

ASTA FUNDING INC
Form 10-Q/A
May 21, 2008

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
FORM 10-Q/A
Amendment No. 1

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

For the quarterly period ended March 31, 2008

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: 0-26906

ASTA FUNDING, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

22-3388607

(IRS Employer
Identification No.)

210 Sylvan Ave., Englewood Cliffs, New Jersey

(Address of principal executive offices)

07632

(Zip Code)

Registrant's telephone number: (201) 567-5648

Former name, former address and former fiscal year, if changed since last report: N/A

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 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, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated
filer ☐

Accelerated filer
☒

Non-accelerated filer ☐

Smaller reporting
company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act) Yes ☐ No ☒

As of May 19, 2008, the registrant had 14,276,158 common shares outstanding.

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ASTA FUNDING, INC. AND SUBSIDIARIES
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EXPLANATORY NOTE

This amendment on Form 10-Q/A is being filed to include in Footnote #14 the aggregate minimum repayment obligations required under the third amendment of the Receivable Financing Agreement entered into on May 19, 2008 with Palisades Acquisition XVI. Minimum payments of principal and interest from May 1, 2008 for the balance of the fiscal year ending September 30, 2008 and for fiscal years ending September 30, 2009 and September 30, 2010 are \$19.7 million, \$67.0 million, and \$75.0 million, respectively. As the payments are to be made on a monthly basis and the minimums are based on averages, these minimums could vary somewhat.

This amendment speaks as of the date of the Report. We have not updated the disclosures contained in this amendment to reflect any events that occurred at a date subsequent to the filing of the Report. The filing of this amendment is not a representation that any statements contained in the Report or this amendment are true or complete as of any date subsequent to the date of the Report. This amendment does not affect the information originally set forth in the Report, the remaining portions of which have not been amended.

Note 14: Subsequent Events

On April 29, 2008, the Company obtained a subordinated loan pursuant to a subordinated promissory note from Asta Group, Inc. (the "Family Entity"). The Family Entity is a greater than 5% shareholder of the Company beneficially owned and controlled by Arthur Stern, the Chairman of the Board of the Company, Gary Stern, the Chief Executive Officer of the Company, and members of their families. The loan is in the aggregate principal amount of \$8,226,278, bears interest at a rate of 6.25% per annum, is payable interest only each quarter until its maturity date of January 9, 2010, subject to prior repayment in full of the Company's senior loan facility with a consortium of banks.

The subordinated loan was incurred by the Company to resolve certain issues described below. Proceeds from the subordinated loan are being used initially to further collateralize the Company's \$175 million revolving loan facility with a consortium of banks (the "Bank Group") and ultimately will be used to reduce the balance due on that facility on or prior to May 31, 2008. This facility is secured by substantially all of the assets of the Company and its subsidiaries (the "Bank Group Collateral"), other than the assets of Palisades XVI, the entity that made the Portfolio Purchase that was separately financed by the Bank of Montreal (the "BMO Facility").

An entity (the "Servicer") that provides servicing for certain portfolios within the Bank Group Collateral, was also engaged by Palisades Collection, LLC, the Company's servicing subsidiary ("Palisades Collection"), after the acquisition of the Portfolio Purchase, to provide certain management services with respect to the portfolios owned by Palisades XVI and financed by the BMO Facility and to provide subservicing functions for portions of the Portfolio Purchase. Collections with respect to the Portfolio Purchase, and most portfolios purchased by the Company, lag the costs and fees which are expended to generate those collections, particularly when court costs are advanced to pursue an aggressive litigation strategy, as is the case with the Portfolio Purchase. Start-up cash flow issues with respect to the Portfolio Purchase were exacerbated by (a) collection challenges caused by the current economic environment, (b) the fact that Palisades Collection believed that it would be desirable to engage the Servicer to perform management services with respect to the Portfolio Purchase which services were not contemplated at the time of the initial acquisition of the Portfolio Purchase and (c) Palisades Collection believed it would be desirable to commence litigations and incur court costs at a faster rate than initially budgeted. As previously described in the Company's Form 10-K and Form 10-K/A for the year ended September 30, 2007, the agreements with the Servicer call for a 3% fee on substantially all gross collections from the Portfolio Purchase on the first \$500 million and 7% on substantially all gross collections from the Portfolio Purchase in excess of \$500 million. Additionally, the Company pays the Servicer a monthly fee of \$275,000 for the first twenty four months for consulting, asset identification and skiptracing efforts in connection with the Portfolio Purchase. The Servicer also receives a servicing fee with respect to those accounts it actually subservices. As the fees due to the Servicer for management and subservicing functions and the amounts

