NEW YORK MORTGAGE TRUST INC
Form 10-K
March 08, 2010

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

FORM 10-K

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

For the Fiscal Year Ended December 31, 2009

o 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 001-32216
NEW YORK MORTGAGE TRUST, INC .
(Exact name of registrant as specified in its charter)

Maryland	47-0934168
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

52 Vanderbilt Avenue, New York, NY 10017
(Address of principal executive office) (Zip Code)
(212) 792-0107
(Registrant's telephone number, including area code)
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 $0.01 per share	NASDAQ Stock Market

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

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

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 o No x

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 x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, 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 shorter period that the registrant was required to submit and post such files). Yes o No o

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

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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 definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (check one):

Large Accelerated Filer o Accelerated Filer o Non-Accelerated Filer x Smaller Reporting Company o

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

The aggregate market value of voting stock held by non-affiliates of the registrant as of June 30, 2009 was approximately $48.1 million.

The number of shares of the Registrant’s Common Stock outstanding on March 1, 2010 was 9,415,094.

DOCUMENTS INCORPORATED BY REFERENCE

Document	Where Incorporated
1. Portions of the Registrant's Definitive Proxy Statement relating to its 2010 Annual Meeting of Stockholders scheduled for May 11, 2010 to be filed with the Securities and Exchange Commission by no later than April 30, 2010.	Part III, Items 10-14

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NEW YORK MORTGAGE TRUST, INC.

FORM 10-K

For the Fiscal Year Ended December 31, 2009

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PART I

Item 1. BUSINESS

General

New York Mortgage Trust, Inc., together with its consolidated subsidiaries ("NYMT", the "Company", "we", "our", and "us") a self-advised real estate investment trust, or REIT, in the business of acquiring and managing primarily residential adjustable-rate, hybrid adjustable-rate and fixed-rate mortgage-backed securities ("RMBS"), for which the principal and interest payments are guaranteed by a U.S. Government agency, such as the Government National Mortgage Association ("Ginnie Mae"), or a U.S. Government-sponsored entity ("GSE" or "Agency"), such as the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which we refer to collectively as "Agency RMBS," RMBS backed by prime jumbo and Alternative A-paper ("Alt-A") mortgage loans ("non-Agency RMBS"), and prime credit quality residential adjustable-rate mortgage ("ARM") loans held in securitization trusts, or prime ARM loans. The remainder of our current investment portfolio is comprised of notes issued by a collateralized loan obligation ("CLO"). We also may opportunistically acquire and manage various other types of real estate-related and financial assets, including, among other things, certain non-rated residential mortgage assets, commercial mortgage-backed securities ("CMBS"), commercial real estate loans and other similar investments. These assets, together with non-Agency RMBS and CLOs, typically present greater credit risk and less interest rate risk than our investments in Agency RMBS and prime ARM loans, and may also permit us to potentially utilize all or part of a significant net operating loss carry-forward held by Hypotheca Capital, LLC ("HC," then doing business as The New York Mortgage Company LLC), our wholly-owned subsidiary and former mortgage lending business.

Our principal business objective is to generate net income for distribution to our stockholders resulting from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance our leveraged assets and our operating costs, which we refer to as our net interest income. We intend to achieve this objective by investing in a broad class of real estate-related and financial assets, including those listed above, that in aggregate, will generate attractive risk-adjusted total returns for our stockholders.

Prior to 2009, our investment portfolio was primarily comprised of Agency RMBS, prime ARM loans held in securitization trusts and certain non-agency RMBS rated in the highest rating category by two rating agencies. The prime ARM loans in our portfolio were purchased from third parties or originated by us through HC and were subsequently securitized by us and are held in our four securitization trusts. Beginning in the first quarter of 2009, we commenced a repositioning of our investment portfolio to transition the portfolio from one primarily focused on leveraged Agency RMBS and prime ARM loans held in securitization trusts, which primarily involve interest rate risk, to a more diversified portfolio that includes elements of credit risk with reduced leverage. The repositioning included a reduction in the Agency RMBS held in our portfolio through the disposition of $193.8 million of GSE-issued collateralized mortgage obligation floating rate securities, which we refer to as "Agency CMO floaters", a net increase of approximately $27.5 million (par value) in our non-Agency RMBS position and our opportunistic purchase in March 2009 of discounted notes issued by a CLO.

