

REEDS INC
Form S-3/A
July 28, 2009

As filed with the Securities and Exchange Commission on July 28 , 2009
Registration No. 333-156908

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

AMENDMENT NO. 3 ON
FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Reed's, Inc.
(Exact name of registrant as specified in its charter)

Delaware	2086	35-2177773
(State or jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

13000 South Spring Street
Los Angeles, California 90061
(310) 217-9400
(Address and telephone number of principal executive offices and principal place of business)

Christopher J. Reed
Chief Executive Officer
13000 South Spring Street
Los Angeles, California 90061
(310) 217-9400
(Name, address and telephone number of agent for service)

With copies to:

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective

Registration Statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

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 12b2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (1)	Estimated Proposed Maximum Aggregate Offering Price (4)	Amount of Registration Fee
Transferable Subscription Rights (“Rights”) to purchase Series B Convertible Preferred Stock, \$0.0001 par value per share (“Series B Preferred”)	10,000,000	—	—	— (2)
Shares of Series B Preferred Stock underlying the Rights	300,000	\$10.00	\$3,000,000	\$167.40 (3)
Shares of common stock underlying the Series B Preferred	1,500,000	—	—	— (4)
Total	300,000	\$10.00	\$3,000,000	\$167.40 (5)

- (1) This registration statement relates to (a) the subscription rights to purchase Series B Preferred (b) the shares of Series B Convertible Preferred Stock (“Series B Preferred”) deliverable upon the exercise of the rights and (3) the shares of common stock issuable upon conversion of the Series B Preferred .
- (2) The rights are being issued without consideration. Pursuant to Rule 457(g), no separate registration fee is payable with respect to the rights being offered hereby since the rights are being registered in the same registration statement as the securities to be offered pursuant thereto.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
- (4) The securities being registered also include (A) such additional indeterminate number of shares of common stock as may be issued upon (i) adjustment of the conversion rate of the Series B Preferred due to certain events, including the issuance of subdivisions of our common stock (ii) the payment of dividends, at the option of the company, on the Series B Preferred and (B) such indeterminate number of shares of Series B Preferred as may be issued upon payment of dividends in kind, at the option of the company, on the Series B Preferred.Pursuant to

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Rule 457(i), no separate fee is payable with respect to the common stock underlying the Series B Convertible Preferred Stock. In accordance with Rule 416, the number of shares registered hereby shall also be deemed to include an indeterminate number of additional shares of common stock that may be issued upon conversion of the Series B Convertible Preferred Stock as a result of anti-dilution provisions thereof.

(5) Calculated pursuant to Rule 457(g) based on the aggregate exercise price of the rights.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Preliminary Prospectus

Subject To Completion, Dated July 28, 2009

REED'S INC.

10,000,000 Transferable Rights to Subscribe for up to 300,000 Shares of
Series B Convertible Preferred Stock at \$10.00 per Share

We are distributing at no charge to the holders of our common stock on [], 2009, which we refer to as the record date, subscription rights to purchase up to an aggregate of 300,000 shares of our Series B Preferred. We will distribute to you one right for every share of common stock that you own on the record date. Each share of Series B Preferred carries a five percent (5%) annual dividend for a term of three (3) years ,will have an initial stated value of \$10.00 per share, and will be convertible into shares of our common stock at a conversion ratio of five (5) shares of common stock for each share of Series B Preferred held at the time of conversion, representing an initial conversion price of \$ 2.00 per share, which is subject to adjustment.

You are receiving this prospectus because you held shares of our common stock as of the close of business on August [], 2009, the record date for this rights offering. As of the record date, there are [] shares of common stock outstanding. We have granted you one right for each share of our common stock that you owned on the record date. You may purchase one share of our Series B Preferred for every four (4) rights granted to you. If you exercise your rights in full, you may also concurrently exercise an over-subscription right to purchase additional shares of Series B Preferred that remain unsubscribed at the expiration of the rights offering, subject to availability and allocation of shares among persons exercising this over-subscription right. The over-subscription rights allow a holder to subscribe for an additional amount equal to up to 400% of the shares for which such holder was otherwise entitled to subscribe. The exercise price for over-subscription rights is the same as the exercise price per whole share as the basic subscription rights. Rights may only be exercised for whole numbers of shares; no fractional shares of Series B Preferred will be issued in this offering.

