

Edgar Filing: DIANA SHIPPING INC. - Form 20-F/A

DIANA SHIPPING INC.
Form 20-F/A
April 14, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 20-F/A

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR 12(g) OF THE SECURITIES
EXCHANGE ACT OF 1934

OR

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE
ACT OF 1934

for the fiscal year ended December 31, 2005

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number _____-

OR

☐ SHELL COMPANY REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

Date of event requiring this shell company report

For the transition period from _____ to _____

DIANA SHIPPING INC.
(Exact name of Registrant as specified in its charter)

Diana Shipping Inc.
(Translation of Registrant's name into English)

Marshall Islands
(Jurisdiction of incorporation or organization)

16, Pentelis Str., 175 64 P. Faliro, Athens, Greece
(Address of principal executive offices)

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

Title of each class -----	Name of each exchange on which registered -----
Common shares, \$0.01 par value	New York Stock Exchange

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

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Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act:

Title of each class -----	Name of each exchange on which registered -----
Common shares, \$0.01 par value	New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

☐ Yes ☒ No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

☐ Yes ☒ No

Note-Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report:

As of December 31, 2005, there were 45,000,000 shares of the registrant's Common Shares outstanding.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was 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 is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-Accelerated filer ☒

Indicate by check mark which financial statement item the registrant has elected to follow. ☐ Item 17 ☒ Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

☐ Yes ☒ No

(APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE LAST FIVE YEARS)

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

☐ Yes ☐ No

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EXPLANATORY NOTE

This Amendment No. 1 to the Form 20-F of Diana Shipping Inc. ("Amendment No. 1") does not relate to the contents of our 2005 Annual Report on Form 20-F (the "2005 Annual Report") which is not amended hereby. This Amendment No. 1 is being filed solely for the purpose of filing exhibit 4.7.

Item 19. Exhibits

(a) Exhibits

Exhibit Number -----	Description -----
1.1	Amended and Restated Articles of Incorporation of Diana Shipping Investment Corp. (changing name to Diana Shipping Inc. and increasing the authorized shares) (1)
1.2	Amended and restated bylaws of the Company (2)
2.1	Form of Share Certificate (1)
4.1	Form of Stockholders Rights Agreement (2)
4.2	Form of Registration Rights Agreement (2)
4.3	Form of 2005 Stock Incentive Plan (2)
4.4	Form of Technical Manager Purchase Option Agreement (2)
4.5	Form of Management Agreement (1)
4.6	Loan Agreement with Royal Bank of Scotland (2)
4.7	Form of First Amendment to Technical Manager Purchase Option Agreement
8.1	Subsidiaries of the Company (4)
11.1	Code of Ethics (3)
12.1	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer (4)
12.2	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer (4)
13.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (4)
13.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (4)

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- (1) Filed as an Exhibit to the Company's Amended Registration Statement (File No. 333-123052) on March 15, 2005.
 - (2) Filed as an Exhibit to the Company's Registration Statement (File No. 333-123052) on March 1, 2005.
 - (3) Filed as an Exhibit to the Company's 2004 Annual Report on Form 20-F (File No. 001-32458) on June 29, 2005.
 - (4) Filed as an Exhibit to the Company's 2005 Annual Report on Form 20-F (File No. 001-32458) on April 13, 2006.

SIGNATURES

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this amended annual report on its behalf.

DIANA SHIPPING INC.

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By: /s/ Simeon Palios

Simeon Palios
Chief Executive Officer and Chairman

Dated: April 14, 2006

FIRST AMENDMENT

to

OPTION AGREEMENT

made by and between

DIANA SHIPPING INC.

and

LIMON COMPANIA FINANCIERA S.A.,

AZUERO COMPANIA NAVIERA S.A.,

HERRERA COMPANIA NAVIERA S.A.,

EL REAL COMPANIA ARMADORA S.A.,

and

SIMEON PALIOS

in respect of all of the issued and outstanding common shares
of Diana Shipping Services S.A.

Date of Amendment

February 17, 2006

AGREEMENT

This amendment (the "Amendment") is dated February 17, 2006 and amends that certain option agreement dated February 15, 2005 (the "Option Agreement") by and among DIANA SHIPPING INC., a Marshall Islands corporation ("DSI"), each of the stockholders of DIANA SHIPPING SERVICES S.A., a Panamanian corporation ("DSS") listed on Schedule I hereto (collectively the "Sellers"), and SIMEON PALIOS ("Palios").