We elected to be taxed as a REIT for federal income tax purposes commencing with our taxable year ended on December 31, 2004. As a result, we generally will not be subject to federal income tax on our taxable income that is distributed to our stockholders.

The financial information requirements required under this Item 1 may be found in our audited consolidated financial statements beginning on page F-3.

Strategic Relationship

In connection with a $20.0 million private investment in our Series A Cumulative Convertible Redeemable preferred stock (the “Series A Preferred Stock”) by JMP Group Inc. and certain of its affiliates (collectively, the “JMP Group”) in the first quarter of 2008, we entered into an advisory agreement with Harvest Capital Strategies LLC (“HCS,” formerly known as JMP Asset Management LLC), an affiliate of the JMP Group, pursuant to which HCS advises the Company with respect to assets held by HC and New York Mortgage Funding, LLC (“NYMF”), excluding certain Agency RMBS held in these entities for regulatory compliance purposes, and assets held by any additional subsidiaries acquired or formed in the future to hold investments made on the Company’s behalf. We refer to these entities as the “Managed Subsidiaries.” We formed this relationship with HCS and the JMP Group for the purpose of improving our capitalization and diversifying our portfolio of investment securities away from the focused leveraged Agency RMBS strategy we employed from early 2007 and into the first quarter of 2009 to a portfolio that, as noted above, includes elements of credit risk with reduced leverage and one that may permit us to potentially utilize all or part of an approximately $62.2 million net operating loss carry-forward held by HC at December 31, 2009.

Our Investment Strategy

We intend to achieve our principal business objective of generating net income for distribution to our stockholders by building and managing a diversified investment portfolio comprised of a broad class of real estate-related and financial assets, that in aggregate, will generate attractive risk-adjusted total returns for our stockholders. We have invested in the past and intend to invest in the future in assets that collectively allow us to maintain our REIT status and our exemption from registration under the Investment Company Act. In building and managing our current investment portfolio, we:

- invest in and manage high-credit quality Agency and non-Agency RMBS, including ARM securities, fixed rate securities, and high-credit quality ARM mortgage loans that primarily involve interest rate risk;

- opportunistically invest in certain other real estate-related and financial assets, including non-Agency RMBS, that further diversifies portfolio risk by introducing elements of credit risk and that may permit us to utilize all or a portion of a significant net operating loss carry-forward held by HC;

- leverage our investments in Agency RMBS and prime ARM loans held in securitization trusts by entering into repurchase agreements or issuing collateralized debt obligations, as applicable;

- generally operate as a long-term portfolio investor; and

- generate earnings from the return on our interest earning securities and spread income from our securitized mortgage loan portfolio.

Prior to 2009, our investment strategy had focused on the acquisition or origination of prime ARM loans for securitization and the acquisition of RMBS, primarily Agency RMBS, for our investment portfolio. As noted above, commencing in the first quarter of 2009, we began to diversify our portfolio by disposing of Agency CMO floaters and acquiring non-Agency RMBS and discounted notes issued by a CLO. As of December 31, 2009, our portfolio was comprised of approximately $159.1 million in RMBS, of which approximately $116.2 million was Agency RMBS and $42.9 million was non-Agency RMBS, and approximately $276.2 million of prime ARM loans held in securitization trusts.

