

FLOTEK INDUSTRIES INC/CN/
Form PRE 14A
September 04, 2009
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement Confidential, for use of the Commission only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
 Definitive Additional Materials
 Soliciting Material Pursuant to Section 240.14a-12

FLOTEK INDUSTRIES, INC.

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
 Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

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- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

- (4) Proposed maximum aggregate value of transaction:

- (5) Total fee paid:

.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

- (1) Amount Previously Paid:

- (2) Form, Schedule or Registration Statement No.:

- (3) Filing Party:

- (4) Date Filed:

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FLOTEK INDUSTRIES, INC.

2930 W. Sam Houston Pkwy N., Suite 300

Houston, Texas 77043

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON OCTOBER 29, 2009

To the Stockholders of Flotek Industries, Inc.:

At the direction of the Board of Directors of Flotek Industries, Inc. (the Company), a Delaware corporation, NOTICE IS HEREBY GIVEN that a Special Meeting of Stockholders of the Company will be held at the Flotek Corporate Office, 2930 W. Sam Houston Pkwy. N, Suite 300, Houston, Texas 77043, on Thursday, October 29, 2009 at 9:00 a.m. (local time), for the purpose of considering and voting upon the following matters:

1. The amendment of the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 40,000,000 shares to 80,000,000 shares (the Proposed Charter Amendment);
2. The approval of the ability of the Company to pay dividends in the future in respect of its shares of preferred stock by issuing shares of the Company's common stock (the Preferred Stock PIK Dividend Provision);
3. The approval of the anti-dilution price protection provision contained in certain warrants issued by the Company in a private placement in August 2009 (the Exercisable Warrant Anti-dilution Provision);
4. The approval of the contingent warrants issued by the Company in a private placement in August 2009 (the Contingent Warrants); and
5. To consider and take action upon such other matters as may properly come before the Meeting.

By order of the Board of Directors

Casey Doherty
Corporate Secretary

September , 2009

YOUR VOTE IS IMPORTANT

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TO ASSURE YOUR REPRESENTATION AT THE MEETING, PLEASE SIGN, DATE AND
RETURN YOUR PROXY AS PROMPTLY AS POSSIBLE. AN ENVELOPE, WHICH REQUIRES NO
POSTAGE IF MAILED IN THE UNITED STATES, IS ENCLOSED FOR THIS PURPOSE.

Stockholders with questions about the Special Meeting or who need assistance in voting their shares may call the Company's proxy solicitor, Innisfree M&A Incorporated, toll-free at (888) 750-5834. Banks and brokers may call collect at (212) 750-5833.

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FLOTEK INDUSTRIES, INC.

2930 W. Sam Houston Pkwy N., Suite 300

Houston, Texas 77043

PROXY STATEMENT

This Proxy Statement and the accompanying form of proxy are being sent to the stockholders of Flotek Industries, Inc. (the "Company"), a Delaware corporation, in connection with the solicitation by the Board of Directors of the Company (the "Board") of proxies to be voted at a Special Meeting of Stockholders of the Company (the "Meeting") to be held at 9:00 a.m. (local time) on Thursday, October 29, 2009 at the Flotek Corporate Office, 2930 W. Sam Houston Pkwy. N., Suite 300, Houston, Texas 77043 and at any adjournments thereof.

The Notice of Meeting, this Proxy Statement and the accompanying form of proxy are first being mailed to the stockholders on or about September 22, 2009.

Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to Be Held on October 29, 2009. The Proxy Statement is available at www.flotekind.com/proxymaterials.

At the Meeting, stockholders will be asked (i) to consider and vote upon the amendment of the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock, \$0.0001 par value per share ("common stock"), from 40,000,000 shares to 80,000,000 shares (the "Proposed Charter Amendment"); (ii) to consider and vote upon the approval of the ability of the Company to pay dividends in the future in respect of its shares of preferred stock, \$0.0001 par value per share ("preferred stock"), by issuing shares of the Company's common stock (the "Preferred Stock PIK Dividend Provision"); (iii) to consider and vote upon the approval of the anti-dilution price protection provision contained in certain warrants issued by the Company in a private placement in August 2009 (the "Exercisable Warrant Anti-dilution Provision"); (iv) to consider and vote upon the approval of the contingent warrants issued by the Company in a private placement in August 2009 (the "Contingent Warrants"); and (v) to consider and take action upon such other matters as may properly come before the Meeting.

VOTING SECURITIES

The Board has fixed the close of business on September 14, 2009, as the record date (the "Record Date") for determination of stockholders entitled to notice of, and to vote at, the Meeting. At the close of business on such date, there were outstanding and entitled to vote _____ shares of common stock of the Company, which is the Company's only authorized and outstanding class of stock entitled to vote at the Meeting.

Holders of at least one-third of the outstanding shares of common stock are required to be represented at the Meeting, in person or by proxy, to constitute a quorum. Each outstanding share of common stock as of the Record Date is entitled to one vote. There will be no cumulative voting of shares for any matter voted upon at the Meeting.

The affirmative vote of at least a majority of the shares of common stock outstanding is required to approve the Proposed Charter Amendment. In determining whether this proposal has received the requisite number of affirmative votes, abstentions and broker non-votes will have the same effect as votes against the proposal.

The affirmative vote of at least a majority of the shares of common stock represented at the Meeting is required to approve the other matters to be considered at the Meeting. In determining whether each such other proposal has received the requisite number of affirmative votes, abstentions and broker non-votes will have the same effect as votes against such proposal.

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If the enclosed form of proxy is properly executed and returned to the Company prior to or at the Meeting and is not revoked prior to its exercise, all shares of common stock represented thereby will be voted at the Meeting and, where instructions have been given by a stockholder, will be voted in accordance with such instructions.

