

ODYSSEY MARINE EXPLORATION INC  
Form 10-K  
April 01, 2019  
Table of Contents

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

**FORM 10-K**

(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, 2018**

**TRANSITION REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**

**Commission File Number 001-31895**

**ODYSSEY MARINE EXPLORATION, INC.**

**(Exact name of registrant as specified in its charter)**

**Nevada**  
**(State or other jurisdiction of**

**84-1018684**  
**(I.R.S. Employer**

**incorporation or organization)**

**Identification No.)**

**5215 W. Laurel Street, Tampa, Florida 33607**

**(Address and zip code of principal executive offices)**

**(813) 876-1776**

**(Registrant's telephone number including area code)**

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

**Common Stock, \$.0001 par value**

**NASDAQ Capital Market**

**(Title of each class)**

**(Name of each exchange on which registered)**

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

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Securities Act. Yes  No

Indicate by mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). 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, a smaller reporting company, or emerging growth company. See definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

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

Smaller reporting company

Emerging growth 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 7.9 million shares of voting stock held by non-affiliates of Odyssey Marine Exploration, Inc. as of June 30, 2018 was approximately \$65.3 million. As of March 8, 2019, the Registrant had 9,222,199 shares of Common Stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

The information required by Part III of this Form 10-K is incorporated by reference to the Company's Definitive Proxy Statement for the Registrant's Annual Meeting of Stockholders to be held on June 3, 2019.

**Table of Contents****TABLE OF CONTENTS**

	<b>Page</b>
<b><u>PART I</u></b>	
Item 1. <u>Business</u>	1
Item 1A. <u>Risk Factors</u>	6
Item 1B. <u>Unresolved Staff Comments</u>	10
Item 2. <u>Properties</u>	10
Item 3. <u>Legal Proceedings</u>	10
Item 4. <u>Mine Safety Disclosures</u>	10
<b><u>PART II</u></b>	
Item 5. <u>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	11
Item 6. <u>Selected Financial Data</u>	11
Item 7. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	12
Item 7A. <u>Quantitative and Qualitative Disclosures About Market Risk</u>	23
Item 8. <u>Financial Statements and Supplementary Data</u>	23
Item 9. <u>Changes in and Disagreements With Accountants on Accounting and Financial Disclosure</u>	24
Item 9A. <u>Controls and Procedures</u>	24
Item 9B. <u>Other Information</u>	24
<b><u>PART III</u></b>	
Item 10. <u>Directors, Executive Officers and Corporate Governance</u>	24
Item 11. <u>Executive Compensation</u>	24
Item 12. <u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	24
Item 13. <u>Certain Relationships and Related Transactions, and Director Independence</u>	24
Item 14. <u>Principal Accounting Fees and Services</u>	25
<b><u>PART IV</u></b>	
Item 15. <u>Exhibits and Financial Statement Schedules</u>	26
<b><u>SIGNATURES</u></b>	64
<b><u>EXHIBITS INDEX</u></b>	65

---

**Table of Contents**

*As used in this Annual Report on Form 10-K, we, us, our company and Odyssey mean Odyssey Marine Exploration, Inc. and our subsidiaries, unless the context indicates otherwise.*

**PART I**

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Act of 1934, as amended. The statements regarding Odyssey Marine Exploration, Inc. and its subsidiaries contained in this report that are not historical in nature, particularly those that utilize terminology such as may, will, should, likely, expects, anticipates, believes, plans, or comparable terminology, are forward-looking statements based on current expectations and assumptions, and entail various risks and uncertainties that could cause actual results to differ materially from those expressed in such forward-looking statements.

Important factors known to us that could cause such material differences are identified in our **RISK FACTORS** in Item 1A and elsewhere in this report. Accordingly, readers of this Annual Report on Form 10-K should consider these factors in evaluating an investment in our securities and are cautioned not to place undue reliance on the forward-looking statements contained herein. We undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events unless otherwise specifically indicated, except as required by law.

**ITEM 1. BUSINESS**

**Overview**

Odyssey Marine Exploration, Inc. is a world leader in deep-ocean exploration. The discovery, development and extraction of deep-ocean minerals is the company's core focus. Our innovative techniques are also applied to shipwreck cargo recovery and other marine survey and exploration charter services. We have numerous projects in various stages of development around the world from both our own portfolio as well as through third-party contracts.

In 2010, we began to leverage our core business expertise and technology for deep-ocean mineral exploration. Our expeditions conducted for Neptune Minerals, Inc. and Chatham Rock Phosphate, Ltd. resulted in the assessment of significant mineral deposits. We are also developing and exploring our own deep-ocean mineral projects. Through our majority stake in Oceanica Resources S. de R.L., a Panamanian company ( Oceanica ), we control Exploraciones Oceanicas, S. De R.L. De C.V. ( ExO ), a Mexican company that has exclusive mining permits for a significant phosphate deposit. Our team performed all of the off-shore exploration to find and validate the mineralized phosphate deposit and is managing the environmental studies and environmental permit application process with ExO. This phosphate deposit is one of the largest to be identified, is expected to be important to the regional and international fertilizer markets, and is strategically important to Mexico and North America. To move to the next phase of development of the deposit, Odyssey's subsidiaries are managing the legal and political process to gain approval of the Environmental Impact Application ( EIA ).

In addition to our ownership stake in the ExO phosphate deposit, we also own a controlling interest in one other mineral project and a non-controlling interest in three other mineral companies controlling mineral deposits. We are also developing new mineral projects around the world.

We have extensive experience discovering shipwreck sites in the deep ocean and conducting archaeological excavations with remotely operated vehicles ( ROVs ). We have worked on historically important shipwreck projects

including the SS *Republic*, HMS *Victory* (1744), the SS *Central America* and *La Marquis de Tourny*. Odyssey also has considerable experience conducting cargo recovery operations from 20<sup>th</sup> century shipwrecks in the deep ocean. Between 2012 and 2013, we recovered over 110 tons of silver cargo, representing 99% of the insured cargo, from the SS *Gairsoppa*, which was located nearly three miles deep. This was one of the largest and heaviest recoveries from a shipwreck in history.

### **Deep-Ocean Mineral Exploration**

Our mineral exploration and development program leverages the 20+ years experience we have mapping the ocean floor in search of shipwrecks. The technology and team have been seamlessly applied to successfully locate mineral deposits on the ocean floor worldwide. Our expert team boasts some of the industry's most experienced ocean explorers and geologists utilizing an extensive array of advanced deep-ocean technology resulting in the cost-efficient exploration and assessment of seabed minerals.

## **Table of Contents**

Our capabilities allow us to perform precision geophysical and geotechnical surveys, detailed mapping, sampling, environmental assessments and resource evaluations. The company's capabilities also include a full suite of strategic and administrative functions that support identification of new resources, the scientific services required to validate and quantify mineral resources as well as process and analyze the environmental data for permitting. Through strategic alliances and partnerships Odyssey also develops extraction and commercial programs. This collective suite of capabilities gives the company the ability to develop subsea mineral resources from blue-ocean concepts through to extraction and commercial sales. This enables the company to rapidly drive resource targets and assets up the valuation chain.

We offer exploration services, including geophysical and geotechnical assessments of seabed mineral deposits as well as those mentioned above, to companies, including our subsidiaries and companies in which we hold an equity position, as a resource development partner. When performing mineral exploration services, we may receive payments in the form of cash for services, equity interests in the contracting company, or financial interests in the tenement.

There are many economically significant types of seabed mineral deposits being evaluated or explored by Odyssey. Three primary types are:

**Phosphorites** Phosphorite deposits are mineral occurrences that are recovered primarily for their phosphate material. Phosphorites may be present on the seabed or in the stratigraphic column. Phosphate is an agriculturally important mineral used primarily for crop fertilization, though a variety of uses exist for phosphate and phosphorus, the significant elements in phosphate. Phosphorites exist in a wide range of depositional environments. Several factors contribute to the formation of phosphorites, including a supply of phosphorus, present or pre-existing complex oceanographic circulation patterns, and a proper sedimentological setting. Generally, phosphorites are targeted on continental shelves and slopes, though phosphorites do occur on oceanic seabed features such as guyots (flat-topped seamounts).

**Polymetallic nodules** These nodular concretions are found on the seabed and consist of concentric layers of iron and manganese hydroxides. Nodules generally consist primarily of either manganese or iron. Manganese nodules can contain up to 30% manganese as well as other valuable metals and minerals including cobalt, copper and rare earths. Polymetallic nodules are found at the seabed interface in oceans worldwide. Nodules must exhibit proper metal content and exist in sufficient concentration to be of potential economic interest. Polymetallic nodules are found around the world in abyssal plains at depths generally ranging from 4,000 – 5,000 meters.

**Seafloor Massive Sulphides (SMS)** SMS deposits are found on the ocean floor and contain copper, zinc, gold, silver and other metals. SMS deposits are found in areas of active or complex tectonic or volcanogenic activity, such as near oceanic spreading centers (such as the Mid-Atlantic Ridge and East Pacific Rise), back-arc basins (such as the Manus Basin in Papua New Guinea waters) and submarine arc volcanic chains (such as Kermadec Arc in New Zealand waters). SMS deposit targets are generally distantly adjacent and away from active venting systems in largely biologically benign environments.

## **Deep-Ocean Shipwreck Exploration**

During the past 20 years, we amassed a large private database and research library of target shipwrecks, developed and acquired proprietary deep-ocean equipment and tools, and built a team of knowledgeable experts to execute off-shore projects. Over that time, we conducted shipwreck search and cargo recovery work on our own behalf and under contract to third parties. On December 10, 2015, we sold the shipwreck database and research library to an affiliate of Monaco Financial LLC's, Magellan, while still retaining our equipment, tools, and specialized offshore team members. As part of this transaction with Monaco, Magellan agreed to exclusively hire Odyssey on a cost plus

basis for any shipwreck search and recovery projects conducted through 2020 with the option to extend the contract. Magellan will also pay us 21.25% of the net proceeds from any monetization of recovered cargo.

We have extensive experience and abilities in key functional areas required for success in the shipwreck business, such as research, conservation, documentation and exhibit of rare artifacts and publication of archaeological excavation. We conduct these services under contract to Monaco's affiliate and other companies for their projects as well.

### **Offshore Services**

We own specialized marine services survey and recovery equipment that we mobilize for customers on leased vessels. This proprietary equipment is operated by our technical team when conducting operations worldwide. This allowed us to launch the CLIO Offshore services program, increasing the utilization and leverage of the technical team and assets between our projects. CLIO Offshore is focused on third-party survey, remotely operated vehicle (ROV) and recovery projects down to 6,000 meters in depth. This program also offers services for deep-ocean resource explorations, ship and airplane wreck explorations, archaeological recovery and conservation and insurance documentation.



## **Table of Contents**

### **Operational Projects and Status**

We have numerous deep-ocean projects in various stages of development around the world. To protect the targets of our planned operations, in some cases we may defer disclosing specific information relating to our projects until we have located a shipwreck or other potentially valuable sources of interest and determined a course of action to protect property rights. With respect to mineral deposits, SEC Industry Guide 7 outlines the Securities and Commission's basic mining disclosure policy and what information may be disclosed in public filings. The SEC has adopted amendments to the property disclosure requirements for mining registrants that must be complied with for the full fiscal year beginning after January 1, 2021. With respect to shipwrecks, the identity of the ship may be undeterminable and the nature and amount of cargo may be uncertain, thus before completing any recovery, specific information about the project may be unavailable. If work is conducted on behalf of a client, release of information may be limited by the client. Although Odyssey has a variety of projects in various stages of development, only projects with material operational activity in the past 12 months are included below.

