MKTGINC

'mktg, inc.' Enters Into Definitive Agreement for $5 Million Financing; Obtains Nasdaq Waiver to Stockholder Approval Rules

NEW YORK, Nov 30, 2009 /PRNewswire-FirstCall via COMTEX News Network/ -- 'mktg, inc.' (Nasdaq: CMKG), an alternative marketing and media communications agency, today reported that on November 25, 2009, it entered into a Securities Purchase Agreement with an investment vehicle organized by Union Capital Corporation, and certain of directors and officers of the Company, providing for a $5 million financing led by an affiliate of Union Capital Corporation. The Financing will consist of $2.5 million in aggregate principal amount of Senior Secured Notes, $2.5 million in aggregate stated value of Series D Convertible Participating Preferred Stock, and Warrants to purchase 2,456,272 shares of Common Stock. The financing is expected to close on or about December 10, 2009.

The Company previously reported that it was under financial strain and needed to seek working capital in light of recent losses, the suspension of its revolving credit facility and cash collateralization of its term loan (which has since been repaid), and a reduction in advance payments by clients.

Nasdaq Exemption from Stockholder Approval Requirements

The financing would ordinarily require prior stockholder approval under Nasdaq's Listing Rules since, among other things, (i) an affiliate of Union Capital Corporation will beneficially hold approximately 40.5% of the Company's Common Stock following the closing, which could be deemed to constitute a change of control, (ii) Company personnel are participating in the financing, which in Nasdaq's view could constitute equity compensation, and (iii) the financing is a private placement of securities convertible into more than 20% of the Company's Common Stock at prices below the current market price

Due to its pressing cash needs, the Company determined that the delay inherent in securing stockholder approval would seriously jeopardize the Company's financial viability. As a result, the Company sought and obtained Nasdaq approval for an exception to their stockholder approval requirements so that the Company could conclude the proposed financing at the earliest possible time. The Company's reliance on the exception from Nasdaq's rules was authorized by the Company's Audit Committee, in accordance with Nasdaq's rules.

Terms of the Financing

Investors will invest $5 million in the financing, and in exchange therefor will be issued $2.5 million in principal amount of Secured Notes, 2.5 million shares of Preferred Stock with an aggregate Stated Value of $2.5 million, initially convertible into 5,321,922 shares of Common Stock, and Warrants to purchase 2,456,272 shares of Common Stock. The terms of the Securities and the financing are summarized below.

The Secured Notes

The Secured Notes will be secured by substantially all of the Company's assets; bear interest at a rate of 12.5% per annum payable quarterly; and mature in one installment on the third anniversary of the financing. The Company may prepay the Secured Notes at any time. While the Secured Notes are outstanding the Company will be subject to customary affirmative, negative and financial covenants. The Secured Notes are not convertible into equity.

Preferred Stock

The shares of Preferred Stock to be issued in the financing have a Stated Value of $1.00 per share, and will initially be convertible into Common Stock at a conversion price of $0.47. The conversion price of the Preferred Stock will be subject to full ratchet anti-dilution provisions for 18 months following the financing, and *weighted*-average anti-dilution provisions thereafter. Holders of the Preferred Stock will not be entitled to special dividends but will be entitled to be paid upon a liquidation, redemption or change of control the Stated Value of such shares plus the greater of (a) a 14% accreting liquidation preference, compounding annually, and (b) 3% of the volume weighted average price of the Company's Common Stock outstanding on a fully-diluted basis (excluding the shares issued upon conversion of the Preferred Shares) for the 20 days preceding the event. A consolidation or merger, a sale of all or substantially all of our assets, and a sale of 50% or more of Company Common Stock would be treated as a change of control for this purpose.

The Preferred Stock will vote together with the Common Stock on an as-converted basis, and the vote of a majority of the shares of the Preferred Stock will be required to approve, among other things, (i) any issuance of capital stock which is senior to or pari passu with the Preferred Stock; (ii) any increase in the number of authorized shares of Preferred Stock; (iii) any dividends or payments on equity securities; (iv) any amendment to the Company's Certificate of Incorporation, By-laws or other governing documents that would result in an adverse change to the rights, preferences, or privileges of the Preferred Stock; (v) any material deviation from the annual budget approved by the Company's Board of Directors; and (vi) entering into any material contract not contemplated by the annual budget approved by the Board of Directors.

After the sixth anniversary of the financing, holders of the Preferred Stock can require the redemption of the Preferred Stock at its Stated Value plus any accretion thereon. In addition, the Company may be required to redeem the Preferred Stock earlier upon the occurrence of a "Triggering Event." Triggering Events include (i) failure to timely deliver shares of Common Stock upon conversion of Preferred Stock, (ii) failure to pay amounts due to the holders (after notice and a cure period), (iii) a bankruptcy event, (iv) a cross default under other indebtedness in excess of certain amounts, and (v) a breach or representations, warranties or covenants in the documents entered into in connection with the financing. Upon a Triggering Event or failure to redeem the Preferred Stock, the accretion rate on the Preferred Stock will increase to 16.5% per annum. The Company may also be required to pay penalties upon a failure to timely deliver shares of Common Stock upon conversion of Preferred Stock.