Any stockholder executing a proxy which is solicited hereby has the power to revoke it prior to its exercise. Revocation may be made by attending the Meeting and voting the shares of common stock in person or by delivering to the Secretary of the Company at the principal executive offices of the Company located at 2930 W. Sam Houston Parkway N., Suite 300, Houston, Texas 77043, prior to exercise of the proxy, a written notice of revocation or a later-dated, properly executed proxy.

The solicitation of proxies will be by mail, but proxies also may be solicited by telephone, telegram or in person by directors, officers and other employees of the Company. The Company will bear all costs of soliciting proxies. In order to solicit proxies, the Company will also request financial institutions, brokerage houses, custodians, nominees and fiduciaries to forward proxy materials to the beneficial owners of shares of common stock as of the Record Date and will reimburse such persons for their reasonable expenses of forwarding the proxy materials in accordance with customary practice. In addition, the Company has engaged Innisfree M&A Incorporated to provide proxy solicitation services for a fee of \$15,000, plus reimbursement of out-of-pocket expenses.

Table of Contents**BENEFICIAL OWNERSHIP OF DIRECTORS AND EXECUTIVE OFFICERS**

The following table sets forth the beneficial ownership of our outstanding common stock as of September 1, 2009 by (i) each current director (including each nominee), (ii) each named executive officer of the Company identified in the Summary Compensation Table in our proxy statement for our 2009 annual meeting, and (iii) all current directors and executive officers as a group. There are currently no known beneficial owners of more than 5% of our common stock.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Number of Shares which Individual has the Right to Acquire	Total Number of Shares Beneficially Owned	Percent of Class (1)
Jerry D. Dumas, Sr. (2)	635,450	562,141	1,197,591	4.99%
Jesse E. Neyman	36,258	2,981	39,239	*
Steven A. Reeves	177,328	11,775	189,103	*
Scott D. Stanton	5,556		5,556	*
John W. Chisholm	103,835	25,389	129,224	*
James R. Massey	26,104	1,852	27,956	*
Kevin G. McMahon	22,620	1,852	24,472	*
Barry E. Stewart	71,968	25,057	97,025	*
Richard O. Wilson	93,304	25,057	118,361	*
James A. Jowett (3)	6,395		6,395	*
Lisa G. Meier (4)	40,069		40,069	*
All current directors & executive officers as a group (11)	1,218,887	656,104	1,874,991	7.8%

* Less than 1%

- (1) Based on 23,437,714 shares of common stock outstanding as of September 1, 2009. For purposes of this table, a person or group of persons is deemed to have beneficial ownership of any shares that such person or group of persons has the right to acquire within 60 days of September 1, 2009.
- (2) Includes 18,096 shares of common stock owned by Saxton River Corporation and 26,000 shares of common stock owned by Dora Tes Foundation both of which is controlled jointly by Mr. and Mrs. Dumas. Number of Shares which Individual has the Right to Acquire do not include shares issuable upon conversion of certain preferred stock or exercise of certain warrants that are not issuable within 60 days hereof as a result of provisions in the governing instruments of such preferred stock and warrants limiting the conversion or exercise thereof if such conversion or exercise would cause the holder to beneficially own more than 4.99% of our common stock.
- (3) Shares owned by Mr. Jowett as of final date of employment.
- (4) Shares owned by Ms. Meier as of final date of employment.

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**PROPOSAL 1: AMENDMENT OF AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
TO INCREASE THE AUTHORIZED NUMBER OF SHARES OF COMMON STOCK**

Our Board has unanimously approved and is submitting for stockholder approval an amendment to our Amended and Restated Certificate of Incorporation, also referred to as the Charter, to increase the number of authorized shares of common stock from 40,000,000 shares to 80,000,000 shares. The number of preferred shares (currently 100,000) will be left unchanged.

Of the 40,000,000 currently authorized shares of common stock, as of September 1, 2009, there were 23,697,430 shares issued and 23,437,714 shares outstanding (not including 259,716 shares held as treasury shares). In addition, as of September 1, 2009, 8,907,698 shares were reserved for issuance upon the conversion of outstanding convertible notes, the exercise of outstanding warrants and the exercise of outstanding stock options under our stock-based compensation plans.

If Proposal No. 1 is approved, we will file the certificate of amendment to our Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, which will become effective either upon filing or at such time as the Board determines the appropriate effective time for the increase in authorized shares, subject to Delaware law. The certificate of amendment would provide that Article FOUR of our Amended and Restated Certificate of Incorporation be amended to read as follows:

FOUR: The aggregate number of shares which the corporation shall have the authority to issue is 80,100,000, consisting of 80,000,000 shares of Common Stock, par value of \$.0001 per share, and 100,000 shares of Preferred Stock, par value of \$.0001 per share.

Overview of Private Placement Transaction

On August 12, 2009, we completed a private placement of shares of our preferred stock and warrants to purchase shares of our common stock, yielding aggregate gross proceeds of \$16 million. We undertook this private placement transaction to strengthen our balance sheet and increase our liquidity. In connection with this private placement, we also entered into a amendment to our bank credit facility to waive covenant violations as of June 30, 2009 and relax certain of the financial covenant obligations under our bank credit facility in the future. These actions were necessitated by the current downturn in domestic oil and gas drilling activity, which has adversely impacted our liquidity and results of operations. We used a portion of the net proceeds of this private placement to repay borrowings under our revolving credit facility, and will use the balance of the net proceeds for general corporate purposes, including making scheduled interest payments on our indebtedness.

