

ORION HEALTHCORP INC

Form DEF 14A

November 09, 2006

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

**SCHEDULE 14A
(Rule 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

ORION HEALTHCORP, INC.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - (1) Title of each class of securities to which transaction applies:
 - (2) Aggregate number of securities to which transaction applies:
 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11. (set forth the amount on which the filing fee is calculated and state how it was determined):
 - (4) Proposed maximum aggregate value of transaction:
 - (5) Total fee paid:

- o Fee paid previously with preliminary materials.
 - o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
 - (1) Amount previously paid:
 - (2) Form, Schedule or Registration Statement No.:
 - (3) Filing Party:
 - (4) Date Filed:
-

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November 9, 2006

To Our Stockholders:

On behalf of the board of directors and management of Orion HealthCorp, Inc., I cordially invite you to attend a special meeting of the stockholders (the Special Meeting) to be held on Monday, November 27, 2006, at 8:00 a.m. local time, at 1805 Old Alabama Road, Roswell, Georgia 30076.

The attached Notice of Special Meeting and Proxy Statement describe the formal business to be transacted at the Special Meeting. At the Special Meeting stockholders will be asked to approve (i) a proposal amending our certificate of incorporation to increase the aggregate number of shares of authorized capital stock available for issuance; (ii) a proposal amending our certificate of incorporation to increase the number of shares of Class A Common Stock authorized and available for issuance; (iii) a proposal amending our certificate of incorporation to create and authorize the issuance of a new class of our common stock, Class D Common Stock, which will be convertible into our Class A Common Stock, and establishing the rights and preferences of such Class D Common Stock; (iv) pursuant to the rules of the American Stock Exchange, a proposal authorizing the issuance of shares of the newly created Class D Common Stock to investors pursuant to a private placement; (v) pursuant to the rules of the American Stock Exchange, a proposal authorizing the issuance of warrants to purchase shares of Class A Common Stock to an investor pursuant to a private placement; (vi) pursuant to the rules of the American Stock Exchange, a proposal authorizing the issuance of shares of Class A Common Stock as a portion of the consideration used for the acquisition of a medical billing services business; and (vii) a proposal to amend our 2004 Incentive Plan to increase the number of shares of our Class A Common Stock available for grants under the 2004 Incentive Plan and increase the maximum number of shares that can be granted to a participant in a calendar year under the 2004 Incentive Plan.

Each of the matters to be considered by stockholders at the Special Meeting are more fully described in the accompanying Notice of Special Meeting and Proxy Statement. Our board of directors, and in certain circumstances a special committee of our board of directors, has determined that the matters to be considered at the Special Meeting are in the best interests of us and our stockholders. For the reasons set forth in the Proxy Statement, the board of directors, and in certain circumstances a special committee of our board of directors, unanimously recommends a vote FOR each of these proposals.

WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, PLEASE SIGN AND DATE THE ENCLOSED PROXY CARD AND RETURN IT IN THE ACCOMPANYING POSTAGE-PAID RETURN ENVELOPE AS PROMPTLY AS POSSIBLE. This will not prevent you from voting in person at the Special Meeting, but will assure that your vote is counted if you are unable to attend the Special Meeting. **YOUR VOTE IS VERY IMPORTANT TO OUR COMPANY.**

Sincerely,

Terrence L. Bauer
President and Chief Executive Officer

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**ORION HEALTHCORP, INC.
1805 OLD ALABAMA ROAD, SUITE 350
ROSWELL, GEORGIA 30076**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
To Be Held On November 27, 2006**

NOTICE IS HEREBY GIVEN that a special meeting of stockholders (the Special Meeting) of Orion HealthCorp, Inc. will be held on Monday, November 27, 2006, at 8:00 a.m. local time, at 1805 Old Alabama Road, Roswell, Georgia 30076, or at any adjournments or postponements thereof. The Proxy Statement and a proxy card for the Special Meeting are enclosed.