Warrants

The investors in the financing will be issued nominal strike price Warrants to purchase an aggregate of 2,456,272 shares of Common Stock. The Warrants are exercisable for a period of six years following issuance.

Board Rights

So long as at least 25% of the shares of Preferred Stock issued at closing are outstanding, the holders of the Preferred Stock as a class will have the right to designate two members of the Company's Board of Directors, and so long as at least 15% but less than 25% of the shares of Preferred Stock issued at the closing are outstanding, the holders of the Preferred Stock will have the right to designate one member of the Company's Board of Directors. Additionally, the holders of Preferred Stock have the right to designate two non-voting observers to the Company's Board of Directors.

Participation Rights

An affiliate of Union Capital Corporation will have the right to purchase its pro rata share of new securities, subject to customary exceptions, in the event the Company issues new equity securities.

Management Investment Requirement

As a condition to their participation in the financing, Union Capital Corporation required that directors, officers and employees of the Company collectively purchase $735,000 of the securities on the same terms and conditions as the affiliate of Union Capital Corporation. Directors, officers and employees participating in the financing include Marc Particelli, Chairman of the Board, who has agreed to invest $500,000 in the financing, Charles Horsey, President, who has agreed to invest $200,000 in the financing, and other employees who have agreed to invest an aggregate amount of approximately $35,000 in the financing.

Demand Registration Rights

At the request of the holders of a majority of the shares of Common Stock issuable upon conversion of the Preferred Stock and exercise of the Warrants, the Company will be required to file a registration statement with the SEC to register the resale of such shares of Common Stock under the Securities Act of 1933, as amended.

Fees

The Company will pay Union Capital Corporation a closing fee of $325,000, half of which will be upon the closing of the financing and the balance of which will be paid in six monthly installments beginning January 1, 2010. The Company will also reimburse Union Capital Corporation for all of its fees, including reasonable legal fees, costs and expenses, in an amount not to exceed $250,000. Additionally, upon closing, the Company will enter into a management consulting agreement with Union Capital Corporation under which Union Capital Corporation will provide the Company with management advisory services and the Company will pay Union Capital Corporation a fee of $125,000 per year for such services. Such fee will be reduced to $62,500 per year if the holders of the Preferred Stock no longer have the right to nominate two directors and Union Capital Corporation no longer owns at least 40% of the Common Stock purchased by it at closing (assuming conversion of Preferred Stock and exercise of Warrants held by it). The management consulting agreement will terminate when the holders of the Preferred Stock no longer have the right to nominate any directors and affiliate(s) of Union Capital Corporation no longer owns at least 20% of the Common Stock purchased by it at closing (assuming conversion of Preferred Stock and exercise of Warrants held by it).

Use of Proceeds

The Company will use the net proceeds of the financing to repay amounts owed to Diageo, expenses incurred in the connection with the financing, and for general working capital purposes.

Conditions to Closing

The closing of the financing is subject to a number of conditions, including, among other things, that in accordance with Nasdaq rules, 10 days shall have passed since mailing notice to stockholders, and the representations and warranties provided to the investors in the securities purchase agreement are true and correct in all material respects.

Effect of Stock Issuances Related to the Financing Transactions

The shares of Preferred Stock to be issued in the financing will initially be convertible into 5,321,922 shares of Common Stock, and the Warrants will initially be convertible into 2,456,272 shares of Common Stock. The Company currently has 8,596,951 shares of Common Stock outstanding. Accordingly, if all of the shares of Preferred Stock issued in the financing are converted to Common Stock at the initial conversion price and all of the Warrants exercised, the Company will have 16,375,145 shares of Common Stock outstanding, representing a potential increase of approximately 90% in the number of shares outstanding prior to the financing.

About 'mktg, inc.'

'mktg, inc.' (Nasdaq: CMKG) is an alternative media and marketing services company headquartered in New York with full service offices in San Francisco, Chicago, Cincinnati and Toronto. The company currently serves a variety of the world's most recognizable brands, including CBS, Diageo, P&G, Nintendo, Pepsi, Nike, Apple, Scottrade and Google/YouTube. The company's services include experiential marketing, digital marketing, retail promotions and strategic research and planning. The firm's programs help its clients profitably connect with consumers and create networks of brand advocates to generate brand awareness and higher sales for its customers. For more information, please visit www.mktg.com.

About Union Capital Corporation

Founded in 1968, Union Capital Corporation is a private equity firm that invests in businesses and management and provides operational resources, analytic support, and financial discipline. Union Capital's principals consist of experienced investors and senior business executives. They invest their own capital in every transaction which demonstrates their commitment to the success of each portfolio investment. For more information, please visit www.unioncapitalcorp.com

This press release includes statements which constitute forward-looking statements made pursuant to the safe harbor provision of the Private Securities Litigation Reform Act of 1995. Forward-looking statements in this press release are not promises or guarantees and are subject to risks and uncertainties that could cause our actual results to differ materially from those anticipated. These statements are based on management's current expectations and assumptions and are naturally subject to uncertainty and changes in circumstances. We caution you not to place undue reliance upon any such forward-looking statements.

SOURCE 'mktg, inc.'

http://www.mktg.com