrants at any time after they become exercisable and prior to their expiration, at a price of \$0.01 per warrant, provided that (i) the last reported sale price of the common stock equals or exceeds \$13.75 per share for any 20 trading days within a 30-trading-day period ending on the third business day prior to proper notice of such redemption and (ii) on the date we give notice of redemption and during the entire period thereafter until the time we redeem the warrants, we have an effective registration statement under the Securities Act covering the shares of common stock issuable upon exercise of the warrants and a current prospectus relating to them is available. Redemption of the outstanding warrants could force our warrant holders: (i) to exercise their warrants and pay the exercise price therefor at a time when it may be disadvantageous for them to do so; (ii) to sell their warrants at the then current market price when they might otherwise wish to hold their warrants; or (iii) to accept the nominal redemption price which, at the time the outstanding warrants are called for redemption, is likely to be substantially less than the market value of their warrants. None of the warrants held by our founder will be redeemable by us so long as they are held by the initial stockholders or their permitted transferees and none of the warrants held by our sponsor will be redeemable by us so long as they are held by our sponsor or its permitted transferees, and none of the co-investment warrants will be redeemable by us so long as they are held by Mr. Hicks, any relevant controlled affiliate of Mr. Hicks that purchases the co-investment units, or their permitted transferees. In the event that the Graham Transaction is consummated, GPC will assume the rights and obligations of us under the warrants pursuant to the Graham Transaction.

***The price of Graham IPO Corp. s shares after any completion of the Graham Transaction may be volatile.***

The price of Graham IPO Corp. s shares after any completion of the Graham Transaction may be volatile, and may fluctuate due to factors such as:

actual or anticipated fluctuations in Graham IPO Corp. s quarterly and annual results and those of its publicly held competitors;

mergers and strategic alliances in the packaging industry;

market conditions in the industry;

changes in government regulation;

fluctuations in Graham IPO Corp. s quarterly revenues and earnings and those of its publicly held competitors;

shortfalls in Graham IPO Corp. s operating results from levels forecasted by securities analysts;

investor sentiment toward the stocks of packaging companies in general and plastic packaging companies in particular;

announcements concerning Graham IPO Corp. or its competitors; and

the general state of the securities markets.

**Table of Contents**

***We may waive one or more of the conditions to the Graham Transaction without resoliciting stockholder approval for the Graham Transaction.***

We may agree to waive, in whole or in part, some of the conditions to its obligations to complete the Graham Transaction, to the extent permitted by applicable laws. Our board of directors would evaluate the materiality of any waiver to determine whether amendment of the proxy statement/prospectus and resolicitation of proxies is warranted. In some instances, if our board of directors determines that a waiver is not sufficiently material to warrant resolicitation of stockholders, we have the discretion to complete the Graham Transaction without seeking further stockholder approval.

***Following any consummation of the Graham Transaction, Graham IPO Corp. would have anti-takeover provisions in its organizational documents that may discourage a change of control.***

Following any consummation of the Graham Transaction, certain provisions of Graham IPO Corp.'s amended and restated certificate of incorporation and amended and restated bylaws may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by stockholders. These provisions provide for, among other things:

a classified board of directors with staggered three-year terms;

the removal of directors only for cause and only with the affirmative vote of holders of at least a majority of the shares of Graham IPO Corp. Common Stock entitled to vote in the election of directors;

advance notice for nominations of directors by stockholders and for stockholders to include matters to be considered at annual meetings; and

no ability for stockholders to call special stockholder meetings.

In addition, Section 203 of the Delaware General Corporation Law may, under certain circumstances, make it more difficult for a person who would be an interested stockholder (defined generally as a person with 15% or more of a corporation's outstanding voting stock) to effect a business combination (defined generally as mergers, consolidations and certain other transactions, including sales, leases or other dispositions of assets with an aggregate market value equal to 10% or more of the aggregate market value of the corporation) with the corporation for a three-year period.

These anti-takeover provisions could make it more difficult for a third party to acquire Graham IPO Corp., even if the third party's offer may be considered beneficial by many stockholders. As a result, stockholders may be limited in their ability to obtain a premium for their shares.

***The cash available for Graham IPO Corp. to pay down debt will be reduced if our stockholders exercise their right to convert their shares into cash.***

Pursuant to our amended and restated certificate of incorporation, holders of shares issued in our initial public offering may vote against the Graham Transaction and demand that we convert their shares into cash. We will not consummate the Graham Transaction if holders of 30% or more shares of common stock issued in our initial public offering exercise these conversion rights. To the extent the Graham Transaction is consummated and our public stockholders properly exercise their conversion rights, there will be a corresponding reduction in the amount of funds available to Graham IPO Corp., as the surviving company, following any completion of the Graham Transaction and the amount of cash that could be used to pay down debt under Graham Packaging's credit agreement, as contemplated by the Purchase Agreement. As of December 31, 2008, assuming the Graham Transaction proposal is adopted, the maximum amount of funds that could be disbursed to our stockholders upon the exercise of their conversion rights is approximately \$163.3 million, or approximately 30% of the funds then held in the trust account.

***The New York Stock Exchange may fail to list Graham IPO Corp.'s securities on its exchange, or delist Graham IPO Corp.'s securities from quotation on its exchange in the future, which could limit investors' ability to make transactions in its securities and subject Graham IPO Corp. to additional trading restrictions.***

Graham IPO Corp. intends to list its securities on the New York Stock Exchange, a national securities exchange, if the Graham Transaction is consummated. However, Graham IPO Corp. cannot assure you that its securities



would be listed, or would continue to be listed, on the New York Stock Exchange, following the consummation of the Graham Transaction.

## **Table of Contents**

Additionally, Graham IPO Corp. would be required to file an initial listing application for the New York Stock Exchange and meet the New York Stock Exchange's initial listing requirements as opposed to its more lenient continued listing requirements. Graham IPO Corp. cannot be certain that it would be able to meet those initial listing requirements at that time.

If the New York Stock Exchange fails to list Graham IPO Corp.'s securities on its exchange, or delists Graham IPO Corp.'s securities from trading on its exchange in the future, Graham IPO Corp. could face significant material adverse consequences, including:

a limited availability of market quotations for its securities;

a determination that its common stock is a penny stock which will require brokers trading in its common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our common stock;

a limited amount of news and analyst coverage for its company; and

a decreased ability to issue additional securities or obtain additional financing in the future.

***Compliance with the Sarbanes-Oxley Act of 2002 will require substantial financial and management resources both before and after any consummation of the Graham Transaction.***

Section 404 of the Sarbanes-Oxley Act of 2002 will require that Graham IPO Corp. evaluate and report on its system of internal controls and that Graham IPO Corp. have such system of internal controls. If Graham IPO Corp. fails to maintain the adequacy of its internal controls, it could be subject to regulatory scrutiny, civil or criminal penalties and/or stockholder litigation. Any inability to provide reliable financial reports could harm Graham IPO Corp.'s business. Section 404 of the Sarbanes-Oxley Act also requires that Graham IPO Corp.'s independent registered public accounting firm report on management's evaluation of Graham IPO Corp.'s system of internal controls. The development of the internal controls in order to achieve compliance with the Sarbanes-Oxley Act may increase the time and costs necessary to complete the Graham Transaction. Furthermore, any failure to implement required new or improved controls, or difficulties encountered in the implementation of adequate controls over its financial processes and reporting in the future, could harm Graham IPO Corp.'s operating results or cause Graham IPO Corp. to fail to meet its reporting obligations. Inferior internal controls could also cause investors to lose confidence in Graham IPO Corp.'s reported financial information, which could have a negative effect on the trading price of Graham IPO Corp.'s stock.

***There may be tax consequences to the Graham Transaction that may adversely affect the parties to the Purchase Agreement.***

While it is expected that the Graham Transaction will be structured so as to minimize taxes to the parties to the Graham Transaction, the Graham Transaction might not meet the statutory requirements of a tax-free reorganization, or the parties might not obtain the intended tax-free treatment upon a transfer of shares or assets. A non-qualifying reorganization could result in the imposition of substantial taxes.

***The Blackstone Group, L.P. and affiliates of Thomas O. Hicks would hold a significant ownership interest in Graham IPO Corp. following any closing of the Graham Transaction and may have conflicts of interest with Graham IPO Corp. in the future.***

After giving effect to any completion of the Graham Transaction, affiliates of The Blackstone Group, L.P. (Blackstone) would be the largest stockholder of Graham IPO Corp. and would be in a position to exert considerable influence over Graham IPO Corp., including matters related to the appointment of management and the entering into of mergers, sales of substantially all assets and other extraordinary transactions. In addition, Blackstone, as well as affiliates of Thomas O. Hicks, who are expected after any closing of the Graham Transaction to comprise the second largest stockholder, are in the business of making investments in companies and may from time to time acquire and hold interests in businesses that compete directly or indirectly with Graham IPO Corp. and pursue competing acquisition opportunities.

In addition, after giving effect to the Graham Transaction, various affiliates of Blackstone, which controls a principal equity holder of Graham Packaging, would be required by Graham Operating Company's existing credit agreement to be the stockholders holding, in the aggregate, the single largest share of the voting power attributable to Graham IPO Corp. Common Stock. In the event that a party acquires beneficial ownership representing voting power in Graham IPO Corp.

**Table of Contents**

greater than the voting power represented by the equity interests beneficially owned by Blackstone and its affiliates, it may trigger an event of default under the Graham Packaging's credit agreement.

***Graham IPO Corp. expects to record a significant amount of goodwill and other identifiable intangible assets, and may never realize the full value of its intangible assets.***

In connection with any consummation of the Graham Transaction, Graham IPO Corp. would record a significant amount of goodwill and other identifiable intangible assets. Goodwill and identifiable intangible assets are recorded at fair value on the date of acquisition and, in accordance with Financial Accounting Standards Board Statement of Financial Accounting Standards ( SFAS ) No. 142, Goodwill and Other Intangible Assets, will be reviewed at least annually for impairment. Impairment may result from, among other things, deterioration in performance, adverse market conditions, adverse changes in applicable laws or regulations, including changes that restrict the activities of or affect the products and services sold by Graham IPO Corp., and a variety of other factors. The amount of any quantified impairment must be expensed immediately as a charge to results of operations. Depending on future circumstances, it is possible that Graham IPO Corp. may never realize the full value of its intangible assets. Any future determination of impairment of a significant portion of goodwill or other identifiable intangible assets would have an adverse effect on Graham IPO Corp.'s financial position and results of operations.

***The sale or availability for sale of substantial amounts of Graham IPO Corp. Common Stock, warrants and units could cause the price of Graham IPO Corp. Common Stock, warrants and units to decline.***

Upon any closing of the Graham Transaction, Blackstone, our sponsor and the other Sellers would own a substantial amount of Graham IPO Corp. Common Stock (in addition to warrants). In the future, such shares may be sold from time to time in the public market pursuant to the registration rights to be granted in connection with the Graham Transaction or pursuant to Rule 144. Such sales may commence after six months or 180 days after the closing in the case of Blackstone and the Sponsor, respectively, and after three months after the closing in the case of certain other Sellers. The sale of these shares or the availability for future sale of these shares could adversely affect the market price of the Graham IPO Corp. Common Stock, warrants and units and could impair the future ability of the Graham IPO Corp. to raise capital through offerings of Graham IPO Corp. Common Stock.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

We currently maintain our executive offices at 100 Crescent Court, Suite 1200, Dallas, Texas 75201. The cost for this space is included in the \$10,000 per month fee that Hicks Holdings Operating LLC ( Hicks Holdings Operating ), an entity owned and controlled by Mr. Hicks, our founder and chairman of the board, charges us for general and administrative services. We believe, based on rents and fees for similar services in the Dallas metropolitan area that the fee charged by Hicks Holdings Operating is at least as favorable as we could have obtained from an unaffiliated person. We consider our current office space adequate for our current operations.

**ITEM 3. LEGAL PROCEEDINGS**

As of December 31, 2008, there was no material litigation, arbitration or governmental proceeding currently pending against us or any members of our management team in their capacity as such, and we and the members of our management team have not been subject to any such proceeding.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

**Table of Contents****PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Price Range of Common Stock**

Our units, common stock and warrants are listed on NYSE Alternext US (formerly, American Stock Exchange) under the symbols TOH.U, TOH and TOH.WS, respectively.

The following table includes the high and low sales prices for our units, common stock and warrants for the periods presented.

	Units <sup>(1)</sup>		Common Stock <sup>(2)</sup>		Warrants <sup>(3)</sup>	
	High	Low	High	Low	High	Low
<b>2008</b>						
Fourth Quarter	\$ 9.40	\$8.75	\$9.15	\$8.64	\$0.29	\$0.03
Third Quarter	\$ 9.87	\$9.24	\$9.43	\$8.89	\$0.57	\$0.20
Second Quarter	\$10.10	\$9.47	\$9.90	\$9.00	\$0.80	\$0.50
First Quarter	\$10.02	\$9.57	\$9.39	\$8.98	\$0.90	\$0.52
<b>2007</b>						
Fourth Quarter	\$10.15	\$9.78	\$9.87	\$8.92	\$1.06	\$0.85
Third Quarter	\$ 9.96	\$9.96				

(1) Our units were listed on the American Stock Exchange on September 28, 2007. The figures for the third quarter of 2007 are for September 28, 2007.

(2) Our common stock was listed on the American Stock Exchange on October 8, 2007. The figures for the fourth quarter of 2007 are for the period from October 8, 2007 to December 31, 2007.

(3) Our warrants were listed on the American

Stock Exchange on October 8, 2007. The figures for the fourth quarter of 2007 are for the period from October 8, 2007 to December 31, 2007.

**Holders**

As of March 10, 2009, there was one holder of record of our units, six holders of record of our common stock and six holders of record of our warrants.

**Dividends**

Other than the stock dividend declared by our board of directors in September 2007, pursuant to which 0.2 shares of our common stock were issued for each share of common stock then outstanding, we have not paid any dividends on our common stock to date and do not intend to pay dividends prior to completion of our initial business combination. The payment of dividends in the future will depend on our revenues and earnings, if any, capital requirements and general financial condition after a business combination is completed. The payment of any dividends subsequent to our initial business combination or the distribution in full of the trust account will be within the discretion of our then-board of directors. It is the present intention of our board of directors to retain any earnings for use in our business operations and, accordingly, we do not anticipate the board declaring any dividends in the foreseeable future. Further, any credit agreements we enter into in connection with a business combination may restrict or prohibit payment of dividends.

