

Rhapsody Acquisition Corp.  
Form 8-K  
February 20, 2008

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

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**FORM 8-K**

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

Date of Report (Date of earliest event reported): February 19, 2008

**RHAPSODY ACQUISITION CORP.**

(Exact Name of Registrant as Specified in Charter)

Delaware (State or Other Jurisdiction of Incorporation)	005-52203 (Commission File Number)	20-4743916 (IRS Employer Identification No.)
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825 Third Avenue, 40 <sup>th</sup> Floor, New York, New York (Address of Principal Executive Offices)	10022 (Zip Code)
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Registrant's telephone number, including area code: (212) 319-7676

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ý Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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COMMENCING SHORTLY AFTER THE FILING OF THIS CURRENT REPORT ON FORM 8-K, RHAPSODY ACQUISITION CORP. ("RHAPSODY") INTENDS TO HOLD PRESENTATIONS FOR CERTAIN OF ITS STOCKHOLDERS, AS WELL AS OTHER PERSONS WHO MIGHT BE INTERESTED IN PURCHASING RHAPSODY SECURITIES, REGARDING ITS MERGER WITH PRIMORIS CORPORATION ("PRIMORIS"), AS DESCRIBED IN THIS REPORT. THIS CURRENT REPORT ON FORM 8-K, INCLUDING SOME OR ALL OF THE EXHIBITS HERETO, WILL BE DISTRIBUTED TO PARTICIPANTS AT SUCH PRESENTATIONS.

EARLYBIRDCAPITAL, INC. ("EBC"), THE MANAGING UNDERWRITER OF RHAPSODY'S INITIAL PUBLIC OFFERING ("IPO") CONSUMMATED IN OCTOBER 2006, IS ACTING AS RHAPSODY'S INVESTMENT BANKER IN THESE EFFORTS, FOR WHICH IT WILL RECEIVE A FEE OF \$360,000. ADDITIONALLY, THE UNDERWRITERS DEFERRED \$414,000 OF THE COMMISSIONS OWED TO THEM IN CONNECTION WITH THE IPO UNTIL THE CLOSING OF RHAPSODY'S BUSINESS COMBINATION. RHAPSODY AND ITS DIRECTORS AND EXECUTIVE OFFICERS AND EBC MAY BE DEEMED TO BE PARTICIPANTS IN THE SOLICITATION OF PROXIES FOR THE SPECIAL MEETING OF RHAPSODY STOCKHOLDERS TO BE HELD TO APPROVE THE MERGER.

STOCKHOLDERS OF RHAPSODY AND OTHER INTERESTED PERSONS ARE ADVISED TO READ, WHEN AVAILABLE, RHAPSODY'S REGISTRATION STATEMENT CONTAINING A PRELIMINARY PROXY STATEMENT/PROSPECTUS AND FINAL REGISTRATION STATEMENT CONTAINING A DEFINITIVE PROXY STATEMENT/PROSPECTUS IN CONNECTION WITH RHAPSODY'S SOLICITATION OF PROXIES FOR THE SPECIAL MEETING BECAUSE THESE PROXY STATEMENTS/PROSPECTUSES WILL CONTAIN IMPORTANT INFORMATION. SUCH PERSONS CAN ALSO READ RHAPSODY'S FINAL PROSPECTUS, DATED OCTOBER 3, 2006, FOR A DESCRIPTION OF THE SECURITY HOLDINGS OF THE RHAPSODY OFFICERS AND DIRECTORS AND OF EBC AND THEIR RESPECTIVE INTERESTS IN THE SUCCESSFUL CONSUMMATION OF THIS BUSINESS COMBINATION. THE DEFINITIVE PROXY STATEMENT/PROSPECTUS WILL BE MAILED TO STOCKHOLDERS AS OF A RECORD DATE TO BE ESTABLISHED FOR VOTING ON THE MERGER. STOCKHOLDERS WILL ALSO BE ABLE TO OBTAIN A COPY OF THE DEFINITIVE PROXY STATEMENT/PROSPECTUS, WITHOUT CHARGE, BY DIRECTING A REQUEST TO: RHAPSODY ACQUISITION CORP., 825 THIRD AVENUE, 40<sup>TH</sup> FLOOR, NEW YORK, NEW YORK 10022. THE REGISTRATION STATEMENT CONTAINING THE PRELIMINARY PROXY STATEMENT/PROSPECTUS AND THE DEFINITIVE PROXY STATEMENT/PROSPECTUS, ONCE AVAILABLE, CAN ALSO BE OBTAINED, WITHOUT CHARGE, AT THE SECURITIES AND EXCHANGE COMMISSION'S INTERNET SITE ([HTTP://WWW.SEC.GOV](http://www.sec.gov)).