The Special Meeting is for the purpose of considering and acting upon the following matters, each as more fully described in the attached Proxy Statement:

1. To consider and vote upon a proposal to amend our certificate of incorporation to increase the aggregate number of shares of our authorized capital stock from 117,000,000 shares to 370,000,000 shares.
2. To consider and vote upon a proposal to amend our certificate of incorporation to increase the number of shares of Class A Common Stock authorized and available for issuance from 70,000,000 shares to 300,000,000 shares.
3. To consider and vote upon a proposal to amend our certificate of incorporation to authorize 50,000,000 shares of a new class of common stock, Class D Common Stock, which is convertible into our Class A Common Stock, and to provide for the rights and preferences of the Class D Common Stock.
4. To consider and vote upon a proposal to issue shares of our Class D Common Stock to investors in a private placement.
5. To consider and vote upon a proposal to issue warrants to purchase shares of our Class A Common Stock to an investor in a private placement.
6. To consider and vote upon a proposal to issue shares of our Class A Common Stock as a portion of the consideration to be paid for our acquisition of a medical billing services business.
7. To consider and vote upon a proposal to amend our 2004 Incentive Plan to increase the number of shares of our Class A Common Stock available for grants under the 2004 Incentive Plan from 2,200,000 shares to such number of shares representing 10% of our outstanding Class A Common Stock as of the date of closing of the private placement, on a fully diluted basis taking into account the shares issued in the private placement and the Rand acquisition, and to increase the maximum number of shares that can be granted to a participant in any calendar year under the 2004 Incentive Plan from 1,000,000 shares to 3,000,000 shares.

Execution of a proxy in the form enclosed also permits the proxy holders to vote, in their discretion, upon such other matters that may properly come before the Special Meeting or any adjournment or postponement thereof. Holders of Class A Common Stock should vote those shares on the WHITE proxy card, holders of Class B Common Stock should vote those shares on the GREEN proxy card and holders of Class C Common Stock should vote those shares on the BLUE proxy card. As of the date of mailing, the board of directors is not aware of any other matters that may come before the Special Meeting. Any action may be taken on the foregoing proposals at the Special Meeting on the date specified above or on any date or dates to which, by original or later adjournment or postponement, the Special

Meeting may be adjourned or postponed. Stockholders of record at the close of business on October 20, 2006 are the stockholders entitled to vote at the Special Meeting and any adjournments or postponements thereof.

WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, YOU ARE REQUESTED TO SIGN, DATE AND RETURN THE APPROPRIATE ENCLOSED PROXY CARD (WHITE PROXY CARD FOR CLASS A COMMON STOCK, GREEN PROXY CARD FOR CLASS B COMMON STOCK AND BLUE PROXY CARD FOR CLASS C COMMON STOCK) WITHOUT DELAY IN THE ENCLOSED

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POSTAGE-PAID ENVELOPE. ANY PROXY YOU GIVE MAY BE REVOKED BEFORE THE VOTE AT THE SPECIAL MEETING BY DELIVERING TO THE CORPORATE SECRETARY A WRITTEN REVOCATION OR A DULY EXECUTED PROXY BEARING A LATER DATE. IF YOU ARE PRESENT AT THE SPECIAL MEETING YOU MAY REVOKE YOUR PROXY AND VOTE IN PERSON ON EACH MATTER BROUGHT BEFORE THE SPECIAL MEETING. HOWEVER, IF YOU ARE A STOCKHOLDER WHOSE SHARES ARE NOT REGISTERED IN YOUR OWN NAME, YOU WILL NEED ADDITIONAL DOCUMENTATION FROM YOUR RECORD HOLDER TO VOTE IN PERSON AT THE SPECIAL MEETING. OUR BOARD OF DIRECTORS, AND IN CERTAIN INSTANCES A SPECIAL COMMITTEE OF THE BOARD OF DIRECTORS, RECOMMENDS A VOTE FOR EACH OF THE PROPOSALS.

BY ORDER OF THE BOARD OF DIRECTORS

Stephen H. Murdock
Corporate Secretary

Roswell, Georgia
November 9, 2006

IMPORTANT: THE PROMPT RETURN OF PROXIES WILL SAVE US THE EXPENSE OF FURTHER REQUESTS FOR PROXIES IN ORDER TO ENSURE A QUORUM AT THE SPECIAL MEETING. A SELF ADDRESSED ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE. NO POSTAGE IS REQUIRED IF MAILED IN THE UNITED STATES.

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**PROXY STATEMENT
OF
ORION HEALTHCORP, INC.**

**SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON NOVEMBER 27, 2006**

GENERAL

Our board of directors is soliciting your proxy in connection with a special meeting of stockholders (the Special Meeting), which will be held on Monday, November 27, 2006, at 8:00 a.m. local time, at 1805 Old Alabama Road, Roswell, Georgia 30076, and at any adjournments or postponements thereof, for the purposes set forth in the accompanying Notice of Special Meeting of stockholders. All stockholders are entitled and encouraged to attend the Special Meeting in person. This Proxy Statement and the accompanying Notice of Special Meeting are being first mailed to stockholders on or about November 13, 2006.

COMPANY BACKGROUND

We are a healthcare services organization providing outsourced business services to physicians. We serve the physician market through two subsidiaries, Integrated Physician Solutions, Inc. (IPS), which provides business and management services to general and subspecialty pediatric physician practices, and Medical Billing Services, Inc. (MBS), which provides billing, collection and practice management services, primarily to hospital-based physicians. We currently have three classes of common stock outstanding: Class A Common Stock, par value \$0.001 per share (Class A Common Stock), Class B Common Stock, par value \$0.001 per share (Class B Common Stock) and Class C Common Stock, par value \$0.001 per share (Class C common Stock). Our Class A Common Stock is traded on the American Stock Exchange (AMEX) under the symbol ONH.

In April 2005, our board of directors initiated a strategic plan designed to accelerate our growth and enhance our future earnings potential. The plan focused on our strengths, which include providing billing, collections and complementary business management services to physician practices. As part of this plan, we completed a series of transactions involving the divestiture of non-strategic assets in 2005 and early 2006. In addition, we redirected financial resources and company personnel to areas that management believed would enhance long-term growth potential. A key component of our long-term strategic plan was the identification of potential acquisition targets that would increase our presence in the markets we serve and enhance stockholder value.

In furtherance of our strategic plan, we recently entered into separate stock purchase agreements for the acquisition of all of the issued and outstanding capital stock of (i) Rand Medical Billing, Inc. (Rand), and (ii) On Line Payroll Services, Inc. and On Line Alternatives, Inc. (collectively, On Line). As part of the consideration for our acquisition of Rand, we have agreed to issue such number of shares of our Class A Common Stock having a value equal to \$600,000 based on the average closing price per share of our Class A Common Stock for the twenty day period prior to the closing date of the acquisition of Rand. In addition, we entered into (x) a Stock Purchase Agreement, dated September 8, 2006 (the Stock Purchase Agreement) with Phoenix Life Insurance Company (Phoenix) and Brantley Partners IV, L.P. (Brantley IV) to issue, for an aggregate purchase price of \$4,650,000, shares of a newly created class of our common stock, Class D Common Stock, par value \$0.001 per share (the Class D Common Stock), which would be convertible into our Class A Common Stock and (y) a Note Purchase Agreement, dated September 8, 2006 (the Note Purchase Agreement, and together with the Stock Purchase Agreement, the Private Placement Agreements) with Phoenix to issue, for an aggregate purchase price of \$3,350,000, our senior unsecured subordinated promissory notes due 2011 in the original principal amount of \$3,350,000, bearing interest at an aggregate rate of 14% per annum, together with warrants to purchase shares of our Class A Common Stock, as more fully described herein and in the

Note Purchase Agreement and the form of common stock purchase warrant (the Warrant Certificate). Some or all of the proceeds we receive upon consummation of the transactions set forth in the Private Placement Agreements, along with proceeds from senior bank financing and other funds available to us, will be used to finance a portion of the acquisitions of the Rand and

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On Line businesses and for general working capital purposes. The issuance of the shares of Class D Common Stock and Class A Common Stock underlying the warrants issued pursuant to the Private Placement Agreements and the Warrant Certificate and the issuance of the shares of our Class A Common Stock in connection with the Rand acquisition are the subject of Proposals IV, V and VI. Copies of the Private Placement Agreements, the form of Warrant Certificate, the Rand stock purchase agreement and the On Line stock purchase agreement are attached hereto as Annexes A, B, N, C and L, respectively.

QUESTIONS AND ANSWERS ABOUT THE MEETING

Why am I receiving this Proxy Statement and proxy card?

You are receiving a Proxy Statement and proxy card because you own shares of our Class A Common Stock, shares of our Class B Common Stock, and/or shares of our Class C Common Stock (collectively, Common Stock). This Proxy Statement describes proposals on which we would like you, as a stockholder, to vote. It also gives you information on the proposals so that you can make an informed decision.

What am I being asked to vote on?

You are being asked to vote on the following proposals:

- Proposal I* To approve an amendment to our certificate of incorporation to increase the aggregate number of shares of our authorized capital stock from 117,000,000 shares to 370,000,000 shares.
- Proposal II* To approve an amendment to our certificate of incorporation to increase the number of shares of Class A Common Stock authorized and available for issuance from 70,000,000 shares to 300,000,000 shares. The increased number of shares to be approved are a portion of, and not in addition to, the additional shares being authorized pursuant to Proposal I.
- Proposal III* To approve an amendment to our certificate of incorporation to authorize 50,000,000 shares of a new class of common stock, Class D Common Stock, which is convertible into shares of our Class A Common Stock, and to provide for the rights and preferences of the Class D Common Stock. The new shares to be approved are a portion of, and not in addition to, the additional shares being authorized pursuant to Proposal I.
- Proposal IV* To approve the issuance as part of a private placement transaction to Phoenix and Brantley of such number of shares of our newly created Class D Common Stock representing upon conversion 19.375% of our outstanding Class A Common Stock as of the date of issuance of the Class D Common Stock, on a fully-diluted basis taking into account the issuance of the shares of Class D Common Stock but excluding certain of our outstanding options, warrants and convertible securities and certain shares of Class B Common Stock to be purchased by us from Brantley Capital Corporation (Brantley Capital). The shares of Class D Common Stock to be issued pursuant to this proposal are a portion of, and not in addition to, the shares being created pursuant to Proposal III, the shares of Class A Common Stock to be issued upon conversion of such Class D Common Stock are a portion of, and not in addition to, the additional shares being authorized pursuant to Proposal II and all of the shares to be issued pursuant to this proposal are a portion of, and not in addition to, the additional shares being authorized pursuant to Proposal I.
- Proposal V* To approve the issuance as part of a private placement transaction to Phoenix of warrants to purchase shares of our Class A Common Stock equal to 1.117% of our outstanding Class A

Common Stock on the date of issuance of the Warrant Certificate, taking into account the issuance of the shares of Class D Common Stock described above but excluding certain of our outstanding options, warrants and convertible securities and certain shares of Class B Common Stock to be purchased by us from Brantley Capital. The shares of Class A Common Stock to be issued upon exercise of the warrants referred to in this proposal are a portion of, and not in

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addition to, the additional shares being authorized pursuant to Proposal II and are a portion of, and not in addition to, the additional shares being authorized pursuant to Proposal I.

Proposal VI To approve the issuance as a portion of the consideration to be paid for our acquisition of the stock of the Rand business to the selling stockholder of Rand such number of shares of our Class A Common Stock having a value of \$600,000 based on the average closing price per share of our Class A Common Stock for the twenty day period prior to the closing of the acquisition of Rand. The shares of Class A Common Stock to be issued pursuant to this proposal are a portion of, and not in addition to, the additional shares being authorized pursuant to Proposal II and all of the shares to be issued pursuant to this proposal are a portion of, and not in addition to, the additional shares being authorized pursuant to Proposal I.

