

NAVY SEC-2 FOI 1A (XXXXXXXXXXXXXXXXXXXXXXXXXXXX)

From: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 Sent: 14 August 2014 22:12
 To: NAVY SEC-COMD SEC (Ahern, Giles SCS1)
 Cc: NAVY SEC-3RD SECTOR HERITAGE XXXXXXXXXXXXXXXXXXXX
 Subject: OMEX - 10Q SEC Statement
 Attachments: MESONCapital.Aug2014.pdf

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Dear Giles,
 I hope you are well and things are not too grim workwise. (XXXXXXXXXXXXXXXX) before he left, asked me to keep supplying MOD with a copy of these periodic financial assessments of OMEX. I am afraid much of it is beyond my comfort zone but my wife (XXXXX) who is a Chartered Accountant and lectures in Financial Reporting at post graduate level, tells me the level of analysis by Meson is impressive and the report makes grim reading. Hopefully OMEX will not go under, as that would raise further complications re HMS Victory and the contrt with MHF.

Let me know if, contrary to (XXXXXX) request, you want me to stop forwarding these periodic reports.

Best wishes,
 (XXXXXX)



Meson Capital Partners, Meson Capital (205 articles)
Long/short equity, activist investor, hedge fund manager
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Odyssey's SEC 10Q: Out Of Cash In Weeks, Neptune Minerals Declines -94%

Aug. 14, 2014 11:27 AM ET | About: Odyssey Marine Exploration, Inc. (OMEX)
Disclosure: The author is short OMEX. (More...)

Summary

- OMEX's legal 10Q filed with the SEC paints a dramatically different and darker picture than the vague, hype-filled PR and conference call which is caveated by a safe harbor disclaimer.
- Out of cash in weeks - Legal 10Q: "Our consolidated cash balance at June 30, 2014 was \$5.7 million which is sufficient to support approximately two months of operations".
- Or Get ready for dilution - Legal 10Q: "We may enter into convertible debt deals... At times, conversion prices could be lower than market price of our common stock".
- Look out Mako & Oceanica - OMEX re-traded and crammed down junior securities at Neptune Minerals, officially valuing it at \$1/share, a decline of 94% from \$17.50 last reported.
- \$10mm marketing agreement "Binding LOI" (an oxymoron) hyped on the conference call has NOT closed and seems dubious as OMEX does not have title to SSCA coins.

After Odyssey Marine Exploration (NASDAQ:OMEX)'s Q1 disastrous conference call due to critical questions piqued by our assessment of the Q1 10-Q (Odyssey Marine: Shrinking Cash Position Fails To Cover Current Bills, CEO Greg Stemm Must Go), OMEX management was clever enough this time to release the 10-Q immediately before the conference call so that nobody would have time to read it and form critical questions. Most investors don't understand the difference between the 10-Q, which is a legal document filed with the SEC and the press releases and conference calls. The difference is that lying in a 10-Q with the SEC can mean serious legal sanctions whereas false statements in a press release or conference call are protected by a "safe harbor" disclaimer: that boilerplate that few investors read allows companies to basically say anything they want under the caveat emptor of "forward looking statement." The OMEX Q2 10-Q legal document and conference call / PR is one of the most divergent we have ever seen. As a father may tell his daughter interested in dating a boy: pay attention to what he DOES (SEC Legal filings) not what he SAYS (PR/Conf calls)...

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We have made dozens of well researched statements about OMEX, all backed by hard facts and have included the referenced, public documents linked in those statements. We have no need here to refute blanket dismissals of those claims with no supporting evidence made by OMEX

management. There are enough new facts to focus on that are important to shareholders that OMEX management omitted from their vague, hype filled conference call.