The rights will expire at 5:00 p.m., New York City time, on [], 2009, which date we refer to as the expiration date. If the rights offering is undersubscribed, we may extend the period for exercising the rights for up to an additional 30 trading days in our sole discretion. A "trading day" is any day the NASDAQ Stock Market is open for trading. Any rights not exercised at or before that time will expire worthless without any payment to the holders of those unexercised rights. There is no minimum subscription amount required for consummation of the rights offering. We will raise no more than \$3,000,000 in this offering.

You should carefully consider whether to exercise your subscription rights before the expiration date. All exercises of subscription rights are irrevocable. Our board of directors is making no recommendation regarding your exercise of the subscription rights. Investing in our securities involves a high degree of risk. In addition, your holdings in our company will be diluted if you do not exercise the full amount of your basic subscription rights. See "Risk Factors" beginning on page 17 of this prospectus.

Our common stock is quoted on the NASDAQ Capital Market under the symbol "REED." The last reported sale price of our common stock on August [], 2009 was \$[] per share. The rights are transferable and will be listed for trading on the NASDAQ Capital Market under the symbol "REEDR" during the course of this offering. We intend to apply to the OTC Bulletin Board for quotation of our Series B Preferred. We cannot assure you that our Series B

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Preferred will meet the requirements for quotation or that there will be an active trading market for our Series B Preferred.

	Subscription Price	Dealer Manager Fee (1)	Proceeds, Before Expenses, to us
Per share	\$10.00	\$0.70	\$9.30
Total (2)	\$3,000,000	\$220,000	\$2,780,000

(1) In connection with the rights offering, we have agreed to pay Source Capital Group, Inc., the dealer-manager for this offering, a cash fee equal to 7% of the gross proceeds of this offering in cash and a non-accountable expense allowance equal to \$10,000. We will also grant Source Capital Group, Inc. a warrant to purchase 5% of the shares of common stock underlying Series B Preferred sold in this offering at an exercise price of \$ 2.50 per share, or 125% of the effective initial conversion price.

(2) Assumes that the rights offering is fully subscribed and that the maximum offering amount in the aggregate of \$3,000,000 is subscribed.

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense. The shares of our Series B Preferred offered hereby and our common stock are not deposits, savings accounts, or other obligations of a bank or savings association and are not insured by the FDIC or any other governmental agency.

Our principal executive offices are located at 13000 South Spring Street, Los Angeles, California 90061. Our telephone number is 310-217-9400. If you have any questions or need further information about this rights offering, please contact MacKenzie Partners, Inc., our information agent for the rights offering, at (212) 929-5500 (call collect) or (800) 322-2885 (toll-free) or via email at reedrights@mackenziepartners.com .

Dealer-Manager
Source Capital Group, Inc.
The date of this prospectus is August [], 2009

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ABOUT THIS PROSPECTUS

Unless the context otherwise requires, all references to “Reed’s,” “we,” “us,” “our,” “our company,” or similar language in this prospectus refer to Reed’s, Inc., a Delaware corporation.

You should rely only on the information contained in this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. For further information, please see the section of this prospectus entitled “Where You Can Find Additional Information.” We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

You should not assume that the information appearing in this prospectus is accurate as of any date other than the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or any sale of a security. Our business, financial condition, results of operations and prospects may have changed since those dates.

We obtained statistical data, market data and other industry data and forecasts used throughout this prospectus from market research, publicly available information and industry publications. Industry publications generally state that they obtain their information from sources that they believe to be reliable, but they do not guarantee the accuracy and completeness of the information. Similarly, while we believe that the statistical data, industry data and forecasts and market research are reliable, we have not independently verified the data, and we do not make any representation as to the accuracy of the information. We have not sought the consent of the sources to refer to their reports appearing in this prospectus.

This prospectus contains trademarks, tradenames, service marks and service names of Reed’s, Inc.

We have not authorized any dealer, agent or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or an accompanying prospectus supplement. This prospectus and the accompanying prospectus supplement, if any, do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus and the accompanying prospectus supplement constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus and the accompanying prospectus supplement, if any, is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus and any accompanying prospectus supplement is delivered or securities are sold on a later date.

