HEARUSA INC
Form 10-K/A
April 20, 2011

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

FORM 10-K/A
(Amendment No. 1)

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

For the fiscal year ended DECEMBER 25, 2010

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 001-11655

HearUSA, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware (State or Other Jurisdiction of Incorporation or Organization)	22-2748248 (I.R.S. Employer Identification No.)
1250 Northpoint Parkway, West Palm Beach, Florida (Address of Principal Executive Offices)	33407 (Zip Code)

Registrant's Telephone Number, Including Area Code (561) 478-8770

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, par value $0.10 per share	NYSE Amex

Securities registered pursuant to Section 12(g) of the Act: None

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

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 þ

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 þ No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (232.405 of this chapter) during the preceding 12 months (or for such short periods that the registrant was required to submit and post such files)

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 the 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 ¨ Accelerated filer ¨

Non-accelerated filer ¨ Smaller reporting company þ

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act). Yes ¨ No þ

As of June 25, 2010, the aggregate market value of the registrant's Common Stock held by non-affiliates (based upon the closing price of the Common Stock on the NYSE Amex) was approximately $36,151,816.

On April 14, 2011, 45,006,218 shares of the registrant's Common Stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Directors

Name and Age	Director Since	Position with the Company
Thomas W. Archibald (72)	1993	Director
Bruce N. Bagni (66)	2005	Director
Paul A. Brown (73)	1986	Director
Joseph L. Gitterman III (75)	1997	Director
Stephen J. Hansbrough (64)	1997	Chief Executive Officer and Chairman of the Board
Michel Labadie (57)	2002	Director
David J. McLachlan (72)	1986	Lead Independent Director
Ozarslan A. Tangun (39)	2009	Director
Stephen W. Webster (50)	2008	Director

Thomas W. Archibald has served on the Board of Directors since 1993. He brings to the Board of Directors decades of executive-level experience with The Bank of New York and previously with Irving Trust Company (before it merged with The Bank of New York in 1988). He retired from The Bank of New York in 1995 where he served as Executive Vice President of the Personal Trust Sector and Private Banking. His experience in the banking and securities industries provides the Board with not only management experience and expertise but also knowledge of the banking and securities industries. His education is from the London School of Economics and Denison University (B.A., economics) and Ohio State University (J.D.). His background has been particularly well suited for the Compensation Committee of the Board of Directors, which he chairs. These attributes and expertise and his depth of experience with the Company over the 18 years he has served the Company have been the reasons the Nominating and Corporate Governance Committee has recommended him for election to the Board of Directors.

Bruce N. Bagni joined the Board of Directors in 2005 shortly after his retirement from Blue Cross Blue Shield of Florida at the end of 2004 where he was Senior Vice President for Public Affairs, General Counsel and Corporate Secretary. He was originally appointed to the Company’s Board of Directors by the Board to fill a vacancy created when the Board was expanded from six to seven members, primarily to increase the number of independent members of the Board and expand available Board expertise. Mr. Bagni was selected to fill that vacancy because of his experience in the health and insurance industries, two industries in which the Company functions as a provider of hearing health care, and because of his independence. Mr. Bagni had been a member of the Office of the CEO at Blue Cross Blue Shield of Florida, which office developed corporate strategy and provided overall management and leadership for that organization. This experience and Mr. Bagni’s prior experience at UNUM Life Insurance Company where he was employed from 1986 to 1992 when he joined Blue Cross Blue Shield, has been valuable to the Company since Mr. Bagni joined the Board and the Company believes that this insurance industry experience will continue to benefit the Company. In addition, Mr. Bagni holds a B.A. from the University of Southern California, a J.D. from Indiana University (Indianapolis) and a Master of Law degree from Columbia University.

