

POKER MAGIC INC  
Form 10-K/A  
October 30, 2009

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

FORM 10-K/A  
(AMENDMENT NO. 1)

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2008

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 0-16686

POKER MAGIC, INC.  
(Exact name of registrant as specified in its charter)

Minnesota  
(State of incorporation)

20-4709758  
(I.R.S. Employer Identification No.)

130 West Lake Street, Suite 300  
Wayzata, Minnesota  
(Address of principal executive offices)

55391  
(Zip Code)

Registrant's telephone number, including area code: (952) 473-3442

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

| Title of Each Class | Name of Each Exchange on which Registered |
|---------------------|---|
|---------------------|---|

Securities registered pursuant to Section 12(g) of the Act:  
Common stock, \$0.001 par value per share

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

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

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

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required to file such reports), and (2) has been subject to the filing requirements for the past 90 days.  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 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 definition of "large accelerated filer," "accelerated filer," "non-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

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

The aggregate market value of the voting stock held by persons other than officers, directors and more than 5% shareholders of the registrant as of June 30, 2008 was \$1.45 million, based on the most recent sales price of the common stock of Company (\$0.25 per share) in private transactions at such date (n.b., the common stock of the Company was not publicly quoted or listed for trading on such date). As of March 13, 2009, there were 8,900,724 shares of the issuer's common stock, \$0.001 par value, outstanding.

DOCUMENTS INCORPORATED IN PART BY REFERENCE: None.

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EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (“Amendment No. 1”) amends the Annual Report on Form 10-K of Poker Magic, Inc. (the “Company”) for the fiscal year ended December 31, 2008, filed with the SEC on March 27, 2009 (the “Original 10-K”). This Amendment No. 1 is being filed for the purpose of responding to comments received from the staff of the SEC. In particular, this Amendment No. 1 contains changes to the following portions of the Original 10-K:

- The footnotes to the Summary Compensation Table contained in Executive and Director Compensation section of the annual report (to correct an error in footnote 2 to that table); and
  - The certifications required by Section 302 and Section 902 of the Sarbanes-Oxley Act of 2002.

The reporting items of the Original 10-K being amended by this Amendment No. 1 are the only items included in this Amendment No. 1. In addition, the Section 302 and Section 906 certifications are being filed in their entirety as Exhibits 31.1, 31.2 and 32.1 to this Amendment No. 1.

Except as described above, this Amendment No. 1 does not amend any other information set forth in the Original 10-K and the Company has not updated disclosures included therein to reflect any events that occurred subsequent to the filing of the Original 10-K. Accordingly, this Amendment No. 1 should be read in conjunction with the Original 10-K and the Company’s filings made with the SEC subsequent to the filing of the Original 10-K. The filing of this Amendment No. 1 is not an admission that the Original 10-K, when filed, included any untrue statement of a material fact or omitted to state a material fact necessary to make a statement not misleading.

## PART III

## ITEM 11 EXECUTIVE AND DIRECTOR COMPENSATION

## Executive Compensation

## Summary Compensation Table

The following table sets forth the total compensation paid by the Company during its two most recent fiscal years ended December 31, 2007 and 2008 to the persons who served as the Company's President or Chief Executive Officer and Chief Financial Officer during such periods (collectively, the "named executives").

| Name and Principal Position                      | Year | Salary (\$) | Stock Awards (\$) | All Other Compensation (\$) | Total (\$) |
|--|------|-------------|-------------------|-----------------------------|------------|
| Douglas M. Polinsky,<br>Chief Executive Officer  | 2007 | \$0 (1)     | \$24,000 (2)      | -                           | \$24,000   |
|  | 2008 | \$4,000 (3) | \$5,000 (4)       | -                           | \$9,000    |
| Joseph A. Geraci, II,<br>Chief Financial Officer | 2007 | \$0 (1)     | \$24,000 (2)      | -                           | \$24,000   |
|  | 2008 | \$4,000 (3) | \$5,000 (4)       | -                           | \$9,000    |