QUESTIONS AND ANSWERS ABOUT THE RIGHTS OFFERING

The following are examples of what we anticipate may be common questions about the rights offering. The answers are based on selected information from this prospectus. The following questions and answers do not contain all of the information that may be important to you and may not address all of the questions that you may have about the rights offering. This prospectus contains more detailed descriptions of the terms and conditions of the rights offering and provide additional information about us and our business, including potential risks related to the rights offering, our common stock and our business.

Exercising the rights and investing in our securities involves a high degree of risk. We urge you to carefully read the section entitled “Risk Factors” beginning on page 17 of this prospectus and all other information included in this prospectus in its entirety before you decide whether to exercise your rights.

Q: What is a rights offering?

A: A rights offering is a distribution of subscription rights on a pro rata basis to all existing common stockholders of a company. We are distributing to holders of our common stock, at no charge, as of the close of business on the record date ([] 2009), up to 10,000,000 subscription rights to purchase up to an aggregate of 300,000 shares of our Series B Preferred valued, in the aggregate, at up to \$3,000,000. You will receive one subscription right for every share of common stock you own at the close of business on the record date. You may purchase one share of our Series B Preferred for every four (4) rights granted to you. The subscription rights will be evidenced by subscription rights certificates, which may be physical certificates but will more likely be electronic certificates issued through the facilities of the Depository Trust Company, or DTC.

Q: Why are you undertaking the rights offering?

A: We are making the rights offering to raise funds primarily for production of inventory and marketing, plus for general working capital purposes. We had approximately \$108,000 of available cash and cash equivalents as of March 31, 2009. If we fail to raise capital by the end of 2009, we would expect to have to significantly decrease operating expenses, which will curtail the growth of our business.

Our board of directors has elected a rights offering over other types of financings because a rights offering provides our existing stockholders the opportunity to participate in this offering first, and our board believes this creates less percentage dilution of stockholder ownership interest in our company than if we issued shares to new investors.

Q: How much money will Reed’s raise as a result of the rights offering?

A: Assuming full participation in the rights offering, we estimate that the net proceeds from the rights offering will be approximately \$2,608,642, after deducting expenses related to this offering payable by us estimated at approximately \$391,358. We may decide to close the rights offering and accept such proceeds of the basic subscription rights and over-subscription rights as we have received as of the expiration date of the rights offering whether or not they are sufficient to meet the objectives we state in this prospectus, other corporate milestones that we may set, or to avoid a “going concern” modification in future reports of our auditors as to uncertainty with respect to our ability to continue as a going concern. We will raise no more than \$3,000,000 in this offering. See “Risk Factors — Completion of this offering is not subject to us raising a minimum offering amount and proceeds may be insufficient to meet our objectives, thereby increasing the risk to investors in this offering.”

Q: What is a right?

A: Each right carries with it a basic subscription right and an over-subscription right. Four (4) rights entitle the holder of the rights the opportunity to purchase one share of Series B Preferred at the subscription price of \$10.00 per share. Each right will be evidenced by a transferable rights certificate.

Q: How does a rights holder transfer a subscription right?

A: The subscription rights may be transferred or assigned during the subscription period. If your shares are held of record by a broker, custodian bank or other nominee on your behalf, you may sell your subscription rights by contacting your broker, custodian bank or other nominee through which you hold your common stock. If you are a record holder of a subscription rights certificate, you may transfer your subscription rights through the subscription agent, in which case, you must deliver your properly executed subscription rights certificate, with appropriate instructions, to the subscription agent. The subscription agent will only facilitate subdivisions, transfers or sales of subscription rights until 5:00 p.m., New York City time, on August [], 2009, [three business days prior] to the scheduled [], 2009 expiration date of this rights offering. You may also choose to sell your subscription rights through a broker, custodian bank or other nominee. We intend to apply for quotation of the subscription rights on the NASDAQ Capital Market under the symbol "REEDR" beginning on or about [], 2009, until 4:00 p.m., New York City time, on [], 2009, the last business day prior to the scheduled expiration date of this rights offering.

Q: What is a basic subscription right?