Proposal VII To approve an amendment to our 2004 Incentive Plan to increase the number of shares of our Class A Common Stock available for grants under the 2004 Incentive Plan from 2,200,000 shares to such number of shares representing 10% of our outstanding Class A Common Stock as of the date of closing of the private placement, on a fully diluted basis taking into account the shares issued in the private placement and the Rand acquisition, and to increase the maximum number of shares that can be granted to a participant in any calendar year under the 2004 Incentive Plan from 1,000,000 shares to 3,000,000 shares. The increased number of shares to be approved will be reserved out of the additional shares of Class A Common Stock being authorized pursuant to Proposals I and II.

Why are we seeking approval for the issuance of our shares in the private placement and in connection with the Rand acquisition?

As a result of our Class A Common Stock being listed for trading on AMEX, issuances of our Common Stock are subject to the provisions of the AMEX Company Guide, including Sections 712 and 713. Pursuant to Section 712 of the AMEX Company Guide, prior to seeking to have any additional shares of our Class A Common Stock listed on AMEX which shares are to be used as consideration for the acquisition of another company, we must obtain stockholder approval if, among other things, the present or potential issuance of our Class A Common Stock (or securities convertible into our Class A Common Stock) could result in an increase by 20% or more in the number of our outstanding shares of Class A Common Stock.

Similarly, pursuant to Section 713 of the AMEX Company Guide, prior to seeking to have any additional shares of our Class A Common Stock listed on AMEX, we must obtain stockholder approval if such shares are to be sold, issued or potentially issued both (i) at a price less than the greater of book or market value, and (ii) either (a) such shares, together with shares sold by our officers, directors or principal stockholders, equals 20% or more of the number of shares of our presently outstanding Class A Common Stock (on an as converted basis) or (b) such shares equal to 20% or more of the number of shares of our presently outstanding Class A Common Stock (on an as converted basis).

Pursuant to the terms of the Private Placement Agreements and as more fully described in this Proxy Statement under Proposals IV and V, we intend to issue (i) shares of our Class D Common Stock, representing upon conversion 19.375% of our outstanding Class A Common Stock as of the date of issuance of the Class D Common Stock, on a fully-diluted basis taking into account the issuance of the shares of Class D Common Stock but excluding certain of our outstanding options, warrants and convertible securities and certain shares of Class B Common Stock to be purchased by us from Brantley Capital and (ii) warrants to purchase shares of our Class A Common Stock equal to 1.117% of our outstanding Class A Common Stock on the date of issuance of the Warrant Certificate, taking into account the issuance of the shares of Class D Common Stock described in this Proxy Statement but excluding certain

of our outstanding options, warrants and convertible securities and certain shares of Class B Common Stock to be purchased by us from Brantley Capital. In addition, pursuant to the terms of the stock purchase agreement for the acquisition of Rand and as more fully described below under Proposal VI, we have agreed to issue such number of shares of our Class A Common Stock having a value of \$600,000 based on the average closing price per share of our Class A Common Stock for the twenty day period prior to the closing of the acquisition of Rand.

