ASPYRA INC
Form PRER14A
January 27, 2010

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

SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No. 1)

Filed by the Registrant x

Filed by a Party other than the Registrant o

Check the appropriate box:

x Preliminary Proxy Statement

¨ Confidential, for Use of the Commission Only (as permitted by Rule 14A-6(e)(2))

¨ Definitive Proxy Statement

¨ Definitive Additional Materials

¨ Soliciting Materials under Rule 14a-12

Aspyra, Inc.
(Name of Registrant as Specified In Its Charter)

_____
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x No fee required.

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

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registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:_____

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

(3) Filing Party:_____

(4) Date Filed:_____

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Aspyra, Inc.
4360 Park Terrace Drive, Suite 220
Westlake Village, CA 91361

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

NOTICE IS HEREBY GIVEN that a Special Meeting of shareholders of Aspyra, Inc., a California corporation (the "Company", "Aspyra", "we", "us", or "our"), to be held at 10:00 a.m., Pacific Time, on Monday, March 8, 2010, at the Company's offices at 4360 Park Terrace Drive, Suite 220, Westlake Village, CA 91361, for the following purposes:

1. To consider and act upon a proposal to approve an amendment to our articles of incorporation to effect a 101-to-1 reverse stock split; and

2. To act on such other matters as may properly come before the meeting or any adjournment or adjournment thereof.

The Board of Directors has fixed the close of business on February 8, 2010, as the record date for the meeting and only holders of shares of record at that time will be entitled to notice of and to vote at the Special Meeting of Shareholders or any adjournment or adjournments thereof.

Pursuant to rules adopted by the Securities and Exchange Commission, you may access a copy of the Proxy Statement at www.aspyra.com.

By Order of the Board of Directors
Ademola Lawal
Chief Executive Officer

February__ , 2010

IMPORTANT

IF YOU CANNOT PERSONALLY ATTEND THE MEETING, IT IS REQUESTED THAT YOU INDICATE YOUR VOTE ON THE ISSUES INCLUDED ON THE ENCLOSED PROXY AND DATE, SIGN AND MAIL IT IN THE ENCLOSED SELF-ADDRESSED ENVELOPE WHICH REQUIRES NO POSTAGE IF MAILED IN THE UNITED STATES.

ASPYRA, INC.
4360 Park Terrace Drive, Suite 220
Westlake Village, CA 91361

PROXY STATEMENT
FOR
Special Meeting of Shareholders
To be held March 8, 2010

GENERAL INFORMATION

The enclosed proxy is solicited by the Board of Directors of Aspyra, Inc., a California corporation ("Aspyra", the "Company", "we", "us", or "our"), in connection with the Special Meeting of Shareholders to be held at 10:00 a.m., Pacific Time, on Monday, March 8, 2010, at the Company's offices at 4360 Park Terrace Drive, Suite 220, Westlake Village, CA 91361, and any adjournments thereof, for the purposes set forth in the accompanying Notice of Meeting. Unless instructed to the contrary on the proxy, it is the intention of the persons named in the proxy to vote the proxies:

1. For approval of an amendment to our articles of incorporation to effect a 101-to-1 reverse stock split; and

2. In their discretion on such other matters as may properly come before the meeting or any adjournment or adjournment thereof.

The record date with respect to this solicitation is the close of business on February 8, 2010 and only shareholders of record at that time will be entitled to vote at the meeting. The principal executive office of the Company is 4360 Park Terrace Drive, Suite 220, Westlake Village, CA 91361, and its telephone number is 818-880-6700. The shares of Common Stock represented by all validly executed proxies received in time to be taken to the meeting and not previously revoked will be voted at the meeting. This proxy may be revoked by the shareholder at any time prior to its being voted by filing with the Secretary of the Company either a notice of revocation or a duly executed proxy bearing a later date. This proxy statement and the accompanying proxy were mailed to you on or about February __, 2010.