We expect that over the near term, our investment portfolio will continue to be weighted towards RMBS and prime ARM loans held in securitization trusts, with continued diversification of the portfolio to non-Agency RMBS and other real estate-related and financial assets as market opportunities arise. If necessary, we will modify our investment allocation strategy from time to time in the future as market conditions change in an effort to maximize the returns from our portfolio of investment assets. As a result, although we focus on the assets described below, our targeted asset classes and allocation strategy may vary over time from those described herein.

Our Targeted Asset Classes

Set forth below is a list of the asset classes we currently target, followed by a brief description of these assets and their position, if any, in our portfolio:

Asset Class	Principal Assets
Residential Mortgage-Backed Securities	Agency RMBS, primarily issued by Fannie Mae or Freddie Mac and backed by hybrid ARM loans;

	Non-Agency RMBS backed by prime jumbo and Alt-A, including investment grade and non-investment grade classes.
Prime ARM Loans Held in Securitization Trusts	Prime ARM loans originated by us or acquired from third parties and securitized in 2005 and early 2006 in four securitization trusts.
Other	Residential whole mortgage loans (including non-rated loans), CMBS, commercial mortgages and other commercial real estate debt, CLOs and other corporate debt or corporate equity securities and other similar investments.

RMBS Issued by Fannie Mae or Freddie Mac and Collateralized by Hybrid ARM Loans. Agency RMBS consists of Agency pass-through certificates and CMOs issued or guaranteed by an Agency. Pass-through certificates provide for a pass-through of the monthly interest and principal payments made by the borrowers on the underlying mortgage loans to the holders of the pass-through certificate. CMOs divide a pool of mortgage loans into multiple tranches with different principal and interest payment characteristics.

Between March 31, 2007 and the first quarter of 2009, we focused a significant amount of our resources and efforts on the purchase and management of hybrid ARM RMBS issued by either Fannie Mae or Freddie Mac, including both pass-through certificates and Agency CMO floaters. Hybrid ARM RMBS are adjustable rate mortgage assets that have a rate that is fixed for a period of three to ten years initially, before becoming annual or semi-annual adjustable rate mortgage assets. Because the coupons earned on Agency RMBS collateralized by ARM loans adjust over time as interest rates change (typically after an initial fixed-rate period), the market values of these assets are generally less sensitive to changes in interest rates than are Agency RMBS collateralized by fixed-rate residential mortgage loans. In addition, the hybrid ARMs that collateralize our Agency RMBS typically have interim and lifetime caps on interest rate adjustments.

Fannie Mae guarantees to the holder of Fannie Mae RMBS that it will distribute amounts representing scheduled principal and interest on the mortgage loans in the pool underlying the Fannie Mae certificate, whether or not received, and the full principal amount of any such mortgage loan foreclosed or otherwise finally liquidated, whether or not the principal amount is actually received. Freddie Mac guarantees to each holder of certain Freddie Mac certificates the timely payment of interest at the applicable pass-through rate and principal on the holder’s pro rata share of the unpaid principal balance of the related mortgage loans. We prefer Fannie Mae-issued RMBS collateralized by ARM loans due to their shorter remittance cycle; which is the time between when a borrower makes a payment and the investor receives the net payment.

Typically, we seek to acquire Agency RMBS collateralized by hybrid ARM loans with fixed periods of five years of less. In most cases we are required to pay a premium above the par value for these assets, the amount of which generally depends on the pass-through rates of the security, the months remaining before the mortgage loan converts to an ARM, and other considerations. As noted above, commencing in the first quarter of 2009, we initiated a program to dispose of the Agency CMO floaters in our investment portfolio. However, we may invest in Agency CMO floaters in the future should the returns on such securities again become attractive.

Non-Agency RMBS. The Company may invest in residential non-Agency RMBS, including investment-grade (AAA through BBB rated) and non-investment grade (BB and B rated and unrated) classes. The mortgage loan collateral for residential non-Agency RMBS consists of residential mortgage loans that do not generally conform to underwriting guidelines issued by Fannie Mae, Freddie Mac or Ginnie Mae due to certain factors, including a mortgage balance in excess of Agency underwriting guidelines, borrower characteristics, loan characteristics and insufficient documentation. Consequently, the principal and interest on non-Agency RMBS are not guaranteed by GSEs, such as Fannie Mae and Freddie Mac, or in the case of Ginnie Mae, the U.S. Government.