**Recent Sale of Unregistered Securities**

Our sponsor, HH-HACI, L.P., a Delaware limited partnership, purchased 10,000,000 founder s units (which were increased to 11,500,000 founder s units as a result of a stock split approved by our board of directors in July 2007 and later increased to 13,524,000 units after giving effect to the August 2007 transfer discussed below and a stock dividend declared by our board of directors in September 2007). In August 2007, our sponsor transferred an aggregate of 230,000 founder s units (which were increased to 276,000 units as a result of the September 2007 stock dividend) to William Cunningham, William Montgomery, Brian Mulrone y and William F. Quinn, each of whom is a member of our board of directors.

## **Table of Contents**

Such securities were issued in connection with our organization pursuant to the exemption from registration contained in Section 4(2) of the Securities Act as they were sold to an accredited investor. The securities were sold for an aggregate offering price of \$25,000 at an average purchase price of \$0.0018 per unit after giving effect to our July 2007 stock split and September 2007 stock dividend.

Thomas O. Hicks, our officers and various officers of Hicks Holdings LLC and Hicks Equity Partners, LLC are equity holders in HH-HACI, L.P. HH-HACI, L.P. is an accredited investor for purposes of Rule 501 of Regulation D. Each of the equity holders in HH-HACI, L.P. are accredited investors under Rule 501 of Regulation D. The limited partnership agreement of HH-HACI, L.P. provides that its partnership interests may only be transferred to officers or directors of our company or other persons affiliated with the sponsor, or in connection with estate planning transfers.

In addition, our sponsor purchased from us 7,000,000 sponsor warrants at \$1.00 per warrant (for an aggregate purchase price of \$7 million). These purchases took place on a private placement basis simultaneously with the consummation of our initial public offering. These issuances were made pursuant to the exemption from registration contained in Section 4(2) of the Securities Act. Our sponsor's obligation to purchase the sponsor warrants was made pursuant to a Sponsor Warrants Purchase Agreement, dated as of September 26, 2007. Such obligation was made prior to the filing of the registration statement filed on Form S-1 in connection with our initial public offering (the

Registration Statement ), and the only conditions to the obligation undertaken by such individuals are conditions outside of the investors' control. Consequently, the investment decision relating to the purchase of the warrants was made prior to the filing of the Registration Statement relating to the public offering and therefore constitutes a completed private placement.

No underwriting discounts or commissions were paid with respect to such sales.

Pursuant to a written purchase agreement between us and Mr. Hicks dated as of September 26 2007, Mr. Hicks has committed to purchase, simultaneously with the consummation of our initial business combination, either directly or through a controlled affiliate of Mr. Hicks, 2,000,000 units, with each unit consisting of one share of common stock and one warrant to purchase one share of common stock. The obligation to make this purchase was made, and the issuance of the related securities will be pursuant to the exemption from registration contained in Section 4(2) of the Securities Act. The proceeds from this sale will be used for general corporate purposes.

### **Use of Proceeds from First Registered Offering**

On October 3, 2007, we consummated our initial public offering of 55,200,000 units (including the over-allotment) with each unit consisting of one share of our common stock and one warrant, each to purchase one share of our common stock at an exercise price of \$7.50 per share. The units from the initial public offering were sold at an offering price of \$10.00 per unit, generating total gross proceeds of \$552 million. Citigroup Global Markets Inc. acted as lead manager for the initial public offering and Lazard Capital Markets and Ladenburg Thalmann & Co. Inc. acted as co-managers for the initial public offering. The securities sold in our initial public offering were registered under the Securities Act of 1933 on a registration statement on Form S-1 (No. 333-143747). The SEC declared the registration statement effective on September 27, 2007.

We paid a total of \$21.3 million in underwriting discounts and commissions and approximately \$1.6 million for other costs and expenses related to our initial public offering and the over-allotment option. After deducting the underwriting discounts and commissions and the initial public offering expenses, the total net proceeds to us from our initial public offering were \$536.4 million of which \$536.1 million was deposited into the trust account and the remaining proceeds of approximately \$250,000 became available to be used to provide for business, legal and accounting due diligence on prospective business combinations and continuing general and administrative expenses.

### **Repurchase of Securities**

None.

**Table of Contents**

**Stock Price Performance Graph**

The graph below compares the cumulative total return of our common stock from October 8, 2007, the date that our common stock first became separately tradable, through December 31, 2008 with the comparable cumulative return of two indices, the S&P 500 Index and the Dow Jones Industrial Average Index. The graph plots the growth in value of an initial investment of \$100 in each of our common stock, the Dow Jones Industrial Average Index and the S&P 500 Index over the indicated time periods, and assuming reinvestment of all dividends, if any, paid on our the securities. We have not paid any cash dividends and, therefore, the cumulative total return calculation for us is based solely upon stock price appreciation and not upon reinvestment of cash dividends. The stock price performance shown on the graph is not necessarily indicative of future price performance.



**Table of Contents****ITEM 6. SELECTED FINANCIAL DATA**

The following table sets forth selected historical financial information derived from our audited financial statements included elsewhere in this Report for the fiscal year ended December 31, 2008 and for the period from February 26, 2007 (inception) to December 31, 2007. You should read the following selected financial data in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and the financial statements and the related notes appearing elsewhere in this report.

	<b>Year ended December 31, 2008</b>	<b>February 26, 2007  (inception)  through December 31, 2007</b>	<b>Period from February 26, 2007  (inception) to December 31, 2008 (cumulative)</b>
<b>Statement of Operations Data:</b>			
Operating expenses:			
Formation and operating costs	\$ 673,502	\$ 196,885	\$ 870,387
Professional services	718,759	722,023	1,440,782
Loss from operations before other income (expense) and income tax expense	(1,392,261)	(918,908)	(2,311,169)
Other income/(expense):			
Interest income	7,601,056	5,153,789	12,754,845
State taxes other than income taxes	(167,935)	(116,553)	(284,488)
Total other income	7,433,121	5,037,236	12,470,357
Income before income tax expense	6,040,860	4,118,328	10,159,188
Income tax expense	2,053,932	1,400,652	3,454,584
Net income	3,986,928	2,717,676	6,704,604
Deferred interest, net of taxes, attributable to common stock subject to possible redemption	(1,488,760)	(1,020,426)	(2,509,186)
Net income attributable to common stock	\$ 2,498,168	\$ 1,697,250	4,195,418
Earnings per share:			
Basic and diluted	\$ 0.05	\$ 0.07	\$ 0.11
Weighted average shares outstanding:			
Basic and diluted	52,440,001	24,002,143	39,425,350
<b>Balance Sheet Data:</b>			
Cash and cash equivalents	\$ 819,061	\$ 52,053	\$ 819,061
Cash and cash equivalents held in trust	250,023,554		250,023,554

Edgar Filing: Hicks Acquisition CO I Inc. - Form 10-K

Marketable securities held in trust	290,117,945	541,301,789	290,117,945
Total assets	544,797,348	541,842,224	544,797,348
Common stock subject to redemption, 16,559,999 shares at \$9.71 per share	160,797,590	160,797,590	160,797,590
Deferred interest attributable to common stock subject to redemption (net of taxes of \$1,313,840 and \$525,674 at December 31, 2008 and 2007, respectively)	2,509,186	1,020,426	2,509,186
Total stockholders' equity	362,199,984	359,701,816	362,199,984
<b>Cash Flow Data:</b>			
Net cash provided by operating activities	\$ 3,030,871	\$ 5,163,686	\$ 8,194,557
Net cash used in investing activities	(2,263,863)	(541,301,789)	(543,565,652)
Net cash provided by financing activities		536,190,156	536,190,156

30

**Table of Contents**

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

**Overview**

We are a blank check company formed for the purpose of acquiring, or acquiring control of, through a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination one or more businesses or assets. Our management team is engaged in the private equity business and evaluates various acquisition opportunities from time to time in connection with their ordinary course of business. Our efforts in identifying prospective target businesses will not be limited to a particular industry, but we will not complete a business combination with any entity engaged in the energy industry as its principal business or whose principal business operations are conducted outside of the United States or Canada. We intend to effect our initial business combination using cash from the proceeds of our initial public offering, our capital stock, debt or a combination of cash, stock and debt.

The issuance of additional shares of our stock in a business combination:

may significantly dilute the equity interest of our investors;

may subordinate the rights of holders of common stock if preferred stock is issued with rights senior to those afforded our common stock;

could cause a change in control if a substantial number of shares of our common stock is issued, which may affect, among other things, our ability to use our net operating loss carry forwards, if any, and could result in the resignation or removal of our present officers and directors;

may have the effect of delaying or preventing a change of control of us by diluting the stock ownership or voting rights or a person seeking to obtain control of our company; and

may adversely affect prevailing market prices for our common stock and/or warrants.

Similarly, if we issue debt securities, it could result in:

default and foreclosure on our assets if our operating revenues after an initial business combination are insufficient to repay our debt obligations;

acceleration of our obligations to repay the indebtedness even if we make all principal and interest payments when due if we breach certain covenants that require the maintenance of certain financial ratios or reserves without a waiver or renegotiation of that covenant;

our immediate payment of all principal and accrued interest, if any, if the debt security is payable on demand; and

our inability to obtain necessary additional financing if the debt security contains covenants restricting our ability to obtain such financing while the debt security is outstanding.

As indicated in the accompanying audited financial statements, at December 31, 2008, we had approximately \$539.8 million in cash held in trust, which includes accrued interest of approximately \$388,000. We intend to use substantially all of the net proceeds of our initial public offering, including the funds held in the trust account (excluding deferred underwriting commissions), to acquire a target business.

**Results of Operations and Known Trends or Future Events**

Through December 31, 2008, our efforts have been limited to organizational activities, activities relating to our initial public offering, activities relating to identifying and evaluating prospective acquisition candidates, and activities relating to general corporate matters; we have not generated any revenues, other than interest income earned on the proceeds of our initial public offering. As of December 31, 2008, approximately \$540.1 million was held in the trust account (including \$17.4 million of deferred underwriting commissions, \$7.0 million from the sale of warrants to the

initial stockholders and approximately \$388,000 in accrued interest) and we had cash outside of trust of approximately \$819,000

## **Table of Contents**

and approximately \$899,000 in accounts payable and accrued expenses. Up to \$6.6 million of interest on the trust proceeds may be released to us for our activities in connection with identifying and conducting due diligence of a suitable business combination, and for general corporate matters. Through December 31, 2008, we had withdrawn \$5.0 million from interest earned on the trust proceeds for working capital requirements. Other than the deferred underwriting commissions, no amounts are payable to the underwriter in the event of a business combination.

For the twelve months ended December 31, 2008, we earned approximately \$7.6 million in interest income. Our funds in the trust account are invested in the JPMorgan U.S. Treasury Plus Money Market Fund and U.S. Treasury securities with a maturity of 180 days or less.

We intend to invest the trust account funds in U.S. Treasury Securities having a shorter maturity of 90 days or less to the extent treasury bills of such duration are available at the applicable time of reinvestment.

### **Liquidity and Capital Resources**

During 2007, we disbursed an aggregate of approximately \$1.6 million, out of the proceeds of our initial public offering not held in trust for the following purposes:

\$395,000 for premiums associated with our directors and officers liability insurance; and

\$1.2 million of expenses in legal, accounting and filing fees relating to our SEC reporting obligations, general corporate matters, and miscellaneous expenses.

We believe we will have sufficient available funds outside of the trust account to operate through September 28, 2009. However, we cannot assure you this will be the case. Over this time period, we currently anticipate incurring expenses for the following purposes:

due diligence and investigation of prospective target businesses;

legal and accounting fees relating to our SEC reporting obligations and general corporate matters;

structuring and negotiating a business combination, including the making of a down payment or the payment of exclusivity or similar fees and expenses; and

other miscellaneous expenses.

As indicated in the accompanying audited financial statements, at December 31, 2008, we had out of trust cash of approximately \$819,000 and approximately \$899,000 in accounts payable and accrued expenses. We expect to incur significant costs in pursuit of our acquisition plans. There is no assurance that our plans to consummate a business combination will be successful or successful within the target business acquisition period. These factors, among others, raise substantial doubt about our ability to continue operations as a going concern. The accompanying financial statements do not include any adjustments that may result from the outcome of this uncertainty.

### **Off Balance Sheet Requirements**

We have never entered into any off-balance sheet financing arrangements and have never established any special purpose entities. We have not guaranteed any debt or commitments of other entities or entered into any options on non-financial assets.

### **Contractual Obligations**

We do not have any long term debt, capital lease obligations, operating lease obligations, purchase obligations or other long term liabilities.

**Table of Contents****Critical Accounting Policies*****Cash and Cash Equivalents***

We consider all highly liquid investments with original maturities of three months or less to be cash equivalents. Such cash and cash equivalents, at times, may exceed federally insured limits. We maintain our accounts with financial institutions with high credit ratings.

***Cash and Cash Equivalents Held in Trust***

Cash and cash equivalents held in trust are with JPMorgan Chase Bank, N.A., and Continental Stock Transfer & Trust Company serves as the trustee. We consider all highly liquid investment placed in trust with original maturities of three months or less to be cash equivalents. These consist of JPMorgan U.S. Treasury Plus Money Market Fund of \$250,007,027 plus accrued interest of \$16,527 at December 31, 2008. There were no cash and cash equivalents held in trust at December 31, 2008. Subsequent to December 31, 2008, we invested the funds previously held in the JPMorgan U.S. Treasury Plus Money Market Fund in U.S. Treasury bills with a maturity of 180 days or less.

***Marketable Securities Held in Trust***

Marketable securities held in trust are with JPMorgan Chase Bank, N.A., and Continental Stock Transfer & Trust Company serves as the trustee. The marketable securities held in trust are invested in U.S. Treasury bills with a maturity of 180 days or less.

***Earnings per Common Share***

Earnings per share is computed by dividing net income applicable to common stockholders by the weighted average number of common shares outstanding for the period. The weighted average common shares issued and outstanding of 52,440,001 and 24,002,143 used for the computation of basic and diluted earnings per share for the twelve month period to December 31, 2008, and for the period from February 26, 2007 (inception) to December 31, 2007, respectively, take into effect the 13,800,000 shares outstanding for the entire period and the 55,200,000 shares (less 16,559,999 shares subject to possible redemption) sold in the initial public offering and outstanding since October 3, 2007.

The 76,000,000 warrants related to the our initial public offering, private placement and the founder's unit are contingently issuable shares and are excluded from the calculation of diluted earnings per share.

***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

***Income Taxes***

Deferred income taxes are provided for the differences between the bases of assets and liabilities for financial reporting and income tax purposes. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized.

We recorded a deferred income tax asset for the tax effect of certain temporary differences, aggregating approximately \$269,000 and \$155,000 at December 31, 2008 and 2007, respectively.