### **Subsea Mineral Mining Exploration Projects**

#### **Oceanica Resources, S. de R.L.**

In February 2013, we disclosed Odyssey's ownership interest, through Odyssey Marine Enterprises, Ltd., a wholly owned Bahamian company (Enterprises), in Oceanica Resources, S. de R.L., a Panamanian company (Oceanica), and Exploraciones Oceanicas, S. De R.L. De C.V. (ExO), a subsidiary of Oceanica. ExO is in the business of mineral exploration and controls exclusive permits in an area in Mexican waters that contains a large amount of phosphate mineralized material. Phosphate is a key ingredient of fertilizers. In March 2014, Odyssey completed a first NI 43-101 compliant report on the deposit and periodically updates this report. This deposit is currently our main mineral project, and success of this project is important to Odyssey's future. Odyssey believes that this deposit contains a large amount of high-grade phosphate rock that can be extracted on a financially attractive basis (essentially a dredging operation) and that the product will be attractive to Mexican and other world producers of fertilizers.

ExO has conducted extensive scientific testing of the mineralized phosphate material and of the environmental impact of recovering the mineralized material from the seafloor. ExO has been working with leading environmental experts on the impact assessment and permitting process, with Royal Boskalis Westminster N.V on the extraction and processing program, and with JPMorgan and the AHMSA group of companies on the strategic growth alternatives.

ExO applied for and was granted additional mining concession areas by the Mexican government. These additional areas are adjacent to the zones with the highest concentration of mineralization in the original mining concession area. ExO also relinquished certain parts of the granted concession areas where the mineral concentration levels were less attractive for mining purposes.

In September 2014, ExO reported that the EIA for proposed dredging and recovery of phosphate sands from the deposit had been filed with the Mexican Secretary of Environment and Natural Resources (SEMARNAT). Approval of this EIA application is needed in order to obtain an environmental permit to begin the commercial extraction of phosphate from the tenement area. In November 2014, SEMARNAT held a public hearing on the EIA in Mexico and asked supplemental questions to ExO on its EIA application. In full compliance with the SEMARNAT process, a response to the questions was filed in March 2015. In addition to providing supplemental scientific information and studies, the response included additional mitigation and economic considerations to reinforce ExO's commitment to being good corporate citizens and stewards of the environment. In June 2015, ExO withdrew its EIA application to allow additional time for review and regional briefings. The EIA was re-submitted in June 2015, and additional information was filed in August 2015. A public hearing on this application was conducted by SEMARNAT on

Edgar Filing: ODYSSEY MARINE EXPLORATION INC - Form 10-K

October 8, 2015, additional questions were received from SEMARNAT in November 2015, and ExO's responses to the questions were filed with SEMARNAT on December 3, 2015. On April 8, 2016, SEMARNAT denied the application for this environmental license as presented.

On March 21, 2018, the Superior Court of the Federal Court of Administrative Justice in Mexico ruled unanimously in favor of our subsidiary, ExO, nullifying the April 2016 denial of the environmental license application for the extraction of phosphate sand from ExO's deposit. In May 2018, after the statutory period for appeal of the ruling had passed with no appeals filed, the Mexican court published the full ruling on their website.

## **Table of Contents**

On October 18, 2018 we were notified that SEMARNAT repeated their refusal to issue the environmental approval for the phosphate deposit controlled by ExO in opposition to the unanimous ruling and Court Order issued by Mexico's Federal Court of Administrative Justice. On October 22, 2018, legal counsel for ExO filed an action before the Court requesting sanctions be imposed upon SEMARNAT and a requirement for SEMARNAT to promptly issue the permit as directed in the Court Order.

To move to the next phase of development of the deposit, Odyssey and its subsidiaries need the issuance of this environmental permit. Odyssey and its subsidiary ExO continue to work with our Mexican partners to obtain the necessary environmental permission as noted in the Court's ruling.

Enterprises initially held 77.6 million of Oceanica's 100.0 million outstanding shares. Subsequently, Enterprises sold and transferred to Mako Resources, LLC ( Mako ) 15.0 million shares for a purchase price of \$1.00 per share, or \$15.0 million, and granted Mako options to purchase an additional 15.0 million shares at the purchase price of \$2.50 per share before December 31, 2013.

In June 2013, Mako agreed to exercise a portion of these options to purchase 8.0 million shares at a reduced exercise price of \$1.25 per share. As part of Odyssey's strategy to maintain a control position in Oceanica, in parallel with the early exercise, Enterprises purchased 1.0 million shares of Oceanica from another Oceanica shareholder at \$1.25 per share. This transaction also provided Odyssey voting rights on an additional 3.0 million shares of Oceanica held by such other Oceanica shareholder so long as there is no change in control of Odyssey.

An option to purchase an additional 1.0 million shares was exercised by Mako on December 30, 2013 for a total amount of \$2.5 million. The options on the remaining 6.0 million shares were extended in 2014 and 2015. On March 11, 2015, these options were terminated in exchange for the issuance of 4.0 million shares of our common stock to Mako. In August 2014, we entered into a loan agreement with Monaco Financial, LLC, a marketing partner. Under terms of that agreement, Monaco may convert all or part of the loan balance into Oceanica shares held by us to purchase Oceanica shares from us at a pre-defined price (See NOTE H). This loan was amended in December 2015 and again in March 2016, extending the maturity date of the loan to April 1, 2018 and allowing Monaco to retain the call option on the \$10 million worth of Oceanica shares held by Odyssey until April 1, 2018. In March 2015, Odyssey entered into a loan arrangement with Minera del Norte, S.A. de C.V. ( MINOSA ) whereby Odyssey pledged all of its shares in Oceanica as collateral for a \$14.75 million loan from MINOSA. The MINOSA loan has been amended several times and matured December 31, 2017, coupled with other stipulations, see NOTE H in ITEM 8 for further information.

## **Shipwreck Exploration Projects**

Odyssey began conducting offshore services for our shipwreck business partner, Magellan Limited, in 2016. In 2017 the search and inspection phase of a major shipwreck project covering multiple valuable targets was successfully completed. We currently are providing a range of marine-related services to Magellan in support of this and other projects.

## **Other Projects**

Odyssey offers its marine exploration services to third-party companies. This may be for mineral exploration, environmental studies, shipwreck search and recovery, subsea surveys, and other off-shore work requiring specialized vessels, equipment and personnel.

## **Legal and Political Issues**

Odyssey works with several leading international maritime lawyers and policy experts to constantly monitor international legal initiatives that might affect our projects.

To the extent that we engage in mineral exploration or shipwreck search and recovery activities in the territorial, contiguous or exclusive economic zones of countries, Odyssey works to comply with verifiable applicable regulations and treaties.

We believe there will be increased interest in the protection of underwater cultural heritage and in the recovery of subsea minerals throughout the oceans of the world. We are uniquely qualified to provide governments and international agencies with knowledge and skills to help manage these resources.

## **Table of Contents**

Related to mineral exploration, we will evaluate the political climate and specific legal requirements of any areas in which we are working. We may partner with third parties who have unique industry experience in specific geographical areas to assist with navigation of the regulatory landscape.

## **Competition**

Odyssey conducts mineral exploration on both shallow and deep-sea terrains. There are several companies that publicly identify themselves as engaged in aspects of deep-ocean mineral exploration or mining, including Nautilus Minerals (NUS.TO), Neptune Minerals, Deep Green Resources, Inc. and Chatham Rock Phosphate, Ltd. (CRP.NZ) as well as countries that are exploring options to mine deep-ocean mineralized materials. As our mineral exploration business plan includes partnering with others in the industry, we view these entities as potential partners rather than pure competitors. As mineral rights are generally granted on an exclusive basis for a specific area or tenement, once licenses are granted we do not anticipate any competitive intrusion on those areas. It is possible that one of these companies or some currently unknown group may secure licenses on an area desired by Odyssey or one of our partners; but since exploration work does not start until licenses are secured, we do not believe that competition from one or more of these entities, known or unknown, would materially affect our operating plan or alter our current business strategy. For offshore mineral exploration, there are providers of vessels and equipment that could be competitors or partners for certain projects. These companies generally service the oil, gas and telecom industries with survey capabilities. We view these companies as potential strategic partners or services providers for our projects.

## **Cost of Environmental Compliance**

With the exception of marine operations, our general business operations do not expose us to environmental risks or hazards. We carry insurance that provides a layer of protection in the event of an environmental exposure resulting from the operation of vessels we may utilize. The cost of such coverage is not material on an annual basis. Our seabed mineral business is currently in the exploration and validation phase and has thus not exposed us to any significant environmental risks or hazards, other than those which are standard to basic marine operations.

## **Executive Officers of the Registrant**

The names, ages and positions of all the executive officers of the Company as of March 1, 2019 are listed below.

Mark D. Gordon (age 58) has served as Chief Executive Officer since October 1, 2014, as President since October 2007 and was appointed to the Board of Directors in January 2008. Previously, Mr. Gordon served as Chief Operating Officer since October 2007 and as Executive Vice President of Sales and Business Development since January 2007 after joining Odyssey as Director of Business Development in June 2005. Prior to joining Odyssey, Mr. Gordon owned and managed four different ventures (1987-2003).

Jay A. Nudi, CPA (age 55) has served as Chief Financial Officer since June 2017, as Principal Accounting Officer since January 2006 and joined Odyssey as Controller in May 2005. Mr. Nudi previously assumed the additional responsibilities of Interim Chief Financial Officer on June 8, 2016 and of Treasurer in May 2010. Prior to joining Odyssey, Mr. Nudi served as Controller for The Axis Group in Atlanta (2003-2004).

John D. Longley, Jr. (age 52) has served as Chief Operating Officer since October 1, 2014. Previously Mr. Longley served as Executive Vice President of Sales and Business Development since February 2012. Mr. Longley was originally the Director of Sales and Business Operations when he joined the Company in May 2006.

Laura L. Barton (age 56) was appointed as Executive Vice President and Director of Communications in June 2012 and formerly served as Vice President and Director of Corporate Communications from November 2007 to June 2012. She was appointed Corporate Secretary in June 2015. Ms. Barton previously served as Director of Corporate Communications and Marketing for Odyssey since July 2003. Ms. Barton was previously President of LLB Communications, a marketing and communications consulting company whose customers included a variety of television networks, stations and distributors and the Company (1994-2003).

## **Table of Contents**

### **Employees**

As of December 31, 2018, we had 17 full-time employees, most working from our corporate offices in Tampa, Florida. Additionally, we contract with specialized technicians to perform technical marine survey and recovery operations and from time to time hire subcontractors and consultants to perform specific services.

### **Internet Access**

Odyssey's Forms 10-K, 10-Q, 8-K and all amendments to those reports are available without charge through Odyssey's web site on the Internet as soon as reasonably practicable after they are electronically filed with, or furnished to, the Securities and Exchange Commission, [www.sec.gov](http://www.sec.gov). They may be accessed as follows: [www.odysseymarine.com](http://www.odysseymarine.com) (Investors/Financial Information Link).