Paul A. Brown, M.D. is the founder of the Company and has served on the Board since the Company's inception in 1986. He holds an A.B. from Harvard College and an M.D. from Tufts University School of Medicine. His medical training and previous experience as founder, Chairman and Chief Executive Officer of MetPath Inc., continue to provide the Board with a unique perspective on the Company's business, the precepts of its founding and the Company's commitment to patient care and the medical model of hearing care. Dr. Brown was Chairman of the Board of the Company until February of 2008 when he retired and was named Chairman Emeritus. He served as Chief Executive Officer from 1986 until July 2002. Dr. Brown has remained very active in education, the community and business. The Nominating Committee and the Board of Directors believe that this experience continues to benefit the Company. Dr. Brown was formerly Chairman of the Board of Overseers of Tufts University School of Medicine, an Emeritus member of the Board of Trustees of Tufts University, a past member of the Visiting Committee of Boston University School of Medicine and a past part-time lecturer in pathology and member of the visiting Community at Columbia University College of Physicians and Surgeons.

Joseph L. Gitterman, III is currently the manager of the EIP Group, an investing, trading and consulting firm that he founded in 1994. Until 1994, he was a Senior Managing Director of LaBranche & Co. He was a member of the New York Stock Exchange for over thirty years and was appointed a Governor in 1986. At the New York Stock Exchange, Mr. Gitterman served on more than 14 committees, serving as chairman of many of them. Mr. Gitterman has served on the Company's Board of Directors since 1997. His vast prior and current experience in the financial industry brings a capital markets perspective and expertise to the Board of Directors. The Nominating Committee and Board of Directors believes that this, combined with his leadership skills and attributes gained over decades in business, suits him well to provide perspective and leadership to the Company.

Stephen J. Hansbrough is currently serving as the Company's Chief Executive Officer and Chairman of the Board. He has been with the Company since December of 1993. Before joining the Company, Mr. Hansbrough was Chairman and Chief Executive Officer of Dart Drug Stores, a position he held after serving as the Senior Vice President of Dart Drug Corporation, where he was instrumental in starting its affiliated group of companies (Crown Books and Trak Auto). These companies, along with Dart Drug Stores, had over 400 retail locations and generated approximately $550 million in annual revenues with over 3,000 employees. Mr. Hansbrough brings this extensive retail experience to the Company and provides this unique perspective to the work of the Board of Directors.

Michel Labadie has served on the Board of Directors since 2002 when the Company acquired Helix Hearing Care of America Corp. Mr. Labadie was a director of Helix Hearing Care of America Corp. Since 1992, Mr. Labadie has been President and Chief Executive Officer of Les pros de la Photo (Quebec) Inc., the largest photo finishing company in Canada. Previously, he worked as the head of the Venture Capital, Portfolio Management and Mergers and Acquisition Departments of a major financial institution. This extensive business experience has been particularly valuable to the Company generally and specifically in connection with the integration of the Canadian operations of Helix into HearUSA and later in connection with the Company's acquisition program. The Board believes his business experience will continue to benefit the Company through Mr. Labadie's continued service on the Board of Directors.

David J. McLachlan served as Executive Vice President and Chief Financial Officer of Genzyme Corporation, a biotechnology company, from 1989 to 1999 and then senior advisor to Genzyme's chairman and chief executive officer until June of 2004. Since that time he has served on other public company boards of directors and is currently serving on the board of Dyax Corp., a biotechnology company, and Skyworks Solutions, Inc., a manufacturer of analog, mixed signal and digital semiconductors for mobile communications. He is a graduate of Harvard Business School and Harvard College. His public company experience, especially as the chief financial officer of Genzyme, brings public company perspective and financial reporting expertise to the Board. He has served on the Board since the Company was founded in 1986 and therefore has over two decades of experience with the Company, which the Nominating Committee and Board of Directors believes to be valuable on an ongoing basis to the Company. Mr. McLachlan currently serves as the Company's Lead Independent Director.