***Recent Accounting Pronouncements***

In December 2007, the Financial Accounting Standards Board issued Statement No. 141 (revised 2007), *Business Combinations*, ( SFAS 141R ). SFAS 141R establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling interest in the acquiree and the goodwill acquired. SFAS 141R also establishes disclosure requirements to enable the evaluation of the nature and financial effects of the business combination. This statement is effective for us beginning January 1, 2009. SFAS

**Table of Contents**

141R will be applied prospectively to business combinations with an acquisition date on or after the effective date. As a result of the adoption of SFAS 141R, we expect that approximately \$3.5 million will be expensed in our financial statements on January 1, 2009 due to the deferred acquisition costs related to the Graham Transaction. SFAS 141R no longer allows deferral of these costs.

We do not believe that any recently issued, but not effective, accounting standards, if currently adopted, would have a material effect on our financial statements, other than the adoption of SFAS 141R described above.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Market risk is the sensitivity of income to changes in interest rates, foreign exchanges, commodity prices, equity prices, and other market-driven rates or prices. We are not presently engaged in and, if we do not consummate a suitable business combination prior to the prescribed liquidation date of the trust fund, we may not engage in, any substantive commercial business. Accordingly, we are not and, until such time as we consummate a business combination, we will not be, exposed to risks associated with foreign exchange rates, commodity prices, equity prices or other market-driven rates or prices. The net proceeds of our initial public offering held in the trust fund may be invested by the trustee only in U.S. governmental treasury bills with a maturity of 180 days or less or in money market funds meeting certain conditions under Rule 2a-7 under the Investment Company Act. Given our limited risk in our exposure to government securities and money market funds, we do not view the interest rate risk to be significant.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

Our financial statements appear following Item 15 of this Report and are incorporated herein by reference.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A(T). CONTROLS AND PROCEDURES**

As required by Rules 13a-15 under the Securities Exchange Act, our chief executive officer and chief financial officer carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2008. Based upon their evaluation, they concluded that our disclosure controls and procedures were effective as of the end of the period covering the report. Disclosure controls and procedures are controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms; and include controls and procedures designed to ensure that information is accumulated and communicated to our management, and made known to our chief executive officer and chief financial officer.

A target business may not be in compliance with the provisions of the Sarbanes-Oxley Act regarding the adequacy of internal controls. Many small and mid-sized target businesses we may consider for a business combination may have internal controls that need improvement in areas such as:

staffing for financial, accounting and external reporting areas, including segregation of duties;

reconciliation of accounts;

proper recording of expenses and liabilities in the period to which they relate;

evidence of internal review and approval of accounting transactions;

documentation of processes, assumptions and conclusions underlying significant estimates; and

documentation of accounting policies and procedures.

**Table of Contents**

*Management's Report on Internal Control Over Financial Reporting*

Management is responsible for the preparation and integrity of the consolidated financial statements appearing in the reports that we file with the SEC. The consolidated financial statements were prepared in conformity with U.S. generally accepted accounting principles and include amounts based on management's estimates and judgments.

Our management is also responsible for establishing and maintaining adequate internal control over financial reporting. As defined in Rule 13a-15 under the Securities Exchange Act, internal control over financial reporting is a process designed by, or under the supervision of, our principal executive officer and principal financial or accounting officer and effected by our board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, we carried out an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2008 based on the criteria in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ( *COSO* ). Although there are inherent limitations in the effectiveness of any system of internal control over financial reporting, based on its assessment, our management believes that, as of December 31, 2008, our internal control over financial reporting is effective.

KPMG LLP, the independent registered public accounting firm that audited our financial statements included in this report, has also audited the effectiveness of our internal control over financial reporting as stated in their report included herein.

There has been no change in our internal control over financial reporting that occurred during the quarter ended December 31, 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

None.



Table of Contents**PART III****ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE****Directors and Executive Officers**

Our current directors and executive officers are as follows:

<b>Name</b>	<b>Age</b>	<b>Position</b>
Thomas O. Hicks	63	Chairman of the Board
Joseph B. Armes	47	Director, President, Chief Executive Officer and Chief Financial Officer
Eric C. Neuman	64	Senior Vice President
Robert M. Swartz	56	Senior Vice President
Christina Weaver Vest	38	Senior Vice President
Thomas O. Hicks, Jr.	31	Secretary and Vice President
Mack H. Hicks	28	Vice President
William H. Cunningham	65	Director
William A. Montgomery	60	Director
Brian Mulrone	70	Director
William F. Quinn	61	Director

**Thomas O. Hicks** our founder, has been our chairman of the board since our inception. From our inception until August 2007, Mr. Hicks also served as our president and chief executive officer. Since 2005, Mr. Hicks has served as the chairman of Hicks Holdings LLC ( Hicks Holdings ), a holding company for sports, real estate and private equity investments of Mr. Hicks and his family, including the National Hockey League's Dallas Stars, purchased in December 1995, Major League Baseball's Texas Rangers, acquired in June 1998 and a 50% interest in the English Premier League's Liverpool Football Club, acquired in March 2007. Hicks Holdings is also the controlling stockholder of Latrobe Specialty Steel Company, a specialty steel manufacturer. Its other corporate holdings include DirecPath, a company that provides bundled DIRECTV programming, broadband voice and data services, security and other locally based services to multiple dwelling units across the United States, Ocular LCD, Inc., a designer, manufacturer and marketer of high-performance liquid crystal displays, modules and systems, Grupo Pilar, an animal and pet food company in Argentina and Anvita Health, a provider of decision support systems for healthcare professionals. Mr. Hicks co-founded Hicks, Muse, Tate & Furst, a nationally prominent private equity firm in the United States that specialized in leveraged acquisitions, and served as chairman from 1989 through 2004. During Mr. Hicks' tenure as chairman, Hicks Muse raised over \$12 billion of private equity funds, and consummated over \$50 billion of leveraged acquisitions, and was one of the most active private investment firms in the country. Mr. Hicks also co-founded and served as co-chief executive officer of the leveraged buy-out firm Hicks & Haas from 1984 until 1989. Mr. Hicks received a Master's of Business Administration degree from the University of Southern California in 1970 and a Bachelor of Business Administration degree from the University of Texas in 1968. Mr. Hicks is the father of Thomas O. Hicks, Jr., our secretary and one of our vice presidents, and Mack Hicks, a vice president of our company.

In Mr. Hicks' position as our chairman, he has general supervision and control of our acquisition activities subject to the ultimate authority of our board of directors and is responsible for the execution of the policies of our board of directors with respect to such matters.

**Joseph B. Armes** has been our chief financial officer and one of our directors since our inception and has served as our president and chief executive officer since August 2007. Mr. Armes also previously served as our chief operating officer, an executive vice president and our secretary from our inception until August 2007. Since 2005, Mr. Armes has served as the chief operating officer of Hicks Holdings. From 1998 to 2005, Mr. Armes held several positions, including executive vice president and general counsel from 1998-2001 and chief financial officer from 2001-2005, of Southwest Sports Group, a holding company for various sports teams, including Major League Baseball's Texas Rangers and the National Hockey League's Dallas Stars. From 1997 to 1998, Mr. Armes served as Executive Vice President and General Counsel of Suiza Foods Corporation (currently known as Dean Foods Company), a New York Stock Exchange listed food company. Mr. Armes served as Vice President and General Counsel of The Morningstar Group Inc., a Nasdaq listed food company, from 1996 until its merger with Suiza Foods

Corporation in 1997. From 1991 to 1996, Mr. Armes practiced law with the law firm of Weil, Gotshal & Manges LLP, where he specialized in mergers and acquisitions. Mr. Armes currently serves on the

**Table of Contents**

board of directors of Ocular LCD, Inc. Mr. Armes received a Bachelor of Business Administration degree from Baylor University in 1983, a Master's of Business Administration from Baylor University in 1984, and a Juris Doctorate from Southern Methodist University in 1991.

**Eric C. Neuman** has been a senior vice president since our inception. Mr. Neuman currently serves as a managing director and partner of Hicks Equity Partners LLC, and previously served from 2005 until April 2007 as a senior vice president of its affiliate, Hicks Holdings. Mr. Neuman has been a partner of HM Capital (formerly Hicks, Muse, Tate & Furst), since 2000 and has served as an officer since 1993. At HM Capital, he was involved in the acquisition of most of the firm's media investments during that time period. In 2002, Mr. Neuman became responsible for HM Capital's Latin American portfolio, and he remains responsible for monitoring the remaining investments in this portfolio and overseeing their liquidation. Mr. Neuman currently serves on the board of directors of DirecPath, LLC. In addition, Mr. Neuman currently serves as a director of several HM Capital portfolio companies, including Claxson Interactive Group, Inc., a British Virgin Islands media company that distributes entertainment to the Spanish and Portuguese speaking world, Intercable, an international provider of television, internet and telephone services, Fox Pan American Sports LLC, an international sports programming and production company and Persona Cable, Inc., a cable, television, internet and telecommunications provider in Canada. Prior to joining HM Capital in 1993, Mr. Neuman served for eight years as managing director of Communications Partners, Ltd., a private merchant bank focused on media and communications businesses. From 2001 until September, 2006, Mr. Neuman was a director of Cablevision S.A., the leading Argentine cable company. Following the devaluation of the Argentine peso in 2002, Cablevision S.A. entered into a consensual restructuring agreement under Argentine law with the majority of its creditors, which is subject to the approval of the Argentine courts. From 1976 to 1983, he served as Senior Vice President of InterFirst Bank in Dallas and President of First Dallas Capital, a small business investment company. Mr. Neuman received a Bachelors of Arts degree from the University of South Florida in 1967 and a Masters of Business Administration, with distinction, from Northwestern University in 1970.

**Robert M. Swartz** has been a senior vice president since September 2007. Mr. Swartz currently serves as a managing director and partner of Hicks Equity Partners LLC. In 2009, Mr. Swartz was elected to the Board of Directors of Anvita Health. From 1999 until 2007, Mr. Swartz served in various positions at Centex Corporation, a New York Stock Exchange home building company, serving as Senior Vice President of Strategic Planning and Mergers and Acquisitions from 1999 to 2000 and serving as Chairman and Chief Executive Officer of Centex HomeTeam Services from 2000 to 2007. From 1997 until 1999, Mr. Swartz served as Executive Vice President of FirstPlus Financial Group, Inc., a consumer finance company in Dallas, Texas. In 1996, Mr. Swartz served as President and Chief Executive Officer of AMRE, Inc. a nationwide home services provider. From 1994 to 1995, Mr. Swartz served as President of Recognition International, an NYSE high-technology company and previously served from 1990 to 1993 as that company's Chief Financial Officer. Mr. Swartz received a Bachelors of Science degree in accounting from the State University of New York in Albany in 1973 and a Master of Business Administration degree in finance from New Hampshire College in 1976. Mr. Swartz is a Certified Public Accountant.

**Christina Weaver Vest** has been a senior vice president since our inception. Ms. Vest currently serves as a managing director and partner of Hicks Equity Partners LLC, and previously served from 2005 until April 2007 as a senior vice president of its affiliate, Hicks Holdings. Prior to joining Hicks Holdings, and until 2008, Ms. Vest served as a Principal at HM Capital (formerly Hicks, Muse, Tate & Furst), which she joined in 1995. At HM Capital, Ms. Vest principally focused on the firm's domestic branded consumer products investments as well as on several Latin American media investments. Ms. Vest currently serves as a director of Ocular LCD Inc. and of Anvita Health. She is also a director of various Hicks, Muse, Tate & Furst portfolio companies, including Sturm Foods, Inc., a global dry grocery manufacturer for both retail and food service industries and Fox Pan American Sports, an international sports programming and production company. Ms. Vest received a Bachelors of Arts degree from Harvard University in 1993 and a Master's of Business Administration degree from Harvard Business School in 1999.

**Thomas O. Hicks, Jr.** has been a vice president since our inception and has served as our secretary since August 2007. Since 2005, Mr. Hicks has served as a vice president of Hicks Holdings. Since 2008, he has served as Executive Vice President of Hicks Sports Group and since 2007, Alternate Governor for the Dallas Stars Hockey Club. From 2003 to 2005, Mr. Hicks served as director of corporate sales and suite sales for the Texas Rangers

Baseball Club. From 2001 to 2003, Mr. Hicks was an analyst at Greenhill & Co. LLC, a New York based merchant banking firm. As an analyst, Mr. Hicks was involved in numerous private equity, mergers and acquisition advisory and financial restructuring transactions. Mr. Hicks currently serves as a director of the English Premier League's Liverpool Football Club. Mr. Hicks received a Bachelors of Arts degree in government from the University of Texas at Austin in 2001. He currently serves as the Chairman of the Campaign for Children in Crisis for Big Brother Big Sisters Organization of North Texas, and is on the boards of Big Brothers Big Sisters of North Texas, the Texas Rangers Foundation, Capital for Kids, SMU Athletic Forum and the

**Table of Contents**

University of Texas at Arlington Development Board. Mr. Hicks is the son of Thomas O. Hicks, our founder and chairman of the board, and the brother of Mack H. Hicks, one of our vice presidents.

**Mack H. Hicks** has been a vice president since our inception. Since January 2007, Mr. Hicks has served as a vice president of Hicks Holdings LLC. From January 2006 to December 2006, Mr. Hicks served as a research analyst at Halcyon Asset Management LLC, a multi-strategy investment firm. From June 2004 to January 2006, he served as an analyst in the financial sponsors group of Credit Suisse, an investment banking firm. As an analyst, Mr. Hicks was involved with several leveraged buyouts, recapitalizations and acquisitions. Mr. Hicks received a Bachelors of Arts degree from the University of Texas at Austin in 2003. He currently serves as a director for Wahanda, an online health, beauty and wellness company based in the United Kingdom. Mr. Hicks also serves on the board of Dallas Providence Homes, a transformational housing ministry for victims of domestic violence. Mr. Hicks is the son of Thomas O. Hicks, our founder and chairman of the board, and the brother of Thomas O. Hicks, Jr., our secretary and one of our vice presidents.

**William H. Cunningham** has served as a director of our company since the closing of our initial public offering. Since 1979, Dr. Cunningham has served as a professor of marketing at the University of Texas at Austin and he has held the James L. Bayless Chair for Free Enterprise at the University of Texas at Austin since 1985. From 1983 to 1985 he was Dean of the College of Business Administration and Graduate School of Business of the University of Texas at Austin, from 1985 to 1992 he served as the President of the University of Texas at Austin and from 1992 to 2000 he served as the Chancellor (Chief Executive Officer) of the University of Texas System. Dr. Cunningham currently serves on the board of directors of Lincoln National Corporation, a New York Stock Exchange listed holding company for insurance, investment management, broadcasting and sports programming businesses, Southwest Airlines, an airline listed on the New York Stock Exchange, Introgen Therapeutics, Inc., a biopharmaceutical company, and Hayes Lemmerz International Inc., a Nasdaq Global Market listed provider of automotive wheels and other components for the automotive, commercial highway, heating and general equipment industries. Dr. Cunningham currently serves as a member of the Board of Trustees of John Hancock Mutual Funds. Dr. Cunningham received a Bachelor of Business Administration degree in 1966, a Master of Business Administration degree in 1967 and a Ph.D. in 1971, each from Michigan State University.