- (1) The named executive did not receive a salary during the year ended December 31, 2007, primarily because the Company did not then have the resources to pay, or commit to pay, such individual a regular market-based salary for his services.
- (2) The named executive received a stock award of 250,000 fully vested common shares in January 2007 in exchange for services to be rendered to the Company in his role as a corporate officer and director during 2007. This represents the dollar amount recognized for financial reporting purposes under SFAS 123R with respect to stock grants to the named executive for his services.
- (3) The named executive received a salary of \$4,000 during the year ended December 31, 2008, primarily because the Company did not then have the resources to pay, or commit to pay, such individual a regular market-based salary for his services. In addition, in order to value the services rendered to the Company by the named executive, the Company recorded \$19,000 with respect to the named executive (aggregating to \$38,000 for both named executives) as additional paid-in capital in lieu of additional stock awards using the fair value of the stock on the date of the grant.
- (4) The named executive received a stock award of \$5,000, which included a \$2,000 carryover from 2007. This represents the dollar amount recognized for financial reporting purposes under SFAS 123R with respect to stock grants to the named executive for his services.

## Employment Agreements with Executives

The Company does not currently have employment agreements with Messrs. Polinsky and Geraci, and currently has no plans to enter into employment agreements with such individuals.

## Outstanding Equity Awards at Fiscal Year End

The Company had no outstanding options, warrants, unvested stock awards or equity incentive plan awards as of December 31, 2008 held by any named executive. In addition, the Company has no options, warrants, unvested stock awards or equity incentive plan awards outstanding and held by any named executive as of the date of this filing.

#### Director Compensation

The Company paid \$4,000 in director compensation in 2008. In addition, the Company reimburses directors for their expenses incurred in attending or participating in meetings of the board of directors or other Company-related meetings.

PART IV

ITEM 15 EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

Exhibits

| Exhibit Number | Description  |
|----------------|--|
| 3.1            | Amended and Restated Articles of Incorporation of Poker Magic, Inc. (1)  |
| 3.2            | Amended and Restated Bylaws of Poker Magic, Inc. (1)   |
| 4              | Form of Common Stock Certificate. (1)  |
| 10.1           | Asset Purchase Agreement with Select Video, Inc., dated March 10, 2006. (1)  |
| 10.2           | License Agreement with Bally's Park Place, Inc., dated December 26, 2007. (1)  |
| 10.3           | Amendment to License Agreement with Bally's Park Place, Inc., dated June 26, 2008. (2)   |
| 14*            | Code of Ethics (3)   |
| 31.1*          | Section 302 Certification of the Chief Executive Officer   |
| 31.2*          | Section 302 Certification of the Chief Financial Officer   |
| 32.1*          | Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. §1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

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(1) Incorporated herein by reference to the registrant's registration statement on Form 10-SB, filed on January 29, 2008.

(2) Incorporated by reference to Exhibit 10.2 to the registrant's current report on Form 8-K, filed on July 10, 2008.

(3) Available on registrant's website at [www.pokermagicinc.com](http://www.pokermagicinc.com), as permitted under Item 406(c) of Regulation S-K.

\*Filed electronically herewith.

SIGNATURES

In accordance with the requirements of the Securities Exchange Act of 1934, the registrant has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

POKER MAGIC, INC.

/s/ Douglas Polinsky  
Douglas Polinsky  
Chief Executive Officer

Dated: October 30, 2009

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| Signature and Name                               | Position/Title  | Date             |
|--|---|------------------|
| /s/ Douglas M. Polinsky<br>Douglas M. Polinsky   | Chief Executive Officer, President and<br>Director (principal executive officer)        | October 30, 2009 |
| /s/ Joseph A. Geraci, II<br>Joseph A. Geraci, II | Chief Financial Officer and Director<br>(principal accounting and financial<br>officer) | October 30, 2009 |

EXHIBIT INDEX

| Exhibit<br>Number | Description  |
|-------------------|--|
| 31.1              | Section 302 Certification of the Chief Executive Officer   |
| 31.2              | Section 302 Certification of the Chief Financial Officer   |
| 32.1              | Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. §1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

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