OUTSTANDING SHARES; QUORUM; REQUIRED VOTE

The close of business on February 8, 2010 has been fixed as the record date for the determination of shareholders entitled to notice of and to vote at the Special Meeting and any postponements or adjournments thereof. As of the record date, we estimate that there will be 17,201,327 shares of the Company's common stock outstanding and entitled to vote. Each common share is entitled to one vote. The presence in person or by proxy at the Special Meeting of the holders of a majority of such shares shall constitute a quorum. There is no cumulative voting. The affirmative vote of the holders of a majority of the total outstanding common shares is necessary to approve the amendment to the articles of incorporation to effect a 101-to-1 reverse stock split of the common stock of the Company.

Votes shall be counted by one or more persons who shall serve as the inspectors of election. The inspectors of election will canvas the shareholders present in person at the meeting, count their votes and count the votes represented by proxies presented. Abstentions and broker nonvotes are counted for purposes of determining the number of shares represented at the meeting, but are deemed not to have voted on the proposal. Broker nonvotes occur when a nominee (which has voted on one or more matters at the meeting) does not vote on one or more other matters at the meeting because it has not received instructions to so vote from the beneficial owner and does not have discretionary authority

to so vote.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the transaction, passed upon the merits or fairness of the transaction, or passed upon the adequacy or accuracy of the disclosure in this Proxy Statement. Any representation to the contrary is a criminal offense.

SUMMARY TERM SHEET

The following summary term sheet highlights selected information from this Proxy Statement and may not contain all of the information that may be important to you. Accordingly, we encourage you to read this entire Proxy Statement, its appendices and the documents referred to or incorporated by reference in this Proxy Statement. Each item in this summary term sheet includes a caption reference directing you to a more complete description of that item.

Action To Be Considered by Stockholders

We are seeking stockholder consent to the following action:

- The approval of an amendment to our certificate of incorporation to effect a 101-for-1 reverse split of our common stock. See "Amendment to Articles of Incorporation to Effect 101-to-1 Reverse Stock Split."

Effect of the Reverse Split on Stockholders (See "Special Factors – Effects and Tax Consequences of the Reverse Split on our Other Stockholders")

If the reverse split is approved by stockholders, then as a result of the reverse split:

- Each share of common stock will automatically become and be converted into 1/101 (or approximately 0.0099) shares of common stock. This means that each 101 shares of common stock that you own will automatically become and be converted into one share of common stock.

- We will pay cash in lieu of fractional shares based on the last closing price of the common stock on the date prior to the reverse split, which we estimate will be approximately $0.06 per share (on a pre-reverse split basis, or $6.06 on a post-reverse split basis), based on the closing price of our common stock on January 15, 2010.

- If you own less than 101 shares of common stock, you will receive cash in lieu of fractional shares, and you will cease to be a stockholder. As a result, you will cease to have any direct or indirect ownership interest in the Company and will not be able to participate in any future earnings or growth of the Company.

- If you hold stock in more than one account and you do not consolidate your accounts, each account will be treated separately. As a result, if you own less than 101 shares in each of several accounts but the total number of shares which you own is more than 101 shares, you will cease to be a stockholder at the effective time of the reverse split and you will receive cash in lieu of all of your fractional shares.

- If you hold your stock in street name (which is how your stock is held if you keep your stock in your brokerage or nominee account) you will receive cash and/or shares based on the number of shares held in the brokerage or nominee account. The shares, if any, and cash in lieu of fractional shares, will be determined separately for each account you hold in street name.

- The shares and cash in lieu of fractional shares will be separately determined for each brokerage firm who holds our stock either on its own behalf or on behalf of its customers. Each account in each brokerage firm will be treated as a separate account for determining how many shares and how much cash in lieu of fractional shares will be paid.

- We will have fewer than 300 stockholders. As a result we will terminate our registration under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We estimate that as a result of the reverse split, the number of shareholders of record of our common stock will be reduced from 329 to 170.

Action Required by Stockholders

You are not required to take any action before the reverse split becomes effective. If the reverse split is approved by shareholders, then once the reverse split becomes effective, you will receive a transmittal letter for you to receive any shares and cash in lieu of fractional shares which are due to you as a result of the one-for-101 reverse split. The form of our letter to you is set forth in Appendix B to this Proxy Statement.