**William A. Montgomery** has served as a director of our company since the closing of our initial public offering. Mr. Montgomery has been a private investor since 1999. From 1989 to 1999, Mr. Montgomery was Chief Executive Officer of SA-SO Company, a company engaged in the distribution of municipal and traffic control products based in Dallas, Texas. Prior to 1989, Mr. Montgomery worked as a registered representative in the financial services industry, most recently serving with Morgan Stanley in the Private Client Services group from 1985 to 1989. Mr. Montgomery is also a board member and serves as Compensation Committee Chairman of Windstream Corporation, a telecommunications company headquartered in Little Rock, Arkansas. Mr. Montgomery received a Bachelor of Science degree in Business Administration and Finance from the University of Arkansas in 1971.

**Brian Mulroney** has served as a director of our company since the closing of our initial public offering. Mr. Mulroney served as the Prime Minister of Canada from September 1984 to June 1993. After resigning as Prime Minister, Mr. Mulroney rejoined the Montreal law firm of Ogilvy Renault as Senior Partner and continues to serve in such capacity. In addition, Mr. Mulroney currently serves as a director of Barrick Gold Corporation, Blackstone Group LP, Archer Daniels Midland Company, Wyndham Worldwide Corporation, Independent News and Media, PLC, Quebecor Inc. and Quebecor World Inc. He also serves as Chairman of the International Advisory Board of Barrick Gold Corporation. He is a member of the International Advisory Councils of Lion Capital LLP. Mr. Mulroney is also a trustee of the Montreal Heart Institute Foundation, the International Advisory Council of the *École des Hautes études commerciales de Montréal* and the Council on Foreign Relations. Mr. Mulroney has been awarded Canada's highest honour, Companion of the Order of Canada, and has also been made a Grand Officer of the *Ordre national du Québec*. He has also received honorary degrees and awards from various universities and governments in Canada and abroad. Mr. Mulroney received his honours undergraduate degree from St. Francis Xavier University, Antigonish, N.S. in 1959, and a law degree from *Université Laval* in Quebec City in 1964.

**William F. Quinn** has served as a director of our company since the closing of our initial public offering. Mr. Quinn serves as the Chairman of American Beacon Advisors, Inc., which has responsibility for the management

of American Airlines pension and short-term fixed income assets. Prior to being named to his current position, Mr. Quinn served as both Chairman and Chief Executive Officer from April 2006 to December 2007, President from November 1986 to April 2006 and director since 2001. Mr. Quinn also served as a trustee of American Beacon Advisors, Inc. and related mutual funds from 1987 until April 2008. He currently serves as chairman of Lighthouse Holdings, Inc. From 1994 until August 2007, Mr. Quinn served as a trust manager of Crescent Real Estate Equities Company. Prior to his positions with American Beacon Advisors, Inc., Mr. Quinn held several management positions with American Airlines and its subsidiaries. He has served as a director of the Board of American Airlines Federal Credit Union from July 1979 to present, including serving as Chairman of the Board from November 1989 to May 2003, and currently serves as chairman of the United Way of Tarrant County where

## **Table of Contents**

he has been a director since 2005 (with prior tenure from 1988-2000) and a director of the Association for Financial Professionals since 2006. Mr. Quinn served as the Chairman of the Committee on the Investment of Employee Benefit Assets (CIEBA) from 2006 to 2008 and currently serves on the advisory board of the Dallas Society of Financial Analysts. Mr. Quinn has served on the advisory board for Southern Methodist University's Endowment Fund since September 1996, the investment committee of the United Way of Tarrant County's Endowment funds since 1999 and is currently serving his third term on the New York Stock Exchange Pension Management Advisory Committee. Mr. Quinn received a Bachelor of Science degree in Accounting from Fordham University in 1969 and is a Certified Public Accountant.

### **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Securities Exchange Act requires our officers, directors and persons who own more than ten percent of a registered class of our equity securities to file reports of ownership and changes in ownership with the Securities and Exchange Commission. Officers, directors and ten percent stockholders are required by regulation to furnish us with copies of all Section 16(a) forms they file. Based solely on copies of such forms received or written representations from certain reporting persons that no Form 5s were required for those persons, we believe that, during the fiscal year ended December 31, 2008, all filing requirements applicable to our officers, directors and greater than ten percent beneficial owners were complied with.

### **Audit Committee**

Effective October 3, 2007 we established an audit committee of our board of directors, which consists of Mr. Montgomery, Mr. Mulrone and Mr. Quinn, each of whom has been determined to be independent as defined in Rule 10A-3 of the Securities Exchange Act and the rules of NYSE Alternext US. The audit committee's duties, which are specified in our Audit Committee Charter, include, but are not limited to:

- reviewing and discussing with management and the independent auditor the annual audited financial statements;

- discussing with management and the independent auditor significant financial reporting issues and judgments made in connection with the preparation of our financial statements;

- discussing with management major risk assessment and risk management policies;

- monitoring the independence of the independent auditor;

- verifying the rotation of the lead (or coordinating) audit partner having primary responsibility for the audit and the audit partner responsible for reviewing the audit as required by law;

- reviewing and approving all related-party transactions;

- inquiring and discussing with management our compliance with applicable laws and regulations;

- pre-approving all audit services and permitted non-audit services to be performed by our independent auditor, including the fees and terms of the services to be performed;

- appointing or replacing the independent auditor;

- determining the compensation and oversight of the work of the independent auditor (including resolution of disagreements between management and the independent auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work; and

- establishing procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls or reports which raise material issues regarding our financial

statements or accounting policies.

Prior to our completion of an initial business combination, the audit committee will also monitor compliance on a quarterly basis with the terms described below and the other material terms relating to our initial public offering. If any



## **Table of Contents**

noncompliance is identified, then the audit committee will be charged with the responsibility to immediately take all action necessary to rectify such noncompliance or otherwise cause compliance with the terms of our initial public offering.

There will be no fees or other cash payments paid to our existing stockholders, officers, directors or their affiliates prior to, or for any services they render in order to effectuate, the consummation of the initial business combination (regardless of the type of transaction that it is) other than:

our repayment on October 3, 2007 of a \$225,000 loan that is non-interest bearing made to us by Mr. Hicks to cover operating expenses;

a payment of an aggregate of \$10,000 per month to Hicks Holdings Operating, an affiliate of Mr. Hicks, for office space, secretarial and administrative services; and

reimbursements for any out-of-pocket expenses incurred in connection with actions on our behalf, such as identifying potential target businesses and performing due diligence on suitable business combinations.

### **Financial Expert on Audit Committee**

The audit committee will at all times be composed exclusively of independent directors who, as required by NYSE Alternext US, are able to read and understand fundamental financial statements, including a company's balance sheet, income statement and cash flow statement.

In addition, we must certify to NYSE Alternext US that the committee has, and will continue to have, at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience or background that results in the individual's financial sophistication. The board of directors has determined that Mr. Quinn satisfies the NYSE Alternext US definition of financial sophistication and also qualifies as an audit committee financial expert, as defined under rules and regulations of the SEC.

### **Code of Ethics and Committee Charters**

In September 2007, we adopted a code of ethics that applies to our officers, directors and employees and have filed copies of our code of ethics and our board committee charters as exhibits to the registration statement on Form S-1. You will be able to review these documents by accessing our public filings at the SEC's web site at [www.sec.gov](http://www.sec.gov). In addition, a copy of the code of ethics will be provided without charge upon request to us. We intend to disclose any amendments to or waivers of certain provisions of our code of ethics in a Current Report on Form 8-K.

### **ITEM 11. EXECUTIVE COMPENSATION**

None of our executive officers or directors received any cash compensation for services rendered. Since the closing of our initial public offering we have paid Hicks Holdings Operating, an entity owned and controlled by Mr. Hicks, our founder and chairman of the board, a total of \$10,000 per month for office space and administrative services, including secretarial support. This arrangement will continue until the earlier of consummation of our initial business combination or our liquidation and was agreed to by Hicks Holdings Operating for our benefit and is not intended to provide Mr. Hicks compensation in lieu of a salary. We believe that such fees are at least as favorable as we could have obtained from an unaffiliated third party for such services. Mr. Armes is an executive officer of Hicks Holdings Operating. Other than this \$10,000 per month fee, no compensation of any kind, including finder's and consulting fees, will be paid to our sponsor, executive officers and directors, or any of their respective affiliates, for services rendered prior to or in connection with the consummation of a initial business combination. We are not party to any agreements with our executive officers and directors that provide for benefits upon termination of employment. However, these individuals will be reimbursed for any out-of-pocket expenses incurred in connection with activities on our behalf such as identifying potential target businesses and performing due diligence on suitable business combinations. After completion of our initial business combination, directors or members of our management team who remain with us may be paid consulting, management or other fees from the combined company with any and all amounts being fully disclosed to stockholders, to the extent then known, in the proxy solicitation materials furnished to our stockholders in connection with the stockholder meeting to approve a proposed business combination. It is unlikely the amount of such compensation will be known at the time of a stockholder meeting held to consider a

business combination, as it will be up to the directors of the post-combination business to determine executive and director compensation. We do not intend to take any action to ensure that members of our management team maintain their positions with us after the consummation of our initial business combination, although it is possible that some or all of our executive officers and directors may negotiate employment or consulting arrangements to remain with the

**Table of Contents**

company after the initial business combination. The existence or terms of any such employment or consulting arrangements to retain their positions with the company may influence our management's motivation in identifying or selecting a target business but we do not believe that the ability of our management to remain with the company after the consummation of an initial business combination will be a determining factor in our decision to proceed with any potential business combination.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The following table sets forth information regarding the beneficial ownership of our common stock as of December 31, 2008, by:

each person known by us to be the beneficial owner of more than 5% of our outstanding shares of common stock;

each of our officers and directors; and

all our officers and directors as a group.

Unless otherwise indicated, we believe that all persons named in the table have sole voting and investment power with respect to all shares of common stock beneficially owned by them.

<b>Name and Address of Beneficial Owner</b>	<b>Number of Shares Beneficially Owned</b>	<b>Approximate Percentage of Outstanding Common Stock</b>
HH-HACI, L.P. (our sponsor) 100 Crescent Court, Suite 1200 Dallas, Texas 75201	13,524,000	19.6%
Thomas O. Hicks <sup>(1)</sup> c/o Hicks Holdings LLC 100 Crescent Court, Suite 1200 Dallas, Texas 75201	13,524,000	19.6%
Fir Tree, Inc. <sup>(2)</sup> 505 Fifth Avenue, 23rd Floor New York, New York 10017	6,160,000	8.9%
QVT Financial LP <sup>(3)</sup> 1177 Avenue of the Americas, 9 <sup>th</sup> floor New York, New York 10036	4,799,458	6.96%
Aldebaran Investments LLC <sup>(4)</sup> 500 Park Avenue 5th Floor New York, NY 10022	4,139,700	6.00%
Michael A. Roth and Brian J. Stark <sup>(5)</sup> 3600 South Lake Drive St. Francis, WI 53235	3,673,600	5.3%
William H. Cunningham P.O. Box E Austin, TX 78713	69,000	0.1%
William A. Montgomery 200 Crescent Court, Suite 1200 Dallas, Texas 75201	69,000	0.1%
	69,000	0.1%

Brian Mulroney  
c/o Ogilvy Renault  
1981 McGill College Avenue  
Montreal, Quebec Canada

William F. Quinn  
4151 Amon Carter Blvd.  
Fort Worth, Texas 76155

All directors and executive officers as a group (eleven individuals)

69,000

0.1%

13,800,000

20.0%

41

---

**Table of Contents**

- (1) Mr. Hicks is the sole member of HH-HACI GP, LLC, the general partner of our sponsor, and may be considered to have beneficial ownership of our sponsor's interests in us. Mr. Hicks disclaims beneficial ownership of any shares of our common stock in which he does not have a pecuniary interest.
  
- (2) Based on Amendment No. 2 to a Schedule 13G filed with the SEC on February 11, 2009, Fir Tree, Inc. ( "Fir Tree" ) is the investment manager for each of SPAC Holdings 1, LLC ( "SPAC Holdings 1" ), SPAC Holdings 2, LLC ( "SPAC Holdings 2" ) and Fir Tree Value Master Fund, L.P. ( "Fir Tree Value" ). Based on Amendment No. 2 to a Schedule 13G

filed with the SEC on February 11, 2009, SPAC Holdings 1, SPAC Holdings 2 and Fir Tree Value are the beneficial owners of 3,893,253 shares of common stock, 1,641,138 shares of common stock and 625,609 shares of common stock, respectively. This amounts to beneficial ownership of 5.6%, 2.4% and 0.9%, respectively. SPAC Holdings 1 may direct the vote and disposition of 3,893,253 shares. SPAC Holdings 2 may direct the vote and disposition of 1,641,138 shares. Fir Tree Value may direct the vote and disposition of 625,609 shares. Fir Tree has been granted investment discretion over the shares of common stock held by SPAC Holdings 1, SPAC Holdings

2 and Fir Tree  
Value.

- (3) Based on Amendment No. 3 to a Schedule 13G filed with the SEC on January 29, 2009 on behalf of QVT Financial LP, a Delaware limited partnership ( QVT Financial ), QVT Financial GP LLC, a Delaware limited liability company, QVT Fund LP, a Cayman Islands limited partnership (the Fund ), and QVT Associates GP LLC, a Delaware limited Partnership. QVT Financial LP ( QVT Financial ) is the investment manager for the Fund, which beneficially owns 3,972,693 shares of our common stock, Quintessence Fund L.P. ( Quintessence ), which beneficially owns 428,300 shares of our common stock

and a separate discretionary account managed for Deutsche Bank AG (the Separate Account ), which holds 398,305 shares of our common stock. QVT Financial has the power to direct the vote and disposition of the 4,799,458 shares collectively owned by Fund, Quintessence and held in the Separate Account. QVT Financial GP LLC is the general partner of QVT Financial and may be deemed to beneficially own the same number of shares of common stock deemed beneficially owned by QVT Financial. QVT Associates GP LLC is the general partner of Fund and Quintessence and may be deemed to beneficially own an aggregate of 4,401,073 of our shares of common stock.



(4) Based on a Schedule 13G filed with the SEC on February 17, 2009, by Aldebaran Investments LLC ( Aldebaran ), Aldebaran is the investment manager of a separate account which owns 6.00% of our common stock.