**Item 1.01 Entry into a Material Definitive Agreement.****General; Structure of Acquisition**

On February 19, 2008, Rhapsody Acquisition Corp. (“Rhapsody”) entered into an Agreement and Plan of Merger (“Merger Agreement”) with Primoris Corporation (collectively with its subsidiaries “Primoris” or the “Company”) and certain of Primoris’ shareholders (the “Signing Shareholders”). Pursuant to the Merger Agreement, Primoris will be merged into Rhapsody, with Rhapsody being the surviving corporation. Upon the consummation of the merger, Rhapsody will change its name to “Primoris Corporation.”

Primoris is a holding company of various subsidiaries which cumulatively form a diversified engineering and construction company providing a wide range of construction, fabrication, maintenance and replacement services, as well as engineering services to major public utilities, petrochemical companies, energy companies, municipalities and other customers.

The merger is expected to be consummated in the second or third quarter of 2008, after the required approval by the stockholders of Rhapsody and the fulfillment of certain other conditions, as described herein and in the Merger Agreement.

**Merger Consideration**

- Closing Merger Consideration. The Primoris shareholders and its Foreign Managers pursuant to certain Termination Agreements (collectively, the “Primoris Holders”), in exchange for all shares of common stock of Primoris outstanding immediately prior to the merger, will receive in the aggregate (i) 24,094,800 shares of Rhapsody common stock *plus* (ii) the right to receive the EBITDA Shares (as described below) for each year with respect to which EBITDA Shares are issuable.
- EBITDA Shares. As referenced above, the Primoris Holders will also be entitled to receive additional payments of shares of Rhapsody common stock based on Rhapsody’s achievement of specified EBITDA milestones in the fiscal years ending December 31, 2008 and 2009. Such payments are referred to in the Merger Agreement as “EBITDA Shares.” The following table sets forth the milestones and the contingent shares issuable to the Primoris Holders:

Fiscal Year Ending 12/31	EBITDA Milestone	EBITDA Share Payment
2008	\$ 39,300,000	2,500,000
2009	\$ 46,000,000	2,500,000

For purposes of these contingent shares, EBITDA is defined in the Merger Agreement to mean Rhapsody’s income before provision for income taxes, plus interest expense, less interest income, plus depreciation and amortization, plus any expenses arising solely from the Merger charged to income in such fiscal year, plus expense relating to the Termination Agreements with the Foreign Managers of \$1,277,340 for 2008 only, plus any GAAP expense relating to the issuance of Rhapsody common stock to the Foreign Managers as part of the Termination Agreements for 2008 only, plus any expense (non-cash only) relating to Rhapsody’s Incentive Compensation Plan. In addition, any Rhapsody expenses prior to the closing of the merger that are included in its 2008 income statement will be excluded for purposes of EBITDA calculation.

## **Lock-Up**

The Primoris Holders will not be able to sell any of the shares of Rhapsody common stock that they receive upon closing of the merger for twelve months after the closing.