Ozarslan A. Tangun is the newest member of the Board of Directors. He was appointed by the Board to fill a vacancy created for his service in October 2009. Mr. Tangun is the founder and managing member of Patara Capital Management, LP, an investment partnership founded in April 2006. Prior to establishing Patara Capital, Mr. Tangun was employed by Southwest Securities, a full service brokerage firm based in Texas, from 1995 to 2006. During this time, Mr. Tangun held the position of Director of Research for over six years. He also held the positions of Senior Vice President and Associate Director of Research. His depth of current experience and expertise in the securities industry brings the Board of Directors a fresh securities industry perspective and, with his company's investment in HearUSA, an investor perspective. Mr. Tangun currently serves on the board of directors of XETA Technologies, Inc., a Nasdaq communications solution company servicing Fortune 1000 companies. Mr. Tangun is a graduate of the University of Iowa (MBA). He is a CFA charter holder.

Stephen W. Webster is currently the Senior Vice President of Finance and Chief Financial Officer of Adolor Corporation, a biopharmaceutical company dedicated to the discovery, development and commercialization of novel prescription pain management products. Mr. Webster has over twenty years of healthcare industry related experience. Before assuming his position at Adolor in June 2008, Mr. Webster served as Managing Director of Healthcare Investment Banking at Broadpoint Capital (formerly First Albany Capital). Previously, from 2000 to 2006, Mr. Webster was co-founder, President and Chief Executive Officer of Neuronyx, Inc., a privately held biotechnology company. Mr. Webster also spent over 13 years at PaineWebber Incorporated, including as director, investment banking division, health care group. It was Mr. Webster's healthcare experience and his public company, particularly chief financial officer, experience which the Board believed was important when it invited Mr. Webster to join the Board of Directors in 2008. The Board was interested in expanding the board to include more independent directors and to gain greater financial expertise in connection, in particular, with its Audit Committee work. The Nominating Committee and the Board of Directors believes that Mr. Webster will continue to make valuable contributions to the Board and in particular to the Audit Committee, a committee he currently chairs. Mr. Webster earned his MBA in Finance from The Wharton School and his AB in Economics cum laude from Dartmouth College.

There are no family relationships between or among any directors or executive officers of the Company.

Audit Committee

The Company has a separately designated standing audit committee. During 2010, the HearUSA Audit Committee was comprised of Messrs. Archibald, Bagni, Gitterman, Labadie, McLachlan, Tangun and Webster, all of whom are "independent" as defined by the NYSE Amex listing standards and Rule 10A-3 under the Securities Exchange Act of 1934, as amended. Mr. Webster served as Chairman of the Audit Committee. The Board of Directors has determined that each member of the Audit Committee is financially literate and Messrs. McLachlan and Webster are "audit committee financial experts" within the meaning of the rules and regulations adopted by the Securities and Exchange Commission.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934 requires the Company's directors and executive officers and persons who own beneficially more than ten percent of any class of equity security of the Company to file with the Securities and Exchange Commission initial reports of such ownership and reports of changes in such ownership. Officers, directors and such beneficial owners are required by Securities and Exchange Commission regulations to furnish the Company with copies of all Section 16(a) forms they file.

To the Company's knowledge, based solely on review of copies of reports furnished to the Company, during the fiscal year ended December 25, 2010, all Section 16(a) filing requirements applicable to its executive officers and directors were made on a timely basis.

Corporate Governance and Code of Ethics

The Board of Directors has adopted corporate governance guidelines upon the recommendation of the Nominating and Corporate Governance Committee. The Board also has adopted a Code of Ethics applicable to all the Company's directors, officers and employees. A copy of both the corporate governance guidelines and the code of ethics are available on the Company's website at www.hearusa.com.

Executive Officers

Information regarding executive officers may be found in the section captioned "Executive Officers of the Registrant" (Part I) of this Annual Report on Form 10-K.