(5) Based on Amendment No. 1 to a Schedule 13G filed with the SEC on February 17, 2009 by Michael A. Roth and Brian J. Stark, as joint filers. Mr. Roth and Mr. Stark, as the managing members of Stark Offshore Management LLC, share voting and dispositive power over 3,673,600 shares our common stock held directly by Stark Master Fund Ltd. Stark Offshore Management LLC is the investment manager and has sole power

to direct the  
management of  
Stark Master  
Fund Ltd.

In March 2007, our sponsor purchased 10,000,000 founder s units (which was increased to 11,500,000 units through a stock split in July 2007 and later increased to 13,524,000 units after giving effect to the August 2007 transfer discussed below and a stock dividend declared by our board of directors in September 2007) for an aggregate purchase price of \$25,000, or \$0.0018 after giving effect to our July 2007 stock split and September 2007 stock dividend. Each founder s unit consisted of one founder s share and one founder s warrant. Mr. Hicks, our founder and chairman of the board, is the sole member of HH-HACI GP, the general partner of our sponsor. In addition, Mr. Hicks, Mr. Armes, our president, chief executive officer, chief financial officer and one of our directors, Mr. Neuman, a senior vice president of our company, Mr. Swartz, a senior vice president of our company, Ms. Vest, a senior vice president of our company, Thomas O. Hicks, Jr., our secretary and one of our vice presidents, and Mack H. Hicks, a vice president of our company, are each limited partners of our sponsor. In August 2007, our sponsor transferred an aggregate of 230,000 founder s units (which were increased to 276,000 units as a result of the September 2007 stock dividend) to William H. Cunningham, William A. Montgomery, Brian Mulroney and William F. Quinn, each of whom will be a member of our board of directors.

Simultaneously with the closing of our initial public offering, our sponsor purchased warrants to purchase 7,000,000 shares of our common stock. The warrants were purchased at a price of \$1.00 per warrant and have an exercise price of \$7.50 per share.

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE**

In March 2007, we issued an aggregate of 10,000,000 founder s units (which was increased to 11,500,000 units in July 2007 through a stock split approved by our board of directors and later increased to 13,524,000 units after giving effect to the August 2007 transfer discussed below and a stock dividend declared by our board of directors in September 2007) to

**Table of Contents**

our sponsor, for an aggregate purchase price of \$25,000 in cash, or \$0.0018 per unit after giving effect to the July 2007 stock split and the September 2007 stock dividend. In August 2007, our sponsor transferred an aggregate of 230,000 founder's units which were increased to 276,000 units as a result of the September 2007 stock dividend to William H. Cunningham, William A. Montgomery, Brian Mulroney and William F. Quinn, each of whom are members of our board of directors.

Each founder's unit consists of one share of common stock, which we refer to as a founder's share, and one warrant to purchase one share of common stock, which we refer to as a founder's warrant. Thomas O. Hicks, our founder and chairman of the board, is the sole member of HH-HACI GP, LLC, the general partner of our sponsor. Each of our executive officers is also a limited partner of our sponsor.

Our sponsor also purchased 7,000,000 warrants, which we refer to as sponsor warrants, from us in a private placement which took place simultaneously with the closing of our initial public offering. Each sponsor warrant entitles the holder to purchase one share of our common stock. Our sponsor has agreed that the sponsor warrants (including the common stock issuable upon exercise of the sponsor warrants) will not, subject to certain limited exceptions, be transferred, assigned or sold by it until 180 days after the completion of our initial business combination.

Pursuant to a written agreement with us, Mr. Hicks is required to purchase from us, directly or through a controlled affiliate, in a private placement that will occur immediately prior to our consummation of our initial business combination, 2,000,000 co-investment units at a price of \$10.00 per unit for an aggregate purchase price of \$20 million. If Mr. Hicks elects to make the co-investment through an entity, he will control such entity. The co-investment units will be identical to the units sold in our initial public offering, except that: (i) the co-investment warrants will not be redeemable by us so long as they are held by Mr. Hicks, any relevant controlled affiliate of Mr. Hicks who purchases the co-investment units or their permitted transferees; and (ii) with certain limited exceptions, the co-investment shares and co-investment warrants (including the common stock issuable upon exercise of the co-investment warrants) may not be transferred, assigned or sold until 180 days after the completion of our initial business combination. However, the proceeds from the sale of the co-investment units will not be deposited into the trust account that holds the proceeds from our initial public offering and the sale of the sponsor warrants, and the proceeds will not be available for distribution to our public stockholders in the event of a liquidation of the trust account, or upon conversion of shares held by public stockholders. Instead, the proceeds from the sale of the co-investment units will be used for general corporate purposes and will be received by us immediately after our consummation of our initial business combination, which will not occur until after the signing of a definitive initial business combination agreement and the approval of our initial business combination by a majority of the votes cast by our public stockholders. In addition, the co-investment warrants will not be redeemable by us so long as they are held by Thomas O. Hicks, the relevant controlled affiliate or their permitted transferees, and the co-investment shares or co-investment warrants (including the common stock issuable upon exercise of the co-investment warrants) may not, with certain limited exceptions, be transferred, assigned or sold until 180 days after the completion of our initial business combination. The business purpose of the co-investment is to provide additional capital to us and demonstrate Mr. Hicks' further commitment to our completion of an advantageous business combination. In the event that the co-investment units are not purchased immediately prior to our consummation of our initial business combination, our sponsor has agreed to sell, and we have agreed to purchase, its founder's shares and founder's warrants for an aggregate repurchase price of \$1,000 pursuant to a written agreement between Mr. Hicks, our sponsor and us. The purpose of this agreement is to augment Mr. Hicks' contractual commitment to purchase the co-investment units with an additional incentive to make the co-investment.

Each of Messrs. Hicks, Armes, Neuman and Swartz, Ms. Vest, Thomas O. Hicks, Jr., and Mack H. Hicks is an officer, member or partner of Hicks Holdings LLC or Hicks Equity Partners LLC. In order to minimize potential conflicts of interest which may arise from multiple corporate affiliations, each of our officers has agreed, until the earliest of our completion of our initial business combination, our liquidation or such time as he or she ceases to be an officer, to present to our company for our consideration, prior to presentation to any other entity, any business opportunity with a fair market value of \$200 million or more, subject to any pre-existing fiduciary or contractual obligations he or she might have. In the event that any of our officers becomes aware of a business combination

opportunity that falls within the line of business of any entity to which he or she has pre-existing fiduciary or contractual obligations, he or she may be required to present such business combination opportunity to such entity prior to presenting such business combination opportunity to us. However, each of those officers will be required to offer all suitable business opportunities with a fair market value less than \$200 million for a business combination to Hicks Holdings or Hicks Equity Partners prior to presenting it to us. In the event that any of our officers becomes aware of a business combination opportunity that falls within the line of business of any entity to which he or she has pre-existing fiduciary or contractual obligations, he or she may be required to present such business combination opportunity to us. Each of our officers, other than Thomas O. Hicks, Jr., currently has certain relevant fiduciary duties or contractual obligations which may take priority over his or her duties to us.

## **Table of Contents**

Hicks Holdings Operating, an entity controlled by Thomas O. Hicks, our founder and chairman of the board, has agreed to, from the date of the closing of our initial public offering through the earlier of our consummation of a business combination or our liquidation, make available to us office space and certain office and secretarial services, as we may require from time to time. We have agreed to pay Hicks Holdings Operating \$10,000 per month for these services. However, this arrangement is solely for our benefit and is not intended to provide Mr. Hicks compensation in lieu of salary. We believe, based on rents and fees for similar services in the Dallas metropolitan area, that the fee charged by Hicks Holdings Operating is at least as favorable as we could have obtained from an unaffiliated person.

Mr. Hicks has also advanced to us approximately \$225,000 to cover expenses related to our initial public offering. This loan was payable without interest on the earlier of December 31, 2007 or the closing of our initial public offering. We repaid this loan on October 3, 2007 from the proceeds of our initial public offering not placed in trust.

Other than the \$10,000 per-month administrative fee paid to Hicks Holdings Operating and reimbursement of any out-of-pocket expenses incurred in connection with activities on our behalf such as identifying potential target businesses and performing due diligence on suitable business combinations, no compensation or fees of any kind, including finder's fees, consulting fees or other similar compensation, will be paid to our sponsor, officers or directors, or to any of their respective affiliates, prior to or with respect to our initial business combination (regardless of the type of transaction that it is).

After our initial business combination, members of our management team who remain with us may be paid consulting, management or other fees from the combined company with any and all amounts being fully disclosed to our stockholders, to the extent then known, in the proxy solicitation materials furnished to our stockholders. It is unlikely the amount of such compensation will be known at the time of a stockholder meeting held to consider our initial business combination, as it will be up to the directors of the post-combination business to determine executive and director compensation.

All ongoing and future transactions between us and any member of our management team or his or her respective affiliates, including loans by members of our management team, will be on terms believed by us at that time, based upon other similar arrangements known to us, to be no less favorable to us than are available from unaffiliated third parties. Such transactions or loans, including any forgiveness of loans, will require prior approval in each instance by our audit committee which will have access, at our expense, to our attorneys or independent legal counsel. It is our intention to obtain estimates from unaffiliated third parties for similar goods or services to ascertain whether such transactions with affiliates are on terms that are no less favorable to us than are otherwise available from such unaffiliated third parties. If a transaction with an affiliated third party were found to be on terms less favorable to us than with an unaffiliated third party, we would not engage in such transaction.

Our initial stockholders and the purchaser of the co-investment shares and co-investment warrants, hold registration rights to require us to register a sale of any of our securities held by them pursuant to a registration rights agreement. These stockholders will be entitled to make up to three demands that we register such securities for sale under the Securities Act. In addition, these stockholders will have piggy-back registration rights to include their securities in other registration statements filed by us. However, the registration rights agreement provides that we will not permit any registration statement filed under the Securities Act to become effective until termination of the applicable lock-up period, which occurs 180 days after the completion of our initial business combination. We will bear the costs and expenses of filing any such registration statements.

### **Director Independence**

NYSE Alternext US requires that a majority of our board of directors must be composed of independent directors, which is defined generally as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship, which, in the opinion of the company's board of directors would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director.

Our board of directors has determined that each of Mr. Cunningham, Mr. Montgomery, Mr. Mulroney and Mr. Quinn are independent directors as such term is defined under the rules of NYSE Alternext US and Rule 10A-3 of the Securities Exchange Act. In making the foregoing determinations, our board of directors considered that investment clients of American Beacon Advisors, Mr. Quinn's employer, have co-invested, on arms length terms and on a passive basis, with affiliates of Mr. Hicks, our founder and chairman of the board, in past private investments that

are unrelated to our company. Our independent directors will have regularly scheduled meetings at which only independent directors are present.

**Table of Contents**

We will not enter into our initial business combination with an entity which is affiliated with any of our officers, directors, or sponsor.

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The firm of KPMG LLP acts as our independent registered public accounting firm. The following is a summary of fees paid to KPMG LLP for services rendered.

**Audit Fees**

During the year ended December 31, 2008, fees paid or payable for our independent registered public accounting firm were \$601,000 for the services they performed in connection with our Annual Report for the fiscal year ended December 31, 2008 and 2007, the three Quarterly Reports for the fiscal quarters ended March 31, 2008, June 30, 2008 and September 30, 2008, due diligence and review of the registration statement on Form S-4. During the period from February 26, 2007 (inception) through December 31, 2007, fees paid or payable to our independent registered public accounting firm were \$364,988 for the services they performed in connection with various audits, and our initial public offering including review of the registration statement on Form S-1 and amendments thereto, comfort letters and consents.

**Tax Fees**

During 2008, we were billed \$10,000 for tax services, principally for the preparation of income tax returns. During 2007, there were no fees billed for tax services provided by our independent registered public accounting firm.

**All Other Fees**

During 2008 and 2007, there were no fees billed for products and services provided by our independent registered public accounting firm other than those set forth above.

**Audit Committee Approval**

Since our audit committee was not formed until our initial public offering, the audit committee did not pre-approve all of the foregoing services although any services rendered prior to the formation of our audit committee were approved by our board of directors. However, in accordance with Section 10A(i) of the Securities Exchange Act, before we engage our independent accountant to render audit or non-audit services on a going-forward basis, the engagement will be approved by our audit committee.

**Table of Contents**

**PART IV**

**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Financial Statements

Reference is made to the index to financial statements of the Company under Item 8 of Part II.

(2) Financial Statement Schedule

All other schedules are omitted because they are not applicable or the amounts are immaterial or the required information is presented in the financial statements and notes thereto in Item 8 above.