CEO Transition a Step in the Right Direction but Too Little Too Late

First, to give some credit to the OMEX board of directors, we applaud the decision to remove Greg Stemm as CEO. We advocated this last quarter and are impressed with the decisive action. Unfortunately as Warren Buffett says, "When a manager with a reputation for brilliance takes the helm at a business with a terrible reputation, it is usually the latter that remains intact." The unending losses and unviability of the treasure hunting business do not provide incoming CEO Mark Gordon an easy task. In addition, former OMEX employees have recounted to us how Greg Stemm has described COO Mark Gordon as his "Sock Puppet" does not leave us with a feeling of confidence that Gordon will be able to hold the house of cards in order for very long after the Founder Stemm has left the sinking ship.



SEC 10-Q: OMEX language appears to be a CYA for Bankruptcy Filing to be Made Shortly or Dilutive Equity Raise

*If cash inflow is not sufficient to meet our desired projected business plan requirements, we will be required to follow our contingency business plan which is based on curtailed expenses and requires less cash inflows. We may also have to revert to capital raises that include equity and/or convertible debt to allow us to continue as a going concern. **Our consolidated cash balance at June 30, 2014 was \$5.7 million which is sufficient to support approximately two months of operations....** While we have been successful in generating cash inflows and raising the necessary funds in the past, there can be no assurance that we can continue to do so in 2014 or the following twelve months. ...*

We may enter into convertible debt deals whereas our shares may be acquired from time to time upon conversion of the outstanding debt. At times, conversion prices could be lower than market price of our common stock at the time of conversion. We previously had outstanding senior convertible debt that was converted at a discount to market

-OMEX SEC 10-Q Q2 filed Aug 11, 2014 (emphasis ours)

New sources of Cash mentioned in PR / Conf Call Highly Suspicious and not Mentioned in Subsequent Events Section of 10-Q

Longs will no doubt highlight that this was as of June 30, 2014 and since then they have claimed to draw additional cash from the Fifth Third \$10mm credit line and also have a new \$10mm "marketing agreement "Binding LOI". These two sources of cash are only mentioned in the press release, protected by a 'forward looking statement' safe harbor and are NOT mentioned in the 10-Q. Unlike in Q1 where the \$10mm Fifth Third credit line was announced and properly documented, these sources of cash appear far

more tenuous and dubious.

Firstly: We accurately predicted that \$7.5mm would be the max allowable draw on the \$10mm Fifth Third Credit line back on July 17th (SSCA Inventory Unsealed: Confirms Disappointing Salvage, Meson's Estimates). Our July 16 bankruptcy prediction was always caveated on them being unable further draw on this line, they have bought themselves a few more weeks from now it appears. 10-Q: "At June 30, 2014, the outstanding loan balance on this credit facility was \$7,436,514"

Secondly: We find it highly suspicious that the CFO would announce that they have made an additional draw on the Fifth Third \$10mm credit line given that A) the Odyssey Explorer is still at sea (returning today) and the collateral needs to be on shore to allow a further cash draw and B) He was evasive and would not answer questions about the amount of the credit line draw. Regardless, this amount is likely to be small - perhaps max \$1mm and we will know in the next few days based on the inventory sheets from the court.

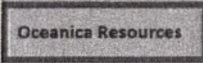
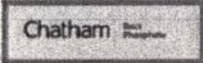
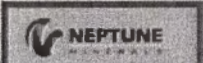
Thirdly: A \$10mm loan "Binding LOI" is referenced on the PR but not in the 10-Q. If it were a material event, it would legally be required to be filed with the SEC. So either: A) it is NOT material because the only thing "binding" about the LOI is confidentiality or some other noneconomic issue and there is still substantial uncertainty that the deal will close (CFO said it would close "in the coming days or weeks" - highly vague) or B) OMEX is failing to satisfy its SEC filing obligations. A seems more likely. Further, why would any coin dealer be willing or able to loan money to OMEX, at the brink of insolvency, while it doesn't even possess title of the coins and those coins already have a secured loan against them? This is highly suspicious and we believe this loan is unlikely to materialize.

Finally: What exactly does the CFO think "non-dilutive" means? This statement has been used repeatedly in press releases and conference calls and our version of "non-dilutive" is "that sharecount will not increase without a commensurate increase in value." However, we are befuddled what definition is being used at OMEX as the sharecount JUST in 2014 OMEX has "issued 1,290,155 shares of common stock" (Q2 10Q)

What Ever Happened to the Neptune Minerals Phosphate Project? It just officially got valued again, down -94% from the last time OMEX updated shareholders!