Funds for Payment of the Cash in Lieu of Fractional Shares and Preparing, Printing and Mailing Proxy Statement

We will pay for preparing, printing and mailing this Proxy Statement. Only one Proxy Statement will be delivered to multiple stockholders sharing an address, unless contrary instructions are received from one or more of such stockholders. Upon receipt of a written request at the address noted above, we will deliver a single copy of this Proxy Statement and future stockholder communication documents to any stockholders sharing an address to which multiple copies are now delivered. We estimate our legal, transfer agent, printing, mailing and related costs associated with this Proxy Statement and holding the Special Meeting will be approximately $25,000. In addition, if the reverse split is approved by shareholders, we will be paying our stockholders who have fractional shares for the value of the fractional shares, based on the last closing price of our common stock as of the effective date on the reverse split. We estimate that we will pay out stockholders approximately $500 for their fractional shares. We will pay the costs associated with this Proxy Statement as well as the cash in lieu of fractional shares from cash available to us.

Accounting Consequences of the Reverse Split (See “Amendment to Articles of Incorporation to Effect 101-to-1 Reverse Stock Split.”)

If the reverse split is approved by shareholders, then as a result of the reverse split:

- The number of outstanding shares of common stock will be reduced from 17,201,327 shares, which are outstanding on the date of this information, to approximately 170,227 shares. The exact number of shares outstanding after the reverse split will be determined following the effectiveness of the reverse split.

- The purchase of the fractional shares will be treated as the purchase of treasury stock and will be reflected in the stockholders’ equity section of our balance sheet as a reduction of additional paid-in capital in the amount of our payment in lieu of fractional shares, which is estimated at approximately $500.

Tax Treatment of the Reverse Split (See “Special Factors – Effects and Tax Consequences of the Reverse Split to our Other Stockholders” and “Amendment to Articles of Incorporation to Effect 101-to-1 Reverse Stock Split.”)

The combination and exchange of each 101 shares of the common stock into one share of new common stock should be a tax-free transaction, and the holding period and tax basis of the old common stock will be transferred to the new common stock received in exchange therefore. Provided that the old common stock is held as a capital asset, the cash paid to for fractional shares will be treated as a payment in redemption of the fractional shares and the stockholder will recognize a capital gain or loss, as the case may be, on the difference between your basis in the fractional share and the payment in lieu of the fractional share.

This discussion, which relates to United States residents, should not be considered as tax or investment advice, and the tax consequences of the reverse split may not be the same for all stockholders. You should consult your own tax advisors to know how federal, state, local and foreign tax laws affect you.

Fairness of the Reverse Split (See “Special Factors – Reasons for the Reverse Split,” “Special Factors – Fairness of the Reverse Split” and “Amendment to Articles of Incorporation to Effect 101-to-1 Reverse Stock Split.”)

Our board, in approving the reverse split, believes that the reverse split is fair to us and to our stockholders, including our unaffiliated stockholders, regardless of whether they receive cash in lieu of fractional shares or continue as stockholders.

No Appraisal Rights (See “Amendment to Articles of Incorporation to Effect 101-to-1 Reverse Stock Split.”) You will not have any rights of appraisal with respect to the reverse split, which means that you will not have any procedure to follow for you to challenge the valuation placed by us on your common stock in paying cash in lieu of fractional shares.

Effect of the Reverse Split on Officers, Directors and Affiliates (See "Special Factors – Effect of the Reverse Split on our Affiliates" and "Amendment to Articles of Incorporation to Effect 101-to-1 Reverse Stock Split.")

Rodney Schutt, our chief executive officer and a director, until his resignation on December 18, 2009, owns 161,538 shares of common stock, representing approximately 0.9% of our outstanding common stock. Following the reverse split, Mr. Schutt will own 1,599 shares of common stock, which will represent approximately 0.9% of our outstanding common stock after the reverse split.