A: Four (4) basic subscription rights give you the opportunity to purchase one share of our Series B Preferred. You may exercise any number of your basic subscription rights or you may choose not to exercise any subscription rights at all.

For example, if you own 400 shares of our common stock on the record date and you are granted one right for every share of our common stock you own at that time, then you have the right to purchase up to 100 shares of Series B Preferred, subject to adjustment to eliminate fractional rights. If you hold your shares in the name of a broker, dealer, custodian bank, trustee or other nominee who uses the services of the DTC, then DTC will notify you of your right to cause them to be exercised.

Q: What is an over-subscription right?

A: If you elect to purchase all of the shares available to you pursuant to your basic subscription right, you may also concurrently elect to subscribe for any number of additional shares that may remain unsubscribed as a result of any other stockholders not exercising their basic subscription rights, subject to a pro rata adjustment if over-subscription requests exceed shares, as more fully described below. The over-subscription rights allow a holder to subscribe for an additional amount equal to up to 400% of the shares for which such holder was otherwise entitled to subscribe at the same exercise price per whole share as a basic subscription right.

For example, if you own 400 shares of our common stock on the record date, and exercise your basic subscription right to purchase all (but not less than all) 100 shares of Series B Preferred which are available for you to purchase, then, you may also concurrently exercise your over-subscription right to purchase up to 400 additional shares of Series B Preferred that remain unsubscribed as a result of any other stockholders not exercising their basic subscription rights, subject to the pro rata adjustments described below. Accordingly, if your basic and over-subscription rights are exercised and honored in full, you would receive a total of 500 shares of Series B Preferred in this offering. Payments in respect of over-subscription rights are due at the time payment is made for the basic subscription right.

Q. What happens if rights holders exercise their respective over-subscription rights to purchase additional shares of Series B Preferred?

A: We will allocate the remaining available shares pro rata among rights holders who exercised their respective over-subscription rights, based on the number of over-subscription shares of Series B Preferred to which they subscribed. The allocation process will assure that the total number of remaining shares available for basic and over-subscriptions is distributed on a pro rata basis. The percentage of remaining shares of Series B Preferred each over-subscribing rights holder may acquire will be rounded down to result in delivery of whole shares.

Payments for basic subscriptions and over-subscriptions will be deposited upon receipt by the subscription agent and held in a segregated account with the subscription agent pending a final determination of the number of shares of Series B Preferred to be issued pursuant to the basic and over-subscription rights. If the pro rated amount of shares allocated to you in connection with your basic or over-subscription right is less than your basic or over-subscription request, then the excess funds held by the subscription agent on your behalf will be promptly returned to you without interest or deduction. We will deliver certificates representing your shares of our Series B Preferred or credit your account at your nominee holder with shares of our Series B Preferred that you purchased pursuant to your basic and over-subscription rights as soon as practicable after the rights offering has expired and all proration calculations and reductions contemplated by the terms of the rights offering have been effected.

Q. Are there any circumstances in which either Reed's could be obligated to distribute subscription rights for a number of shares of Series B Preferred which exceeds its available shares of Series B Preferred? What would happen in this case?

A: If we receive a sufficient number of basic subscriptions, the aggregate number of exercises could exceed the 300,000 shares of Series B Preferred authorized and available in this offering for issuance. In such a case, we would reduce on a pro rata basis, the number of basic subscriptions we accept so that we will not become obligated to issue, upon exercise of the basic subscriptions, a greater number of shares of Series B Preferred than we have authorized and available for issuance. If we have a sufficient number of shares of Series B Preferred available to meet basic subscriptions but receive an excess of over-subscriptions, we would reduce on a pro rata basis, the number of over-subscriptions we accept so that we will not become obligated to issue, upon exercise of the over-subscriptions, a greater number of shares of Series B Preferred than we have authorized and available for issuance.

Q: Will the officers, directors and significant stockholders of Reed's be exercising their rights?

A: Our officers, directors and greater than 5% beneficial stockholders may participate in this offering, but none of our officers, directors or greater than 5% beneficial stockholders are obligated to so participate.

Q: Will the subscription rights and the shares of Series B Preferred that I receive upon exercise of my rights be tradable on the NASDAQ Capital Market?