## **ITEM 1A. RISK FACTORS**

*You should carefully consider the following factors, in addition to the other information in this Annual Report on Form 10-K, in evaluating our company and our business. Our business, operations and financial condition are subject to various risks. The material risks are described below and should be carefully considered in evaluating Odyssey or any investment decision relating to our securities. This section is intended only as a summary of the principal risks. If any of the following risks actually occur, our business, financial condition, or operating results could suffer. If this occurs, the trading price of our common stock could decline, and you could lose all or part of the money you paid to buy our common stock.*

### ***Our business involves a high degree of risk.***

An investment in Odyssey is extremely speculative and of exceptionally high risk. With respect to mineral exploration projects, there are uncertainties with respect to the quality and quantity of the material and their economic feasibility, the price we can obtain for the sale of the deposit or the ore extracted from the deposit, the granting of the necessary permits to operate, environmental safety, technology for extraction and processing, distribution of the eventual ore product, and funding of necessary equipment and facilities. In projects where Odyssey takes a minority ownership position in the company holding the mining rights, there may be uncertainty as to that company's ability to move the project forward. With respect to our shipwreck projects, although we may be able to plan and obtain permits for our projects, there is a possibility that the shipwrecks may have already been salvaged or may not be found, or may not have had anything valuable on board at the time of the sinking. Even if objects of value are located and recovered, there is the possibility that the recovery cost will exceed the value of the objects recovered or that others, including both private parties and governmental entities, will assert conflicting claims and challenge our rights to the recovered objects. Finally, even if we are successful in locating and retrieving objects from a shipwreck and establishing title to them, there are no assurances as to the value that such objects will bring at their sale, as the market for such objects is uncertain, and there could be an extended sales cycle to convert the cargo into cash. Since December 2015, the majority of our work on shipwreck projects has been performed as a contractor to another party, which limits the potential upside for us on such projects. The contracting party may encounter many of the same risks listed above with respect to obtaining permits, retaining ownership of any recovered cargo, and monetizing the cargo. As a contractor, we are also dependent on the contracting party's ability to commence the project in a timely manner and to pay our invoices.

### ***The research and data we use may not be reliable.***

The success of a mineral or shipwreck project is dependent to a substantial degree upon the research and data we or the contracting party have obtained. By its very nature, research and data regarding mineral deposits and shipwrecks can be imprecise, incomplete, outdated, and unreliable. For mineral exploration, data is collected based on a sampling technique and available data may not be representative of the entire ore body or tenement area. In the case of shipwrecks, it is often composed of or affected by numerous assumptions, rumors, legends, historical and scientific inaccuracies and misinterpretations which have become a part of such research and data over time. Prior to conducting off-shore exploration, we typically conduct on-shore research. There is no guarantee that the models and research conducted on-shore will be representative of actual results on the seafloor. Off-shore exploration typically requires significant expenditures, with no guarantee that the results will be useful or financially rewarding.

***Operations may be affected by natural hazards.***

Underwater exploration and recovery operations are inherently difficult and dangerous and may be delayed or suspended by weather, sea conditions or other natural hazards. Further, such operations may be undertaken more safely during certain months of the year than others. We cannot guarantee that we, or the entities we are affiliated with, will be able to conduct search and recovery operations during favorable periods. In addition, even though sea conditions in a particular search location



## **Table of Contents**

may be somewhat predictable, the possibility exists that unexpected conditions may occur that adversely affect our operations. It is also possible that natural hazards may prevent or significantly delay search and recovery operations. Seabed mineral extraction work may be subject to interruptions resulting from storms that adversely affect the extraction operations or the ports of delivery.

### ***We may be unable to establish our rights to resources or items we discover or recover.***

Persons and entities other than Odyssey and entities we are affiliated with (both private and governmental) may claim title to the shipwrecks and/or valuable cargo that we may recover. Even if we are successful in locating and recovering shipwrecks and/or valuable cargo, we or our client may not be able to establish necessary rights to property recovered if challenged by governmental entities, prior owners, or other attempted salvors claiming an interest therein. In such an event we may not receive our share of anticipated proceeds although we would still be paid for our work when conducting operations for a client. We may discover potentially valuable seabed mineral deposits, but we may be unable to get title to the deposits or get the necessary governmental permits to commercially extract the minerals. Mineral deposits and shipwrecks may be in controlled waters where the policies and laws of a certain government may change abruptly, thereby adversely affecting our ability to operate in those zones.

### ***The market for any objects or minerals we recover is uncertain.***

Even if valuable items can be located and recovered in the future, it is difficult to predict the price that might be realized for such items. The value of certain recovered items will fluctuate with the precious metals market, which has been highly volatile in past years. In addition, the entrance on the market of a large supply of minerals or similar items from shipwrecks located and recovered by others could depress the market. During the time between the date a mineral deposit is discovered and the date the first extracted minerals are sold, world and local prices for the mineral may fluctuate drastically and thereby change the economics of the mineral project.

### ***We could experience delays in the disposition or sale of minerals or recovered objects.***

The methods and channels that may be used in the disposition or sale of recovered items are uncertain at present and may include several alternatives. Ready access to buyers for valuable items recovered cannot be guaranteed. Delays in the disposition of such items could adversely affect the profitability of projects or cash flow. It may take significant time between the date a mineral deposit is discovered and the date the first extracted minerals are sold. Stakes in the mineral deposits can potentially be sold at an earlier date, but there is no guarantee that there will be readily available buyers at favorable competitive prices.

### ***Legal, political or civil issues could interfere with our marine operations.***

Legal, political or civil issues of governments throughout the world could restrict access to our operational marine sites or interfere with our marine operations or rights to seabed mineral deposits. In many countries, the legislation covering ocean exploration lacks clarity. As a result, when we are conducting projects in certain areas of the world for our own account or on our behalf of a contracting party, we may be subjected to unexpected delays, requests, and outcomes as it works with local governments to define and obtain the necessary permits and to assert its claims over assets on the seafloor bottom. Our vessel, equipment, personnel and or cargo could be seized or detained by government authorities. We may have to work with different units of a government, and there may be a change of government representatives over time. This may result in unexpected changes or interpretations in government contracts and legislation.

### ***Objects we recover could be stolen from us.***

If we locate a shipwreck and assert a valid claim to items of value on our behalf or other behalf of a contracting party, there is a risk of theft of such items at sea by pirates or poachers before or after the recovery or while in transit to a safe destination as well as when stored in a secured location. Such thefts may not be adequately covered by insurance.

*We may be unable to get permission to conduct exploration, excavation, or extraction operations.*

It is possible we will not be successful in obtaining the necessary permits to conduct exploration or excavation and extraction operations. In addition, permits we obtain may be revoked or not honored by the entities that issued them. In addition, certain governments may develop new permit requirements that could delay new operations or interrupt existing operations.

**Table of Contents**

***Changes in our business strategy or restructuring of our businesses may increase our costs or otherwise affect the profitability of our businesses.***

As changes in our business environment occur, we may need to adjust our business strategies to meet these changes or we may otherwise find it necessary to restructure our operations or particular businesses or assets. When these changes or events occur, we may incur costs to change our business strategy and may need to write down the value of assets or sell certain assets. In any of these events our costs may increase, and we may have significant charges associated with the write-down of assets. Discontinuing the use of a multi-year charter of a ship may result in large one-time costs to cover any penalties or charges to put the ship back into its original condition.

***We may be unsuccessful in raising the necessary capital to fund operations and capital expenditures.***

Our ability to generate cash inflows is dependent upon our ability to recover and monetize large quantities of minerals or mineral rights or shipwrecks and cargo or to charter or lease marine exploration vessels or equipment on favorable terms. However, we cannot guarantee that the sales and other cash sources will generate sufficient cash inflows to meet our overall cash requirements. If cash inflows are not sufficient to meet our business requirements, we will be required to raise additional capital through other financing activities. While we have been successful in raising the necessary funds in the past, there can be no assurance we can continue to do so in the future.

***We depend on key employees and face competition in hiring and retaining qualified employees.***

Our employees are vital to our success, and our key management and other employees are difficult to replace. We currently do not have employment contracts with the majority of our key employees. We may not be able to retain highly qualified employees in the future which could adversely affect our business.

***We may continue to experience significant losses from operations.***

We have experienced a net loss in every fiscal year since our inception except for 2004. Our net losses were \$5.2 million in 2018, \$7.8 million in 2017 and \$6.3 million in 2016. Even if we do generate operating income in one or more quarters in the future, subsequent developments in our industry, customer base, business or cost structure or an event such as significant litigation or a significant transaction may cause us to again experience operating losses. We may not become profitable for the long-term, or even for any quarter.

***Technological obsolescence of our marine assets or failure of critical equipment could put a strain on our capital requirements or operational capabilities.***

We employ state-of-the-art technology including side-scan sonar, magnetometers, ROVs, and other advanced science and technology to perform seabed mineral exploration and to locate and recover shipwrecks at depths previously unreachable in an economically feasible manner. Although we try to maintain back-ups on critical equipment and components, equipment failures may require us to delay or suspend operations. Also, while we endeavor to keep marine equipment in excellent working condition and current with all available upgrades, technological advances in new equipment may provide superior efficiencies compared to the capabilities of our existing equipment, and this could require us to purchase new equipment which would require additional capital.

***We may not be able to contract with clients or customers for marine services or syndicated projects.***

In the past, from time to time, we have earned revenue by chartering out vessels, equipment and crew and providing marine services to clients or customers. Even if we do contract out our services, the revenue may or may not be

sufficient to cover administrative overhead costs. While the operational results of these syndicated projects are generally successful, the clients or customers may not be willing or financially able to continue with syndicated projects of this type in the future. Failure to secure such revenue producing contracts in the future may have a material impact on our revenue and operating cash flows. We may take payment for these services in the form of cash, shares in the client's company, or a financial interest in the tenement areas. There is no guarantee that the non-cash payment for our services will ever be able to be monetized or be used by Odyssey.

## **Table of Contents**

***The issuance of shares at conversion prices lower than the market price at the time of conversion and the sale of such shares could adversely affect the price of our common stock.***

Some of our outstanding shares may have been acquired from time to time upon conversion of convertible notes at conversion prices that are lower than the market price of our common stock at the time of conversion. In the past, Odyssey has issued debt obligations that could be converted into common shares at prices below the market price. Conversion of the notes at conversion prices that are lower than the market price at the time of conversion and the sale of the shares issued upon conversion could have an adverse effect upon the market price of our common stock.

***Investments in subsea mineral exploration companies may prove unsuccessful.***

We have invested in marine mineral companies that to date are still in the exploration phase and have not begun to earn revenue from operations. We may or may not have control or input on the future development of these businesses. There can be no assurance that these companies will achieve profitability or otherwise be successful in capitalizing on the mineralized materials they intend to exploit.