The estate of C. Ian Sym-Smith (a former director of the Company who died in September 2009) owns 1,560,982 shares, representing approximately 9.1% of our outstanding common stock. Following the reverse split, the estate of C. Ian Sym-Smith will own 15,455 shares of common stock, which will represent approximately 9.1% of our outstanding common stock after the reverse split.

Bradford G. Peters, a former director of the Company, owns 2,269,711 shares, representing approximately 13.2% of our outstanding shares. Following the reverse split, Mr. Peters will own 22,472 shares of common stock, which will represent approximately 13.2% of our outstanding common stock after the reverse split.

James Shawn Chalmers owns 2,289,660 shares, representing approximately 13.3% of our outstanding common stock. Following the reverse split, Mr. Chalmers will own 22,669 shares of common stock, which will represent approximately 13.3% of our outstanding common stock after the reverse split. Mr. Chalmers states that he does not own any Common Stock directly but he is (i) the sole director and President and majority shareholder of J&S Ventures, Inc.; (ii) the sole manager and holder of 75% of the membership interests of Orion Capital Investments, LLC; and (iii) the sole trustee and sole beneficiary of the J. Shawn Chalmers Revocable Trust dated August 13, 1996.

No other officer or director owns any significant number of shares.

In addition to the shares owned by officers and directors, four of our directors hold options to purchase a total of 267,497 shares of common stock at exercise price ranging from $0.22 per share to $2.48. As a result of the reverse split, these options will entitle the holders to purchase approximately 2,649 shares of common stock at exercise prices ranging from $22.22 to $250.48 per share.

QUESTIONS AND ANSWERS CONCERNING THE STOCKHOLDER ACTION TO BE CONSIDERED

If you hold your stock in your brokerage account, how will your shares be treated?

If the reverse split is approved by shareholders, then if you hold your stock in a brokerage account or otherwise in a nominee account, the number of shares that you will receive and the cash in lieu of fractional shares will be based on the number of share in your account, as reported to us by your broker. If you advised your broker that the broker is not authorized to provide us with your name, then your broker will not provide us with your name, but will provide us with the number of shares held in each of your accounts.

How will your stock be treated in you hold your common stock in more than one account?

If the reverse split is approved by shareholders, then if you hold stock in more than one account or more than one name, each account will be treated separately. For example, if shares are held in the names of Jon Doe, Jonathan Doe and Jon P. Doe, each account will be treated separately. If you have less than 101 shares in each of these accounts, you will receive cash in lieu of fractional shares for all of your accounts. Similarly, if you have accounts at different brokerage firms, each account will be treated separately.

Can you combine your accounts so that all of your shares are in one account?

If the reverse split is approved by shareholders, then you can combine your accounts either by yourself or through your brokerage firm.

If you hold shares in brokerage accounts, you should discuss with your broker the method of combining your account. If you hold shares in your own name, you should contact our transfer agent to obtain information as to combining your accounts.

Can you divide your accounts so that you will receive cash in respect of all of your shares?

If the reverse split is approved by shareholders, then we will pay cash in lieu of fractional shares to each stockholder of record and each stockholder who holds shares in a brokerage or nominee account on the effective date of the reverse split. Whether you divide or combine your accounts, each account which is treated as a separate account on the effective date of the reverse split will be treated separately in determining what shares or cash in lieu of fractional shares is due to you.

Who is our transfer agent?

Our transfer agent is American Stock Transfer and Trust Company, LLC, 6201 15 th Avenue, Brooklyn, NY 11219, phone: 718-921-8261.

Why did the board of directors choose to adopt a reverse stock split?

Our board of directors approved the reverse split in order to enable us to reduce the number of our stockholders and to terminate the registration of our common stock under the Exchange Act. We have a large number of stockholders who own small quantities of our common stock.

If the reverse split is approved by shareholders, then as a result of the reverse split, we will have fewer than 300 stockholders of record, and we will be able to terminate the registration of our common stock under the Exchange Act. Upon filing a certification and notice of termination of registration under the Exchange Act, we will no longer be required to file the annual, quarterly and current reports which we are presently required to file and we will not be subject to provisions of the Sarbanes-Oxley Act of 2002, including those relating to the attestation by our independent auditor as to our internal controls over financial reporting.