Item 11. Executive Compensation

The following table presents summary information concerning 2010 compensation awarded or paid to, or earned by, (i) the Company's chief executive officer, (ii) the Company's chief financial officer and (iii) each of the other persons who served as executive officers in 2010 whose salary and bonus exceeded $100,000 (the "Named Executive Officers") for the year 2010.

SUMMARY COMPENSATION TABLE

Name and Principal Positions	Year	Salary ($)	Bonus ($)	Stock Awards ($) (4)	Option Awards ($) (5)	Nonequity Incentive Plan Compen-sation ($)	All Other Compen-sation ($)	Total ($)
Stephen J. Hansbrough	2010	399,000	—	—	205,362	—	—	604,362
CEO and Chairman of the	2009	406,000	—	94,504	107,448	99,408	—	707,360
Board (1)	2008	415,000	—	126,490	—	—	—	541,490
Gino Chouinard (2)	2010	333,000	—	—	114,090	—	—	447,090
President and	2009	333,000	—	52,502	62,678	82,840	—	531,020
Chief Operating Officer	2008	306,000	10,000	63,245	—	—	—	379,245
Frank Puñal (3)	2010	238,000	—	—	68,454	—	—	306,454
Senior Vice President	2009	235,000	—	31,501	53,724	49,310	—	369,535
and Chief Financial Officer	2008	127,000	—	—	175,000	—	—	302,000

(1) The $99,408 non-equity incentive plan compensation reflected in 2009 was earned in 2009 as a cash incentive award for achievement by the Company of a 2009 adjusted net income and individual performance goals and paid in 2010.

(2) Mr. Chouinard was promoted to the position of president and chief operating officer on February 23, 2009. His compensation for 2008 reflects that earned by him in his role as president and chief financial officer. The $82,840 non-equity incentive plan compensation reflected in 2009 was earned in 2009 as a cash incentive award for achievement by the Company of 2009 adjusted net income and individual performance goals and paid in 2010. The $10,000 bonus reflected in 2008 was paid in 2008 as a discretionary bonus for 2007 performance.

(3) Mr. Puñal joined the Company on April 28, 2008, as the Company's chief accounting officer. He was promoted to the position of chief financial officer on February 23, 2009. His compensation for 2008 reflects that earned by him in his role as senior vice president and chief accounting officer. The $49,310 non-equity incentive plan compensation reflected in 2009 was earned in 2009 as a cash incentive award for achievement by the Company of 2009 adjusted net income and individual performance goals and paid in 2010.

(4) Does not reflect amounts actually received as compensation but represents the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 based on the probable outcome of the performance conditions measures as of the grant date. The grant date fair value of the 2010 performance based awards assuming achievement of the maximum performance criteria would be $127,575, $74,925 and $57,713 for Mr. Hansbrough, Mr. Chouinard and Mr. Puñal, respectively. The grant date fair value of the 2009 performance based awards assuming achievement of the maximum performance criteria would be $121,500, $67,500 and $40,500 for Mr. Hansbrough, Mr. Chouinard and Mr. Puñal, respectively. The grant date fair value of the 2008 performance based awards assuming achievement of the maximum performance criteria could be $292,600 and $191,100 for Mr. Hansbrough and Mr. Chouinard, respectively. For a discussion of the assumptions used in calculating the

expense, see Note 11 to the Consolidated Financial Statements in the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 2010.

(5) Represents the aggregate grant date fair value computed in accordance with FASB ASC Topic 718. For discussion of the assumptions used in calculating the expense, see Note 11 to the Consolidated Financial Statements in the Company's Annual Report on Form 10-K for the fiscal year ended December 25, 2010.