***We may be subject to short selling strategies.***

Short sellers of our stock may be manipulative and may attempt to drive down the market price of our common stock. Short selling is the practice of selling securities that the seller does not own but rather has, supposedly, borrowed from a third party with the intention of buying identical securities back at a later date to return to the lender. The short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares, as the short seller expects to pay less in that purchase than it received in the sale. As it is therefore in the short seller's best interests for the price of the stock to decline, many short sellers (sometimes known as "disclosed shorts") publish, or arrange for the publication of, negative opinions regarding the relevant issuer and its business prospects to create negative market momentum and generate profits for themselves after selling a stock short. Although traditionally these disclosed shorts were limited in their ability to access mainstream business media or to otherwise create negative market rumors, the rise of the Internet and technological advancements regarding document creation, videotaping and publication by weblog ("blogging") have allowed many disclosed shorts to publicly attack a company's credibility, strategy and veracity by means of so-called "research reports" that mimic the type of investment analysis performed by large Wall Street firms and independent research analysts. These short attacks have, in the past, led to selling of shares in the market, on occasion in large scale and broad base. Issuers who have limited trading volumes and are susceptible to higher volatility levels than large-cap stocks, can be particularly vulnerable to such short seller attacks. These short seller publications are not regulated by any governmental, self-regulatory organization or other official authority in the U.S., are not subject to certification requirements imposed by the Securities and Exchange Commission and, accordingly, the opinions they express may be based on distortions or omissions of actual facts or, in some cases, fabrications of facts. In light of the limited risks involved in publishing such information, and the enormous profit that can be made from running just one successful short attack, unless the short sellers become subject to significant penalties, it is more likely than not that disclosed short sellers will continue to issue such reports.

***Some of our equipment or assets could be seized or we may be forced to sell certain assets***

We have pledged certain assets, such as equipment and shares of subsidiaries, as collateral under our loan agreements. Some suppliers have the ability to seize some of our assets if we do not make timely payments for the services, supplies, or equipment that they have provided to us. If we were unable to make payments on these obligations, the lender or supplier may seize the asset or force the sale of the asset. The loss of such assets could adversely affect our operations. The sale of the asset may be done in a manner and under circumstances that do not provide the highest

cash value for the sale of the asset.

***We could be delisted from the NASDAQ Capital Market.***

Our common stock is listed on the NASDAQ Capital Market, which imposes, among other requirements, a minimum bid requirement. The closing bid price for our common stock must remain at or above \$1.00 per share to comply with NASDAQ's minimum bid requirement for continued listing. If the closing bid price for our common stock is less than \$1.00 per share for 30 consecutive business days, NASDAQ may send us a notice stating we will be provided a period of 180 days to regain compliance with the minimum bid requirement or else NASDAQ may make a determination to delist our common stock. Another requirement for continued listing on the NASDAQ Capital Market is to maintain our market capitalization above \$35.0 million.

Failure by the company to maintain compliance with the above-mentioned and other NASDAQ continued listing requirements may lead to the delisting of the company from the NASDAQ Capital Market. Delisting from the NASDAQ Capital Market could make trading our common stock more difficult for investors, potentially leading to declines in our share price and liquidity. If our common stock is delisted by NASDAQ, our common stock may be eligible to trade on an over-the-

## **Table of Contents**

counter quotation system, where an investor may find it more difficult to sell our stock or obtain accurate quotations as to the market value of our common stock. We cannot assure you that our common stock, if delisted from the NASDAQ Capital Market, will be listed on another national securities exchange or quoted on an over-the counter quotation system.

### ***Our insurance coverage may be inadequate to cover all of our business risks.***

Although we seek to obtain insurance for some of our main operational risks, there is no guarantee that the insurance policies that we have are sufficient, that they will be in place when needed, that we will be able to obtain insurance coverage when desired, that insurance will be available on commercially attractive terms, or that we will be able to anticipate the risks that need to be insured. For example, although we may be able to obtain War Risk coverage for a project at a specific date and location, such insurance may be unavailable at other times and locations. Although we may be able to insure our marine assets for certain risks such as certain possible loss or damage scenarios, we may lack insurance to cover against government seizure or detention of our certain marine assets. Permanent loss or temporary loss of our marine assets and the associated business interruption without commensurate compensation from an insurance policy could severely impact the financial results and operational capabilities of the company.

### ***We may be exposed to cyber security risks.***

We depend on information technology networks and systems to process, transmit and store electronic information and to communicate among our locations around the world and among ourselves within our company. Additionally, one of our significant responsibilities is to maintain the security and privacy of our confidential and proprietary information and the personal data of our employees. Our information systems, and those of our service and support providers, are vulnerable to an increasing threat of continually evolving cybersecurity risks. Computer viruses, hackers and other external hazards, as well as improper or inadvertent staff behavior could expose confidential company and personal data systems and information to security breaches. Techniques used to obtain unauthorized access or cause system interruption change frequently and may not immediately produce signs of intrusion. As a result, we may be unable to anticipate these incidents or techniques, timely discover them, or implement adequate preventative measures. With respect to our commercial arrangements with service and support providers, we have processes designed to require third-party IT outsourcing, offsite storage and other vendors to agree to maintain certain standards with respect to the storage, protection and transfer of confidential, personal and proprietary information. However, we remain at risk of a data breach due to the intentional or unintentional non-compliance by a vendor's employee or agent, the breakdown of a vendor's data protection processes, or a cyber-attack on a vendor's information systems or our information systems.

## **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## **ITEM 2. PROPERTIES**

We maintain our offices in Tampa, Florida where we lease approximately 12,000 square feet of office space. This corporate office space is located in a building that we previously owned. We previously leased our corporate office space from Monaco Financial, LLC, a related party, for \$20,080 per month, however, Monaco sold the building in October 2018. The new landlord assumed our current lease without revision. We currently do not own any buildings or land. We believe our current leased facility is sufficient for our foreseeable needs.

**ITEM 3. LEGAL PROCEEDINGS**

The Company is not currently a party to any litigation. From time to time in the ordinary course of business, we may be subject to or may assert a variety of claims or lawsuits.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable



**Table of Contents****PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Price Range of Common Stock**

Our common stock is listed on the NASDAQ Capital Market under the symbol OMEX. The following table sets forth the high and low sale prices for our common stock during each quarter presented.

<b>Quarter Ended</b>	<b>Price</b>	
	<b>High</b>	<b>Low</b>
March 31, 2017	\$ 5.79	\$ 3.25
June 30, 2017	\$ 4.56	\$ 2.98
September 30, 2017	\$ 5.00	\$ 3.39
December 31, 2017	\$ 4.82	\$ 3.17
<b>Quarter Ended</b>		
March 31, 2018	\$ 13.75	\$ 3.44
June 30, 2018	\$ 11.75	\$ 6.66
September 30, 2018	\$ 9.87	\$ 6.44
December 31, 2018	\$ 8.65	\$ 3.16

**Approximate Number of Holders of Common Stock**

The number of record holders of our common stock at January 25, 2019 was approximately 170. This does not include stockholders that hold their stock in accounts included in street name with broker/dealers which approximates 8,600 stockholders.

**Dividends**

Holders of our common stock are entitled to receive such dividends as may be declared by our Board of Directors. No dividends have been declared with respect to our common stock and none are anticipated in the foreseeable future.

**Unregistered Sales of Equity Securities**

There were no unregistered sales of equity securities of the Company's common stock during the year ended December 31, 2018.

**Issuer Purchases of Equity Securities**

There were no repurchases of shares of the Company's common stock during the year ended December 31, 2018.

**ITEM 6. SELECTED FINANCIAL DATA**

Edgar Filing: ODYSSEY MARINE EXPLORATION INC - Form 10-K

The following table sets forth selected financial data, which should be read in conjunction with the Company's Consolidated Financial Statements and the related notes to those statements included in Item 8. Financial Statements and Supplementary Data and with Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations appearing elsewhere in this Form 10-K. The selected financial data have been derived from the Company's audited financial statements.

Dollars in thousands except per share amounts	Years Ended December 31,				
	2018	2017	2016	2015	2014
<b>Results of Operations</b>					
Revenue	\$ 3,276	\$ 1,248	\$ 4,683	\$ 5,330	\$ 1,323
Net income (loss)	(5,172)	(7,759)	(6,316)	(18,207)	(26,473)
Earnings (loss) per share basic	(0.60)	(0.95)	(0.84)	(2.46)	(3.74)
Earnings (loss) per share diluted	(0.60)	(0.95)	(0.84)	(2.46)	(3.74)
Cash dividends per share					

**Table of Contents****Financial Position**

Assets	\$ 5,473	\$ 2,972	\$ 5,084	\$ 6,913	\$ 25,090
Long-term obligations	4,644	7,644	8,979	3,141	11,808
Shareholder s equity (deficit)	(41,197)	(37,983)	(31,103)	(25,549)	(10,404)

**ITEM 7. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion and analysis is intended to provide a narrative of our financial results and an evaluation of our financial condition and results of operations. The discussion should be read in conjunction with our consolidated financial statements and notes thereto. A description of our business is discussed in Item 1 of this report which contains an overview of our business as well as the status of our ongoing project operations.

**Results of Operations**

The dollar values discussed in the following tables, except as otherwise indicated, are approximations to the nearest \$1,000,000 and therefore do not necessarily sum in columns or rows. For more detail refer to the Financial Statements and Supplementary Data in Item 8. The tables identify years 2018, 2017 and 2016, all of which included a twelve-month period ended December 31.

**2018 Compared to 2017**

	Increase/(Decrease) (Dollars in millions)	2018 vs. 2017			
		2018	2017	\$	%
Total revenue		\$ 3.3	\$ 1.2	\$ 2.0	162%
Marketing, general and administrative		5.7	6.2	(0.5)	8%
Operations and research		3.7	3.4	0.3	7%
Total operating expenses		\$ 9.3	\$ 9.6	\$ (0.3)	3%
Other income (expense)		\$ (3.0)	\$ (2.7)	\$ 0.3	14%
Income tax benefit (provision)		\$ 0.0	\$ 0.0	\$ 0.0	0%
Non-controlling interest		\$ 3.9	\$ 3.3	\$ 0.7	21%
Net income (loss)		\$ (5.2)	\$ (7.8)	\$ (2.5)	33%

**Revenue**

Current revenue is generated from chartering or leasing marine exploration equipment, vessel or services. Total revenues increased by \$2.0 million in 2018 as compared to 2017. The \$2.0 million increase is comprised of a \$1.0 million increase in continuation marine recovery work for Magellan and \$1.0 million of new revenue with CIC, LLC related to mineral services. See NOTE J for further CIC related party information.

**Cost and Expenses**

Marketing, general and administrative expenses primarily include all costs within the following departments: Executive, Finance & Accounting, Legal, Information Technology, Human Resources, Marketing & Communications, Sales and Business Development. Marketing, general and administrative expenses decreased from \$6.2 million in 2017 to \$5.7 million in 2018. The decrease of \$0.5 million was primarily due to (i) a net decrease of \$0.2 million in personnel expenses attributable to regular, incentive and share-based compensation, (ii) a decrease of \$0.4 million in admiralty legal support and (iii) a \$0.1 million increase in our management related insurance policy.

Operations and research expenses primarily include all costs within Archaeology, Conservation, Exhibits, Research, and Marine Operations, which include all vessel and charter operations. For 2018, Operations and research expenses were \$3.7

**Table of Contents**

million compared to \$3.4 million for the same period in 2017. The variance of \$0.3 million was primarily due to (i) a \$1.0 million increase, which is offset by the additional revenue, in marine services costs which include technical crew costs as well as other marine operational costs such as equipment rental, fuel, port fees and consumables, (ii) a decrease of \$0.2 million in general operations support services overhead which includes insurances, depreciation, travel and professional services, (iii) a net gain of \$0.7 million on the sale of certain marine assets and (iv) a \$0.2 million increase attributable to mineral support services for a client which is offset by the additional revenue.