## **Indemnification of Rhapsody**

To provide a fund for payment to Rhapsody with respect to its post-closing rights to indemnification under the Merger Agreement for breaches of representations and warranties and covenants by Primoris and its stockholders, there will be placed in escrow (with an independent escrow agent) 1,807,110 of the shares issuable to the Primoris shareholders at closing ("Indemnity Escrow Fund"). Other than as described below, the escrow will be the sole remedy for Rhapsody for its rights to indemnification under the Merger Agreement. Claims for indemnification may be asserted against the Indemnity Escrow Fund by Rhapsody once its damages exceed a \$1,400,000 deductible and will be reimbursable to the full extent of the damages in excess of such amount, except that claims made with respect to representations and warranties relating to outstanding capitalization and title to the Primoris shares will not be subject to such deductible. On the date that is the later of (i) 30 days after the date on which Rhapsody has filed its Report on Form 10-K pursuant to the Securities and Exchange Act of 1934 for its 2008 fiscal year and (ii) one year after the closing of the merger, the escrow agent will release 1,445,688 of the original number of escrow shares, less that number of escrow shares applied in satisfaction of or reserved with respect to indemnification claims made prior to such date, to the Primoris shareholders. The remaining escrow shares will be available for indemnification only with respect to tax indemnification claims and environmental indemnification claims and will be released on the first business day following the third anniversary of the closing date of the merger, less any shares reserved to satisfy tax or environmental indemnification claims made prior to such date.

## **Representations and Warranties**

The Merger Agreement contains representations and warranties of each of Primoris, the Signing Shareholders and Rhapsody relating to, among other things, (a) proper organization and similar corporate matters, (b) capital structure of each constituent company, (c) the authorization, performance and enforceability of the Merger Agreement, (d) licenses and permits, (e) taxes, (f) financial information and absence of undisclosed liabilities, (g) holding of leases and ownership of real property and other properties, including intellectual property, (h) accounts receivable, (i) contracts, (j) title to, and condition of, properties and environmental condition thereof, (k) absence of certain changes, (l) employee matters, (m) compliance with laws, (n) litigation and (o) regulatory matters.

## **Covenants**

Rhapsody and Primoris have each agreed to take such actions as are necessary, proper or advisable to consummate the merger. They have also agreed to continue to operate their respective businesses in the ordinary course prior to the closing and not to take certain specified actions without the prior written consent of the other party.

The Merger Agreement also contains additional covenants of the parties, including, among others, covenants providing for:

- (i) The parties to use commercially reasonable efforts to obtain all necessary approvals from governmental agencies and other third parties that are required for the consummation of the transactions contemplated by the Merger Agreement;

- (ii) The protection of confidential information of the parties and, subject to the confidentiality requirements, the provision of reasonable access to information;
- (iii) Rhapsody to prepare and file a registration statement, which shall contain a proxy statement/prospectus, to register, under the Securities Act of 1933, the shares that will be issued to the Primoris Holders pursuant to the merger, and to solicit proxies from the Rhapsody stockholders to vote on proposals regarding the approval of the merger, the change of Rhapsody's name to Primoris Corporation, an amendment to Rhapsody's certificate of incorporation to increase the authorized number of shares of common stock to 60 million, to change its corporate existence to perpetual and to delete certain portions thereof that will no longer be applicable after the merger or that are addressed by the Delaware General Corporation Law, the election of directors, the adoption of an incentive compensation plan providing for the granting of options and other stock-based awards and, if necessary, adjournment of the special meeting;
- (iv) Primoris and the Signing Shareholders to waive their rights to make claims against Rhapsody to collect from the trust fund established for the benefit of the holders of the shares sold in Rhapsody's IPO ("Public Shares") for any monies that may be owed to them by Rhapsody; and
- (v) The Signing Shareholders at or prior to closing of the merger shall repay to Primoris any loan by Primoris to such Signing Shareholder.

## **Conditions to Closing**

### ***General Conditions***

Consummation of the transactions is conditioned on (i) the Rhapsody stockholders, at a meeting called for these purposes, approving the merger and (ii) the holders of fewer than 20% of the Public Shares voting against the merger and exercising their right to convert their Public Shares into a pro-rata portion of the trust fund, calculated as of two business days prior to the anticipated consummation of the merger.