Employment Agreements

The Company entered into amended and restated executive employment agreements on December 10, 2009 with each of Mr. Hansbrough and Mr. Chouinard. Mr. Hansbrough's agreement was amended to provide for a new three-year term, which is renewable for successive one-year terms unless notice of non-renewal is given. Mr. Chouinard's agreement was amended to reflect his new title of president and chief operating officer and to provide for a new three-year term, which is renewable for successive one-year terms unless notice of non-renewal is given. The agreements provide for annual base compensation (for Mr. Hansbrough in the amount of $420,000 and for Mr. Chouinard in the amount of $350,000, both to be reviewed and adjusted in the discretion of the Compensation Committee, usually on an annual basis), participation in the Company's current employee benefit plans and, at the discretion of the Board of Directors, in equity compensation plans and cash incentive plans. The Compensation Committee, Mr. Hansbrough and Mr. Chouinard agreed to a 5% reduction in their 2010 annual base compensation as part of the Company's cost reduction initiatives implemented in 2010. In the event Mr. Hansbrough is terminated without cause prior to the end of the term, or if the Company declines to renew the agreement at the end of the term, Mr. Hansbrough is entitled to severance of two times base salary plus cash bonus for the year, continuation of health and life insurance benefits for 24 months, acceleration by 12 months of unvested options and extension of post-termination option exercise periods of such vested options. In the event Mr. Chouinard is terminated without cause prior to the end of the term, or if the Company declines to renew the agreement at the end of the term, Mr. Chouinard is entitled to severance of 1.5 times base salary plus cash bonus for the year, continuation of health and life insurance benefits for 18 months, acceleration by 12 months of unvested options and extension of post-termination option exercise periods of such vested options.

In the event of a change in control and the termination of Mr. Hansbrough without cause or his resignation with good reason, Mr. Hansbrough will be entitled to receive three times his base salary plus bonus for the year, continuation of health and life insurance benefits for a period of 36 months, acceleration of vesting of all unvested options and extension of the exercise period, and immediate vesting of all performance-based restricted stock or stock unit grants. In the event of a change in control and the termination of Mr. Chouinard without cause or his resignation with good reason, Mr. Chouinard will be entitled to receive two times his base salary plus bonus for the year, continuation of health and life insurance benefits for a period of 24 months, acceleration of vesting of all unvested options and extension of the exercise period, and immediate vesting of all performance-based restricted stock or stock unit grants. The agreements do not include "gross up" payment provisions to cover incremental tax liability of the executives in the event payments are made pursuant to the change in control provisions. Mr. Hansbrough and Mr. Chouinard's employment agreements were also amended to include the "modified 280G cutback" which provides that, in the event of a change in control (as defined in the employment agreement), if the executive would receive severance in excess of the 280G statutory safe harbor amount, the executive will receive the amount of severance that results in the greatest after-tax proceeds to the executive in place of the previous 280G provision in the executives' agreements which provided for a cap on change-in-control payments so as not to trigger 280G.

On December 10, 2009, the Company entered into an employment agreement with Francisco Puñal, chief financial officer of the Company. The initial term of the agreement is three years, renewable for successive one-year terms unless notice of non-renewal is given. The agreement provides for an annual base salary of $250,000, participation in the Company's current employee benefit plans and, at the discretion of the Board of Directors, in equity compensation plans and cash incentive plans. The Compensation Committee Mr. Puñal agreed to a 5% reduction in their 2010 annual base compensation as part of the Company's cost reduction initiatives implemented in 2010. In the event Mr. Puñal is terminated without cause prior to the end of the term, or if the Company declines to renew the agreement at the end of the term, Mr. Puñal is entitled to severance of 12 months' base salary plus the cash bonus for the year, continuation of health and life insurance benefits for 12 months, acceleration by 12 months of unvested options, certain vesting and payouts of performance-based restricted stock or stock unit grants and extension of post-termination option exercise periods of vested options.

In the event of a change in control (as defined in the agreement) and the termination of Mr. Puñal without cause or his resignation with good reason (as defined in the agreement), Mr. Puñal would be entitled to receive 1.5 times his base salary plus cash bonus for the year, continuation of health and life insurance benefits for a period of 18 months, acceleration of vesting of all unvested options and extension of the exercise perio