In the private placement transaction, we issued an aggregate of 16,000 shares of our preferred stock, which are convertible into an aggregate of 6,956,512 shares of our common stock. We also issued currently exercisable warrants (the Exercisable Warrants) entitling the holders to purchase an aggregate of 2,480,000 shares of our common stock at an exercise price of \$2.31 per share and Contingent Warrants entitling the holders, after stockholder approval of the Contingent Warrants, to purchase an aggregate of 8,000,000 shares of our common stock at an exercise price of \$2.45 per share. We do not currently have a sufficient number of authorized and unissued shares of common stock to permit the exercise of the Contingent Warrants. The terms of the preferred stock also permit us, after obtaining stockholder approval, to pay dividends on the preferred stock by issuing shares of our common stock in lieu of paying cash dividends. We do not currently have a sufficient number of authorized and unissued shares of common stock to permit us to issue shares of our common stock in lieu of paying cash dividends on our preferred stock. In addition, in order to reserve a sufficient number of shares of our common stock for issuance of shares upon conversion of the preferred stock and exercise of the Exercisable Warrants, we were required to utilize approximately 1,251,905 shares of our common stock that had previously been reserved for the issuance of common stock upon future grants of restricted stock or the exercise of future options under our existing stock incentive plans. As a result, we no longer have a sufficient number of authorized and unissued shares of common stock to permit us to make future grants under our current stock incentive plans.

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The purchase agreements we entered into with the investors in the private placement transaction require us to seek stockholder approval of the matters described in this Proxy Statement, including the Proposed Charter Amendment, and provide for certain penalties if we do not obtain stockholder approval of these matters.

Why We Are Seeking Stockholder Approval

Pursuant to the law of our state of incorporation, Delaware, our Board must approve any amendment to our Charter and submit the amendment to stockholders. The affirmative vote of a majority of the outstanding shares of our common stock is required to approve Proposal No. 1. If stockholders approve Proposal No. 1, we will have sufficient authorized shares of our common stock to enable the exercise of the Contingent Warrants and to make future grants of options under our current stock incentive plans. If stockholders do not approve Proposal No. 1, we will be subject to the penalties described below.

Consequences of Not Obtaining Stockholder Approval

Pursuant to the terms of the preferred stock, the dividend rate on the preferred stock will increase from 15% per annum to 17.5% per annum if we have not obtained stockholder approval of the Proposed Charter Amendment, the Preferred Stock PIK Dividend Provision and the Contingent Warrants on or before December 10, 2009, and will further increase to 20% per annum if we have not obtained such stockholder approval by April 9, 2010. Upon any subsequent obtaining of such stockholder approval, the dividend rate on the preferred stock will return to 15% per annum. Thus, failure to obtain stockholder approval of the Proposed Charter Amendment will result in increased dividends under our preferred stock. It is important that you approve the Proposed Charter Amendment so that the dividend rate on the preferred stock does not increase.

Also pursuant to the terms of the preferred stock, if we have not obtained stockholder approval of the Proposed Charter Amendment, the Preferred Stock PIK Dividend Provision and the Contingent Warrants on or before June 30, 2011, we will be required to make an offer to purchase all outstanding shares of our preferred stock at a price equal to 110% of the liquidation preference of the preferred stock plus all accrued and unpaid dividends. We may not have sufficient funds to pay the purchase price for any shares of preferred stock that are tendered to us if we are required to make this offer to purchase. It is therefore important that you approve the Proposed Charter Amendment so that we will not be required to make this offer to purchase the outstanding preferred stock in July 2011.

In addition, we believe that we will be required under generally accepted accounting principles to classify the preferred stock as indebtedness if we have not obtained the required stockholder approvals to eliminate this obligation to make an offer to repurchase the preferred stock. If we are required to classify the preferred stock as indebtedness, we currently would fall below the continued listing requirements of the New York Stock Exchange (NYSE) relating to minimum market value and stockholders' equity, which could result in the delisting of our shares of common stock from the NYSE. If our shares of common stock are delisted from the NYSE and we are unable to list our shares of common stock on another U.S. national or regional securities exchange or have our shares of common stock quoted on an established automated over-the-counter trading market in the United States within 30 days, we will be required to make an offer to repurchase all of our outstanding convertible notes at a price of 100% of the principal amount thereof plus accrued and unpaid interest. We may not have sufficient funds to pay the purchase price for any convertible notes that are tendered to us if we are required to make this offer to repurchase. It is therefore important that you approve the Proposed Charter Amendment so that we do not run this risk of our common stock being delisted from the NYSE and the risk of potentially being required to make an offer to repurchase our convertible notes.

Pursuant to the terms of the preferred stock, we can, at our election, automatically convert all outstanding shares of preferred stock into common stock if the closing price of our common stock equals or exceeds 150% of the preferred stock conversion price for at least 15 trading days in any period of 30 consecutive trading days. If we cause the preferred stock to automatically convert into shares of common stock before we have paid eight quarterly dividends on the preferred stock, we will be required to pay an additional amount to the holders of the

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preferred stock in connection with such automatic conversion equal to eight quarterly dividends less all dividends previously paid. This feature of the preferred stock will enable us to eliminate the further accrual of dividends on the preferred stock by converting all of the preferred stock into common stock. However, we cannot cause such automatic conversion unless we have previously obtained stockholder approval of the Proposed Charter Amendment and the Contingent Warrants. It is therefore important that you approve the Proposed Charter Amendment so that we will have the ability to automatically convert the preferred stock into shares of common stock if the price of our common stock reaches the required levels.