**Other Income or Expense**

Other income and expense has generally consisted of interest expense and derivative fair value accounting associated with certain of our convertible instruments. Other income and expense increased from an expense of \$2.7 million in 2017 to an expense of \$3.0 million in 2018, an increase of \$0.3 million which primarily resulted from an increase of \$0.4 million in interest expense due to new debt and the application of a default interest rate on two of our loans offset by \$0.1 million of interest earned related to the HMS *Sussex* deposit. See NOTE H for related debt details.

**Income Taxes and Non-Controlling Interest**

We did not incur any taxes in 2018, 2017 or 2016.

Starting in 2013, we became the controlling shareholder of Oceanica. Our financial statements thus include the financial results of Oceanica and its subsidiary. Except for intercompany transactions that are eliminated upon consolidation, Oceanica's revenues and expenses, in their entirety, are shown in our consolidated financial statements. The share of Oceanica's net losses corresponding to the equity of Oceanica not owned by us is subsequently shown as the Non-Controlling Interest in the consolidated statements of operations. The non-controlling interest adjustment for 2018 was \$3.9 million as compared to \$3.3 million for 2017. The administrative support has been ongoing in support of the legal process in obtaining the environmental application for our Mexican subsidiary. This increase was mainly attributable to the compounding debt interest on our Mexican subsidiary's balance sheet.

**Liquidity and Capital Resources**

<b>(Dollars in thousands)</b>	<b>2018</b>	<b>2017</b>
<b>Summary of Cash Flows:</b>		
Net cash (used) by operating activities	\$ (6,471)	\$ (5,851)
Net cash provided by investing activities	994	80
Net cash provided by financing activities	7,156	5,216
Net increase (decrease) in cash and cash equivalents	\$ 1,679	\$ (555)
Beginning cash and cash equivalents	1,108	1,663
Ending cash and cash equivalents	\$ 2,787	\$ 1,108

**Discussion of Cash Flows**

Net cash used by operating activities in 2018 was \$6.5 million, an increase of \$0.6 million compared to 2017. The 2018 operating cash flows primarily reflected a net loss before non-controlling interest of \$9.1 million offset by non-cash items of \$0.1 million which include share-based compensation of \$0.3 million, depreciation and

amortization of \$0.5 million, interest accretion of \$0.1 million and an investment in an unconsolidated entity of \$(0.8) million. Included in this reconciliation of cash flows from operations is a gain on sale of equipment for \$(0.9) million. Other working capital changes (including non-current assets) resulted in an increase in working capital of \$3.5 million. This is primarily a result of a \$1.6 million increase in accrued expense, \$0.5 million decrease accounts payable, \$0.8 million decrease in accounts receivable and \$0.1 million decrease in other assets. The change in accrued expenses is mainly due to the increase of accrued interest on our financial debt.

Net cash used by operating activities in 2017 was \$5.9 million, or an improvement of \$2.4 million compared to 2016. The 2017 operating cash flows primarily reflected a net loss before non-controlling interest of \$11.0 million offset by non-cash items of \$2.0 million which include share-based compensation of \$0.8 million, depreciation and amortization of \$0.8 million, and other items, which includes, interest accretion, and other, for \$0.4 million. Other working capital changes (including non-current assets) resulted in an increase in working capital of \$3.2 million. This is primarily a result of a \$1.9 million increase in accrued expense, \$1.0 million increase accounts payable, \$0.2 million increase in accounts receivable and \$0.1 million increase in other assets. The change in accrued expenses is mainly due to the increase of accrued interest on our financial debt.

**Table of Contents**

Cash flows from investing activities in 2018 were \$1.0 million as the result of the sale of marine equipment.

Cash flows from investing activities in 2017 were \$0.1 million as the result of the sale of marine equipment.

In 2018, we borrowed the final tranche of \$0.4 million from MINOSA, \$0.5 million from SMOM and \$1.0 million from Monaco and an operating loan of \$1.1 million from an investor (see NOTE H). This cash inflow was partially offset by repayment of debt obligations of \$0.3 million. During the fourth quarter of 2018, we issued new equity in an equity offering netting the Company \$4.6 million.

Cash flows provided by financing activities in 2017 were \$5.2 million. During this period, we borrowed \$3.0 million from SMOM (see NOTE H) and \$2.6 million from MINOSA (See NOTE H). The \$5.6 million of new debt was offset in part by \$0.4 million of payments on financing arrangements.

**General Discussion 2018**

At December 31, 2018, we had cash and cash equivalents of \$2.8 million, an increase of \$1.7 million from the December 31, 2017 balance of \$1.1 million. This increase was mainly attributable to the \$0.9 million gain on sale of marine equipment, \$1.9 million of new debt financings and \$4.6 million received from the issuance of new common shares offset by cash used by operations of \$6.5 million.

Financial debt of the company, excluding the derivative or beneficial conversion feature components of such debt, increased by \$3.0 million in 2018, from a balance of \$27.4 million at December 31, 2017 to a balance of \$30.4 million at December 31, 2018. This is due to the Monaco loan of \$1.0 million, the final tranche of debt provided by MINOSA in the amount of \$0.4 million, \$0.5 million from SMOM and \$1.1 million from a new investor, all of which are discussed above in the Discussion of Cash Flows (see NOTE H).

During the fourth quarter of 2018, we entered into a securities purchase agreement with certain investors pursuant to which we sold an aggregate of 700,000 shares of our common and warrants to purchase up to 700,000 shares of common stock to such investors. The proceeds received from this transaction were approximately \$4.6 million (see NOTE L).

Since SEMARNAT initially declined to approve the environmental permit application of our Mexican subsidiary in April 2016 and again in October 2018, even when the ruling of the Superior Court of the Federal Court of Administrative Justice in Mexico nullified SEMARNAT's initial denial, we continue to support the efforts of our subsidiaries and partners to work through the administrative, legal and political process necessary to have the decision reviewed and overturned. The process is expected to conclude in 2019.

**2017 Compared to 2016**

	Increase/(Decrease)		2017 vs. 2016	
	(Dollars in millions)		\$	%
	2017	2016		
Total revenue	\$ 1.2	\$ 4.7	\$ (3.4)	73%
Marketing, general and administrative	6.2	7.9	(1.7)	23
Operations and research	3.4	8.3	(4.8)	58
Gain on sale of marine assets		(1.0)	1.0	100

Edgar Filing: ODYSSEY MARINE EXPLORATION INC - Form 10-K

Total operating expenses	\$ 9.6	\$ 15.2	\$ (5.6)	37%
Other income (expense)	\$(2.7)	\$ 1.5	\$(4.1)	281%
Income tax benefit (provision)	\$ 0.0	\$ 0.0	\$ 0.0	0%
Non-controlling interest	\$ 3.3	\$ 2.8	\$ 0.5	18%
Net income (loss)	\$(7.8)	\$(6.3)	\$(1.4)	23%



---

**Table of Contents****Revenue**

Current revenue is generated from chartering or leasing our marine exploration equipment, vessel and services. Total revenues decreased by \$3.4 million in 2017 as compared to 2016. 2017 includes shipwreck explorations for Magellan while 2016 includes an executed marine survey services contract as well as shipwreck exploration services for Magellan.

**Cost and Expenses**

Marketing, general and administrative expenses primarily include all costs within the following departments: Executive, Finance & Accounting, Legal, Information Technology, Human Resources, Marketing & Communications, Sales and Business Development. Marketing, general and administrative expenses decreased from \$7.9 million in 2016 to \$6.2 million in 2017. The decrease of \$1.8 million was primarily due to (i) a decrease of \$1.9 million in personnel expenses resulting from regular, incentive and share-based compensation, (ii) an increase of \$0.4 million in admiralty legal support and (iii) a \$0.2 million reduction in general corporate overhead supportive expenses.

Operations and research expenses primarily include all costs within Archaeology, Conservation, Exhibits, Research, and Marine Operations, which include all vessel and charter operations. For 2017, Operations and research expenses were \$3.4 million compared to \$8.3 million for the same period in 2016. The variance of \$4.8 million was primarily due to (i) a \$4.3 million reduction of marine services costs which include technical crew costs as well as other marine operational costs such as equipment rental, fuel, port fees and consumables and (ii) a decrease of \$0.5 million in general operations support services overhead which includes insurances, depreciation, travel and professional services. 2016 included the full-time operations of our vessel, the *Odyssey Explorer*, which was sold in mid-2016. The 2016 \$1.0 million gain on the sale of marine assets was due to the sale of the *Odyssey Explorer* and one other marine asset.

**Other Income or Expense**

Other income and expense has generally consisted of interest expense and derivative fair value accounting associated with certain of our convertible instruments. Other income and expense decreased from an income of \$1.5 million in 2016 to an expense of \$2.7 million 2017, a decrease of \$4.1 million which primarily resulted from (i) 2016 included \$3.4 million of fair value derivative income from accounting mainly related to the Monaco loans which is not in 2017, (ii) 2016 included \$0.4 of from the MINOSA Call Option which is not in 2017 and (iii) an increase of \$0.3 million of interest expense due to accretion of a beneficial conversion feature bifurcated from the Epsilon and Monaco notes and an increase in Epsilon debt principal and other financings. See NOTE H for related debt details.

**Income Taxes and Non-Controlling Interest**

We did not incur any income taxes in 2017, 2016 or 2015.

Starting in 2013, we became the controlling shareholder of Oceanica. Our financial statements thus include the financial results of Oceanica and its subsidiary. Except for intercompany transactions that are eliminated upon consolidation, Oceanica's revenues and expenses, in their entirety, are shown in our consolidated financial statements. The share of Oceanica's net losses corresponding to the equity of Oceanica not owned by us is subsequently shown as the Non-Controlling Interest in the consolidated statements of operations. The non-controlling interest adjustment for 2017 was \$3.3 million as compared to \$2.8 million for 2016. The administrative support has been ongoing in support of the legal process in obtaining the environmental application for our Mexican subsidiary. This increase was mainly attributable to the compounding debt interest on our Mexican subsidiary's balance sheet.

**Liquidity and Capital Resources**

<b>(Dollars in thousands)</b>	<b>2017</b>	<b>2016</b>
<b>Summary of Cash Flows:</b>		
Net cash (used) by operating activities	\$ (5,851)	\$ (8,305)
Net cash provided by investing activities	80	70
Net cash provided by financing activities	5,216	7,656
<b>Net (decrease) in cash and cash equivalents</b>	<b>\$ (555)</b>	<b>\$ (579)</b>
Beginning cash and cash equivalents	1,663	2,242
<b>Ending cash and cash equivalents</b>	<b>\$ 1,108</b>	<b>\$ 1,663</b>

---

**Table of Contents****Discussion of Cash Flows**

Net cash used by operating activities in 2017 was \$5.9 million, or an improvement of \$2.4 million compared to 2016. The 2017 operating cash flows primarily reflected a net loss before non-controlling interest of \$11.0 million offset by non-cash items of \$2.0 million which include share-based compensation of \$0.8 million, depreciation and amortization of \$0.8 million, and other items, which includes, interest accretion, and other, for \$0.4 million. Other working capital changes (including non-current assets) resulted in an increase in working capital of \$3.2 million. This is primarily a result of a \$1.9 million increase in accrued expense, \$1.0 million increase accounts payable, \$0.2 million increase in accounts receivable and \$0.1 million increase in other assets. The change in accrued expenses was mainly due to the increase of accrued interest on our financial debt.