Prime ARM Loans Held in Securitization Trusts. Our portfolio also includes prime ARM loans held in four securitization trusts. The loans held in securitization trusts are loans that primarily were originated by our discontinued mortgage lending business, and to a lesser extent purchased from third parties, that we securitized in 2005 and early 2006. These loans are substantially prime full documentation interest only hybrid ARMs on residential properties and are all are first lien mortgages. The Company maintained the ownership trust certificates, or equity, of these securitizations which includes rights to excess interest, if any. Subject to market conditions, we may acquire mortgage loans in the future and subsequently securitize these loans.

Commercial Mortgage-Backed Securities. We may invest in commercial mortgage-backed securities, or CMBS, through the purchase of mortgage pass-through notes. CMBS are secured by, or evidence ownership interests in, a single commercial mortgage loan or a pool of mortgage loans secured by commercial properties. These securities may be senior, subordinated, investment grade or non-investment grade. We expect that most of our CMBS investments will be part of a capital structure or securitization where the rights of the class in which we invest are subordinated to senior classes but senior to the rights of lower rated classes of securities, although we may invest in the lower rated classes of securities if we believe the risk adjusted returns are attractive. We generally intend to invest in CMBS that will yield high current interest income and where we consider the return of principal to be likely. We may acquire CMBS from private originators of, or investors in, mortgage loans, including savings and loan associations, mortgage bankers, commercial banks, finance companies, investment banks and other entities.

The yields on CMBS depend on the timely payment of interest and principal due on the underlying mortgage loans and defaults by the borrowers on such loans may ultimately result in defaults on the CMBS. In the event of a default, the trustee for the benefit of the holders of CMBS has recourse only to the underlying pool of mortgage loans and, if a loan is in default, to the mortgaged property securing such mortgage loan. After the trustee has exercised all of the rights of a lender under a defaulted mortgage loan and the related mortgaged property has been liquidated, no further remedy will be available. However, holders of relatively senior classes of CMBS will be protected to a certain degree by the structural features of the securitization transaction within which such CMBS were issued, such as the subordination of the more junior classes of the CMBS.

High Yield Corporate Bonds. We may invest in high yield corporate bonds, which are below investment grade debt obligations of corporations and other nongovernmental entities. We expect that a significant portion of such bonds we may invest in will not be secured by mortgages or liens on assets, and may have an interest-only payment schedule, with the principal amount staying outstanding and at risk until the bond's maturity. High yield bonds are typically issued by companies with significant financial leverage.

Collateralized Loan Obligations. We may invest in debentures, subordinated debentures or equity interests in a CLO. A CLO is secured by, or evidences ownership interests in, a pool of assets that may include RMBS, non-agency RMBS, CMBS, commercial real estate loans or corporate loans. Typically a CLO is collateralized by a diversified group of assets either within a particular asset class or across many asset categories. These securities may be senior, subordinated, investment grade or non-investment grade. We expect the majority of our CLO investments to be part of a capital structure or securitization where the rights of the class in which we will invest to receive principal and interest are subordinated to senior classes but senior to the rights of lower rated classes of securities, although we may invest in the lower rated classes of securities if we believe the risk adjusted return is attractive.

Equity Securities. To a lesser extent, subject to maintaining our qualification as a REIT, we also may invest in common and preferred equity, which may or may not be related to real estate. These investments may include direct purchases of common or preferred equity or other equity type investments. We will follow a value-oriented investment approach and focus on the anticipated cash flows generated by the underlying business, discounted by an appropriate rate to reflect both the risk of achieving those cash flows and the alternative uses for the capital to be invested. We will also consider other factors such as the strength of management, the liquidity of the investment, the underlying value of the assets owned by the issuer and prices of similar or comparable securities.