If stockholders do not approve the Proposed Charter Amendment at the meeting to which this Proxy Statement relates, the investors in our private placement transaction can require us to call and hold up to three additional meetings of our stockholders to consider and vote on the Proposed Charter Amendment and any of the other proposals set forth in this Proxy Statement that have not previously been approved. Calling such meetings and preparing and distributing proxy materials for such meetings will be expensive and will likely distract management of the Company from the operations of the Company. It is therefore important that you approve the Proposed Charter Amendment so that we are not required to call and hold additional special meetings of our stockholders to consider this and the other proposals again.

Other Considerations

While not the primary purpose for the proposed increase, the additional authorized shares of common stock will also be available from time to time for corporate purposes, including raising additional capital, acquisitions of other companies, products, technologies or businesses, stock dividends, stock splits and other distributions. We do not have any current intention or plan to issue shares of common stock for any purpose except for the issuance of shares (i) upon exercise of the Contingent Warrants (if the Contingent Warrants are approved by stockholders), (ii) in payment of dividends on our preferred stock, if and when declared by our Board and not paid in cash (and if the Preferred Stock PIK Dividend Provision is approved by stockholders), and (iii) upon the exercise of outstanding stock options and future issuances under our existing equity compensation plans to the extent deemed appropriate by the Compensation Committee of our Board.

Authorized but unissued shares of our common stock may be issued from time to time upon authorization by our Board, at such times, to such persons and for such consideration as the Board may determine in its discretion, except as may be required for a particular transaction by applicable law, regulation or the rules of the NYSE. When and if such shares are issued, they would have the same voting and other rights and privileges as the currently issued and outstanding shares of common stock.

The authorization of the additional shares of common stock would not, by itself, have any effect on the rights of stockholders. However, holders of common stock have no preemptive rights to acquire additional shares of common stock, so the issuance of additional shares could have a dilutive effect on earnings per share and the voting power of existing stockholders at the time of the issuance. The issuance of additional shares of common stock, or the perception that additional shares may be issued, may also adversely affect the market price of our common stock.

The Board does not believe an increase in the number of authorized shares of our common stock would significantly affect the ability of a third party to attempt to gain control of us. However, it is possible that an increase in authorized shares of common stock could render such an acquisition more difficult under certain circumstances or discourage an attempt by a third party to obtain control of us by making possible the issuance of shares that would dilute the share ownership of a person attempting to obtain control or otherwise make it difficult to obtain any required stockholder approval for a proposed transaction for control. The Board has no current intention to authorize the issuance of additional shares of common stock for such purposes and is not aware of any present attempt to obtain control of us or otherwise accumulate our common stock.

THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR PROPOSAL NO. 1 TO AMEND OUR AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

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**PROPOSAL 2: APPROVAL OF THE ABILITY OF THE COMPANY TO PAY DIVIDENDS IN
RESPECT OF THE PREFERRED STOCK IN SHARES OF COMMON STOCK**

Our Board has unanimously approved and is submitting for stockholder approval this proposal to permit the Company to pay dividends in the future in respect of its shares of preferred stock by issuing shares of the Company's common stock. If stockholders approve this Proposal No. 2, the Company will have the option in the future to pay dividends on its preferred stock in either cash or shares of our common stock or a combination of cash and shares of our common stock.

Why We Are Seeking Stockholder Approval

We issued 16,000 shares of our preferred stock on August 12, 2009 in our private placement transaction. Each share of preferred stock has a liquidation preference of \$1,000, and dividends on these shares of preferred stock accrue at 15% per annum, subject to increase in certain circumstances. Dividends on our outstanding shares of preferred stock are payable quarterly in cash or, at our option after stockholder approval of this Proposal No. 2, in shares of common stock based on the volume weighted average trading price of a share of common stock for the 10 trading days prior to the payment date of such dividends, or a combination of cash and shares of common stock. Although we do not currently have a sufficient number of authorized shares of common stock to pay dividends on our preferred stock in shares of our common stock, we will have sufficient authorized shares of common stock if stockholders approve the Proposed Charter Amendment described above in Proposal No. 1.

We believe that the ability to pay dividends on the shares of preferred stock by issuing shares of common stock will give us greater flexibility to retain cash for other uses, such as debt service payments and capital expenditures. In the current economic climate, we believe that it is important for us to have the option to preserve working capital by being able to pay dividends on our preferred stock by issuing shares of common stock in lieu of paying cash dividends.

The purchase agreements we entered into with the investors in the private placement transaction require us to seek stockholder approval of the matters described in this Proxy Statement, including the Preferred Stock PIK Dividend Provision, and provide for certain penalties if we do not obtain stockholder approval of these matters. If stockholders do not approve this Proposal No. 2, we will be subject to the penalties described below.

Consequences of Not Obtaining Stockholder Approval

Pursuant to the terms of the preferred stock, the dividend rate on the preferred stock will increase from 15% per annum to 17.5% per annum if we have not obtained stockholder approval of the Proposed Charter Amendment, the Preferred Stock PIK Dividend Provision and the Contingent Warrants on or before December 10, 2009, and will further increase to 20% per annum if we have not obtained such stockholder approval by April 9, 2010. Upon any subsequent obtaining of such stockholder approval, the dividend rate on the preferred stock will return to 15% per annum. Thus, failure to obtain stockholder approval of the Preferred Stock PIK Dividend Provision will result in increased dividends under our preferred stock. It is important that you approve the Preferred Stock PIK Dividend Provision so that the dividend rate on the preferred stock does not increase.