The approval of the merger will require the affirmative vote of the holders of a majority of the Public Shares voted on such proposal at the special meeting. The holders of the shares of Rhapsody common stock issued prior to its IPO, including the current officers and directors of Rhapsody, have agreed to vote such shares in the matter of the approval of the merger to the same effect as the majority of the Public Shares are voted.

The approval of the amendments of Rhapsody's certificate of incorporation will require the affirmative vote of the holders of a majority of the outstanding common stock of Rhapsody and is a condition to the consummation of the merger. The approval of the incentive compensation plan will require the affirmative vote of a majority of the outstanding Rhapsody common stock present in person or by proxy at the stockholder meeting. The approval of the incentive compensation plan is not a condition to the consummation of the merger.

In addition, the consummation of the transactions contemplated by the Merger Agreement is conditioned upon, among other things, (i) no order, stay, judgment or decree being issued by any governmental authority preventing, restraining or prohibiting in whole or in part, the consummation of such transactions, (ii) the execution by and delivery to each party of each of the various transaction documents, (iii) the delivery by each party to the other party of a certificate to the effect that the representations and warranties of each party are true and correct in all material respects as of the closing and all covenants contained in the Merger Agreement (including Rhapsody's representation that its Public Shares are quoted on the Over-the-Counter Bulletin Board) have been materially complied with by each party and (iv) the receipt of all necessary consents and approvals by third parties and the completion of necessary proceedings.

***Rhapsody's Conditions to Closing***

The obligations of Rhapsody to consummate the transactions contemplated by the Merger Agreement, in addition to the conditions described above in the preceding paragraph, are conditioned upon each of the following, among other things:

- there being no material adverse change affecting Primoris that has occurred since the signing of the Merger Agreement;
- holders of no more than five percent (5%) of the shares of any class of securities of Primoris shall have exercised their dissenters' rights;
- the employment agreements with Primoris management shall have been executed and delivered by Primoris and them;
- the Lock-Up Agreement, the Voting Agreement and the Escrow Agreement shall have been executed and delivered by the parties thereto;
- (i) all outstanding indebtedness owed by any Primoris insider to Primoris shall have been repaid in full; (ii) all guaranteed or similar arrangements pursuant to which Primoris has guaranteed the payment or performance of any obligations of any Primoris insider to a third party shall have been terminated; and (iii) no Primoris insider shall own any direct equity interests in any subsidiary of Primoris; and
- receipt by Rhapsody of an opinion of Primoris' counsel in agreed form.

***Primoris' Conditions to Closing***

The obligations of Primoris to consummate the transactions contemplated by the Merger Agreement also are conditioned upon, among other things:

- there being no material adverse change affecting Rhapsody that has occurred since the signing of the Merger Agreement;
- the Lock-up Agreement, the Voting Agreement and the Escrow Agreement shall have been executed and delivered by the parties thereto;
- Rhapsody shall have arranged for funds remaining in the trust account to be dispersed to Rhapsody upon the closing of the merger;
- receipt by Primoris of an opinion of Rhapsody's counsel in agreed form;



- Rhapsody being in compliance with reporting requirements under the Securities and Exchange Act of 1934; and
- all officers of Rhapsody having resigned from all of their positions and offices with Rhapsody.

### **Waivers**

If permitted under applicable law, either Primoris or Rhapsody may waive any inaccuracies in the representations and warranties made to such party contained in the Merger Agreement and waive compliance with any agreements or conditions for the benefit of itself or such party contained in the Merger Agreement. The condition requiring that the holders of fewer than 20% of the Public Shares affirmatively vote against the merger proposal and demand conversion of their shares into cash may not be waived. We cannot assure you that all of the conditions will be satisfied or waived.