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spent for court costs were higher than those initially contemplated for subservicing functions, and as start-up collections with respect to the Portfolio Purchase were slower than initially projected, the amounts owed to the Servicer with respect to the Portfolio Purchase for fees and advances for court costs to pursue litigation against debtors have, to date, exceeded amounts available to pay the Servicer from collections received by the Servicer on the Portfolio Purchase on a current basis. The Company considered the effects of these trends on the Portfolio Purchase valuation.

Rather than waiting for collections from the Portfolio Purchase to satisfy sums of approximately \$8.2 million due the Servicer for court cost advances and its fees, the Servicer set-off that amount against amounts it had collected on behalf of the Company with respect to the Bank Group Collateral. While the Servicer disagrees, the Company believes that those sums should have been remitted to the Bank Group without setoff.

The Company has determined to remedy any shortfall in the receipts under the Bank Group facility by obtaining the \$8.2 million subordinated loan from the Family Entity and causing the proceeds of the loan to be delivered to the Bank Group and not to pursue a dispute with the Servicer at this time. The Company believes that avoiding a dispute with the Servicer at this time is in its best interests, as it should improve collections on the Portfolio Purchase and, provide for greater borrowing ability for new portfolios under the Bank Group facility. The Company also believes that the terms of the subordinated loan from the Family Entity are more favorable than could be obtained from an unrelated third party institution.

On April 29, 2008, the Company entered into a letter agreement with the Bank Group in which the Bank Group consented to the Subordinated Loan from the Family Entity and the Servicer has stated, in writing, that it will not make any further set-offs against collections due to it pending resolution of this dispute. The Company believes that any future sums due to the Servicer will be available from the cash flow of the Portfolio Purchase.

On May 19, 2008, Palisades XVI entered into the third amendment of its Receivable Financing Agreement. As the actual collections on the Portfolio Purchase continued to be slower than the minimum collections scheduled under the second amendment, the lender and Palisades XVI agreed to an extended amortization schedule than the schedule determined in connection with the second amendment. The effect of this reduction is to extend the payments of the loan. The lender also increased the interest rate to approximately 320 basis points over LIBOR, subject to automatic reduction in the future if additional capital contributions are made by the parent of Palisades XVI. Minimum payments of principal and interest from May 1, 2008 for the balance of the fiscal year ending September 30, 2008 and for fiscal years ending September 30, 2009 and September 30, 2010 are \$19.7 million, \$67.0 million, and \$75.0 million, respectively. As the payments are to be made on a monthly basis and the minimums are based on averages, these minimums could vary somewhat. While the Company believes it will be able to make all payments due under the new payment schedule, the Company also believes that if it fails to do so it will be required to sell the Portfolio Purchase or may be subject to a foreclosure on the Portfolio Purchase.

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Item 6. Exhibits

Signatures

Exhibit 31.1 - Section 302 Certificate of Principal Executive Officer

Exhibit 31.2 - Section 302 Certificate of Principal Financial Officer

Exhibit 32.1 - Section 906 Certificate of Principal Executive Officer

Exhibit 32.2 - Section 906 Certificate of Principal Financial Officer

EX-31.1: CERTIFICATION

EX-31.2: CERTIFICATION

EX-32.1: CERTIFICATION

EX-32.2: CERTIFICATION

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Item 6. Exhibits

(a) Exhibits

- 31.1 Certification of the Registrant's Chief Executive Officer, Gary Stern, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
 - 31.2 Certification of the Registrant's Chief Financial Officer, Mitchell Cohen, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
 - 32.1 Certification of the Registrant's Chief Executive Officer, Gary Stern, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
 - 32.2 Certification of the Registrant's Chief Financial Officer, Mitchell Cohen, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ASTA FUNDING, INC.

(Registrant)

Date: May 20, 2008

By: /s/ Gary Stern

Gary Stern, President, Chief Executive
Officer

(Principal Executive Officer)

Date: May 20, 2008

By: /s/ Mitchell Cohen

Mitchell Cohen, Chief Financial Officer
(Principal Financial Officer and

Principal Accounting Officer)