Also pursuant to the terms of the preferred stock, if we have not obtained stockholder approval of the Proposed Charter Amendment, the Preferred Stock PIK Dividend Provision and the Contingent Warrants on or before June 30, 2011, we will be required to make an offer to purchase all outstanding shares of our preferred stock at a price equal to 110% of the liquidation preference of the preferred stock plus all accrued and unpaid dividends. We may not have sufficient funds to pay the purchase price for any shares of preferred stock that are tendered to us if we are required to make this offer to purchase. It is therefore important that you approve the Preferred Stock PIK Dividend Provision so that we will not be required to make this offer to purchase the outstanding preferred stock in July 2011.

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In addition, we believe that we will be required under generally accepted accounting principles to classify the preferred stock as indebtedness if we have not obtained the required stockholder approvals to eliminate this obligation to make an offer to repurchase the preferred stock. If we are required to classify the preferred stock as indebtedness, we currently would fall below the continued listing requirements of the NYSE relating to minimum market value and stockholders' equity, which could result in the delisting of our shares of common stock from the NYSE. If our shares of common stock are delisted from the NYSE and we are unable to list our shares of common stock on another U.S. national or regional securities exchange or have our shares of common stock quoted on an established automated over-the-counter trading market in the United States within 30 days, we will be required to make an offer to repurchase all of our outstanding convertible notes at a price of 100% of the principal amount thereof plus accrued and unpaid interest. We may not have sufficient funds to pay the purchase price for any convertible notes that are tendered to us if we are required to make this offer to repurchase. It is therefore important that you approve the Preferred Stock PIK Dividend Provision so that we do not run this risk of our common stock being delisted from the NYSE and the risk of potentially being required to make an offer to repurchase our convertible notes.

If stockholders do not approve the Preferred Stock PIK Dividend Provision at the meeting to which this Proxy Statement relates, the investors in our private placement transaction can require us to call and hold up to three additional meetings of our stockholders to consider and vote on the Preferred Stock PIK Dividend Provision and any of the other proposals set forth in this Proxy Statement that have not previously been approved. Calling such meetings and preparing and distributing proxy materials for such meetings will be expensive and will likely distract management of the Company from the operations of the Company. It is therefore important that you approve the Preferred Stock PIK Dividend Provision so that we are not required to call and hold additional special meetings of our stockholders to consider this and the other proposals again.

Other Considerations

The issuance of additional shares of common stock in payment of dividends on our shares of preferred stock could have a dilutive effect on earnings per share and the voting power of existing stockholders at the time of the issuance. The issuance of additional shares of common stock, or the perception that additional shares may be issued, may also adversely affect the market price of our common stock.

THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR PROPOSAL NO. 2 TO APPROVE THE PREFERRED STOCK PIK DIVIDEND PROVISION.

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PROPOSAL 3: APPROVAL OF THE EXERCISABLE WARRANT ANTI-DILUTION PROVISION

Our Board has unanimously approved and is submitting for stockholder approval this proposal to approve the anti-dilution provision of certain warrants we issued in our private placement transaction on August 12, 2009. If stockholders approve this Proposal No. 3, the exercise price of such warrants will be subject to adjustment in certain circumstances.

Why We Are Seeking Stockholder Approval

In the private placement transaction that we completed on August 12, 2009, we issued shares of preferred stock and warrants to purchase shares of our common stock. Of those warrants, warrants to purchase an aggregate of 2,480,000 shares of common stock are currently exercisable, and warrants to purchase 8,000,000 shares of common stock are contingent on stockholder approval (as described below in Proposal No. 4). The Exercisable Warrants contain a provision that provides that if, prior to the exercise or termination of the Exercisable Warrants, we issue shares of common stock or securities convertible into or exercisable for shares of common stock at a consideration per share less than the exercise price of the Exercisable Warrants (currently \$2.31 per share), subject to certain exceptions, the exercise price of the Exercisable Warrants will be reduced to be equal to the aggregate consideration per share of common stock received by the Company in such issuance. In accordance with NYSE rules, this provision only applies after we have obtained stockholder approval of such anti-dilution price protection provision. The Exercisable Warrants will expire if not exercised on or before August 11, 2014. The anti-dilution provision of the Exercisable Warrants and related definitions are attached to this Proxy Statement as Exhibit A.

The purchase agreements we entered into with the investors in the private placement transaction require us to seek stockholder approval of the matters described in this Proxy Statement, including the Exercisable Warrant Anti-dilution Provision, and provide for certain penalties if we do not obtain stockholder approval of these matters. If stockholders do not approve this Proposal No. 3, we will be subject to the penalties described below.

Consequences of Not Obtaining Stockholder Approval

If stockholders do not approve the Exercisable Warrant Anti-dilution Provision at the meeting to which this Proxy Statement relates, the investors in our private placement transaction can require us to call and hold up to three additional meetings of our stockholders to consider and vote on the Exercisable Warrant Anti-dilution Provision and any of the other proposals set forth in this Proxy Statement that have not previously been approved. Calling such meetings and preparing and distributing proxy materials for such meetings will be expensive and will likely distract management of the Company from the operations of the Company. It is therefore important that you approve the Exercisable Warrant Anti-dilution Provision so that we are not required to call and hold additional special meetings of our stockholders to consider this and the other proposals again.

Other Considerations

Any reduction in the exercise price of the Exercisable Warrants will result in the receipt by the Company of less consideration upon the exercise of the Exercisable Warrants, which may have a dilutive effect on the book value per share of our common stock. However, the Exercisable Warrant Anti-dilution Provision will not increase the number of shares of common stock issuable upon exercise of the Exercisable Warrants.

THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR PROPOSAL NO. 3 TO APPROVE THE EXERCISABLE WARRANT ANTI-DILUTION PROVISION.