### **Termination**

The Merger Agreement may be terminated at any time, but not later than the closing, as follows:

- (i) by mutual written consent of Rhapsody and Primoris;
- (ii) by either Rhapsody or Primoris if the merger is not consummated on or before October 3, 2008;
- (iii) by either Rhapsody or Primoris if a governmental entity shall have issued an order, decree or ruling or taken any other action, in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the merger, which order, decree, judgment, ruling or other action is final and nonappealable;
- (iv) by either Rhapsody or Primoris if the other party has breached any of its covenants or representations and warranties in any material respect and has not cured its breach within thirty days of the notice of an intent to terminate, provided that the terminating party is itself not in breach;
- (v) by either Rhapsody or Primoris if, at the Rhapsody stockholder meeting, the merger shall fail to be approved by holders of the Public Shares or the holders of 20% or more of the Public Shares exercise conversion rights; or
- (vi) by Primoris if the special meeting is not called to be held within 30 days after the registration statement is declared effective.

### **Employment Agreements**

In connection with the consummation of the Merger Agreement, Brian Pratt, the Chief Executive Officer of Primoris, and 8 other executive officers of Primoris or its subsidiaries (John P. Schauerman, Primoris; Alfons Theeuwes, Primoris; John M. Perisich, Primoris; Scott E. Summers, ARB, Inc.; Timothy R. Healy, ARB, Inc.; Mark A. Thurman, ARB Structures, Inc.; David J. Baker, Onquest, Inc.; and William McDevitt, Cardinal Contractors, Inc.) will enter into employment agreements with either Primoris or one of its subsidiaries (the "Employer"). Each employment agreement will be for a five-year term, with the exception of David J. Baker, Chief Executive Officer and President of Onquest, Inc., which is for a one-year term, subject to earlier termination in certain circumstances, and may be extended by mutual agreement of the executive and the Employer.



The employment agreements provide for initial annual base salaries not exceeding \$500,000 and also provide for discretionary bonuses in accordance with policies established by the Board or the Compensation Committee of the Board. Each employment agreement also provides for the provision of certain additional (“fringe”) benefits to the covered executive. The agreements also require that the Employer continue providing health benefits for one year if their employment is terminated by the Employer without cause except where comparable health insurance is available from a subsequent employer.

The employment agreements provide that, in the event of the termination of an executive’s employment by the Employer without cause (as defined in the employment agreement), the Employer will pay him a lump sum equal to one-half of one year’s base salary of the executive.

The employment agreements contain certain restrictive covenants that prohibit the executives from disclosing information that is confidential to Primoris and its subsidiaries and generally prohibit them, during the employment term and for two years thereafter, from soliciting or hiring the employees of Primoris and its subsidiaries and from using Primoris’ Confidential Information (as defined in the employment agreements), to divert any customer business or income from Primoris, or to otherwise alter the manner in which a customer does business with Primoris.

#### **Post-Merger Board of Directors of Rhapsody**

After the merger, Rhapsody’s board of directors will consist of seven directors, of whom five will be selected by Primoris, three of whom will be independent directors under applicable SEC and exchange rules, and two will be selected by Rhapsody.

#### **Post-Merger Ownership of Rhapsody**

As a result of the merger, assuming that no stockholders of Rhapsody elect to convert their Public Shares into cash as permitted by Rhapsody’s certificate of incorporation, the Primoris Holders will own approximately 79.3% of the shares of Rhapsody common stock to be outstanding immediately after the merger and the other Rhapsody stockholders will own approximately 20.7% of Rhapsody’s outstanding shares of common stock, in each case based on the Rhapsody shares of common stock outstanding as of December 31, 2007. If 19.99% of the Public Shares are converted into cash, such percentages will be approximately 82.1% and 17.9%, respectively. The foregoing does not take into account shares that would be issued to Primoris Holders upon achievement of the EBITDA milestones or the exercise of warrants or shares that would be issued under the incentive compensation option plan to be adopted in connection with the merger. However, if 19.99% of the Public Shares are converted and thereafter the full EBITDA consideration is earned, the current Rhapsody stockholders would own 15.3% of the total outstanding stock and the Primoris Holders would own 84.7%, assuming that no other shares are issued.

#### **Financial Information**

The unaudited financial information included in Exhibit 99.2 to this Report was prepared by Primoris as a private company, and was derived from financial statements prepared in accordance with United States generally accepted accounting principles. Such financial information is not in conformity with SEC Regulation S-X. Accordingly, such historical information will be adjusted and presented differently in Rhapsody’s proxy statement/prospectus to solicit stockholder approval of the merger. Rhapsody is filing the attached financial information (Exhibit 99.2 to this Form 8-K) as Regulation FD Disclosure material.