(3) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
1.1	Form of Underwriting Agreement (incorporated by reference to Exhibit 1.1 to Amendment No. 2 to the Registrant's Registration Statement on Form S-1 filed on September 4, 2007).
2.1	Equity Purchase Agreement, dated as of July 1, 2008, among the Company, GPC Holdings, L.P., Graham Packaging Corporation, Graham Capital Company, Graham Engineering Corporation, BMP/Graham Holdings Corporation, GPC Capital Corp. II, Graham Packaging Holdings Company and the other parties signatory thereto (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K dated July 1, 2008).
2.2	First Amendment to Purchase Agreement, dated as of January 27, 2009, among the Company, Graham Packaging Holdings Company, GPC Holdings, L.P., Graham Packaging Corporation, Graham Capital Company, Graham Engineering Corporation, BMP/Graham Holdings Corporation, GPC Capital Corp. II and the other parties signatory thereto (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K dated January 27, 2009).
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K dated October 3, 2007).
3.2	Amended and Restated By-laws (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K dated October 3, 2007).
4.1	Specimen Unit Certificate (incorporated by reference to Exhibit 4.1 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
4.2	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.2 to Amendment No. 2 to the Registrant's Registration Statement on Form S-1 filed on September 4, 2007).
4.3	Specimen Warrant Certificate (incorporated by reference to Exhibit 4.3 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
4.4	Warrant Agreement between Continental Stock Transfer & Trust Company and the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated October 3, 2007).
10.1	Promissory Note, dated March 1, 2007, issued to Thomas O. Hicks (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1 filed on September 13, 2007).
10.2	Letter Agreement, dated as of September 26, 2007, among the Registrant, Citigroup Global Markets Inc., HH-HACI, L.P. and Thomas O. Hicks (incorporated by reference to Exhibit 10.2 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
10.3	Form of Letter Agreement among the Registrant, Citigroup Global Markets Inc. and each executive officer and director (incorporated by reference to Exhibit 10.3 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
10.4	Investment Management Trust Agreement between Continental Stock Transfer & Trust Company and the Registrant (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated October 3, 2007).
10.5	Letter Agreement between Hicks Holdings Operating LLC and Registrant regarding administrative support. (incorporated by reference to Exhibit 10.5 to Amendment No. 2 to the Registrant's





**Table of Contents**

<b>Exhibit No.</b>	<b>Description</b>
10.6	Registration Rights Agreement, dated as of September 26, 2007, among the Registrant, HH-HACI, L.P., Thomas O. Hicks, William H. Cunningham, William A. Montgomery, Brian Mulrone y and William F. Quinn (incorporated by reference to Exhibit 10.6 to Amendment No. 4 to the Registrant s Registration Statement on Form S-1 filed on September 27, 2007).
10.7	Securities Purchase Agreement, effective as of March 1, 2007, between the Registrant and HH-HACI, L.P. (incorporated by reference to Exhibit 10.7 to Amendment No. 4 to the Registrant s Registration Statement on Form S-1 filed on September 27, 2007).
10.8	Sponsor Warrants Purchase Agreement, dated as of September 26, 2007, between the Registrant and HH-HACI, L.P. (incorporated by reference to Exhibit 10.8 to Amendment No. 4 to the Registrant s Registration Statement on Form S-1 filed on September 27, 2007).
10.9	Co-Investment Securities Purchase Agreement, dated as of September 26, 2007, between the Registrant and Thomas O. Hicks (incorporated by reference to Exhibit 10.9 to Amendment No. 4 to the Registrant s Registration Statement on Form S-1 filed on September 27, 2007).
10.10	Form of Indemnity Agreement (incorporated by reference to Exhibit 10.10 to Amendment No. 4 to the Registrant s Registration Statement on Form S-1 filed on September 27, 2007).
10.11	Securities Assignment Agreement, dated as of August 30, 2007 between the Registrant, HH-HACI, L.P., William H. Cunningham, William A. Montgomery, Brian Mulrone y and William F. Quinn (incorporated by reference to Exhibit 10.11 to Amendment No. 3 to the Registrant s Registration Statement on Form S-1 filed on September 13, 2007).
14	Form of Code of Ethics (incorporated by reference to Exhibit 14 to Amendment No. 1 to the Registrant s Registration Statement on Form S-1 filed on July 26, 2007).
31#	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32#	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

# Filed herewith.

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: March 10, 2009

HICKS ACQUISITION COMPANY I, INC.

By: /s/ Joseph B. Armes  
 Name: Joseph B. Armes  
 Title: *President, Chief Executive Officer  
 and Chief Financial Officer*

**POWER OF ATTORNEY**

The undersigned directors and officers of HICKS ACQUISITION COMPANY I, Inc. hereby constitute and appoint Joseph B. Armes, with the power to act without the other and with full power of substitution and resubstitution, our true and lawful attorneys-in-fact and agents with full power to execute in our name and behalf in the capacities indicated below any and all amendments to this report and to file the same, with all exhibits and other documents relating thereto and hereby ratify and confirm all that such attorneys-in-fact, or either of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities and Exchange Act of 1934, this report has been signed below by the following persons in the capacities and on the dates indicated below.

/s/ Thomas O. Hicks	Chairman of the Board	March 10, 2009
Thomas O. Hicks		
/s/ Joseph B. Armes	President, Chief Executive Officer, Chief Financial Officer and Director	March 10, 2009
Joseph B. Armes		
/s/ William H. Cunningham	Director	March 10, 2009
William H. Cunningham		
/s/ William A. Montgomery	Director	March 10, 2009
William A. Montgomery		
/s/ Brian Mulroney	Director	March 10, 2009
Brian Mulroney		
/s/ William F. Quinn	Director	March 10, 2009
William F. Quinn		

**Table of Contents****EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
1.1	Form of Underwriting Agreement (incorporated by reference to Exhibit 1.1 to Amendment No. 2 to the Registrant's Registration Statement on Form S-1 filed on September 4, 2007).
2.1	Equity Purchase Agreement, dated as of July 1, 2008, among the Company, GPC Holdings, L.P., Graham Packaging Corporation, Graham Capital Company, Graham Engineering Corporation, BMP/Graham Holdings Corporation, GPC Capital Corp. II, Graham Packaging Holdings Company and the other parties signatory thereto (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K dated July 1, 2008).
2.2	First Amendment to Purchase Agreement, dated as of January 27, 2009, among the Company, Graham Packaging Holdings Company, GPC Holdings, L.P., Graham Packaging Corporation, Graham Capital Company, Graham Engineering Corporation, BMP/Graham Holdings Corporation, GPC Capital Corp. II and the other parties signatory thereto (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K dated January 27, 2009).
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K dated October 3, 2007).
3.2	Amended and Restated By-laws (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K dated October 3, 2007).
4.1	Specimen Unit Certificate (incorporated by reference to Exhibit 4.1 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
4.2	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.2 to Amendment No. 2 to the Registrant's Registration Statement on Form S-1 filed on September 4, 2007).
4.3	Specimen Warrant Certificate (incorporated by reference to Exhibit 4.3 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
4.4	Warrant Agreement between Continental Stock Transfer & Trust Company and the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated October 3, 2007).
10.1	Promissory Note, dated March 1, 2007, issued to Thomas O. Hicks (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1 filed on September 13, 2007).
10.2	Letter Agreement, dated as of September 26, 2007, among the Registrant, Citigroup Global Markets Inc., HH-HACI, L.P. and Thomas O. Hicks (incorporated by reference to Exhibit 10.2 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
10.3	Form of Letter Agreement among the Registrant, Citigroup Global Markets Inc. and each executive officer and director (incorporated by reference to Exhibit 10.3 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
10.4	Investment Management Trust Agreement between Continental Stock Transfer & Trust Company and the Registrant (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated October 3, 2007).
10.5	Letter Agreement between Hicks Holdings Operating LLC and Registrant regarding administrative support. (incorporated by reference to Exhibit 10.5 to Amendment No. 2 to the Registrant's Registration Statement on Form S-1 filed on September 4, 2007).
10.6	Registration Rights Agreement, dated as of September 26, 2007, among the Registrant, HH-HACI, L.P., Thomas O. Hicks, William H. Cunningham, William A. Montgomery, Brian Mulrone and William F. Quinn (incorporated by reference to Exhibit 10.6 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
10.7	Securities Purchase Agreement, effective as of March 1, 2007, between the Registrant and HH-HACI, L.P. (incorporated by reference to Exhibit 10.7 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).

Edgar Filing: Hicks Acquisition CO I Inc. - Form 10-K

- 10.8 Sponsor Warrants Purchase Agreement, dated as of September 26, 2007, between the Registrant and HH-HACI, L.P. (incorporated by reference to Exhibit 10.8 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
- 10.9 Co-Investment Securities Purchase Agreement, dated as of September 26, 2007, between the Registrant and Thomas O. Hicks (incorporated by reference to Exhibit 10.9 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).
- 10.10 Form of Indemnity Agreement (incorporated by reference to Exhibit 10.10 to Amendment No. 4 to the Registrant's Registration Statement on Form S-1 filed on September 27, 2007).

**Table of Contents**

<b>Exhibit No.</b>	<b>Description</b>
10.11	Securities Assignment Agreement, dated as of August 30, 2007 between the Registrant, HH-HACI, L.P., William H. Cunningham, William A. Montgomery, Brian Mulrone y and William F. Quinn (incorporated by reference to Exhibit 10.11 to Amendment No. 3 to the Registrant's Registration Statement on Form S-1 filed on September 13, 2007).
14	Form of Code of Ethics (incorporated by reference to Exhibit 14 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 filed on July 26, 2007).
31#	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32#	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

# Filed herewith.

**Table of Contents**

**INDEX TO FINANCIAL STATEMENTS  
Hicks Acquisition Company I, Inc.**

	<b>Page</b>
<b>Audited Financial Statements of Hicks Acquisition Company I, Inc.</b>	
<u>Reports of Independent Registered Public Accounting Firm</u>	F-2
<u>Balance Sheets as of December 31, 2008 and 2007</u>	F-4
<u>Statements of Operations for the year ended December 31, 2008 and for the periods from February 26, 2007 (inception) to December 31, 2007 and February 26, 2007 (inception) to December 31, 2008 (cumulative)</u>	F-5
<u>Statements of Stockholders' Equity for the period February 26, 2007 (inception) to December 31, 2008</u>	F-6
<u>Statements of Cash Flows for the year ended December 31, 2008 and for the periods from February 26, 2007 (inception) to December 31, 2007 and February 26, 2007 (inception) to December 31, 2008 (cumulative)</u>	F-7
<u>Notes to Financial Statements</u>	F-8

F-1

---

**Table of Contents**

**Report of Independent Registered Public Accounting Firm**

The Board of Directors

Hicks Acquisition Company I, Inc.:

We have audited the accompanying balance sheets of Hicks Acquisition Company I, Inc. (a development stage company) (the Company) as of December 31, 2008 and 2007, and the related statements of operations, stockholders equity and cash flows for the year ended December 31, 2008, for the period February 26, 2007 (inception) to December 31, 2007 and the period February 26, 2007 (inception) to December 31, 2008. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Hicks Acquisition Company I, Inc. as of December 31, 2008 and 2007, and the results of its operations and its cash flows for the year ended December 31, 2008, for the period February 26, 2007 (inception) to December 31, 2007 and the period February 26, 2007 (inception) to December 31, 2008 in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming that Hicks Acquisition Company I, Inc. will continue as a going concern. As more fully described in note 1, the Company must consummate a business combination by September 28, 2009 or be dissolved. This condition raises substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to this matter is described in note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Hicks Acquisition Company I, Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 9, 2009 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

Dallas, Texas

March 9, 2009



**Table of Contents**

**Report of Independent Registered Public Accounting Firm**

The Board of Directors

Hicks Acquisition Company I, Inc.:

We have audited Hicks Acquisition Company I, Inc.'s (the Company) internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Hicks Acquisition Company I, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Hicks Acquisition Company I, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the balance sheets of Hicks Acquisition Company I, Inc. as of December 31, 2008 and 2007, and the related statements of operations, stockholders' equity and cash flows for the year ended December 31, 2008, for the period February 26, 2007 (inception) to December 31, 2007 and the period February 26, 2007 (inception) to December 31, 2008, and our report dated March 9, 2009 expressed an unqualified opinion on those financial statements. Our report dated March 9, 2009 contains an explanatory paragraph that the Company must consummate a business combination by September 28, 2009 or be dissolved, which condition raises substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ KPMG LLP

Dallas, Texas

March 9, 2009

**Table of Contents**

**HICKS ACQUISITION COMPANY I, INC.**  
**(A Development Stage Company)**  
**Balance Sheets**

	<b>December 31, 2008</b>	<b>December 31, 2007</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 819,061	\$ 52,053
Cash and cash equivalents held in trust	250,023,554	
Marketable securities held in trust	290,117,945	541,301,789
Other assets	67,530	267,798
 Total current assets	 541,028,090	 541,621,640
Deferred tax assets	269,305	154,751
Deferred acquisition costs	3,499,953	
Other noncurrent assets		65,833
 Total assets	 \$ 544,797,348	 \$ 541,842,224
<b>Liabilities and Stockholders Equity</b>		
Current liabilities:		
Accounts payable	\$ 633,889	\$ 655,871
Accrued expenses	200,983	489,287
Accrued federal and state taxes	1,004,011	1,671,956
Accrued expenses – related party	63,705	117,278
Deferred underwriter’s commission	17,388,000	17,388,000
 Total current liabilities	 \$ 19,290,588	 \$ 20,322,392
 Common stock, subject to possible redemption; 16,559,999 shares at \$9.71 per share at December 31, 2008 and 2007	 160,797,590	 160,797,590
Deferred interest attributable to common stock subject to possible redemption (net of taxes of \$1,313,840 and \$525,674 at December 31, 2008 and 2007, respectively)	2,509,186	1,020,426
 Commitments and contingencies		
 Stockholders’ equity:		
Preferred stock, \$0.0001 par value. Authorized 1,000,000 shares; none issued or outstanding at December 31, 2008 and 2007		
Common stock, \$0.0001 par value. Authorized 225,000,000 shares; issued and outstanding 69,000,000 shares (less 16,559,999 shares subject to possible redemption) at December 31, 2008 and 2007	5,244	5,244
Additional paid-in capital	357,999,322	357,999,322
Earnings accumulated during the development stage	4,195,418	1,697,250

Edgar Filing: Hicks Acquisition CO I Inc. - Form 10-K

Total stockholders' equity	362,199,984	359,701,816
Total liabilities and stockholders' equity	\$ 544,797,348	\$ 541,842,224

See accompanying notes to financial statements.

F-4

---

Table of Contents

**HICKS ACQUISITION COMPANY I, INC.**  
**(A Development Stage Company)**  
**Statements of Operations**

	Twelve Months Ended December 31, 2008	February 26, 2007 (inception) to December 31, 2007	Period from February 26, 2007 (inception) to December 31, 2008 (cumulative)
Operating expenses:			
Formation and operating costs	\$ 673,502	\$ 196,885	\$ 870,387
Professional services	718,759	722,023	1,440,782
Loss from operations before other income (expense) and income tax expense	(1,392,261)	(918,908)	(2,311,169)
Other income (expense):			
Interest income	7,601,056	5,153,789	12,754,845
State taxes other than income taxes	(167,935)	(116,553)	(284,488)
Total other income	7,433,121	5,037,236	12,470,357
Income before income tax expense	6,040,860	4,118,328	10,159,188
Income tax expense	2,053,932	1,400,652	3,454,584
Net income	3,986,928	2,717,676	6,704,604
Deferred interest, net of taxes, attributable to common stock subject to possible redemption	(1,488,760)	(1,020,426)	(2,509,186)
Net income attributable to common stock	\$ 2,498,168	\$ 1,697,250	\$ 4,195,418
Earnings per share:			
Basic and diluted	\$ 0.05	\$ 0.07	\$ 0.11
Weighted average shares outstanding:			
Basic and diluted	52,440,001	24,002,143	39,425,350

See accompanying notes to financial statements.

F-5

**Table of Contents**

**HICKS ACQUISITION COMPANY I, INC.**  
**(A Development Stage Company)**  
**Statements of Stockholders' Equity**

	Common Stock		Additional paid-in capital	Earnings accumulated during the development stage	Stockholders equity
	Shares	Amount			
Initial capital from founding stockholder for cash	11,500,000	\$ 1,150	\$ 23,850		\$ 25,000
Stock dividend	2,300,000	230	(230)		
Sale of 55,200,000 units, net of underwriter's discount and offering costs	55,200,000	5,520	511,771,636		511,777,156
Proceeds subject to possible redemption of 16,559,999 shares		(1,656)	(160,795,934)		(160,797,590)
Proceeds from sale of warrants to sponsor			7,000,000		7,000,000
Net income attributable to common stock				1,697,250	1,697,250
Balance as of December 31, 2007	69,000,000	\$ 5,244	\$ 357,999,322	\$ 1,697,250	\$ 359,701,816
Net income attributable to common stock				2,498,168	2,498,168
Balance as of December 31, 2008	69,000,000	\$ 5,244	\$ 357,999,322	\$ 4,195,418	\$ 362,199,984

See accompanying notes to financial statements.