Other Assets. We also may from time to time opportunistically acquire other mortgage-related and financial assets that may include, among others: residential whole mortgage loans, commercial mortgages and other commercial real estate debt and other similar assets.

Our Financing Strategy

Given the continued uncertainty in the credit markets, we believe that maintaining a maximum leverage ratio in the range of 6 to 8 times for our Agency RMBS portfolio and an overall Company leverage ratio of 4 to 5 times is appropriate at this time. At December 31, 2009 the leverage ratio for our portfolio of Agency RMBS, which we define as our outstanding indebtedness under repurchase agreements divided by the sum of total stockholders' equity and our Series A Preferred Stock, was 1 to 1 and, excluding our Series A Preferred Stock, the leverage ratio was 1.4 to 1. We also have $44.9 million of subordinated trust preferred securities outstanding and $266.8 million of collateralized debt obligations ("CDO") outstanding, both of which are not dependent on market values of pledged securities or changing credit conditions by our lenders.

We strive to maintain and achieve a balanced and diverse funding mix to finance our investment portfolio. We rely primarily on repurchase agreements collateralized by Agency RMBS and CDOs in order to finance the Agency RMBS in our investment portfolio and prime ARM loans held in our securitization trusts. Repurchase agreements provide us with short-term borrowings that bear interest rates that are linked to the London Interbank Offered Rate ("LIBOR"), a short term market interest rate used to determine short term loan rates. Pursuant to these repurchase agreements, the financial institution that serves as a counterparty will generally agree to provide us with financing based on the market value of the securities that we pledge as collateral, less a "haircut." Our repurchase agreements may require us to deposit additional collateral pursuant to a margin call if the market value of our pledged collateral declines or if unscheduled principal payments on the mortgages underlying our pledged securities increase at a higher than anticipated rate. To reduce the risk that we would be required to sell portions of our portfolio at a loss to meet margin calls, we intend to maintain a balance of cash or cash equivalent reserves and a balance of unpledged

mortgage securities to use as collateral for additional borrowings. As of December 31, 2009, we had repurchase agreements outstanding with five different counterparties totaling $85.1 million. As of December 31, 2009, we financed approximately $276.2 million of loans we hold in securitization trusts permanently with approximately $9.9 million of our own equity investment in the securitization trusts and the issuance of approximately $266.8 million of CDOs.

Since the first quarter of 2009, we have used cash from operating activities to purchase non-Agency RMBS and the discounted notes issued by a CLO. However, should the prospects for stable, reliable and favorable repurchase agreement financing for non-Agency RMBS develop in the future, we would expect to increase our repurchase agreement borrowings collateralized by non-Agency RMBS. See "Management's Discussion and Analysis of Results of Operations and Financial Condition Liquidity and Capital Resources" for further discussion on our financing activities.

Our Hedging and Interest Rate Risk Management Strategies

A significant risk to our operations, relating to our portfolio management, is the risk that interest rates on our assets will not adjust at the same times or amounts that rates on our liabilities adjust. Even though we retain and invest in securities collateralized by ARM loans, many of the underlying hybrid ARM loans that back the RMBS in our portfolio have initial fixed rates of interest for a period of time ranging from two to five years. Our funding costs are variable and the maturities are short term in nature. We use hedging instruments to reduce our risk associated with changes in interest rates that could affect our RMBS assets and prime ARM loans held in securitization trusts. Typically, we utilize interest rate swaps to effectively extend the maturity of our short term borrowings to better match the interest rate sensitivity to the underlying assets being financed. By extending the maturities on our short term borrowings, we attempt to lock in a spread between the interest income generated by the RMBS in our portfolio and the interest expense related to the financing of such assets in order to maintain a net duration gap of less than one year. As we acquire RMBS, we seek to hedge interest rate risk in order to stabilize net asset values and earnings during periods of rising interest rates. To do so, we use hedging instruments in conjunction with our borrowings to approximate the re-pricing characteristics of such assets. We utilize a model based risk analysis system to assist in projecting portfolio performances over a variety of different interest rates and market stresses. The model incorporates shifts in interest rates, changes in prepayments and other factors impacting the valuations of our financial securities, including mortgage-backed securities, repurchase agreements, interest rate swaps and interest rate caps. However, given the prepayment uncertainties on our RMBS, it is not possible to definitively lock-in a spread between the earnings yield on our portfolio and the related cost of borrowings. Nonetheless, through active management and the use of evaluative stress scenarios of the portfolio, we believe that we can mitigate a significant amount of both value and earnings volatility.