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PROPOSAL 4: APPROVAL OF THE CONTINGENT WARRANTS

Our Board has unanimously approved and is submitting for stockholder approval this proposal to approve the Contingent Warrants we issued in our private placement transaction on August 12, 2009. If stockholders approve this Proposal No. 4, the Contingent Warrants will be exercisable on the terms described below.

Why We Are Seeking Stockholder Approval

In the private placement transaction that we completed on August 12, 2009, we issued shares of preferred stock and warrants to purchase shares of our common stock. Of those warrants, warrants to purchase 8,000,000 shares of common stock are contingent on stockholder approval as set forth in this Proposal No. 4. In accordance with NYSE rules, the Contingent Warrants are not exercisable until we have obtained stockholder approval of the Contingent Warrants.

The purchase agreements we entered into with the investors in the private placement transaction require us to seek stockholder approval of the matters described in this Proxy Statement, including the Contingent Warrants, and provide for certain penalties if we do not obtain stockholder approval of these matters. If stockholders do not approve this Proposal No. 4, we will be subject to the penalties described below.

Summary of the Contingent Warrants

The terms of the Contingent Warrants are governed by the warrant certificates issued to the investors in the private placement transaction, and the following summary is qualified in its entirety by the terms set forth in such warrant certificates. A form of the warrant certificate governing the Contingent Warrants is attached to this Proxy Statement as Exhibit B.

The Contingent Warrants will be exercisable at any time on or after the first business day following approval by the stockholders of the Contingent Warrants and the Proposed Charter Amendment and on or before 5:00 p.m., New York time, on the earlier of (1) the sixty-month anniversary of the day following approval by the stockholders of the Contingent Warrants and the Proposed Charter Amendment or (2) the ninety-eight-month anniversary of August 12, 2009.

The Contingent Warrants will be exercisable, at the option of each holder, in whole or in part by properly delivering a notice of exercise to the Company, accompanied by payment in full for the number of shares of the common stock purchased upon such exercise (except in the event of a proper cashless exercise as described below).

The holder will not have the right to exercise any portion of the Contingent Warrants to the extent the holder would beneficially own in excess of 4.99% (or, if elected by a holder of the warrant upon not less than 61 days advance written notice, up to 9.99%) of the number of shares of common stock outstanding immediately after the exercise.

If we are in breach of our obligations under the purchase agreements that we entered into in connection with the private placement transaction to provide an effective registration statement for the resale of the shares of common stock issuable upon exercise of the Contingent Warrants, then the Contingent Warrants may be exercised, if otherwise exercisable and only during the continuation of such breach, on a cashless basis. If any Contingent Warrants are so exercisable on a cashless basis, such Contingent Warrants will be exercisable, in whole or in part by properly delivering a notice of exercise to the Company, by canceling a portion of the warrant in payment of the purchase price payable in respect of the number of shares of common stock purchased upon such exercise.

The exercise price per share of common stock underlying the Contingent Warrants is \$2.45. This exercise price is subject to appropriate adjustment in the event of stock splits, certain dividends and distributions, reorganizations and similar events affecting the Company's common stock.

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If prior to the exercise or termination of the Contingent Warrants we issue shares of common stock or securities convertible into or exercisable for shares of common stock at a consideration per share less than the exercise price of the Contingent Warrants, subject to certain exceptions, the exercise price of the Contingent Warrants will be reduced to be equal to the aggregate consideration per share of common stock received by us in such issuance.

It shall be a condition to our entry into a Fundamental Transaction that the successor entity assumes in writing (or remains bound by) all of our obligations under the Contingent Warrants pursuant to written agreements, including (if necessary) agreements to deliver to each holder of Contingent Warrants in exchange for such Contingent Warrants a written instrument issued by the successor entity substantially similar in form and substance to the Contingent Warrants exercisable for the consideration that would have been issuable in the Fundamental Transaction in respect of the shares issuable upon exercise of the Contingent Warrants had the Contingent Warrants been exercised immediately prior to the consummation of the Fundamental Transaction. In the event of certain Fundamental Transactions, we will be required to make an offer to purchase the Contingent Warrants from the holders after such Fundamental Transaction at the Black Scholes value of such Contingent Warrants.

Fundamental Transaction means one or more related transactions in which, (i) the Company, directly or indirectly, effects any merger or consolidation with or into another person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another person) is completed pursuant to which holders of the Company's common stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the Company's outstanding common stock, (iv) the Company, directly or indirectly, effects any reclassification, reorganization or recapitalization of its common stock or any compulsory share exchange pursuant to which the Company's common stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another person whereby such other person acquires more than 50% of the outstanding shares of the Company's common stock (not including any shares of common stock held by the other person or other persons making or party to, or associated or affiliated with the other persons making or party to, such stock or share purchase agreement or other business combination).

The Contingent Warrants and all associated rights are transferable, in whole or in part, at the option of the holder, upon surrender to us of the Contingent Warrant together with a written assignment of the Contingent Warrant duly executed by the holder of such Contingent Warrant, payment to us of funds sufficient to pay any transfer taxes payable upon the making of such transfer, and delivery by the holder and transferee to us of any factual representations reasonably required to establish exemptions from the registration requirements of applicable securities laws relating to such transfer. The Contingent Warrants are restricted securities under Rule 144, and may not be transferred except pursuant to an effective registration statement or an exemption from the registration requirements of the Securities Act. We have no obligation to file a registration statement to register the resale of the Contingent Warrants.