Net cash used by operating activities in 2016 was \$8.3 million, or an improvement of \$8.9 million compared to 2015, primarily as a result of an improvement in the net result before adjustment for the non-controlling interest. The 2016 operating cash flows primarily reflected a net loss before non-controlling interest of \$9.1 million offset by non-cash items of \$1.2 million which include share-based compensation of \$1.7 million, depreciation and amortization of \$1.1 million, change in derivative fair values of (\$3.4 million), non-cash gain on sale marine equipment of (\$1.0 million) and other items, which includes, interest accretion, prior year director fees settled with equity and other, for \$0.4 million. Other working capital changes (including non-current assets) resulted in an increase in working capital of \$2.0 million. This is primarily a result of a \$2.3 million increase in accrued expense offset by a net decrease in other items of (\$0.3 million). The change in accrued expenses was mainly due to the increase of accrued interest on our financial debt.

Cash flows from investing activities in 2017 were \$0.1 million as the result of the sale of marine equipment.

Cash flows from investing activities in 2016 were \$0.1 million as the result of the sale of our vessel, *Odyssey Explorer*, offset mainly by purchases of marine equipment.

Cash flows provided by financing activities in 2017 were \$5.2 million. During this period, we borrowed \$3.0 million from SMOM (see NOTE H) and \$2.6 million from MINOSA (See NOTE H). The \$5.6 million of new debt was offset in part by \$0.4 million of payments on financing arrangements.

Cash flows provided by financing activities in 2016 were \$7.7 million. During this period, we borrowed \$6.0 million from Epsilon (see NOTE H) and \$1.8 million from Monaco (See NOTE H). The \$7.8 million of new debt was offset in part by \$0.1 million of payments on financing arrangements.

**General Discussion 2017**

At December 31, 2017, we had cash and cash equivalents of \$1.1 million, a decrease of \$0.6 million from the December 31, 2016 balance of \$1.6 million. This decrease was mainly attributable to the \$5.9 million change in cash used in operations offset with a net increase in debt financing of \$5.3 million.

On May 4, 2017, we entered into a Loan and Security Agreement ( *Loan Agreement* ) with SMOM Limited ( *SMOM* ). Pursuant to the Loan Agreement, SMOM agreed to loan us up to \$3.0 million in convertible promissory notes. As a commitment fee, we assigned the remaining 50% of our Neptune Minerals, LLC receivable to SMOM. This receivable had zero carrying value on our balance sheet. We received advances of \$3.0 million under this agreement of which we received \$750,000 in February 2017 and \$2,250,000 in April 2017. The indebtedness bears interest at a rate of 10% per annum and matures on the second anniversary of this Loan Agreement. The holder has the option to convert any unpaid principal and interest into up to 50% of the equity interest held by Odyssey in Aldama Mining

Company, S.de R.L. de C.V., which is a wholly owned subsidiary of ours. The conversion value of \$1.0 million equates to 10% of the equity interest in Aldama. If the holder elects to acquire the entire 50.0% of the equity interest, but the amount of debt and interest accumulated to be converted is insufficient to acquire the entire 50% equity interest, the Holder must pay the deficiency in cash. As additional consideration for the loan, the holder has the right to purchase from Odyssey all or a portion of the equity collateral (up to the 50% of the equity interest of Aldama) for the option consideration (\$1.0 million for each 10% of equity interests) during the period that is the later of (i) one year after the maturity date and (ii) one year after the loan is repaid in full. The lender may also choose to extend the expiration date annually by paying \$500,000 for each year extended. See NOTE H for further information.

On August 10, 2017, Odyssey Marine Exploration, Inc. ( Odyssey ) and Odyssey Marine Enterprises, Ltd., an indirect, wholly owned subsidiary of Odyssey ( OME ), entered into a Note Purchase Agreement (the Minosa Purchase Agreement ) with Minera del Norte S.A. de C.V. ( Minosa ). Pursuant to the Minosa Purchase Agreement, Minosa loaned \$750,000 to OME and will consider lending up to an additional \$2.25 million to OME. The indebtedness is evidenced by a secured convertible promissory note (the Minosa Note ) and bears interest at a rate equal to 10.0% per annum. Unless otherwise

**Table of Contents**

converted as described below, the entire outstanding principal balance under the Minosa Note and all accrued interest and fees are due and payable upon written demand by Minosa; provided, that Minosa agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the Minosa Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that Minosa intends to demand payment. Odyssey unconditionally and irrevocably guaranteed all of OME's obligations under the Minosa Purchase Agreement and the Minosa Note. Minosa has the right to convert all amounts outstanding under the Minosa Note into shares of Odyssey common stock upon 75 days' notice to OME or upon a merger, consolidation, third party tender offer, or similar transaction relating to Odyssey at the conversion price of \$4.41 per share. See below and NOTE H for further information.

Since SEMARNAT initially declined to approve the Don Diego environmental permit application in April 2016, we have been supporting the efforts of our subsidiaries and partners to work through the administrative, legal and political process necessary to have the decision reviewed and overturned. The process was expected to be concluded in 2018.

**Financings****Stock Purchase Agreement**

On March 11, 2015, we entered into a Stock Purchase Agreement (the "Purchase Agreement") with Penelope Mining LLC (the "Investor"), and, solely with respect to certain provisions of the Purchase Agreement, Minera del Norte, S.A. de C.V. (the "MINOSA"). The Purchase Agreement provides for us to issue and sell to the Investor shares of our preferred stock in the amounts and at the prices set forth below (the numbers set forth below have been adjusted to reflect the 1-for-12 reverse stock split of February 19, 2016):

Series	No. of Shares	Price per Share
Series AA-1	8,427,004	\$ 12.00
Series AA-2	7,223,145	\$ 6.00

The closing of the sale and issuance of shares of the Company's preferred stock to the Investor is subject to certain conditions, including the Company's receipt of required approvals from the Company's stockholders (received on June 9, 2015), the receipt of regulatory approval, performance by the Company of its obligations under the Purchase Agreement, receipt of certain third party consents, the listing of the underlying common stock on the NASDAQ Stock Market and the Investor's satisfaction, in its sole discretion, with the viability of certain undersea mining projects of the Company. Completion of the transaction requires amending the Company's articles of incorporation to (a) effect a reverse stock split, which was done on February 19, 2016, (b) adjusting the Company's authorized capitalization, which was also done on February 19, 2016, and (c) establishing a classified board of directors (collectively, the "Amendments"). The Amendments have been or will be set forth in certificates of amendment to the Company's articles of incorporation filed or to be filed with the Nevada Secretary of State.

The purchase and sale of 2,916,667 shares of Series AA-1 Preferred Stock at an initial closing and for the purchase and sale of the remaining 5,510,337 shares of Series AA-1 Preferred Stock according to the following schedule, is subject to the satisfaction or waiver of specified conditions set forth in the Purchase Agreement:

Date	No. Series AA-1 Shares	Total Purchase Price
------	------------------------	----------------------

Edgar Filing: ODYSSEY MARINE EXPLORATION INC - Form 10-K

March 1, 2016	1,806,989	\$ 21,683,868
September 1, 2016	1,806,989	\$ 21,683,868
March 1, 2017	1,517,871	\$ 18,214,446
March 1, 2018	378,488	\$ 4,541,856

The Investor may elect to purchase all or a portion of the Series AA-1 Preferred Stock before the other dates set forth above. The initial closing and the closing scheduled for March 1, 2016, have not yet occurred because certain conditions to closing have not yet been satisfied or waived. After completing the purchase of all AA-1 Preferred Stock, the Investor has the right, but not the obligation, to purchase all or a portion the 7,223,145 shares of Series AA-2 Preferred Stock at any time after the closing price of the Common Stock on the NASDAQ Stock Market has been \$15.12 or more for 20 consecutive trading days. The Investor's right to purchase the shares of Series AA-2 Preferred Stock will terminate on the fifth anniversary of the initial closing under the Purchase Agreement.

## Table of Contents

The Purchase Agreement contains certain restrictions, subject to certain exceptions described below, on the Company's ability to initiate, solicit or knowingly encourage or facilitate an alternative acquisition proposal, to participate in any discussions or negotiations regarding an alternative acquisition proposal, or to enter into any acquisition agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to an alternative acquisition proposal. These restrictions will continue until the earlier to occur of the termination of the Purchase Agreement pursuant to its terms and the time at which the initial closing occurs.

The Purchase Agreement also includes customary termination rights for both the Company and the Investor and provides that, in connection with the termination of the Purchase Agreement under specified circumstances, including in the event of a termination by the Company in order to accept a Superior Proposal, the Company will be required to pay to the Investor a termination fee of \$4.0 million.

The Purchase Agreement contains representations, warranties and covenants of the parties customary for a transaction of this type.

Subject to the terms set forth in the Purchase Agreement, the Lender provided the Company, through a subsidiary of the Company, with loans of \$14.75 million, the outstanding amount of which, plus accrued interest, will be repaid from the proceeds from the sale of the shares of Series AA-1 Preferred Stock at the initial closing. The outstanding principal balance of the loan at December 31, 2018 was \$14.75 million.

The obligation to repay the loans is evidenced by a promissory note (the *Note*) in the amount of up to \$14.75 million and bears interest at the rate of 8.0% per annum, and, pursuant to a pledge agreement (the *Pledge Agreement*) between the Lender and Odyssey Marine Enterprises Ltd., an indirect, wholly owned subsidiary of the Company (*OME*), is secured by a pledge of 54.0 million shares of Oceanica Resources S. de R.L., a Panamanian limitada (*Oceanica*), held by OME. In addition, OME and the Lender entered into a call option agreement (the *Oceanica Call*), pursuant to which OME granted the Lender an option to purchase the 54.0 million shares of Oceanica held by OME for an exercise price of \$40.0 million at any time during the one-year period after the Oceanica Call was executed and delivered by the parties. The Oceanica Call option expired on March 11, 2016 without being executed or extended. On December 15, 2015, the Promissory Note was amended to provide that, unless otherwise converted as provided in the Note, the adjusted principal balance shall be due and payable in full upon written demand by MINOSA; provided that MINOSA agrees that it shall not demand payment of the adjusted principal balance earlier than the first to occur of: (i) 30 days after the date on which (x) SEMARNAT makes a determination with respect to the current application for the Manifestacion de Impacto Ambiental relating to our phosphate deposit project, which determination is other than an approval or (y) Enterprises or any of its affiliates withdraws such application without MINOSA's prior written consent; (ii) termination by Odyssey of the Stock Purchase Agreement, dated March 11, 2015 (the *Purchase Agreement*), among Odyssey, MINOSA, and Penelope Mining, LLC (the *Investor*); (iii) the occurrence of an event of default under the Promissory Note; (iv) March 30, 2016; or (v) if and only if the Investor shall have terminated the Purchase Agreement pursuant to Section 8.1(d)(iii) thereof, March 30, 2016. On March 18, 2016 the agreements with MINOSA and Penelope were further amended and extended the maturity date of the loan to March 18, 2017(see NOTE H). The August 10, 2017 Minosa Purchase Agreement amended the due date of this note to a due date which may be no earlier than December 31, 2017, and that is at least 60 days subsequent to written notice that Minosa intends to demand payment. We have not received any notice the creditor intends to demand payment. See the August 10, 2017 Minosa Purchase Agreement disclosure below. During December 2017 MINOSA transferred this debt to its parent company.

On March 18, 2016, Odyssey entered into a \$3.0 million Note Purchase Agreement with Epsilon Acquisitions LLC (see below and NOTE H).

Epsilon is an investment vehicle of Mr. Alonso Ancira who is Chairman of the Board of AHMSA, an entity that controls MINOSA.