How did we determine the amount that we will pay for fractional shares?

If the reverse split is approved by shareholders, then the amount that we will pay for fractional shares will be based on the last closing price of our common stock as of the date of the reverse split. As of January 15, 2010, the last closing price of our common stock was $0.06.

How did the board of directors determine the ratio for the reverse split?

The one-for-101 ratio for the reverse split was based on our analysis of our outstanding stock and was intended to result in our common stock being owned by less than 300 stockholders in order that we can terminate our registration under the Exchange Act.

We did not receive any report, opinion (other than an opinion of counsel) or appraisal from an outside party related to the reverse split.

Why does the board of directors want to terminate the registration of our common stock?

The decision by our board of directors to approve the reverse split was made after carefully considering our long-term goals and our current operating environment, including our cash requirements. We estimate that we will realize significant cost savings, of approximately $750,000 annually, resulting from the elimination of reporting obligations under the Exchange Act. We believe that continued reporting pursuant to the Exchange Act does not provide any material benefit to us or our stockholders, while imposing significant costs of compliance. The decision was made at this time due to the Company's current financial condition (as of September 30, 2009, the Company had cash of $564,862 and a working capital deficit of $8,367,049 (see "Summary Financial Information")), which has made it imperative for the Company to seek ways to reduce expenses, and the performance of the Company's common stock (as of January 15, 2010, the last closing price of the Company's common stock was $0.06 (see "Market and Market Price of Our Common Stock")), which has made it increasingly unlikely that the Company will obtain material benefits from being a publicly reporting company. We believe that we and our stockholders are much better served by applying our financial and management resources to our operations.

If the reverse split is approved by shareholders, then following termination of the registration of our common stock under the Exchange Act, we will no longer incur external auditor fees, consulting and legal fees related to being a public company, including expenses related to compliance, planning, documentation and testing, in connection with the internal controls provisions of Section 404 of the Sarbanes-Oxley Act of 2002. We may incur annual audit fees as a private company although the costs of such services have yet to be determined. Additionally, such termination will eliminate the Company's obligation to publicly disclose sensitive, competitive business information. In addition to the related direct financial burden from being a public company, the thin trading market in our common stock has not provided the desired level of liquidity to our stockholders nor provided a meaningful incentive for our key employees.

Did the board of directors appoint any representative to act on behalf of stockholders who are not affiliates of the Company?

The action to be considered at the Special Meeting was approved by the unanimous consent of the board of directors and will require the approval of the holders of a majority of the outstanding shares of common stock. The board did not appoint any person to act as representative for unaffiliated stockholders.

Did the board of directors consider other alternatives to the reverse split?

Yes. The board considered the following alternatives to the reverse split:

- Maintaining the status quo. However, due to the significant costs of being a public reporting company, and other considerations described herein, our board believed that maintaining the status quo would be detrimental to all stockholders. We would continue to incur the expenses of being a public company without realizing the benefits of public company status.

- The sale of the Company. The Company has considered and is currently considering the sale of the Company. The Company is currently in ongoing negotiations with several parties who are conducting due diligence with respect to the sale of the Company. However, past negotiations terminated without an agreement, and with respect to the current negotiations, the Company has not entered into any binding agreement for the sale of the Company and there is no assurance any binding agreement will be reached. If a sale of the Company is not completed, the Company will continue to incur the expenses of being a public company without realizing the benefits of public company status. As a result, the Company intends to proceed with the reverse split unless and until a sale of the Company is completed.

If the reverse split is approved by shareholders, when will the reverse split become effective?

The reverse split will become upon the filing of a certificate of amendment to our articles of incorporation which we intend to file as soon as practicable following shareholder approval.

Where can you get copies of this Proxy Statement and any other material that we have filed with the SEC in connection with the reverse split?

We make all of our filings with the SEC, including this Proxy Statement and the Schedule 13E-3 relating to the reverse split, on the SEC's EDGAR system. This information is available through the SEC's website at www.sec.gov.