Consequences of Not Obtaining Stockholder Approval

Pursuant to the terms of the preferred stock, the dividend rate on the preferred stock will increase from 15% per annum to 17.5% per annum if we have not obtained stockholder approval of the Proposed Charter Amendment, the Preferred Stock PIK Dividend Provision and the Contingent Warrants on or before December 10, 2009, and will further increase to 20% per annum if we have not obtained such stockholder approval by April 9, 2010. Upon any subsequent obtaining of such stockholder approval, the dividend rate on the preferred stock will return to 15% per annum. Thus, failure to obtain stockholder approval of the Contingent Warrants will result in increased dividends under our preferred stock. It is important that you approve the Contingent Warrants so that the dividend rate on the preferred stock does not increase.

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Also pursuant to the terms of the preferred stock, if we have not obtained stockholder approval of the Proposed Charter Amendment, the Preferred Stock PIK Dividend Provision and the Contingent Warrants on or before June 30, 2011, we will be required to make an offer to purchase all outstanding shares of our preferred stock at a price equal to 110% of the liquidation preference of the preferred stock plus all accrued and unpaid dividends. We may not have sufficient funds to pay the purchase price for any shares of preferred stock that are tendered to us if we are required to make this offer to purchase. It is therefore important that you approve the Contingent Warrants so that we will not be required to make this offer to purchase the outstanding preferred stock in July 2011.

In addition, we believe that we will be required under generally accepted accounting principles to classify the preferred stock as indebtedness if we have not obtained the required stockholder approvals to eliminate this obligation to make an offer to repurchase the preferred stock. If we are required to classify the preferred stock as indebtedness, we currently would fall below the continued listing requirements of the NYSE relating to minimum market value and stockholders' equity, which could result in the delisting of our shares of common stock from the NYSE. If our shares of common stock are delisted from the NYSE and we are unable to list our shares of common stock on another U.S. national or regional securities exchange or have our shares of common stock quoted on an established automated over-the-counter trading market in the United States within 30 days, we will be required to make an offer to repurchase all of our outstanding convertible notes at a price of 100% of the principal amount thereof plus accrued and unpaid interest. We may not have sufficient funds to pay the purchase price for any convertible notes that are tendered to us if we are required to make this offer to repurchase. It is therefore important that you approve the Contingent Warrants so that we do not run this risk of our common stock being delisted from the NYSE and the risk of potentially being required to make an offer to repurchase our convertible notes.

If stockholders do not approve the Contingent Warrants at the meeting to which this Proxy Statement relates, the investors in our private placement transaction can require us to call and hold up to three additional meetings of our stockholders to consider and vote on the Contingent Warrants and any of the other proposals set forth in this Proxy Statement that have not previously been approved. Calling such meetings and preparing and distributing proxy materials for such meetings will be expensive and will likely distract management of the Company from the operations of the Company. It is therefore important that you approve the Contingent Warrants so that we are not required to call and hold additional special meetings of our stockholders to consider this and the other proposals again.

Other Considerations

The issuance of additional shares of common stock upon exercise of the Contingent Warrants could have a dilutive effect on earnings per share and the voting power of existing stockholders at the time of the issuance. The issuance of additional shares of common stock, or the perception that additional shares may be issued, may also adversely affect the market price of our common stock.

THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR PROPOSAL NO. 4 TO APPROVE THE CONTINGENT WARRANTS.

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OTHER MATTERS

The Board is not aware of any other matters that may come before the Meeting. However, the proxies may be voted with discretionary authority with respect to any other matters that may properly come before the Meeting.

STOCKHOLDER COMMUNICATIONS

Stockholder proposals for inclusion in the Proxy Statement for the 2010 Annual Meeting of Stockholders must be received by the Company at its principal executive offices by January 6, 2010 to be considered for inclusion in the Proxy Statement and form of proxy relation to the 2010 Annual Meeting of Stockholders. Such stockholder proposals, together with any supporting statements, should be directed to the Secretary of the Company.

Stockholders and interested parties who wish to communicate with the Board, or with any individual director, may do so by (1) calling Lighthouse Services Inc., a third party call center, at (800) 785-1003 or (2) correspondence addressed to the Board, or to an individual director, at the principal executive offices of the Company. All communications received from stockholders are sent directly to Board members.

Stockholders who have questions about the Special Meeting or who need assistance in voting their shares may call the Company's proxy solicitor, Innisfree M&A Incorporated, toll-free at (888) 750-5834. Banks and brokers may call collect at (212) 750-5833.

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EXHIBIT A

Anti Dilution Provision of Exercisable Warrants and Related Definitions

Subject to stockholder approval of this section, if at any time on or after the Initial Exercise Date the Company issues or sells, or in accordance with this is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding Excluded Securities) for a consideration per share (the New Issuance Price) less than a price (the Applicable Price) equal to the Exercise Price in effect immediately prior to such issue or sale or deemed issuance or sale (the foregoing, a Dilutive Issuance), then immediately after such Dilutive Issuance the Exercise Price then in effect shall be reduced to an amount equal to the New Issuance Price. For purposes of determining the adjusted Exercise Price under this section, the following shall be applicable:

(a) Issuance of Options. If the Company in any manner grants any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this section, the lowest price per share for which one share of Common Stock is issuable upon exercise of such Options or upon conversion, exercise or exchange of such Convertible Securities shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting or sale of the Option, upon exercise of the Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(b) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this section, the lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security. No further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock upon conversion, exercise or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of this exercisable warrant has been or is to be made pursuant to other provisions of this section, no further adjustment of the Exercise Price shall be made by reason of such issue or sale.

(c) Change in Option Price or Rate of Conversion. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for Common Stock increases or decreases at any time, the Exercise Price in effect at the time of such increase or decrease shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this section, if the terms of any Option or Convertible Security that was outstanding as of the date of issuance of this exercisable warrant are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the

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Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this section shall be made if such adjustment would result in an increase of the Exercise Price then in effect.