**Class AA Convertible Preferred Stock**

Pursuant to a certificate of designation (the Designation ) to be filed with the Nevada Secretary of State, each share of Series AA-1 Convertible Preferred Stock and Series AA-2 Convertible Preferred Stock (collectively, the Class AA Preferred Stock ) will be convertible into one share of Common Stock at any time and from time to time at the election of the holder. Each share of Class AA Preferred Stock will rank pari passu with all other shares of Class AA Preferred Stock and senior to shares of Common Stock and all other classes and series of junior stock. If the Company declares a dividend or makes a distribution to the holders of Common Stock, the holders of the Class AA Preferred Stock will be entitled to participate in



## **Table of Contents**

the dividend or distribution on an as-converted basis. Each share of Class AA Preferred Stock shall entitle the holder thereof to vote, in person or by proxy, at any special or annual meeting of stockholders, on all matters voted on by holders of Common Stock, voting together as a single class with other shares entitled to vote thereon. So long as a majority of the shares of the Class AA Preferred Stock are outstanding, the Company will be prohibited from taking specified extraordinary actions without the approval of the holders of a majority of the outstanding shares of Class AA Preferred Stock. In the event of the liquidation of the Company, each holder of shares of Class AA Preferred Stock then outstanding shall be entitled to be paid, out of the assets of the Corporation available for distribution to its stockholders, an amount in cash equal to the greater of (a) the amount paid to the Company for such holder's shares of Class AA Preferred Stock, plus an accretion thereon of 8.0% per annum, compounded annually, and (b) the amount such holder would be entitled to receive had such holder converted such shares of Class AA Preferred into Common Stock immediately prior to such time at which payment will be made or any assets distributed.

## **Stockholder Agreement**

The Purchase Agreement provides that, at the initial closing, the Company and the Investor will enter into a stockholder agreement (the "Stockholder Agreement"). The Stockholder Agreement will provide that (a) in connection with each meeting of the Company's stockholders at which directors are to be elected, the Company will (i) nominate for election as members of the Company's board of directors a number of individuals designated by the Investor ("Investor Designees") equivalent to the Investor's proportionate ownership of the Company's voting securities (rounded up to the next highest integer) less the number of Investor Designees who are members of the board of directors and not subject to election at such meeting, and (ii) use its reasonable best efforts to cause such nominees to be elected to the board of directors; (b) the Company will cause one of the Investor Designees to serve as a member of (or at such Investor Designee's election, as an observer to) each committee of the Company's board of directors; and (c) each Investor Designee shall have the right to enter into an indemnification agreement with the Company (an "Indemnification Agreement") pursuant to which such Investor Designee is indemnified by the Company to the fullest extent allowed by Nevada law if, by reason of his or her serving as a director of the Company, such Investor Designee is a party or is threatened to be made a party to any proceeding or by reason of anything done or not done by such Investor Designee in his or her capacity as a director of the Company.

The Stockholder Agreement will provide the Investor with pre-emptive rights with respect to certain equity offerings of the Company and restricts the Company from selling equity securities until the Investor has purchased all the Class AA Preferred Stock or no longer has the right or obligation to purchase any of the Class AA Preferred Stock. The Stockholder Agreement will also provide the Investor with certain "first look" rights with respect to certain mineral deposits discovered by the Company or its subsidiaries. Pursuant to the Stockholder Agreement, the Company will grant the Investor certain demand and piggy-back registration rights, including for shelf registrations, with respect to the resale of the shares of Common Stock issuable upon conversion of the Class AA Preferred Stock.

## **Other loans**

### **Promissory Note**

On May 3, 2017, we entered into a Loan and Security Agreement ("Loan Agreement") with SMOM. Pursuant to the Loan Agreement, SMOM agreed to loan us up to \$3.0 million as evidenced by a convertible promissory note. As a commitment fee, we assigned the remaining 50% of our Neptune Minerals, LLC receivable to SMOM. This receivable had zero carrying value on our balance sheet and due to the age and collectability was deemed to have no fair value. The indebtedness bears interest at a rate of 10% per annum and matures on the second anniversary of this Loan Agreement which is May 3, 2019. On April 20, 2018, the loan was amended, and the principal amount of the Loan was increased to \$3.5 million. The loan balance at December 31, 2018 is \$3.5 million. The holder has the option

to convert up to \$2.0 million of any unpaid principal and interest into up to 50% of the equity interest held by Odyssey in Aldama Mining Company, S.de R.L. de C.V., which is a wholly owned subsidiary of ours. The conversion value of \$1.0 million equates to 10% of the equity interest in Aldama. If the holder elects to acquire the entire 50% of the equity interest, the Holder must pay the deficiency in cash. As additional consideration for the loan, the holder has the right to purchase from Odyssey all or a portion of the equity collateral (up to the 50% of the equity interest of Aldama) for the option consideration (\$1.0 million for each 10% of equity interests) during the period that is the later of (i) one year after the maturity date and (ii) one year after the loan is repaid in full. The lender may also choose to extend the expiration date annually by paying \$500,000 for each year extended (See NOTE H for further information).

---

**Table of Contents****Promissory Note**

On August 10, 2017, we entered into a Note Purchase Agreement (the *Minosa Purchase Agreement*) with MINOSA. Pursuant to the Minosa Purchase Agreement, whereas MINOSA will loan Enterprises up to \$3.0 million. During 2018, this debt was fully funded and Epsilon assigned \$2.0 million of its debt to MINOSA. At December 31, 2018, the outstanding principal balance, including the Epsilon assignment, is \$5.1 million. The indebtedness is evidenced by a secured convertible promissory note (the *Minosa Note*) and bears interest at a rate equal to 10.0% per annum. Unless otherwise converted as described below, the entire outstanding principal balance under this Minosa Note and all accrued interest and fees are due and payable upon written demand by MINOSA; provided, that MINOSA agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the Minosa Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that MINOSA intends to demand payment. MINOSA has not provided any notice they intend to issue a payment demand notice. We unconditionally and irrevocably guaranteed all of the obligations under the Minosa Purchase Agreement and the Minosa Note. MINOSA has the right to convert all amounts outstanding under the Minosa Note into shares of our common stock upon 75 days' notice to us or upon a merger, consolidation, third party tender offer, or similar transaction relating to us at the conversion price of \$4.41 per share. During December 2017 MINOSA transferred this debt to its parent company.

The Minosa Purchase Agreement did not contain any embedded terms or features that have characteristics of derivatives. However, we were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The calculation of the effective conversion amount did result in a BCF because the effective conversion price was less than the Company's stock price on the date of issuance, therefore a BCF of \$62,925 was recorded. As of December 31, 2017, all of the BCF has been accreted to the income statement. The BCF represented a debt discount which is being amortized over the life of the loan.

As previously reported, Epsilon loaned us an aggregate of \$6.0 million pursuant to an amended and restated convertible promissory note, dated as of March 18, 2016, as further amended and restated on October 1, 2016 (the *Epsilon Note*). Since then, Epsilon has assigned \$2.0 million of the indebtedness under the Epsilon Note to MINOSA. Along with Epsilon, we entered into a second amended and restated convertible promissory note (the *Second AR Epsilon Note*), which further amends and restates the Epsilon Note. The stated principal amount of the Second AR Epsilon Note is \$1.0 million (which reflects the outstanding principal balance remaining after giving effect to Epsilon's (x) previous assignment of \$2.0 million of the indebtedness under the Epsilon Note to MINOSA and (y) conversion of \$3.0 million of the indebtedness under the Epsilon Note into shares of our common stock). The Second AR Epsilon Note further provides that the outstanding principal balance under the Second AR Epsilon Note and all accrued interest and fees are due and payable upon written demand by Epsilon; provided, that Epsilon agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the Second AR Epsilon Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that MINOSA intends to demand payment.

Upon the closing of the Minosa Purchase Agreement, MINOSA and Penelope Mining LLC, an affiliate of Minosa (Penelope), executed and delivered a Second Amended and Restated Waiver and Consent and Amendment No. 5 to Promissory Note and Amendment No. 2 to Stock Purchase Agreement (the *Second AR Waiver*). Pursuant to the Second AR Waiver, Minosa and Penelope consented to the transactions contemplated by the Minosa Purchase Agreement and waived any breach of any representation or warranty and violation of any covenant in the Stock Purchase Agreement, dated as of March 11, 2015, as amended April 10, 2015 (the *SPA*), by and among us, Minosa, and Penelope, arising out of the Company's execution and delivery of the Minosa Purchase Agreement and the consummation of the transactions contemplated thereby. Pursuant to the Second AR Waiver, we also waived, and agreed not to exercise our right to terminate the SPA pursuant to Section 8.1(c)(ii) thereto, both (a) until after the

earlier of (i) July 1, 2018, (ii) the date that MINOSA fails, refuses, or declines to fund (or otherwise does not fund) any subsequent loan under the Minosa Purchase Agreement and (iii) demand is made for repayment of all or any part of the indebtedness outstanding under the Minosa Note, the Second AR Epsilon Note, or the Promissory Note, dated as of March 11, 2015, as amended (the SPA Note ), in the principal amount of \$14.75 million that was issued by us to MINOSA under the SPA, and (b) unless on or prior to such termination, the Notes are paid in full.

The Second AR Waiver (x) further provides that following any conversion of the indebtedness evidenced by the Minosa Note, Penelope may elect to reduce its commitment to purchase our preferred stock under the SPA by the amount of indebtedness converted by MINOSA and (y) amends the SPA Note to provide that the outstanding principal balance under the SPA Note and all accrued interest and fees are due and payable upon written demand by MINOSA; provided, that Minosa agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the Minosa Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that Minosa intends to demand payment.

## **Table of Contents**

The obligations under the Minosa Note may be accelerated upon the occurrence of specified events of default including (a) our failure to pay any amount payable under the Minosa Note on the date due and payable; (b) our failure to perform or observe any term, covenant, or agreement in the Minosa Note or the related documents, subject to a five-day cure period; (c) the occurrence and expiration of all applicable grace periods, if any, of an event of default or material breach by us under any of the other loan documents; (d) the termination of the SPA; (e) commencement of certain specified dissolution, liquidation, insolvency, bankruptcy, reorganization, or similar cases or actions by or against us, in specified circumstances unless dismissed or stayed within 60 days; (f) the entry of a judgment or award against us in excess of \$100,000; and (g) the occurrence of a change in control (as defined in the Minosa Note).

Pursuant to second amended and restated pledge agreements (the **Second AR Pledge Agreements** ) entered into by us in favor of MINOSA, we pledged and granted security interests to MINOSA in (a) the 54 million cuotas (a unit of ownership under Panamanian law) of Oceanica held by us, (b) all notes and other receivables from Oceanica and its subsidiary owed to us, and (c) all of the outstanding equity in our wholly owned subsidiary, Odyssey Marine Enterprises, Ltd.

In connection with the execution and delivery of the Minosa Purchase Agreement, Odyssey and MINOSA entered into a second amended and restated registration rights agreement (the **Second AR Registration Rights Agreement** ) pursuant to which Odyssey agreed to register the offer and sale of the shares (the **Conversion Shares** ) of our common stock issuable upon the conversion of the indebtedness evidenced by the Minosa Note. Subject to specified limitations set forth in the Second AR Registration Rights Agreement, including that we are eligible to use Form S-3, the holder of the Minosa Note can require us to register the offer and sale of the Conversion Shares if the aggregate offering price thereof (before any underwriting discounts and commissions) is not less than \$3.0 million. In addition, we agreed to file a registration statement relating to the offer and sale of the Conversion Shares on a continuous basis promptly (but in no event later than 60 days after) after the conversion of the Minosa Note into the Conversion Shares and to thereafter use its reasonable best efforts to have such registration statement declared effective by the Securities and Exchange Commission.