**Table of Contents**

**HICKS ACQUISITION COMPANY I, INC.**  
**(A Development Stage Company)**  
**Statements of Cash Flows**

	Twelve Months Ended December 31, 2008	February 26, 2007 (inception) to December 31, 2007	Period from February 26, 2007 (inception) to December 31, 2008 (cumulative)
Cash flows from operating activities:			
Net income attributable to common stock	\$ 2,498,168	\$ 1,697,250	\$ 4,195,418
Adjustments to reconcile net income attributable to common stock to net cash provided by operating activities:			
Change in deferred tax asset	(114,554)	(154,751)	(269,305)
Deferred interest attributable to common stock subject to possible redemption	1,488,760	1,020,426	2,509,186
Change in operating assets and liabilities:			
Other assets	266,101	(333,631)	(67,530)
Accrued federal and state taxes	(667,945)	1,671,956	1,004,011
Accounts payable	(97,782)	655,871	558,089
Accrued expenses	(288,304)	489,287	200,983
Accrued expenses related party	(53,573)	117,278	63,705
Net cash provided by operating activities	3,030,871	5,163,686	8,194,557
Cash flows from investing activities:			
Increase in cash and cash equivalents held in trust account	250,023,554		250,023,554
Purchase of marketable securities held in trust, net of maturities	(248,863,264)	(541,301,789)	(790,165,053)
Payment of deferred acquisition costs	(3,424,153)		(3,424,153)
Net cash used in investing activities	(2,263,863)	(541,301,789)	(543,565,652)
Cash flows from financing activities:			
Proceeds from note payable related party		225,000	225,000
Payment on note payable related party		(225,000)	(225,000)
Proceeds from sale of units to sponsor		25,000	25,000
Proceeds from sale of warrants to initial founder		7,000,000	7,000,000
Proceeds from initial public offering, net of underwriter's discount and offering costs		529,165,156	529,165,156

Edgar Filing: Hicks Acquisition CO I Inc. - Form 10-K

Net cash provided by financing activities		536,190,156		536,190,156
Increase in cash and cash equivalents	767,008		52,053	819,061
Cash and cash equivalents, beginning of period	52,053			
Cash and cash equivalents, end of period	\$ 819,061	\$ 52,053	\$ 819,061	
Supplemental disclosure of noncash financing and investing activities:				
Accrual of deferred underwriter's commission	\$	\$ 17,388,000	\$	\$ 17,388,000
Accrual of deferred acquisition costs	\$ 75,800	\$	\$	\$ 75,800
Cash paid during the period for:				
Interest	\$	\$	\$	\$
Income taxes	\$ 2,750,000	\$	\$	\$ 2,750,000
See accompanying notes to financial statements.				

F-7

**Table of Contents**

**HICKS ACQUISITION COMPANY I, INC.**  
**(a Development Stage Company)**  
**NOTES TO THE FINANCIAL STATEMENTS**

**Note 1 Organization and Nature of Business Operations**

Hicks Acquisition Company I, Inc. (the Company) was incorporated in Delaware on February 26, 2007 as a blank check company formed for the purpose of acquiring, or acquiring control of, through a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination one or more businesses or assets.

The Company has neither engaged in any operations nor generated any revenue to date. The activity from February 26, 2007 to December 31, 2008 relates to the Company's formation and its initial public offering described below and in Note 3. The Company has selected December 31 as its fiscal year end.

The registration statement for the Company's initial public offering (the Offering) was declared effective September 27, 2007. The Company consummated the Offering on October 3, 2007 and received proceeds of approximately \$529.1 million, net of underwriter's commissions of approximately \$21.3 million and offering costs and other expenses of \$1.6 million. The Company sold to the public 55,200,000 units at a price of \$10.00 per unit, including 7,200,000 units issued pursuant to the exercise of the underwriter's over-allotment option. Simultaneously with the consummation of the Offering, the Company consummated the private sale of 7,000,000 warrants to HH-HACI, L.P., a Delaware limited partnership (the Sponsor), at a price of \$1.00 per sponsor's warrant, generating gross proceeds, before expenses, of \$7 million (the Private Placement). Net proceeds received by the Company from the consummation of both the Offering and Private Placement of sponsor's warrants totaled approximately \$536.1 million, net of underwriter's commissions and offering costs. The net proceeds were placed in a trust account at JPMorgan Chase Bank, N.A. with Continental Stock Transfer & Trust Company acting as trustee.

The Company's management has broad discretion with respect to the specific application of the net proceeds of the Offering, although substantially all of the net proceeds of the Offering are intended to be generally applied toward consummating one or more business combinations with an operating company. The Company's initial business combination must occur with one or more target businesses that collectively have a fair market value of at least 80% of the initial amount held in the trust account (excluding the amount held in the trust account representing the underwriters' deferred commission). If the Company acquires less than 100% of one or more target businesses, the aggregate fair market value of the portion or portions the Company acquires must equal at least 80% of the amount held in the trust account. In no event, however, will the Company acquire less than a controlling interest of a target business (that is, not less than 50% of the voting equity interests of the target business).

The Company's efforts in identifying prospective target businesses will not be limited to a particular industry. Instead, the Company intends to focus on various industries and target businesses that may provide significant opportunities for growth. However, the Company will not complete a business combination with an entity engaged in the energy industry as its principal business or whose principal business operations are conducted outside of the United States or Canada.

Proceeds of the Offering and Private Placement are held in a trust account and will only be released to the Company upon the earlier of: (i) the consummation of an initial business combination; or (ii) the Company's liquidation. The proceeds in the trust account include the underwriter's deferred commission which equals 3.15% of the gross proceeds of the Offering. Upon consummation of an initial business combination, approximately \$17.4 million, which constitutes the underwriters' deferred commissions, will be paid to the underwriters from the funds held in the trust account. The proceeds outside of the trust account as well as the interest income of up to \$6.6 million (net of taxes payable), earned on the trust account balance that may be released to the Company may be used to pay for business, legal and accounting due diligence on prospective acquisitions and continuing general and administrative expenses; provided, however, that after such release there remains in the trust account a sufficient amount of interest income previously earned on the trust account balance to pay any taxes on such \$6.6 million of interest income.

The Company will seek stockholder approval before it will effect an initial business combination, even if the business combination would not ordinarily require stockholder approval under applicable law. In connection with the stockholder vote required to approve any initial business combination, the Company's existing stockholders,



HH-HACI, L.P., and certain of the Company's directors have agreed to vote the founder's shares (as defined in Note 6 below) owned by them immediately before the Offering in accordance with the majority of the shares of common stock voted by the public stockholders. Public stockholders is defined as the holders of common stock sold as part of the units, as defined, in the

F-8

---

**Table of Contents**

Offering or in the aftermarket. The Company will proceed with an initial business combination only if (i) the business combination is approved by a majority of votes cast by the Company's public stockholders at a duly held stockholders meeting, (ii) an amendment to the Company's amended and restated certificate of incorporation to provide for the Company's perpetual existence is approved by holders of a majority of the Company's outstanding shares of common stock, (iii) public stockholders owning no more than 30% (minus one share) of the Company's outstanding shares of common stock sold in the Offering both vote against the business combination and exercise their conversion rights, and (iv) the Company has confirmed that it has sufficient cash resources to pay both (x) the consideration required to close its initial business combination, and (y) the cash due to public stockholders who vote against the business combination and who exercise their conversion rights. If the conditions to consummate the proposed business combination are not met but sufficient time remains before the Company's corporate life expires, the Company may attempt to effect another business combination. With respect to a business combination which is approved and consummated, any Public stockholder who voted against the business combination may exercise their conversion rights as described above, and demand that the Company redeem their shares for cash from the trust fund. Accordingly, the Company has classified 30% (minus one share) of the Public stockholders' shares as temporary equity in the accompanying balance sheet.

If the initial business combination is approved and completed, each public stockholder voting against such qualifying business combination will be entitled to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (including deferred underwriting commissions and interest earned on the trust account, net of income taxes payable on such interest and net of interest income of up to \$6.6 million, on the trust account released to fund the Company's working capital requirements). Public stockholders who convert their stock into their share of the trust account will continue to have the right to exercise any warrants they may hold.

The Company will liquidate and promptly distribute only to the public stockholders the amount in the trust account, less any income taxes payable on interest income and any interest income of up to \$6.6 million, on the balance (net of taxes payable) of the trust account previously released to the Company to fund its working capital requirements, plus any remaining net assets if the Company does not consummate a business combination by September 28, 2009. If the Company fails to consummate such business combination by September 28, 2009, the Company's amended and restated certificate of incorporation provides that the Company's corporate existence will automatically cease on September 28, 2009, except for the purpose of winding up its affairs and liquidating. In the event of liquidation, the per share value of the residual assets remaining available for distribution (including trust account assets) may be more or less than the initial public offering price per share (assuming no value is attributed to the warrants contained in the units to be offered in the Offering discussed in Note 3). In the event of the consummation of a successful initial business combination, the earnings per share will be affected by the dilution attributable to the sponsors shares and warrants.

While the Company hopes to successfully complete a business combination within the time frame discussed above, there is no assurance that the Company will be able to successfully complete a business combination within such time frame. That factor and the Company's declining cash available outside of the Trust Account raise substantial doubt about the Company's ability to continue as a going concern.

**Note 2 Summary of Significant Accounting Policies*****Cash and Cash Equivalents***

The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents. Such cash and cash equivalents, at times, may exceed federally insured limits. The Company maintains its accounts with financial institutions with high credit ratings.

***Cash and Cash Equivalents Held in Trust***

Cash and cash equivalents held in trust are with JPMorgan Chase Bank, N.A., and Continental Stock Transfer & Trust Company serves as the trustee. The Company considers all highly liquid investment placed in trust with original maturities of three months or less to be cash equivalents. These consist of JPMorgan U.S. Treasury Plus Money Market Fund of \$250,007,027 plus accrued interest of \$16,527 at December 31, 2008. There were no cash and cash equivalents held in trust at December 31, 2008. Subsequent to December 31, 2008, we invested the funds previously

held in the JPMorgan U.S. Treasury Plus Money Market Fund in U.S. Treasury bills with a maturity of 180 days or less.

F-9

---

**Table of Contents**

***Marketable Securities Held in Trust***

Marketable securities held in trust are with JPMorgan Chase Bank, N.A., and Continental Stock Transfer & Trust Company serves as the trustee. The marketable securities held in trust are invested in cash, cash equivalents and U.S. Treasury bills with a maturity of 180 days or less.

***Earnings per Common Share***

Earnings per share is computed by dividing net income attributable to common stockholders by the weighted average number of common shares outstanding for the period. The weighted average common shares issued and outstanding of 52,440,001 used for the computation of basic and diluted earnings per share for the twelve month period ending December 31, 2008, takes into effect the 69,000,000 shares outstanding for the entire period (less 16,559,999 shares subject to possible redemption). The weighted average common shares issued and outstanding of 24,002,143 used for the computation of basic and diluted earnings per share for the period February 26, 2007 (inception) to December 31, 2007, takes into effect the 13,800,000 shares outstanding for the entire period and the 55,200,000 shares (less 16,559,999 shares subject to possible redemption) sold in the initial public offering and outstanding since October 3, 2007.

The 76,000,000 warrants related to the Offering, Private Placement and the founder's unit are contingently issuable shares and are excluded from the calculation of diluted earnings per share.

***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

***Income Taxes***

Deferred income taxes are provided for the differences between the bases of assets and liabilities for financial reporting and income tax purposes. A valuation allowance is established when necessary to reduce deferred tax assets to the amount expected to be realized. The Company recorded a deferred income tax asset for the tax effect of certain temporary differences, aggregating approximately \$269,000 and \$155,000 at December 31, 2008 and 2007, respectively.

***Deferred Acquisition Costs***

As of December 31, 2008, the Company has accumulated approximately \$3.5 million in deferred costs related to the proposed Graham Transaction. These costs are capitalized contingent upon any completion of such transaction. Deferred acquisition costs consist primarily of approximately \$1.5 million for legal services, \$1.6 million for due diligence services and \$0.4 million for other related deal expenses.

***Recent Accounting Pronouncements***

In December 2007, the Financial Accounting Standards Board issued Statement No. 141(revised 2007), *Business Combinations*, ( SFAS 141R ). SFAS 141R establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling interest in the acquiree and the goodwill acquired. SFAS 141R also establishes disclosure requirements to enable the evaluation of the nature and financial effects of the business combination. This statement is effective for us beginning January 1, 2009. SFAS 141R will be applied prospectively to business combinations with an acquisition date on or after the effective date. As a result of the adoption of SFAS 141R, we expect that approximately \$3.5 million will be expensed in our financial statements on January 1, 2009 due to the deferred acquisition costs. SFAS 141R no longer allows deferral of these costs.

Management does not believe that any recently issued, but not effective, accounting standards, if currently adopted, would have a material effect on the Company's financial statements, other than the adoption of SFAS 141R described above.

**Table of Contents****Note 3 Initial Public Offering**

On October 3, 2007, the Company sold to the public 55,200,000 units at a price of \$10.00, which included 7,200,000 shares issued pursuant to the underwriter's over-allotment option. Each unit consists of one share of the Company's common stock, \$0.0001 par value, and one warrant.

Each warrant entitles the holder to purchase from the Company one share of common stock at a price of \$7.50 on the later of completion of the initial business combination or twelve months from the date of the closing of the Offering, provided in each case that the Company has an effective registration statement in effect covering the shares of common stock issuable upon exercise of the warrants. The warrants expire September 28, 2011 unless earlier redeemed. Once the warrants become exercisable, they will be redeemable in whole but not in part at a price of \$0.01 per warrant upon a minimum of 30 days' notice, but such redemption may only occur if the last sale price of the common stock equals or exceeds \$13.75 per share for any 20 trading days within a 30 trading day period ending three business days prior to the time that the Company sends the notice of redemption to the warrant holders.