A: The subscription rights will be tradable and listed for trading on the NASDAQ Capital Market under the symbol "REEDR" during the term of this offering. We intend to apply to the OTC Bulletin Board for quotation of our Series B Preferred during the course of this offering. We cannot assure you that our Series B Preferred will meet the requirements for quotation or that there will be an active trading market for our Series B Preferred. However, the Series B Preferred will not be subject to any restrictions on transfer.

Q: How do I exercise my basic subscription right?

A: You may exercise your subscription rights by properly completing and signing your subscription rights certificate. Your subscription rights certificate, together with full payment of the subscription price, must be received by Continental Stock Transfer & Trust Company, the subscription agent for this rights offering, on or prior to the expiration date of the rights offering. We sometimes refer to Continental Stock Transfer & Trust Company in this prospectus as the subscription agent. Continental Stock Transfer & Trust Company is not the transfer agent and registrar for our common stock.

If you use the mail, we recommend that you use insured, registered mail, return receipt requested. We will not be obligated to honor your exercise of subscription rights if the subscription agent receives the documents relating to your exercise after the rights offering expires, regardless of when you transmitted the documents.

Q: How do I exercise my over-subscription right?

A: In order to properly exercise your over-subscription right, you must: (i) indicate on your subscription rights certificate that you submit with respect to the exercise of the rights issued to you how many additional shares of Series B Preferred you are willing to acquire pursuant to your over-subscription right and (ii) concurrently deliver the subscription payment related to your over-subscription right at the time you make payment for your basic subscription right. All funds from over-subscription rights that are not honored will be promptly returned to investors, without interest or deduction.

Q: Am I required to subscribe in the rights offering?

A: No.

Q: Will my voting and other rights be diluted if I do not exercise my subscription rights?

A: Yes. If you do not exercise your subscription rights in full, the percentage of our common stock that you own will decrease, and your voting and other rights will be diluted to the extent that other stockholders exercise their subscription rights to purchase shares of Series B Preferred and such Series B Preferred is converted to common stock. We will raise no more than \$3,000,000 in this offering.

Q: When will the rights offering expire?

A: The subscription rights will expire, if not exercised, at 5:00 p.m., New York City time, on [], 2009, unless we decide to terminate the rights offering earlier or extend the expiration date for up to an additional 30 trading days in our sole discretion. If we extend the expiration date, you will have at least ten trading days during which to exercise your rights. Any rights not exercised at or before that time will expire without any payment to the holders of those unexercised rights. See “The Rights Offering — Expiration Date and Extensions.” The subscription agent must actually receive all required documents and payments before that time and date.

Q: Will Reed’s be requiring a minimum dollar amount of subscriptions to consummate the rights offering?

A: No. There is no minimum subscription requirement to consummate the rights offering. As such, proceeds from this rights offering may not be sufficient to meet the objectives we state in this prospectus, other corporate milestones that we may set, or to avoid a “going concern” modification in future reports of our auditors as to uncertainty with respect to our ability to continue as a going concern.

Q: Is exercising my subscription rights risky?

A: The exercise of your subscription rights and over-subscription rights (and the resulting ownership of our common stock) involves a high degree of risk. Exercising your subscription rights means buying shares of our Series B Preferred and should be considered as carefully as you would consider any other equity investment. You should carefully consider the information under the heading “Risk Factors” and all other information included in this prospectus before deciding to exercise your subscription rights.

Q: After I exercise my subscription rights, can I change my mind and cancel my purchase?

A: No. Once you send in your subscription rights certificate and payment, you cannot revoke the exercise of either your basic or over-subscription rights. You should not exercise your subscription rights unless you are certain that you wish to purchase shares of our Series B Preferred at the proposed subscription price. Any rights not exercised at or before that time will expire worthless without any payment to the holders of those unexercised rights.

Q: Can the board of directors cancel or terminate the rights offering?

A: Yes. Our board of directors may decide to cancel or terminate the rights offering at any time and for any reason before the expiration date. If our board of directors cancels or terminates the rights offering, we will issue a press release notifying stockholders of the cancellation or termination, and any money received from subscribing stockholders will be promptly returned, without interest or deduction.

Q: What should I do if I want to participate in the rights offering but my shares are held in the name of my broker, dealer, custodian bank, trustee or other nominee?

A: