

REEDS INC
Form POS EX
September 05, 2012

As filed with the Securities and Exchange Commission on September 5, 2012

Registration No. 333-172614

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

POST-EFFECTIVE AMENDMENT NO. 1

TO

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Reed's, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or jurisdiction of

2086
(Primary Standard Industrial

35-2177773
(I.R.S. Employer

incorporation or organization) Classification Code Number) Identification No.)

13000 South Spring Street

Los Angeles, California 90061

(310) 217-9400

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Christopher J. Reed

Chief Executive Officer

13000 South Spring Street

Los Angeles, California 90061

(310) 217-9400

(Name, address including zip code, and telephone number, including area code, of agent for service)

With a copy to:

Ruba Qashu

Qashu & Schoenthaler LLP

4695 MacArthur Court, 11th Floor

Newport Beach, California 92660

Telephone: (949) 355-5405

Facsimile: (866) 313-3040

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement, as determined by market conditions and other factors.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

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 of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, 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.

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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, 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 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

- Accelerated filer
- Non-accelerated filer
- Smaller reporting company

EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 (Registration No. 333-172614) of Reed's, Inc. (the "Company") is being filed solely for the purpose of filing exhibits to the Registration Statement. Accordingly, this Post-Effective Amendment No. 1 consists only of a facing page, this explanatory note and Part II of the Registration Statement on Form S-3 setting forth the exhibits to the Registration Statement. This Post-Effective Amendment No. 1 does not modify any other part of the Registration Statement. This Post-Effective Amendment No. 1 shall become effective immediately upon filing with the Securities and Exchange Commission. The contents of the Registration Statement are hereby incorporated by reference.

PART II**INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the expenses payable by us in connection with this offering of securities described in this registration statement. All amounts shown are estimates, except for the SEC registration fee. The Registrant will bear all expenses shown below.

SEC filing fee	\$ 124
Accounting fees and expenses	\$ 3,000
Legal fees and expenses	\$ 18,000
Other (including Transfer Agent fees and expenses)	\$ 1,000
Total	\$ 22,124

Item 15. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the "DGCL"), as the same exists or may hereafter be amended, provides that a Delaware corporation may indemnify any persons who were, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, were or are threatened to be made, a party to any threatened, pending or

completed action or suit by or in the right of the corporation by reason of the fact that such person was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests, provided that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer, director, employee, or agent is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such officer or director has actually and reasonably incurred.

Section 145 of the DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145 of the DGCL.

Our amended certificate of incorporation provides that, to the fullest extent permitted by Delaware law, as it may be amended from time to time, none of our directors will be personally liable to us or our stockholders for monetary damages resulting from a breach of fiduciary duty as a director. Our amended certificate of incorporation also provides discretionary indemnification for the benefit of our directors, officers, and employees, to the fullest extent permitted by Delaware law, as it may be amended from time to time. Pursuant to our bylaws, we are required to indemnify our directors, officers, employees and agents, and we have the discretion to advance his or her related expenses, to the fullest extent permitted by law.

We do currently provide liability insurance coverage for our directors and officers.

These indemnification provisions may be sufficiently broad to permit indemnification of our officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors or officers, or persons controlling us, pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

In the event that a claim for indemnification against such liabilities (other than the payment of expenses incurred or paid by a director, officer or controlling person in a successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to the court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Item 16. Exhibits

See the Exhibit Index which follows the signature page of this Registration Statement on Form S-3, which is incorporated herein by reference.

Item 17. Undertakings

(a) The undersigned Registrant hereby undertakes:

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1. To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement, to:

i. include any prospectus required by section 10(a)(3) of the Securities Act;

ii. reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

iii. include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue. Liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

In accordance with the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and authorized this registration

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statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Los Angeles, State of California, on September 5, 2012.

REED'S, INC.

By: /s/ Christopher J. Reed
Christopher J. Reed
Chief Executive Officer

In accordance with the requirements of the Securities Act of 1933, as amended, this Registration Statement was signed by the following persons in the capacities and on the dates stated.

Signature	Title	Date
/s/ Christopher J. Reed Christopher J. Reed	Chief Executive Officer, Chairman of the Board of Directors (Principal Executive Officer)	September 5, 2012
/s/ James Linesch James Linesch	Chief Financial Officer (Principal Accounting Officer)	September 5, 2012
/s/ Judy Holloway Reed* Judy Holloway Reed	Director	September 5, 2012
/s/ Mark Harris* Mark Harris	Director	September 5, 2012
/s/ Daniel S.J. Muffoletto * Daniel S.J. Muffoletto	Director	September 5, 2012

* By: Power of Attorney

By : /s/ Christopher J. Reed

Christopher J. Reed

Attorney-in-Fact

*pursuant to Power of Attorney filed with

Pre-Effective Amendment No. 1 filed on March 21, 2011

EXHIBIT INDEX

- Securities Purchase Agreement dated January 28, 2011 by and between Reed's Inc. and each of Cranshire Capital, L.P., Freestone Advantage Partners, LP and Hudson Bay Master Fund Ltd. (incorporated by reference to Exhibit 10.1 to Current Report on Form 8K of Reed's Inc., filed January 28, 2011)
- 4.1 L.P., Freestone Advantage Partners, LP and Hudson Bay Master Fund Ltd. (incorporated by reference to Exhibit 10.1 to Current Report on Form 8K of Reed's Inc., filed January 28, 2011)
- Form of Warrant dated February 3, 2011 issued by Reed's Inc. to each of Cranshire Capital, L.P., Freestone Advantage Partners, LP and Hudson Bay Master Fund Ltd. (incorporated by reference to Exhibit 10.1 to Current Report on Form 8K of Reed's Inc., filed January 28, 2011)
- 4.2 Advantage Partners, LP and Hudson Bay Master Fund Ltd. (incorporated by reference to Exhibit 10.1 to Current Report on Form 8K of Reed's Inc., filed January 28, 2011)
- Form of Registration Rights Agreement dated February 3, 2011 between Reed's Inc. and each of Cranshire Capital, L.P., Freestone Advantage Partners, LP and Hudson Bay Master Fund Ltd. (incorporated by reference to Exhibit 10.1 to Current Report on Form 8K of Reed's Inc., filed January 28, 2011)
- 4.3 Capital, L.P., Freestone Advantage Partners, LP and Hudson Bay Master Fund Ltd. (incorporated by reference to Exhibit 10.1 to Current Report on Form 8K of Reed's Inc., filed January 28, 2011)
- 5.1 Legal Opinion of Qashu & Schoenthaler LLP (previously filed as Exhibit 5.1)
- 23.1 Consent of Weinberg & Co., P.A.*
- 23.2 Consent of Qashu & Schoenthaler LLP (contained in Exhibit 5.1)

*Filed herewith