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If we were to consummate the private placement and the Rand acquisition as of our record date, October 20, 2006, we would be obligated to issue 20,772,427 shares of Class D Common Stock (representing 18.4% of our Class A Common Stock on an as converted basis) pursuant to the Private Placement Agreements, warrants to purchase 1,197,564 shares of our Class A Common Stock (representing 1.1% of our Class A Common Stock on an as converted basis) pursuant to the Private Placement Agreements and the Warrant Certificate and 2,400,000 shares of our Class A Common Stock (representing 2.1% of our Class A Common Stock on an as converted basis) in connection with the Rand acquisition. The closing price of our Class A Common Stock on the record date was \$0.25 per share. While none of these transactions individually would require issuances in excess of 20% of our outstanding Class A Common Stock (on an as converted basis), the combination of all three issuances will exceed 20% of our outstanding Class A Common Stock (on an as converted basis) and the issuance of the shares to Phoenix and Brantley IV and the warrants to Phoenix in the private placement, if consummated on October 20, 2006, would be at a price per share of \$0.22, representing a \$0.03 per share discount from the closing price of \$0.25 for a share of our Class A Common Stock. In addition, since the price per share used in the calculation of the shares to be issued in the Rand acquisition is based on a twenty day average, it is possible that the shares issued in that transaction may be issued at a discount, at a premium or at market. If consummated on October 20, 2006, the shares in the Rand acquisition would have been issued at \$0.26 per share, representing a premium of \$0.01 per share from the closing price of \$0.25 per share. Representatives of AMEX have advised us that these three transactions must be aggregated for the purposes of determining whether stockholder approval is required under Sections 712 and 713 of the AMEX Company Guide. Therefore, our board of directors has decided to submit Proposals IV, V and VI to our stockholders for their consideration and approval prior to consummating these transactions.

When do you expect the private placement and the acquisitions to be consummated?

It is currently contemplated that the private placement and the acquisitions of Rand and On Line will be simultaneously completed promptly following conclusion of our Special Meeting, assuming approval of Proposals I, II, III, IV, V and VI and the satisfaction or waiver of all closing conditions related to the private placement and the acquisitions set forth in the Private Placement Agreements and the acquisition agreements, respectively.

Will you consummate the private placement without consummating the acquisitions?

Under the terms of the Private Placement Agreements, we do not have the right to terminate the Private Placement Agreements in the event that we decide not to or are unable to consummate the acquisition of the Rand business and/or the acquisition of the On Line businesses. However, Phoenix and Brantley IV are not obligated to consummate the private placement unless we have consummated the acquisitions of both the Rand and the On Line businesses. Phoenix and Brantley IV have the discretion to waive this condition and consummate the private placement even if we decide not to or are unable to consummate the acquisition of the Rand business and/or the acquisition of the On Line businesses. There is no guarantee that Phoenix and Brantley IV would agree to waive this condition in those circumstances. If Phoenix and Brantley IV were to waive this condition to consummation of the private placement, then we would consummate the private placement and retain the proceeds for use in future acquisitions consistent with our strategic plan and for other working capital purposes.

Will you consummate the acquisitions without consummating the private placement?

Under the terms of the stock purchase agreements for the acquisitions of the Rand and the On Line businesses, we are not obligated to consummate these acquisitions unless we have received financing in amounts sufficient to pay our purchase price obligations under these agreements. We currently contemplate using some or all of the proceeds we will receive from the private placement, along with proceeds from senior bank financing and other funds available to

us, to finance a portion of the acquisitions of the Rand and On Line businesses. However, our consummation of the acquisitions of the Rand and On Line businesses is not dependent on specifically consummating the private placement. If we do not consummate the private placement, then we could consummate the acquisitions of the Rand and On Line businesses if we are able to find sources of funding sufficient to pay the purchase prices for these businesses from sources other than the private placement. There is no guarantee that we would either be able to find alternative financing sources on terms acceptable to us or find them timely enough to complete the acquisitions as presently negotiated.

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Will you consummate one acquisition without consummating the other acquisition?

Under the terms of the stock purchase agreements for the acquisitions of the Rand and On Line businesses, our obligation to consummate each of the acquisitions is not conditioned upon our consummation of the other acquisition. However, Phoenix and Brantley IV are not obligated to consummate the private placement unless we have consummated the acquisitions of both the Rand and the On Line businesses. Phoenix and Brantley IV have the discretion to waive this condition and consummate the private placement even if we decide not to or are unable to consummate the acquisition of either or both of the Rand business or the On Line businesses. There is no guarantee that Phoenix and Brantley IV would agree to waive this condition in those circumstances. If Phoenix and Brantley IV were to waive this condition to consummation of the private placement, then we would consummate the private placement and the remaining acquisition and retain the remaining portion of the proceeds for use in future acquisitions consistent with our strategic plan and for other working capital purposes.