## **Promissory Note**

During the period ended March 31, 2018, Monaco advanced us \$1.0 million that was converted to a loan agreement that was executed April 20, 2018. The indebtedness bears interest at 10.0% percent per year. All principal and any unpaid interest is to be payable on the first anniversary of this agreement, April 20, 2019. This debt is secured by cash proceeds, if any, from our future shipwreck projects we have contracted with Magellan. As additional consideration, their share purchase option expiration date, as discussed in Note 1 Monaco 2014 and Note 2 Monaco 2016 above, has been extended from 30 days to seven months after the note becomes paid in full.

## **Promissory Note**

On July 12, 2018, we entered into a Note and Warrant Purchase Agreement (the **Purchase Agreement** ) with two individuals (the **Lenders** ), one of whom holds in excess of 5.0% of our outstanding common stock. Pursuant to the Purchase Agreement, the Lenders agreed to lend an aggregate of \$1,050,000 to us, which was advanced in three tranches on July 12, 2018, \$500,000, August 17, 2018, \$300,000 and October 4, 2018, \$250,000. The indebtedness is evidenced by secured convertible promissory notes (the **Notes** ) and bears interest at a rate equal to 8.0% per annum. Unless otherwise converted as described below, the entire outstanding principal balance under the Notes and all accrued interest and fees are due and payable on July 12, 2019.

At any time after to the first to occur of (a) a sale by us of additional Notes or (b) September 12, 2018, the Lenders have the right to convert all amounts outstanding under the Notes into either (x) shares of our common stock at the conversion rate of \$8.00 per share, (y) \$500,000 of the indebtedness owed by Exploraciones Oceanicas S. de R. L. de C.V. ( ExO ) to Oceanica Marine Operations, S.R.L. ( OMO ), or (z) a 7.5% interest in Aldama Mining Company, S. de R. L. de C.V. ( Aldama ). We indirectly hold a controlling interest in ExO; OMO and Aldama are indirect, wholly owned subsidiaries of ours.

In connection with the issuance and sale of the Notes, we issued warrants to purchase common stock (the Warrants ) to the Lenders. The Lenders may exercise the Warrants to purchase an aggregate of 50,000 shares of our common stock at an exercise price of \$12.00 per share. The Warrants are exercisable during the period commencing on the date on which the Notes are converted into shares of our common stock and ending on July 12, 2021.

Pursuant to a Pledge Agreement, dated as of July 12, 2018 (the Pledge Agreement ), our obligations under the Notes are secured by a pledge of a portion of Odyssey s ownership interest in Aldama and another entity.

## **Table of Contents**

Pursuant to a Registration Rights Agreement (the "Rights Agreement") among us and the Lenders, we granted the Lenders piggy-back registration rights with respect to the shares of our common stock issuable upon conversion of the Notes and the exercise of the Warrants.

The Purchase Agreement, the Notes, the Warrants, the Pledge Agreement, and the Rights Agreement include representations and warranties and other covenants, conditions, and other provisions customary for comparable transactions.

## **Going Concern Consideration**

We have experienced several years of net losses and may continue to do so. Our ability to generate net income or positive cash flows for the following twelve months is dependent upon our success in developing and monetizing our interests in mineral exploration entities, generating income from exploration charters, collecting on amounts owed to us, and completing the MINOSA/Penelope equity financing transaction approved by our stockholders on June 9, 2015.

Our 2019 business plan requires us to generate new cash inflows to effectively allow us to perform our planned projects. We plan to generate new cash inflows through the monetization of our receivables and equity stakes in seabed mineral companies, financings, syndications or other partnership opportunities. If cash inflow is not sufficient to meet our desired projected business plan requirements, we will be required to follow a contingency business plan which is based on curtailed expenses and fewer cash requirements. On March 11, 2015, we entered into a Stock Purchase Agreement with Minera del Norte S.A. de c.v. ("MINOSA") and Penelope Mining LLC ("Penelope"), an affiliate of MINOSA, pursuant to which (a) MINOSA agreed to extend short-term, debt financing to Odyssey of up to \$14.75 million, and (b) Penelope agreed to invest up to \$101 million over three years in convertible preferred stock of Odyssey. The equity financing is subject to the satisfaction of certain conditions, including the approval of our stockholders which occurred on June 9, 2015, and MINOSA and Penelope are currently under no obligation to make the preferred share equity investments. (See Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations - Financings.)

Our consolidated non-restricted cash balance at December 31, 2018 was \$2.8 million which is insufficient to support operations for the following 12 months. We have a working capital deficit at December 31, 2018 of \$37.4 million. Our largest loan of \$14.75 million from MINOSA had a due date of December 31, 2017 which is now linked to other stipulations, see NOTE H for further detail. The majority of our remaining assets have been pledged to MINOSA, and its affiliates, and to Monaco Financial LLC, leaving us with few opportunities to raise additional funds from our balance sheet. The total consolidated book value of our assets was approximately \$5.4 million at December 31, 2018 and the fair market value of these assets may differ from their net carrying book value. Even though we executed the above noted financing arrangement with Penelope, Penelope must purchase the shares for us to be able to complete the equity component of the transaction. The Penelope equity transaction is heavily dependent on the outcome of our subsidiary's application approval process for an environmental permit to commercially develop a mineralized phosphate deposit off the coast of Mexico. The factors noted above raise doubt about our ability to continue as a going concern. These consolidated financial statements do not include any adjustments to the amounts and classification of assets and liabilities that may be necessary should we be unable to continue as a going concern.

## **Off Balance Sheet Arrangements**

We do not engage in off-balance sheet financing arrangements. In particular, we do not have any interest in so-called limited purpose entities, which include special purpose entities (SPEs) and structured finance entities.

### **Indemnification Provisions**

Under our bylaws and certain consulting agreements, we have agreed to indemnify our officers and directors for certain events arising as a result of the officer's or director's serving in such capacity. Separate agreements may provide indemnification after term of service. The term of the indemnification agreement is as long as the officer or director remains in the employment of the company. The maximum potential amount of future payments we could be required to make under these indemnification agreements is unlimited. However, our director and officer liability insurance policy limits its exposure and enables us to recover a portion of any future amounts paid. As a result of our insurance policy coverage, we believe the estimated fair value of these indemnification agreements is minimal and no liabilities are recorded for these agreements as of December 31, 2018.



## **Table of Contents**

### **Critical Accounting Estimates**

The discussion and analysis of our financial position and results of operations is based upon our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect our financial position and results of operations. See NOTE A to the Consolidated Financial Statements for a description of our significant accounting policies. Critical accounting estimates are defined as those that are reflective of significant judgment and uncertainties, and potentially result in materially different results under different assumptions and conditions. We have identified the following critical accounting estimates. We have discussed the development, selection and disclosure of these policies with our audit committee.

#### ***Long-Lived Assets***

As of December 31, 2018, we had approximately \$0.1 million of net property and equipment and related assets. Our policy is to recognize impairment losses relating to long-lived assets in accordance with the ASC topic for Property, Plant and Equipment. Impairment decisions are based on several factors, including, but not limited to, management's plans for future operations, recent operating results and projected cash flows.

#### ***Realizability of Deferred Tax Assets***

We have recorded a net deferred tax asset of \$0 at December 31, 2018. As required by the ASC topic for Accounting for Income Taxes, we have evaluated whether it is more likely than not that the deferred tax assets will be realized. Based on the available evidence, we have concluded that it is more likely than not that those assets would not be realizable without the recovery and rights of ownership or salvage rights of high value shipwrecks or the monetization of our mineral exploration stakes and thus a valuation allowance of \$52.7 million has been recorded as of December 31, 2018.

#### ***Allowance for Doubtful Accounts***

In determining the collectability of our accounts receivable, we need to make certain assumptions and estimates. Specifically, we may examine accounts and assess the likelihood of collection of particular accounts. Management has elected to record bad debts using the direct write-off method. Generally accepted accounting principles state an estimate is to be made for an allowance for doubtful accounts. The effect of using the direct write-off method, however, is not materially different from the results that would have been obtained had the allowance method been followed. If we were to have a recorded allowance, the accounts receivable would be stated net the recorded allowance.

#### ***Derivative Financial Instruments***

From time to time, we may enter into a financial instrument that may contain a derivative. In evaluating fair value of derivative financial instruments, there are numerous assumptions which management must make that may influence the valuation of the derivatives that would be included in the financial statements.

### **Contractual Obligations**

At December 31, 2018, the Company did not have any contractual obligations that extended beyond 12 months. In January 2016, we entered into a three-year operating lease for our headquarter offices with Monaco Financial, LLC, a related party. During October 2018, Monaco sold the building and the new owner has assumed the lease under the

same terms. This operating lease is cancellable upon nine months notice.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. We do not believe we have material market risk exposure and have not entered into any market risk sensitive instruments to mitigate these risks or for trading or speculative purposes.

We currently do not have any debt obligations or instruments that expose us to interest rate risk.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The information required by this item appears beginning on page 28.

**Table of Contents**

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

***Disclosure Controls and Procedures***

We maintain disclosure controls and procedures designed to ensure that information we are required to disclose in reports that we file with or furnish to the SEC is recorded, processed, summarized and reported within the time periods specified by the SEC. An evaluation was carried out under the supervision and with the participation of the Company's management, including the Chief Executive Officer ( CEO ) and Chief Financial Officer ( CFO ), of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the CEO and Interim CFO have concluded that the Company's disclosure controls and procedures are effective to ensure that we are able to collect process and disclose the information we are required to disclose in the reports we file with the SEC within required time periods.

***Internal Controls over Financial Reporting***

Management's report on our internal controls over financial reporting can be found in the financial statement section of this report. There have been no significant changes in the Company's internal controls over financial reporting as of December 31, 2018 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

On March 26, 2019, our Board of Directors (the Board ) adopted the 2019 Stock Incentive Plan (the Plan ), subject to stockholder approval. The Plan provides for the grant of incentive stock options, non-qualified stock options, restricted stock awards, restricted stock units and stock appreciation rights. The Plan will be submitted to our stockholders for approval at the 2019 Annual Meeting of Stockholders. Up to 800,000 shares may be issued pursuant to awards under The Plan , of which any number may be used for stock options, restricted stock, restricted stock units, or stock appreciation rights. Eligible recipients consist of employees of the Company or any subsidiary who hold a position that is important to the success of the Company, members of the Board, and consultants or advisors who are eligible to receive shares that are registered on SEC Form S-8.

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information concerning Directors and Executive Officers is hereby incorporated by reference to the information under the headings Election of Directors and Executive Officers and Directors of the Company in the Company's Proxy Statement (the Proxy Statement ) for the Annual Meeting of Stockholders to be held on June 3, 2019.

The Company has adopted a Code of Ethics that applies to all of its employees, including the principal executive officer, the principal financial officer and the principal accounting officer. The Code of Ethics and all committee

charters are posted on the Company's website ([www.odysseymarine.com](http://www.odysseymarine.com)). We will provide a copy of any of these documents to stockholders free of charge upon request to the Company.