We also maintain copies of our filings with the SEC on our corporate website. You can obtain access to these filings at www.aspyra.com.

SPECIAL FACTORS

Background

The Company first considered the possibility of seeking to deregister its common stock under the Exchange Act in July 2008. On July 22, 2008, the Company's board of directors held a meeting at which James Zierick, then the Company's chief executive officer, Anahita Villafane, then the Company's chief financial officer, James Helms, then the Company's chief operations officer, and Ademola Lawal, then the Company's vice president of strategy and business development, discussed with the board the possibility of deregistering its common stock under the Exchange Act. The board decided to table the revisit the issue again in 6 to 12 months. On January 22, 2009, the Company's board of directors held a meeting, at which Rodney Schutt, then the Company's chief executive officer, Ms. Villafane, Mr. Helms, Rob Pruter, then the Company's senior vice president sales and marketing, and Mr. Lawal discussed with the board the process of deregistering the Company's common stock under the Exchange Act, the potential benefits and drawbacks. At this meeting, the board and management discussed an analysis of a reverse stock split and its potential costs. On July 27, 2009, the Company's board of directors held a meeting in which Rodney Schutt, then the Company's chief executive officer, and the board discussed the benefits of deregistering the Company's common stock under the Exchange Act. On October 1, 2009, the board acted by written consent to approve the reverse split.

On or about September 25, 2009, and September 30, 2009, Mr. Schutt and Ms. Villafane had telephone discussions with the Company's legal counsel, David Manno and Jeff Cahlon of Sichenzia Ross Friedman Ference LLP, about the process by which the Company could deregister its common stock under the Exchange Act, in particular, obtaining board approval and shareholder approval for a reverse stock split and making the requisite SEC filings. Mr. Schutt and Ms. Villafane indicated the Company's desire to proceed with the reverse split.

On October 1, 2009, the Company's board of directors acted by written consent to approve the reverse split.

Since September 2008, the Company has also been considering the possibility of a sale of the Company due to several factors. We operate in a mature industry of healthcare information technology and services which has been consolidating. There are about 50 Radiology Information Systems/Picture Archiving and Communication Systems (known as RIS/PACS) companies and we believe there are some economies of scale which the Company can achieve by combining with another company. Such potential economies of scale increased in importance due to the fact that Aspyra has not been profitable in recent years. Further, as a small company in a consolidating industry, the board believed there was a significant possibility that Aspyra would be approached by a potential buyer.

In September 2008, an international RIS company which was looking to acquire a PACS company in the U.S in order to enter the U.S market with an established company, initiated contact with the Company regarding a potential sale of the Company. Aspyra's former SVP of Sales, Rob Pruter had worked for the president of this potential buyer and the buyer was aware of his position with Aspyra and contacted Mr. Pruter to learn more about Aspyra. In September 2008, Rob Pruter and James Helms had preliminary discussions with this potential buyer and made a presentation of Aspyra's business and strategy. This potential buyer closed the purchase of another PACS company in January 2009.

On April 6, 2009, Mr. Schutt and Mr. Lawal met with this potential buyer at a tradeshow and discussed the potential buyer's continued interest in Aspyra. Mr. Schutt and Mr. Lawal also met with another potential buyer at this trade show and discussed the potential strategic fit between the two companies.

In June 2009 the Company signed a letter agreement with Roth Capital Partners, LLC ("Roth"), whereby Roth was retained by the Company to provide investment banking services, including with respect to a possible sale of the Company.

On October 30, 2009, Mr. Schutt, Mr. Lawal and Ms. Villafane had a conference call with a potential buyer about preliminary due diligence items and a request for additional information.

On November 16, 2009, Mr. Schutt, Ms. Villafane, and Mr. Lawal had a conference call with a private equity firm that expressed interest in possibly purchasing the Company.

On December 4, 2009, Mr. Lawal, Mr. Schutt, Ms. Villafane, and Mr. Zierick held a conference call with the Company's board of directors to review a letter of intent with a potential buyer.