Will you consummate the Brantley Capital purchase without consummating the private placement?

Under the terms of the purchase agreement with Brantley Capital, we are not obligated to consummate the purchase of the shares of Class B Common Stock from Brantley Capital if the private placement is not consummated. The purchase agreement with Brantley Capital arose as a result of the closing condition to the Private Placement Agreements which required all holders of shares of Class B Common Stock and Class C Common Stock to convert such shares into shares of Class A Common Stock or our acquisition and retirement of all such shares. If the private placement does not close, we will not have the funds to consummate the purchase of these shares from Brantley Capital. Although we believe that this transaction is accretive to our other stockholders and in our best interests, if the private placement does not close we do not presently expect to seek an alternative source of funds to consummate the purchase of these shares from Brantley Capital.

Is stockholder approval the only condition to consummating the private placement and the Rand acquisition?

Each of the Private Placement Agreements and the Rand stock purchase agreement contain a number of conditions to both our obligation to consummate such transactions and the obligations of the other parties thereto to consummate such transactions. A summary of the specific conditions to each agreement are contained in the description of Proposals IV, V and VI. Many of these conditions require actions by parties other than us. While we believe that these actions will occur and such conditions can be satisfied in the time periods specified in each agreement, there is no guarantee that these actions will occur. Most notably, the Private Placement Agreements are conditioned upon all of the current holders of our Class B Common Stock and Class C Common Stock converting such shares into shares of Class A Common Stock or our acquisition and retirement of all such shares prior to consummation of the private placement. While we have discussed this condition with many of these stockholders and most of them have agreed to convert their shares, we do not have a binding commitment from any of these stockholders to convert their shares in such manner and we have not received an indication from all such stockholders that they affirmatively intend to convert their shares. We will continue to have discussions with such stockholders in order to obtain their commitments to convert such shares in the manner required under the Private Placement Agreements. If we are unable to obtain such commitments and such stockholders do not convert their shares in the manner required under the Private Placement Agreements, then we will not be able to consummate the private placement regardless of whether or not Proposals IV and V are approved by our stockholders at the Special Meeting.

Why are we proposing the three amendments to our certificate of incorporation?

Our certificate of incorporation currently authorizes us to issue up to 117,000,000 shares of our capital stock, which includes 70,000,000 shares of our Class A Common Stock. Approval of an increase in the number of shares of our Class A Common Stock and the creation of the terms of the Class D Common Stock is necessary to issue the

securities required to consummate the private placement and the Rand acquisition on the terms currently set forth therein. Also, an increase in the number of our authorized shares of capital stock, including the Class A Common Stock, is necessary to increase the number of shares of Class A Common Stock available for grants under our 2004 Incentive Plan.

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Regardless of whether the private placement and the Rand acquisition are approved and consummated or the 2004 Incentive Plan amendment is approved, we may need additional shares of Class A Common Stock to reserve for the possible conversion of our Class B Common Stock and Class C Common Stock. The conversion factors for the Class B Common Stock and Class C Common Stock fluctuate based on the market price of our Class A Common Stock. Based on recent trading prices for our Class A Common Stock, we may not currently have enough shares of Class A Common Stock to satisfy the conversion of all of the Class B Common Stock and Class C Common Stock should all holders of the Class B Common Stock and Class C Common Stock seek to exercise their conversion rights. As a condition to consummation of the private placement, Phoenix and Brantley IV are requiring that all holders of shares of Class B Common Stock and Class C Common Stock convert those shares into shares of Class A Common Stock, or that such shares of Class B Common Stock and Class C Common Stock otherwise be acquired by us and retired prior to consummation of the private placement. Due to the fluctuating nature of the conversion factors, management is unable to determine with certainty at this time how many shares of Class A Common Stock will be necessary to satisfy this conversion obligation and the conversion obligation in connection with the remainder of the Class B Common Stock and Class C Common Stock when and if this conversion right is exercised. The number of additional shares of Class A Common Stock requested in Proposal II includes management's reasonable estimate of the number of shares of Class A Common Stock that would be required to satisfy these conversion obligations if the trading price of our Class A Common Stock does not decrease below \$0.10 per share. The closing price of our Class A Common Stock on the record date, October 20, 2006, was \$0.25 per share.