OMEX has been working on undersea phosphate mining for years now, Oceanica is just the most recent incarnation of this pipedream that has not been done anywhere commercially in the world, ever. Neptune Minerals, run by OMEX co-founder and former CEO, John Morris, was last valued at \$17.50/share by management, indicating a whopping \$100m+ valuation for OMEX's stake.

(click to enlarge)

Holdings	Odyssey Stake	Carrying value on Odyssey books	Value of Odyssey's stake based on recent equity transaction
 Oceanica Resources	54.6%	\$0	\$68.3M ¹
 Chatham Minerals	6.9%	\$0	\$3.3M
 NEPTUNE Minerals	30%	\$0	\$108M ¹

¹ Based solely on the price paid in recent transactions by third party investors for equity in each company

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source: ODEX Investor Presentation Oct 2013

We have previously highlighted the unusual structure of the Oceanica capital raise (Do Mako Investors Realize Their Tenuous Security Position In Oceanica?) that leaves investors in a very weak security position. With ODEX holding a senior security (the \$10mm receivable for services) and Oceanica insolvent by design, ODEX could in theory cram down and wipe out the minority shareholders at MAKO or any new investors at their whim. While some have pointed out they would have no incentive to do this - THIS IS EXACTLY WHAT JUST HAPPENED AT NEPTUNE THIS LAST QUARTER!

SEC Q2 10-Q: "during the three-months ended September 30, 2013, we, along with a second creditor, loaned funds to NMI of which our share is \$500,000..."

The note **was convertible into NMI's Class A voting shares at \$12.00 per share** upon maturity. **26 During April 2014, we modified the conversion feature** with NMI whereas, during April 2014, the note was converted into 5,225 shares of Class A Preferred non-voting stock. These shares are convertible into **522,500 shares of Class A voting shares** and require no further exchange of consideration for conversion. As a result of the conversion of the loan into equity, we recognized \$522,500 of additional investment in NMI and appropriately wrote it down to the loss in unconsolidated entity."

Note that including accrued interest this works out to a valuation of Neptune Minerals shares of about \$1.00/share vs \$17.50/share previously highlighted by management - a decline of 94% in value! ODEX's 6.7mm shares would be worth a mere \$6.7mm at best even assuming no liquidity discount. More likely these shares are worthless as we believe Neptune has ceased material operations.

Conclusion

We agree with one thing ODEX said on the conference call - investors should focus on facts and not false statements made for personal gain. We have consistently included our evidence here and have followed up in the comments section to legitimate questions. Meanwhile, the CEO is now jumping ship and the incoming CEO asks shareholders to have an "open mind" about what they are capable of while citing project economic numbers for Gairsoppa with NO EVIDENCE to support it. The FACT is that the company still lost \$10mm/year for the two years while completing by far the most successful project in its history. If it's true that the Gairsoppa created \$67mm cash inflows and only cost \$27mm (implying a project profit of \$40mm) - where did the other \$60mm of expenses go during 2012-2013? \$60mm is a huge number! If a project is profitable then ODEX should appropriately account for this in its legal SEC filings but it doesn't because

they know this is without support.

OMEX does some interesting projects but should not exist as a for-profit enterprise, it exists as a vehicle to enrich insiders who make millions while making vague promises to shareholders who need to place more "belief" on the legal SEC documents than management statements protected by safe harbor disclaimers. The wrap-up phase for OMEX's nearly 20 year history of destroying over \$190mm of shareholder value appears to already be in full gear with the Dorado Discovery Charter being terminated and we only hope the employees are treated fairly and the whopping \$4mm of payables posted last Q don't include paychecks that won't clear.

Additional disclosure: Ryan Morris, President, Meson Capital, has pledged to donate his personal profits from OMEX short sales to charity. Full disclaimer at omextruth.com

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