On December 8, 2009, and December 9, 2009, Mr. Lawal and Ms. Villafane held a series of meetings with a potential buyer to review the Company's sales pipeline, financial statements and schedules and detailed product roadmap and customer analysis.

The Company is currently in ongoing negotiations with several parties who are conducting due diligence with respect to the sale of the Company. The Company has not entered into any binding agreements with respect to the sale of the Company.

Purposes, Alternatives and Effects of the Reverse Split

The purpose of the reverse split is to reduce the number of record holders of our common stock so that we will have fewer than 300 stockholders of record. If the reverse if split is approved by shareholders, then following the reverse split, we will have fewer than 300 stockholders of record and we will be able to terminate our registration under the Exchange Act. As a result of the termination of our registration under the Exchange Act:

- We will not be required to file annual reports, quarterly and current reports which are due after we file the notice of termination of registration. We currently file annual reports on Form 10-K, which include our audited year-end financial statements, quarterly reports on Form 10-Q, which include unaudited quarterly and year-to-date financial statements, and current reports on Form 8-K, which report significant matters. If the reverse split becomes effective before March 31, 2010, we will not be required to file a Form 10-K for the year ended December 31, 2009.

- We will not be required to provide you with an information statement in connection with a meeting of stockholders or with an information statement in connection with action taken without a meeting. We would be required to give you notice of the meeting or notice of action taken without a meeting under the California General Corporation Law, but we would not be required to provide you with the information that is required to be included in a proxy statement or an information statement.

- We would not be subject to provisions of the Sarbanes Oxley Act, which, among other provisions, would require us to obtain attestation by our independent auditors as to our internal controls over financial reporting.

- Our officers, directors and 10% stockholders would not be required to file beneficial ownership reports on Forms 3, 4 and 5.

- Holders who beneficially own 5% or more of our common stock would not be required to file statements of beneficial ownership on Schedules 13D or 13G.

In addition, many brokerage firms may have policies which discourage purchases and sales of stock of companies that are not reporting companies; however, our common stock is already affected by policies at many brokerage firms that discourage transactions in low price stocks.

As an alternative to the reverse split, the board considered:

· Maintaining the status quo. However, due to the significant costs of being a public reporting company, and other considerations described herein, our board believed that maintaining the status quo would be detrimental to all stockholders. We would continue to incur the expenses of being a public company without realizing the benefits of public company status.

· The sale of the Company. The Company has considered and is currently considering the sale of the Company. The Company is currently in ongoing negotiations with several parties who are conducting due diligence with respect to the sale of the Company. However, past negotiations terminated without an agreement, and with respect to the current negotiations, the Company has not entered into any binding agreement for the sale of the Company and there is no assurance any binding agreement will be reached. If a sale of the Company is not completed, the Company will continue to incur the expenses of being a public company without realizing the benefits of public company status. As a result, the Company intends to proceed with the reverse split unless and until a sale of the Company is completed.

Prior to November 16, 2009, our Common Stock traded on the NYSE Amex. On September 24, 2009, the Company received notice from NYSE Amex that the Company did not meet one of NYSE Amex's continued listing standards as set forth in Part 10 of the NYSE Amex LLC Company Guide (the "Company Guide"). Specifically, the Company was not in compliance with Section 1003(a)(iv) of the Company Guide in that it had sustained losses which were so substantial in relation to its overall operations or its existing financial resources, or its financial condition had become so impaired that it appeared questionable, in the opinion of NYSE Amex, as to whether the Company would be able to continue operations and/or meet its obligations as they mature. The Company was afforded the opportunity to submit a plan of compliance to NYSE Amex by October 26, 2009, addressing how it intends to regain compliance with Section 1003(a)(iv) of the Company Guide by March 24, 2010. Because the Company intends to deregister under the Exchange Act, the Company did not submit such a plan to NYSE Amex. On November 6, 2009, the Company filed a Form 25 with the SEC for the voluntary delisting of its common stock from NYSE Amex. The delisting was effective on November 16, 2009. As of November 16, 2009, our Common Stock is quoted on the Pink Sheets under the symbol APYI. This is likely to have an adverse impact on the trading and price of our Common Stock.