W I T N E S S E T H:

WHEREAS, the Sellers collectively own all of the issued and outstanding capital stock of DSS (the "DSS Shares");

WHEREAS, DSI is engaged, directly and/or indirectly through wholly-owned subsidiaries, in the ownership and operation of dry bulk carriers and has entered, directly and/or indirectly through wholly-owned subsidiaries,

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into vessel management agreements with DSS (the "Management Agreements") pursuant to which DSS provides technical and commercial vessel management to DSI and its wholly-owned subsidiaries;

WHEREAS, pursuant to the Option Agreement DSI has granted the Sellers an option (the "Option"), jointly and not severally, commencing on the first business day following closing of DSI's initial public offering on March 23, 2005 and terminating on the first anniversary thereof, subject to the terms and condition set forth in the Option Agreement, to sell to DSI all, but not less than all, of the DSS Shares;

WHEREAS, pursuant to the terms of the Option Agreement, the Sellers' have agreed to provide to DSI certain audited financial information of DSS for DSS's fiscal years ending December 31, 2004 and December 31, 2005, respectively, prior to DSI's purchase of the DSS Shares;

WHEREAS, DSI, having determined that it is in the best interests of DSI and its shareholders, and the Sellers now wish to extend the time by which the Seller's may exercise the Option and / or extend the amount of time permitted between receipt of the Put Option Notice and the Put Option Closing Date (each as defined in the Option Agreement) from 30 days to 60 days; and

WHEREAS, DSI, having determined that it is in the best interests of DSI and its shareholders, wishes to waive the Sellers' obligation to provide the certain audited financial information of DSS for DSS's fiscal years ending December 31, 2004 and December 31, 2005.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties hereto hereby agree as follows:

Amendment

1. Section 2.1 of the Option Agreement is hereby amended to read in its entirety as follows:

Sellers' Put Option. (a) DSI hereby grants to the Sellers, jointly and not severally, an irrevocable option (the "Put Option") to cause DSI (or a wholly owned subsidiary of DSI to be designated by DSI) to purchase from the Sellers all, but not less than all, of the DSS Shares for the aggregate purchase price of \$20 million (the "Purchase Price"). The Put Option shall commence on the first business day following the closing of the IPO and shall terminate on April 1, 2006 (the "Put Option Termination Date").

2. Section 2.2 of the Option Agreement is hereby amended to read in its entirety as follows:

Exercise of Put Option. (b) The Put Option shall be exercised by the Sellers' delivery to DSI of a written notice no later than three (3) business days prior to the Put Option Termination Date of the Sellers' intent to cause DSI (or its designee) to purchase all, but not less than all, of the DSS Shares (the "Put Option Notice"). Upon the exercise of the Put Option, DSI (or its designee) shall purchase, and the Sellers shall sell on a date selected by DSI (the "Put Option Closing Date"), the DSS Shares, free and clear of any Liens, not more than 60 days following receipt by DSI of the Put Option Notice, at which time the Purchase Price shall be transferred to an account or accounts designated by the Sellers and the certificates for the DSS Shares shall be delivered to DSI, together with such instruments of

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transfer as are necessary to vest title to the DSS Shares in DSI.

3. Section 3.1 of the Option Agreement is hereby amended to read in its entirety as follows:

DSI's Call Option.(c) (a) The Sellers hereby grant to DSI (or its designee) an irrevocable option (the "Call Option") to purchase all, but not less than all, of the DSS Shares for the Purchase Price. The Call Option shall commence on April 3, 2006 and shall terminate on the second anniversary of the IPO (the "Call Option Termination Date").

Waiver

4. In accordance with Section 6.5 of the Option Agreement, each of the parties hereto hereby agrees to irrevocably waive the Sellers' obligation to provide audited balance sheets, related statements of income and retained earnings and changes in financial positions of DSS for DSS' fiscal years ending December 31, 2004 and December 31, 2005. Nothing contained in this Amendment shall be deemed to relieve the Sellers' of their obligations pursuant to Section 6.2 of the Option Agreement to cooperate with DSI in causing DSS to prepare certain interim financial data as of the Put Option Closing Date.

Miscellaneous

5. Except as expressly amended and modified by this Amendment, all provisions of the Option Agreement shall remain in full force and effect.
6. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Option Agreement.
7. This Amendment shall become effective upon the execution of this Amendment by all of the parties hereto.
8. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have signed this Amendment as of the date first set forth above.

DIANA SHIPPING INC.

LIMON COMPANIA FINANCIERA S.A.

Name:

Title:

Name:

Title:

AZUERO COMPANIA NAVIERA S.A.

Name:

Title:

HERRERA COMPANIA NAVIERA S.A.

Name:

Title:

EL REAL COMPANIA ARMADORA S.A.

Name:

Title:

SIMEON PALIOS

SCHEDULE I

Name

LIMON COMPANIA FINANCIERA S.A.

AZUERO COMPANIA NAVIERA S.A.

HERRERA COMPANIA NAVIERA S.A.

EL REAL COMPANIA ARMADORA S.A.