(d) **Calculation of Consideration Received.** In case any Option is issued in connection with the issue or sale of other securities of the Company, together comprising one integrated transaction in which no specific consideration is allocated to such Options by the parties thereto, the Options will be deemed to have been issued for a consideration of \$0.0001. If any Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Company therefor. If any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of securities, in which case the amount of consideration received by the Company will be the Closing Sale Price of such security on the date of receipt. If any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or securities will be determined in good faith by the board of directors of the Company.

(e) **Record Date.** If the Company takes a record of the holders of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Options or in Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

Certain Defined Terms

Closing Sale Price means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, L.P. ("Bloomberg"), or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00 p.m., New York Time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or Trading Market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.).

Common Stock means the common stock, par value \$0.0001 per share, of the Company.

Convertible Securities means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for Common Stock.

Excluded Securities means any Common Stock issued or issuable: (i) in connection with any stock plan of the Company; (ii) upon exercise of the exercisable warrants; (iii) pursuant to a bona fide firm commitment underwritten public offering with a nationally recognized underwriter that generates gross proceeds to the Company in excess of \$25,000,000 (other than an "at-the-market offering" as defined in Rule 415(a)(4) under the Securities Act and "equity lines"); (iv) upon conversion of any Options or Convertible Securities that are outstanding on the day immediately preceding the Initial Exercise Date, provided that the terms of such Options or Convertible Securities are not amended, modified or changed on or after the Initial Exercise Date; (v) in

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connection with any acquisition, merger, joint venture or strategic investment that has been approved by the board of directors of the Company; (vi) securities issued to commercial banks or financial institutions, the primary business of which is not making equity-related loans; (vii) securities issued to lessors in connection with commercial credit arrangements, equipment financings or similar transactions or to independent contractors or vendors of the Company in connection with bona fide business transactions; or (vii) upon conversion of the preferred stock issued in connection with the exercisable warrants.

Exercise Price means \$2.31 per share of Common Stock under the exercisable warrant, subject to adjustment.

Initial Exercise Date means August 11, 2009.

Options means any right, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

Principal Market means the New York Stock Exchange.

Trading Market means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE Alternext, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

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EXHIBIT B

NEITHER THE WARRANTS REPRESENTED BY THIS WARRANT CERTIFICATE NOR THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. SUCH SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS, AND IN THE CASE OF A TRANSACTION EXEMPT FROM REGISTRATION, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT AND SUCH OTHER APPLICABLE LAWS OR THE COMPANY HAS RECEIVED FROM THE HOLDER REASONABLE ASSURANCE THAT THE SECURITIES CAN BE SOLD, ASSIGNED OR TRANSFERRED PURSUANT TO RULE 144 UNDER THE SECURITIES ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

FLOTEK INDUSTRIES, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant Shares: _____

Issue Date: August 11, 2009

THIS WARRANT TO PURCHASE COMMON STOCK (the Warrant) certifies that, for value received, _____ (the Holder) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date Flotek Industries, Inc., a Delaware corporation (the Company) obtains the Stockholder Approval described in Section 5 hereof (the Initial Exercise Date) and on or prior to the earlier of (i) 5:00 p.m. Eastern time on the 60-month anniversary of the date the Company obtains the Stockholder Approval, or (ii) 5:00 p.m. Eastern time on the 98-month anniversary of the date hereof (the Termination Date) but not thereafter, to subscribe for and purchase from the Company _____ fully paid nonassessable shares of Common Stock of the Company (the Warrant Shares). The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. As used herein, the following terms shall have the following respective meanings:

- a) Affiliate means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.
- b) Board of Directors means the board of directors of the Company.
- c) Business Day means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.
- d) Certificate of Designations means the Certificate of Designations of the Company establishing the Preferred Stock.

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- e) Certificate of Incorporation means the Amended and Restated Certificate of Incorporation of the Company, as such may be amended, modified or restated from time to time.
- f) Closing Sale Price means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, L.P. (Bloomberg), or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00 p.m., New York Time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or Trading Market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the pink sheets by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.).
- g) Commission means the United States Securities and Exchange Commission.
- h) Common Stock means the common stock, par value \$0.0001 per share, of the Company.
- i) Convertible Securities means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for Common Stock.
- j) Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.
- k) Excluded Securities means any Common Stock issued or issuable: (i) in connection with any stock plan of the Company; (ii) upon exercise of the Warrants; (iii) pursuant to a bona fide firm commitment underwritten public offering with a nationally recognized underwriter that generates gross proceeds to the Company in excess of \$25,000,000 (other than an at-the-market offering as defined in Rule 415(a)(4) under the Securities Act and equity lines); (iv) upon conversion of any Options or Convertible Securities that are outstanding on the day immediately preceding the Initial Exercise Date, provided that the terms of such Options or Convertible Securities are not amended, modified or changed on or after the Initial Exercise Date; (v) in connection with any acquisition, merger, joint venture or strategic investment that has been approved by the Board of Directors of the Company; (vi) securities issued to commercial banks or financial institutions, the primary business of which is not making equity-related loans; (vii) securities issued to lessors in connection with commercial credit arrangements, equipment financings or similar transactions or to independent contractors or vendors of the Company in connection with bona fide business transactions; or (viii) in connection with the conversion of the Preferred Stock or exercise of the warrants issued in connection with the Warrants (including warrants issued after the date hereof to the placement agent pursuant to the agreement between the Company and the placement agent entered into in connection with the issuance of Warrants, not to exceed 175,000 shares at an exercise price of not less than \$2.31 per share).
- l) Options means any right, warrants or options to subscribe for or