

TOUSA INC
Form 8-K
March 25, 2008

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

March 21, 2008

TOUSA, Inc.

(Exact name of registrant as specified in its charter)

Delaware

001-32322

76-0460831

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

4000 Hollywood Blvd., Suite 500 N,
Hollywood, Florida

33021

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

954-364-4000

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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Item 1.01 Entry into a Material Definitive Agreement.

Item 1.01 Entry into a Material Definitive Agreement.

On March 15, 2008, TOUSA, Inc. ("TOUSA" or the "Company"), certain subsidiaries of the Company (the "Subsidiary Borrowers"), Citicorp North America, Inc., as Administrative Agent (the "Agent"), Citicorp North America, Inc., as Lender, and Citibank, N.A., as Issuer, entered into Amendment No. 1 (the "DIP Amendment") to Senior Secured Super-Priority Debtor In Possession Credit and Security Agreement dated as of January 29, 2008 (the "DIP Credit Agreement"). The DIP Credit Agreement was approved on an interim basis on January 31, 2008 by the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division (the "Bankruptcy Court") in connection with the commencement of cases by TOUSA and certain of its subsidiaries under Chapter 11 of Title 11 of the United States Code (the "Interim DIP Order"). Pursuant to the DIP Amendment, the DIP Credit Agreement was amended to, among other things, (i) extend the Interim Termination Date (as defined in the DIP Amendment) until April 30, 2008 or, at the request of TOUSA and with the written consent of the Agent prior to April 30, 2008, a date not later than May 30, 2008 and (ii) modify the "Base Rate" of interest to the greater of (a) the interest rate per annum publicly announced by the Agent as its base rate, and (b) the Federal Funds Rate plus 0.50% per annum, with a minimum of 5.75% per annum. In addition, prior to the Interim Termination Date, no Eurodollar Rate Loans will be permitted.

In accordance with the terms of the Interim DIP Order, the DIP Amendment became effective on March 21, 2008 without further order of the Bankruptcy Court.

The foregoing description the DIP Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the DIP Amendment, a copy of which was filed as an exhibit to this Current Report on Form 8-K and is incorporated herein by reference thereto.

Item 7.01 Regulation FD Disclosure.

On March 20, 2008, TOUSA and certain of its affiliates (the "Debtors") filed their unaudited combined monthly operating report for the period January 29, 2008 to February 29, 2008 (the "Monthly Operating Report") with the Bankruptcy Court. Exhibit 99.1 to this Current Report on Form 8-K contains the notice relating to the Monthly Operating Report as filed with the Bankruptcy Court.

The Monthly Operating Report is limited in scope, covers a limited time period and has been prepared solely for the purpose of complying with reporting requirements of the Bankruptcy Court and the title 11 of the United States Code (the "Bankruptcy Code"). The financial information contained in the Monthly Operating Report is preliminary and unaudited and does not purport to show the financial statements of any of the Debtors in accordance with accounting principles generally accepted in the United States of America ("GAAP") and, therefore, may exclude items required by GAAP, such as certain reclassifications, eliminations, accruals and disclosure items. The Company cautions readers not to place undue reliance on the Monthly Operating Report. The Monthly Operating Report may be subject to revision. The Monthly Operating Report is in a format required by the Bankruptcy Court and the Bankruptcy Code and should not be used for investment purposes. The information in the Monthly Operating Report should not be viewed as indicative of future results.

Additional information about the Debtors' chapter 11 cases pending in the Bankruptcy Court, including access to the Monthly Operating Report, court documents and other general information about the chapter 11 cases, is available online at www.tousadocket.com.

Limitation on Incorporation by Reference

The Monthly Operating Report is being furnished for informational purposes only and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended. Registration statements or other documents filed with the U.S. Securities and Exchange Commission ("SEC") shall not incorporate the Monthly Operating Report or any other information set forth in this Current Report on Form 8-K by reference, except as otherwise expressly stated in such filing. This Current Report on Form 8-K will not be deemed an admission as to the materiality of any information in the report that is required to be disclosed solely by Regulation FD.

Item 9.01 Financial Statements and Exhibits.

10.1 - Amendment No. 1 Senior Secured Super-Priority Debtor In Possession Credit and Security Agreement by and among the Company, the Subsidiary Borrowers, the Lenders and the Administrative Agent dated as of March 15, 2008.

99.1 - Notice of Monthly Operating Report for the Period from January 29, 2008 to February 29, 2008

Forward-looking statements

This Current Report on Form 8-K (including the exhibits) may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding the intent, belief or current expectations of the Company and its management which are made with words such as “will,” “expect,” “believe,” and similar words. Any such forward-looking statements are not guarantees of future performance and involve a number of risks and uncertainties that could materially affect actual results such as, but not limited to: (i) the Company’s ability to continue as a going concern; (ii) the ability of the Company to operate pursuant to the terms of its debtor-in- possession credit facility; (iii) the Company’s ability to obtain court approval with respect to motions in the Chapter 11 proceeding; (iv) the ability of the Company to develop, confirm and consummate one or more plans of reorganization with respect to the Chapter 11 proceeding; (v) risks associated with third parties seeking and obtaining court approval to terminate or shorten the exclusivity period for the Company to propose and confirm one or more plans of reorganization, for the appointment of a Chapter 11 trustee or to convert the cases to Chapter 7 cases; (vi) the ability of the Company to obtain and maintain normal terms with vendors and service providers; (vii) the Company’s ability to maintain contracts that are critical to its operations; (viii) the potential adverse impact of the Chapter 11 cases on the Company’s liquidity or results of operations; (ix) the ability of the Company to fund and execute its business plan;(x) the ability of the Company to attract, motivate and/or retain key executives and employees; (xi) the ability of the Company to attract and retain homebuyers and land purchasers; and (xii) other risks and factors regarding the Company and the home building industry identified from time-to-time in the Company’s reports filed with the SEC, including the risk factors identified in its Annual Report on Form 10-K for the year ended December 31, 2006, and its Quarterly Reports on Form 10-Q for the quarters ended March 31, June 30, and September 30, 2007, which can also be found on the Company’s website at www.tousa.com. All information set forth herein is as of today’s date, and the Company undertakes no duty to update this information.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TOUSA, Inc.

March 25, 2008

By: /s/ Angela Valdes

Name: Angela Valdes

Title: Vice President and Chief Accounting Officer

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Exhibit Index

| Exhibit No. | Description |
|--------------------|---|
| 10.1 | Amendment No. 1 to Senior Secured Super-Priority Debtor In Possession Credit and Security Agreement |
| 99.1 | Notice of Filing Monthly Operating Report for the Period from January 29, 2008 to February 29, 2008 |