Why are we proposing an amendment to our 2004 Incentive Plan?

Our 2004 Incentive Plan currently provides that 2,200,000 shares of our Class A Common Stock are eligible for grants under the plan, of which only 476,000 shares are available for future grants. In addition our 2004 Incentive Plan currently limits the number of shares that we can grant to any participant in any calendar year under the 2004 Incentive Plan to 1,000,000 shares. Our board of directors believes that an increase in the incentive pool to such number of shares representing 10% of our outstanding Class A Common Stock as of the date of closing of the private placement, on a fully diluted basis taking into account the shares issued in the private placement and the Rand acquisition, and an increase in the amount that any single participant is eligible to receive in any calendar year to 3,000,000 shares, will provide us with the ability to attract and retain key employees and to align the interests of our key employees with the interests of our stockholders. If this increase were to have been implemented on our record date, October 20, 2006, assuming that the private placement and the Rand acquisition had been consummated as of such date, this would have resulted in an increase of 9,114,526 shares for an aggregate total of 9,590,526 shares available for grants under the 2004 Incentive Plan.

What will our capital structure look like following the private placement?

The following table summarizes our capital structure as it existed on the record date, October 20, 2006, and as we anticipate it will look upon consummation of the private placement, the Rand and On Line acquisitions and the purchase of our shares of Class B Common Stock from Brantley Capital. The pro-forma numbers reflected in this table assume that our stock price on the closing date for these transactions would be the same as it was on the record date, [\$0.25] per share, and that all of the proposals set forth in this Proxy Statement were approved by the stockholders and such transactions were consummated.

As of October 20, 2006		Pro-forma Post Proposals	
Number of Shares	Percentage of Shares	Number of Shares	Percentage of Shares

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	Number of Authorized Shares	Number of Shares Outstanding	Outstanding on a Fully- Diluted Basis	Outstanding on a Fully- Diluted Basis	Number of Authorized Shares	Number of Shares Outstanding	Outstanding on a Fully- Diluted Basis	Outstand on a Fully- Diluted Basis
Class A Common Stock (total)	70,000,000	12,788,776	102,649,038	100.00%	300,000,000	89,359,165	91,877,676	81.6%
Outstanding public shareholders		12,788,776	12,788,776	12.46%		12,788,776	12,788,776	11.3%
Warrant options, restricted stock								
Convertible securities			3,013,672	2.94%			3,013,672	2.6%
Warrants available to exercise as of the Effective Date of the Purchase Agreement				0.00%		1,197,564	1,197,564	1.0%
Shares issuable under the 2014 Equity Incentive Plan as part of the Acquisition Restructuring Plan				0.00%		2,400,000	2,400,000	2.6%
Conversion of Class A Preferred Stock into Common Stock			1,371,539	1.34%		1,371,539	1,371,539	2.1%
Conversion of Class B Preferred Stock into Common Stock			66,499,101	64.78%		55,533,207	55,533,207	49.0%

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	As of October 20, 2006				Pro-forma Post Proposals		
	Number of Authorized Shares	Number of Outstanding Shares	Percentage of Outstanding Shares on a Fully-Diluted Basis	Number of Authorized Shares	Number of Outstanding Shares	Percentage of Outstanding Shares on a Fully-Diluted Basis	
Conversion of Class C Common Stock		18,975,950	18.49%		16,068,079	14.20%	