The ratio of one-for-101 was intended to enable us to be satisfied that, following the reverse split, we would have less than 300 stockholders of records, even if stockholders who hold shares in street name elected to hold their shares in their own names.

Reasons for the Reverse Split

Our board of directors considered many factors in unanimously approving the reverse split at this time, including the following:

- The nature and limited extent of the trading in our common stock as well as the market value that the public markets are currently applying to us.

- The direct and indirect costs associated with the preparation and filing of our periodic reports with the SEC, which we estimate at approximately $750,000 annually, consisting of the following:
  - Legal fees $139,000
  - Outside audit and Sarbanes-Oxley documentation consulting fees $284,000
  - Stock exchange and annual meeting expenses $38,000
  - Edgar filing fees $14,000
  - Director fees (due to expected lower number of directors) $55,000
  - Director and officer insurance $55,000
  - Accounting and finance personnel expenses $145,000

- The fact that many other typical advantages of being a public company, including enhanced access to capital and the ability to use equity securities to acquire other businesses, are not currently sufficiently available to us, because of both our recent history of losses and the low price and limited trading volume in our stock, to justify such costs.

- The current level of analyst coverage and limited liquidity for our common stock under current and reasonably foreseeable market conditions.

We believe that continued reporting pursuant to the Exchange Act does not provide any material benefit to us or our stockholders, while imposing significant costs of compliance. We believe that we and our stockholders are much better served by applying our financial and management resources to our operations. Following termination of the registration of our common stock under the Exchange Act, we will no longer incur external auditor fees, consulting and legal fees related to being a public company, including expenses related to compliance, planning, documentation and testing, in connection with the internal controls provisions of Section 404 of the Sarbanes-Oxley Act of 2002. We may incur annual audit fees as a private company although the costs of such services have yet to be determined. Additionally, such termination will eliminate the Company's obligation to publicly disclose sensitive, competitive business information. In addition to the related direct financial burden from being a public company, the thin trading market in our common stock has not provided the desired level of liquidity to our stockholders nor provided a meaningful incentive for our key employees.

In addition to the significant time and cost savings resulting from termination of our registration under the Exchange Act, the board believes that this action will allow our management to focus its attention and resources on building longer-term enterprise value.

While the factors listed above have existed for several years, their importance has increased, and the decision was made at this time, due to the following factors:

- The Company's current financial condition (as of September 30, 2009, the Company had cash of $564,862 and a working capital deficit of $8,367,049 (see "Summary Financial Information")), which has made it imperative for the Company to seek ways to reduce expenses. Based upon our current plans, we believe that our existing cash reserves will not be sufficient to meet our current obligations and other obligations as they become due and payable. As of September 30, 2009, our average monthly cash usage is $265,000. Accordingly, we need to obtain additional debt or equity financing through a public or private placement of securities, or obtain a credit facility with a lender. Our ability to meet such obligations will depend on our ability to sell securities, borrow funds, reduce operating costs, or some combination thereof. Due to our recent losses, together with the worldwide economic downturn and the general lack of credit even for companies with strong balance sheets and positive operating results, our difficulties in obtaining financing are increasing. We may not be successful in obtaining necessary financing on acceptable terms, if at all.

- The recent performance of the Company's common stock (as of January 15, 2010, the last closing price of the Company's common stock was $0.06 (see "Market and Market Price of Our Common Stock")), which has made it increasingly unlikely that the Company will obtain material benefits from being a publicly reporting company.

- As noted above, on September 24, 2009, the Company received notice from NYSE Amex that the Company did not meet one of NYSE Amex's continued listing standards. The Company believes that had it not voluntarily delisted its common stock from NYSE Amex, its common stock likely would have been delisted from NYSE Amex. Further, the Company does not believe it qualifies for listing on any national securities exchange. The delisting of the Company's common stock from NYSE Amex would further make it increasingly unlikely that the Company would obtain material benefits from being a publicly reporting company.

- As noted above, the Company has had incre