Our Investment Guidelines

In acquiring assets for our portfolio and subsequently managing those assets, management is required to adhere to investment guidelines adopted by our Board of Directors, unless such guidelines are amended, repealed, modified or waived by our Board. Pursuant to our investment guidelines, we will focus on acquiring assets in the following categories:

- Category I investments are RMBS that are either rated within one of the two highest rating categories by either Moody’s Investor Services or Standard and Poor’s (the “Ratings Agencies”), or have their repayment guaranteed by Freddie Mac, Fannie Mae or Ginnie Mae;
- Category II investments are all residential mortgage-related securities that do not fall within Category I; and
- Category III investments are all CMBS and non-mortgage-related securities, including, without limitation, subordinated debentures or equity interests in a CLO, high yield corporate bonds and equity securities.

The investment guidelines provide the following investment limitations:

- no investment shall be made which would cause us to fail to qualify as a REIT;
- no investment shall be made which would cause us or our subsidiaries to register as an investment company under the Investment Company Act;

Certain of our officers have the authority to approve, without the need of further authorization of our Board of Directors, the following transactions from time to time, any of which may be entered into by us or any of our subsidiaries:

- the purchase and sale of Category I investments, subject to the limitations described above;
- the purchase and sale of agency debt, U.S. Treasury securities, overnight investments and money market funds;
- certain hedging arrangements; and
- the incurrence of indebtedness using:
  - repurchase agreements; and
  - term repurchase agreements.

Until further modified by our Board of Directors, our Category II and Category III investments will require the approval of our Board of Directors.

Our Relationship with HCS and the Advisory Agreement

HCS, an external advisor to the managed subsidiaries, is a wholly-owned subsidiary of JMP Group Inc. that manages a family of single-strategy and multi-manager hedge fund products. HCS also sponsors and partners with other investment firms. As of December 31, 2009, HCS had $443.0 million in client assets under management.

Concurrent and in connection with the issuance of our Series A Preferred Stock in January 2008, we entered into an advisory agreement with HCS pursuant to which HCS advises the Managed Subsidiaries with respect to assets held by the Managed Subsidiaries, excluding Agency RMBS held by the Managed Subsidiaries for regulatory compliance purposes and certain non-Agency RMBS. In addition, pursuant to the stock purchase agreement providing for the sale of the Series A Preferred Stock to the JMP Group, James J. Fowler was appointed Chairman of our Board of Directors. Mr. Fowler, who also serves as the non-compensated Chief Investment Officer of the Managed Subsidiaries, is a managing director of HCS, a subsidiary of JMP Group Inc. and a significant investor in our Series A Preferred Stock.

As of December 31, 2009, HCS, JMP Group Inc. and Joseph A. Jolson, the Chairman and Chief Executive Officer of JMP Group Inc., collectively beneficially owned a significant percentage of our outstanding capital stock. See " Conflicts of Interest with HCS; Equitable Allocation of Investment Opportunities" below for more information. In addition, in November 2008 our Board of Directors approved an exemption from the ownership limitations contained in our charter to permit Mr. Jolson to beneficially own up to 25% of the aggregate value of our outstanding capital stock. As a result, these stockholders exert significant influence over us.

Advisory Agreem