**Note 4 Proposed Business Combination**

On July 1, 2008, the Company entered into an Equity Purchase Agreement (the "Purchase Agreement"), with GPC Holdings, L.P., a Pennsylvania limited partnership, Graham Packaging Corporation, a Pennsylvania corporation, Graham Capital Company, a Pennsylvania limited partnership, Graham Engineering Corporation, a Pennsylvania corporation, BMP/Graham Holdings Corporation, a Delaware corporation, GPC Capital Corp. II, a Delaware corporation ( "Graham IPO Corp. "), Graham Packing Holdings Company, a Pennsylvania limited partnership, and the other parties signatory thereto, pursuant to which through a series of transactions (collectively, the "Graham Transaction"), the Company's stockholders would acquire a majority of the outstanding common stock of Graham IPO Corp., par value \$0.01 per share, and Graham IPO Corp. would own, either directly or indirectly, 100% of the partnership interests of Graham Packaging Company, L.P., a Delaware limited partnership.

On January 27, 2009 the Company entered into a First Amendment (the "Amendment") to the Purchase Agreement. The Amendment stipulates that (i) the Company and Blackstone Capital Partners III Merchant Banking Fund L.P., as the Seller Representative, each have the right to terminate the Purchase Agreement by giving written notice to the other and (ii) each party is released from the Purchase Agreement's exclusivity provisions and is permitted to consider other possible transactions.

At December 31, 2008, \$3,499,953 of deferred acquisition costs included on the Company's balance sheet consisted principally of legal fees, accounting fees, consulting and advisory fees and other outside costs incurred by the Company during 2008 that are related to the Graham Transaction. These costs will be expensed on January 1, 2009 with the adoption of SFAS 141R.

**Note 5 Marketable Securities Held in Trust**

The carrying amount, including accrued interest, gross unrealized holding gains, gross unrealized holding losses, and fair value of held-to-maturity treasury securities by major security type and class of security at December 31, 2008 and 2007 are as follows:

	Carrying amount	Accrued Interest	Gross unrealized holding gains	Gross unrealized holding (losses)	Fair value
<b>At December 31, 2008</b>					
Held to Maturity:					
U.S. Treasury Bills	\$ 289,746,162	\$ 371,783	\$	\$	\$ 290,117,945
	Carrying amount	Accrued Interest	Gross unrealized holding gains	Gross unrealized holding (losses)	Fair value
<b>At December 31, 2007</b>					
Held to Maturity:					

Edgar Filing: Hicks Acquisition CO I Inc. - Form 10-K

U.S. Treasury Bills	\$ 536,148,000	\$ 5,153,789	\$	\$	\$ 541,301,789
---------------------	----------------	--------------	----	----	----------------

The treasury bills classified as held-to-maturity mature within one year.

F-11

---

**Table of Contents****Note 6 Note Payable to Affiliate and Related-Party Transactions**

The Company issued an aggregate of \$225,000 in an unsecured promissory note to Thomas O. Hicks, the Company's founder and chairman of the board, on March 1, 2007. The note is non-interest bearing and is payable on the earlier of December 31, 2007 or the consummation of an initial public offering by the Company. With the proceeds of the Offering, this note was paid in full effective October 3, 2007.

The Company has agreed to pay up to \$10,000 a month in total for office space and general and administrative services to Hicks Holdings Operating LLC ( Hicks Holdings ), an affiliate of the Company's founder and chairman of the board, Mr. Hicks. Services commenced after the effective date of the offering and terminate upon the earlier of: (i) the consummation of an initial business combination; or (ii) the liquidation of the Company. During 2008, the Company expensed \$405,675 due to Hicks Holdings and affiliates of which, \$63,705, is outstanding at year end. This amount includes \$120,000 for rent and overhead and \$285,675 for reimbursable expenses primarily related to travel. During 2007, the Company expensed \$117,278 due to Hicks Holdings, which includes \$30,000 for rent and overhead as well as \$87,278 for reimbursable expenses primarily relating to travel-related and business insurance expenses. At year end 2007, \$117,278, is outstanding to be paid.

On October 3, 2007, the sponsor, through the Private Placement, purchased 7,000,000 Sponsor Warrants at \$1.00 per warrant (for a total purchase price of \$7,000,000) from the Company pursuant to Regulation D. Mr. Hicks, the Company's founder and chairman of the board, is the sole member of HH-HACI GP, LLC, the general partner of HH-HACI, L.P. In addition, Mr. Hicks, Joseph B. Armes, the Company's president, chief executive officer, chief financial officer and one of our directors, Eric C Neuman, a senior vice president of the Company, Robert M. Swartz, a senior vice president of the Company, Christina Weaver Vest, a senior vice president of the Company, Thomas O. Hicks, Jr., the Company's secretary and a vice president, and Mack H. Hicks, a vice president of the Company, are each limited partners of HH-HACI, L.P. The Sponsor will be permitted to transfer the warrants held by it to the Company's officers and directors, and other persons or entities affiliated with the Sponsor, but the transferees receiving such securities will be subject to the same agreements with respect to such securities as the Sponsor. Otherwise, these warrants will not be transferable or salable by the Sponsor (except as described below) until 180 days after the completion of an initial business combination. The Sponsor Warrants will be non-redeemable so long as they are held by the Sponsor or the Sponsor's permitted transferees. If the Sponsor Warrants are held by holders other than the Sponsor or its permitted transferees, the Sponsor Warrants will be redeemable by us and exercisable by the holders on the same basis as the warrants including in the units being sold in this offering. Otherwise, the Sponsor Warrants have terms and provisions that are identical to those of the warrants being sold as part of the units in the proposed offering, except that such Sponsor Warrants may be exercised on a cashless basis. The purchase price of the Sponsor Warrants has been determined to be the fair value of such warrants as of the purchase date.

Mr. Hicks, the Company's founder and chairman of the board is required, pursuant to a written co-investment securities purchase agreement, to purchase, directly or through a controlled affiliate, 2,000,000 co-investment units at a price of \$10.00 per unit for an aggregate purchase price of \$20.0 million in a private placement that will occur immediately prior to the consummation of the initial business combination.

The co-investment units will be identical to the units sold in the proposed public offering, except that (i) the co-investment warrants will not be redeemable by us so long as they are held by Mr. Hicks, a controlled affiliate of Mr. Hicks who purchases the co-investment units or their permitted transferees, and (ii) with limited exceptions, the co-investment shares and co-investment warrants (including the common stock issuable upon exercise of the co-investment warrants) may not be transferred, assigned or sold until 180 days after the completion of our initial business combination. The proceeds of the sale of the co-investment units will not be deposited into the trust account and will not be available for distribution to the public stockholders in the event of a liquidation of the trust account, or upon conversion of shares held by public stockholders.

**Note 7 Founder's Units**

On March 1, 2007, the Sponsor purchased 11,500,000 founder's units (after giving effect to a stock split, discussed in greater detail in Note 9, approved by the Company's board of directors in July 2007) for an aggregate amount of \$25,000, or \$0.0022 per unit. On August 30, 2007, the sponsor transferred an aggregate of 230,000 of these units to William H. Cunningham, William A. Montgomery, Brian Mulrone and William F. Quinn, each of whom is a

member of the Company's board of directors. Each founder's unit consists of one share of common stock (a founder's share), and one warrant to

F-12

---



**Table of Contents**

purchase common stock (a founder's warrant). The Sponsor, together with Messrs. Cunningham, Montgomery, Mulrone and Quinn, are referred to as the initial stockholders.

On September 27, 2007, through a stock dividend (discussed in Note 9), the founder's units increased to 13,800,000. This stock dividend also increased the number of shares transferred to certain members of the Company's board of directors to 276,000.

The founder's shares are identical to the shares of common stock included in the Offering, except that: the founder's shares are subject to the transfer restrictions described below;

the initial stockholders have agreed to vote the founder's shares in the same manner as a majority of the public stockholders in connection with the vote required to approve a business combination;

the initial stockholders will not be able to exercise conversion rights granted to the public stockholders with respect to the founder's shares; and

the initial stockholders have waived their rights to participate in any liquidation distribution with respect to the founder's shares if the Company fails to consummate a business combination.

The founder's warrants are identical to those included in the units sold in the Offering, except that: the founder's warrants are subject to the transfer restrictions described below;

the founder's warrants may not be exercised unless and until the last sale price of the Company's common stock equals or exceeds \$13.75 per share for any 20 days within any 30 trading day period beginning 90 days after the Company's initial business combination and there is an effective registration statement covering the shares of common stock issuable upon exercise of the warrants;

the founder's warrants will not be redeemable by the Company as long as they are held by our initial stockholders or their permitted transferees; and

the founder's warrants may be exercised by the holders on a cashless basis.

The initial stockholders have agreed, except in limited circumstances, not to sell or otherwise transfer any of the founder's shares or founder's warrants until 180 days after the completion of the Company's initial business combination. However, the initial stockholders will be permitted to transfer the founder's shares and founder's warrants to the Company's officers and directors, and other persons or entities affiliated with the initial stockholders, provided that the transferees receiving such securities will be subject to the same agreements with respect to such securities as the initial stockholders.

**Note 8 Stockholder's Equity**

***Preferred Stock***

The Company is authorized to issue up to 1,000,000 shares of preferred stock, par value \$0.0001 with such designations, voting and other rights and preferences as may be determined from time to time by the board of directors. No shares were issued and outstanding as of December 31, 2008 or 2007.

***Common Stock***

The authorized common stock of the Company includes up to 225,000,000 shares. The holders of the common shares are entitled to one vote for each share of common stock. In addition, the holders of the common stock are entitled to receive dividends when, as and if declared by the board of directors. At December 31, 2008 and 2007, the Company had 69,000,000 shares of common stock issued and outstanding.

**Table of Contents****Note 9 Stock Split**

On September 27, 2007, the board of directors as of that date (Mr. Hicks and Mr. Armes) approved a stock dividend of 0.2 shares of common stock for every share of common stock issued and outstanding as of September 27, 2007. The stock dividend was granted in connection with an increase in the number of units being offered in the Offering. Total common shares increased from 11,500,000 shares to 13,800,000 shares as a result of the stock dividend. The par value of the stock remained \$0.0001 per share.

On July 24, 2007, the board of directors approved a 1.15-for-1 stock split resulting in an increase of common shares from 10,000,000 shares to 11,500,000 shares. The par value of the common stock remained \$0.0001 per share. The stock split approved July 24, 2007 is reflected in the per share data in the accompanying financial statements as if it occurred on February 26, 2007.

**Note 10 Earnings per Common Share**

The following table sets forth the computation of basic and diluted earnings per common share:

	<b>Twelve months ending December 31, 2008</b>	<b>February 26, 2007 (inception) through December 31, 2007</b>
Net income attributable to common stockholders	\$ 2,498,168	\$ 1,697,250
Basic and diluted earnings per common share:		
Weighted average common shares outstanding	52,440,001	24,002,143
Net income per common share basic and diluted	\$ 0.05	\$ 0.07

**Note 11 Income Taxes**

Income tax expense is as follows:

	<b>Twelve months ending December 31, 2008</b>	<b>For the Period from February 26, 2007 (inception) to December 31, 2007</b>
<b>Current:</b>		
Federal	\$ 2,168,486	\$ 1,555,403
State		
Total	\$ 2,168,486	1,555,403
<b>Deferred:</b>		
Federal	(114,554)	(154,751)
State		
Total	(114,554)	(154,751)
Total income tax expense	\$ 2,053,932	\$ 1,400,652

Edgar Filing: Hicks Acquisition CO I Inc. - Form 10-K

Income taxes differ from the expected statutory income tax benefit, by applying the U.S. federal income tax rate of 34% to pretax earnings due to the following:

	<b>Twelve months ending December 31, 2008</b>	<b>For the Period from February 26, 2007 (inception) to December 31, 2007</b>
Expected statutory income tax expense	\$ 2,053,892	\$ 1,400,232
Amounts not deductible for income tax	40	420
State taxes, net of federal benefit		
Change in valuation allowance		
<b>Total income tax expense</b>	<b>\$ 2,053,932</b>	<b>\$ 1,400,652</b>

F-14

---

**Table of Contents**

The tax effects of temporary differences that give rise to significant portions of the deferred income tax assets and deferred income tax liabilities are presented below:

	<b>December 31, 2008</b>	<b>December 31, 2007</b>
<b>Net non-current deferred income tax assets (liabilities):</b>		
Deferred income tax assets:		
Start up and organization costs	\$ 249,173	\$ 249,173
Deferred acquisition costs	40,896	
Non-current deferred income tax assets	290,069	249,173
Deferred income tax liabilities:		
Prepaid insurance		(90,269)
Amortization	(20,764)	(4,153)
Non-current deferred income tax liabilities	(20,764)	(94,422)
Less: Valuation allowance		
Net non-current deferred income tax asset	269,305	154,751
Total deferred income tax asset	\$ 269,305	\$ 154,751

Management believes it is more likely than not that results of future operations will generate sufficient taxable income to realize the deferred tax assets.

**Note 12 Quarterly Results of Operations (Unaudited)**

The following table sets forth unaudited quarterly results of operations for the year ended December 31, 2008 and the period from February 26, 2007 (inception) through December 31, 2007. This unaudited quarterly information has been derived from the Company's unaudited financial statements and, in the Company's opinion, includes all adjustments, including normal recurring adjustments, necessary for a fair presentation of the information for the periods covered. The operating results for any quarter are not necessarily indicative of the operating results for any future period.

	<b>Three Months Ended</b>				<b>Year Ended</b>
	<b>March 31, 2008</b>	<b>June 30, 2008</b>	<b>September 30, 2008</b>	<b>December 31, 2008</b>	<b>December 31, 2008</b>
Loss from operations	\$ (288,912)	\$ (336,627)	\$ (280,117)	\$ (486,605)	\$ (1,392,261)
Net income attributable to common stock	\$ 1,119,858	\$ 498,901	\$ 648,696	\$ 230,713	\$ 2,498,168
Earnings per share:					
Basic and diluted	\$ 0.02	\$ 0.01	\$ 0.01	\$ 0.01	\$ 0.05
Weighted average shares outstanding:					
Basic and diluted	52,440,001	52,440,001	52,440,001	52,440,001	52,440,001

	<b>The 34 day period ended</b>	<b>Three Months Ended</b>			<b>For the period from February 27, 2007</b>
	<b>March 31, 2007</b>	<b>June 30, 2007</b>	<b>September 30, 2007</b>	<b>December 31, 2007</b>	<b>(inception) to December 31, 2007</b>
Loss from operations	\$ (2,176)	\$ (57,595)	\$ (670,785)	\$ (188,352)	\$ (918,908)
Net (loss) income attributable to common stock	\$ (2,176)	\$ (57,595)	\$ (670,785)	\$ 2,427,806	\$ 1,697,250
Earnings (loss) per share: Basic and diluted	\$ (0.00)	\$ (0.01)	\$ (0.05)	\$ 0.05	\$ 0.07
Weighted average shares outstanding:					
Basic and diluted	11,500,000	11,500,000	12,415,000	52,440,001	24,002,143

F-15