## **Investor Presentation**

Rhapsody is filing the attached investor presentation (Exhibit 99.3 to this Form 8-K) as Regulation FD Disclosure material.

## **Press Release**

Rhapsody is filing the attached press release (Exhibit 99.1 to this Form 8-K) as Regulation FD Disclosure material.

## **Item 7.01 Regulation FD Disclosure.**

### **Business of Primoris**

#### *Introduction*

Primoris Corporation, a Nevada corporation formed in November 2003, is a holding company of various subsidiaries which cumulatively form a diversified engineering and construction company providing a wide range of construction, fabrication, maintenance, replacement and engineering services to major public utilities, petrochemical companies, energy companies, municipalities and other customers. Primoris Corporation's primary subsidiary, ARB, Inc., a California corporation whose predecessor was formed in 1946 ("ARB"), has been engaged in the construction industry since its formation.

The Company installs, replaces, repairs and rehabilitates natural gas, refined product, water and wastewater pipeline systems, and also constructs mechanical facilities, and other structures, including power plants, petrochemical facilities, refineries and parking structures. In addition, the Company provides maintenance services, including inspection, overhaul and emergency repair services, for cogeneration plants, refineries and similar mechanical facilities. Through its subsidiary Onquest, Inc. ("Onquest"), the Company provides engineering design of fired heaters and furnaces primarily for refinery applications, and, through its subsidiary Cardinal Contractors, the Company constructs water and wastewater facilities in Florida. A substantial portion of the Company's activities are performed in the Western United States, primarily in California. In addition, Primoris has strategic presence in Florida, Texas, Latin America and Canada.

In the late 1980s, to reduce its dependence on the pipeline construction business, Primoris began to expand into related markets and broadened the scope of services offered to include construction and maintenance services for power plants, petrochemical facilities and refineries. Following is a summary of key expansion events undertaken by Primoris to accomplish the foregoing:

- 1989: acquired certain assets and key operating personnel of Oilfield Construction Co., a subsidiary of Combustion Engineering, to expand the Company's expertise in the construction of energy processing facilities.
- 1991: acquired certain assets and key operating personnel of Harcro, Inc. to develop directional drilling expertise.
- 1992: acquired substantially all of the assets of OFCCO Constructors to expand the Company's California customer base and industrial construction expertise.

- 1993: acquired substantially all of the assets of Macco Contractors, Inc to expand the Company's construction activities and customer base in the Los Angeles area.
- 1996: acquired substantially all of the assets of Saffel & McAdam to increase the Company's concrete structure design and construction capabilities.
- 2002: formed Onquest to specialize in designing and supplying high performance furnaces for the oil industry.
- 2004: acquired substantially all of the assets of Cardinal Contractors, Inc. to expand the Company's expertise in design/build water and wastewater facilities and to establish a footprint in Florida.
- 2005: acquired substantially all of the assets of Born Heaters Canada to enable the Company's Onquest subsidiary, to expand its ability to provide refinery furnace design and burner management engineered systems.

The Company's customers include many of the leading energy and utility companies in the United States, including, among others, Duke Energy, Conoco Phillips, British Petroleum, Pacific Gas & Electric, Sempra Energy, Williams, Valero, Chevron, Calpine, Kinder Morgan and Praxair.

**Services**

Primoris provides services through the following groups:

- ARB Underground
- ARB Industrial
- ARB Structures
- Onquest
- Cardinal Contractors

The following table sets forth the Company's revenues by business unit for the fiscal years ended December 31, 2007, 2006 and 2005:

(in millions) Business Unit	Year Ended December 31					
	2007		2006		2005	
	Revenue	%	Revenue	%	Revenue	%
ARB Underground	\$ 190	34.6	\$ 205	46.8	\$ 160	44.1
ARB Industrial	158	28.9	58	15.5	87	24.0
ARB Structures	61					