

OMEGA HEALTHCARE INVESTORS INC

Form 10-K/A

December 14, 2006

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 10-K/A

(Amendment No. 1)

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

For the fiscal year ended December 31, 2005.

**o** 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 1-11316

## OMEGA HEALTHCARE INVESTORS, INC.

(Exact Name of Registrant as Specified in its Charter)

**Maryland**

(State or Other Jurisdiction  
of Incorporation or Organization)

**38-3041398**

(I.R.S. Employer Identification No.)

**9690 Deereco Road, Suite 100**

**Timonium, MD**

(Address of Principal Executive Offices)

**21093**

(Zip Code)

Registrant's telephone number, including area code: **410-427-1700**

Securities Registered Pursuant to Section 12(b) of the Act:

**Title of Each Class**

Common Stock, \$.10 Par Value and associated stockholder  
protection rights

**Name of Exchange on  
Which Registered**

New York Stock Exchange

8.375% Series D Cumulative Redeemable Preferred Stock, \$1 Par  
Value

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

**None.**

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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 and Exchange Act of 1934 during the preceding twelve 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 ☒ The Registrant has not yet filed its Form 10-Q for the quarter ended September 30, 2006.

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

The aggregate market value of the voting stock of the registrant held by non-affiliates was \$639,180,194. The aggregate market value was computed using the \$12.86 closing price per share for such stock on the New York Stock Exchange on June 30, 2005.

As of February 10, 2006 there were 57,302,212 shares of common stock outstanding.

### DOCUMENTS INCORPORATED BY REFERENCE

Proxy Statement for the registrant's 2006 Annual Meeting of Stockholders, filed with the Securities and Exchange Commission on April 24, 2006 is incorporated by reference in Part III herein.

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**OMEGA HEALTHCARE INVESTORS, INC.  
2005 FORM 10-K/A ANNUAL REPORT**

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## PART I

### EXPLANATORY NOTE

This Amendment No. 1 to this Annual Report on Form 10-K/A ( Form 10-K/A ) is being filed in order to correct the previously issued historical consolidated financial statements of Omega Healthcare Investors, Inc. ( Omega or the Company ) as of December 31, 2005 and 2004, and for each of the three years in the period ended December 31, 2005, initially filed with the Securities and Exchange Commission (the SEC ) on February 17, 2006, for errors in previously reported amounts related to income tax matters and asset values, as well as the recording of straight-line rental income. Additionally, as a result of these matters, we are amending our evaluation of internal controls over financial reporting in Item 9A.

For the convenience of the reader, this Form 10-K/A includes all of the information contained in the original report on Form 10-K, and no attempt has been made in this Form 10-K/A to modify or update the disclosures presented in the original report on Form 10-K, except as required to reflect the effects of the restatement. The Form 10-K/A does not reflect events occurring after the filing of the Form 10-K or modify or update those disclosures, including the exhibits to the Form 10-K affected by subsequent events. Information not affected by the restatement is unchanged and reflects the disclosures made at the time of the original filing of the Form 10-K on February 17, 2006. Accordingly, this Form 10-K/A should be read in conjunction with our filings made with the Securities and Exchange Commission subsequent to the filing of the original Form 10-K, including any amendments to those filings. The following items have been amended as a result of the restatement:

- Part I - Item 1 Business;
- Part I - Item 1A Risk Factors;
- Part II - Item 6 Selected Financial Data;
- Part II - Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations;
- Part II - Item 7A Quantitative and Qualitative Disclosure About Market Risk;
- Part II - Item 8 Financial Statements and Supplementary Data;
- Part II - Item 9A Controls and Procedures; and
- Part IV - Item 15 Exhibits and Financial Statement Schedules.

We have not amended and do not intend to amend our previously filed Annual Reports on Form 10-K or our Quarterly Reports on Form 10-Q for periods affected by the restatement other than the Form 10-K for the fiscal year ended December 31, 2005. For this reason, the consolidated financial statements, auditors' reports and related financial information for the affected periods contained in any other prior reports should no longer be relied upon. In addition, this Form 10-K/A includes current certifications from the Company's CEO and CFO as Exhibits 31.1, 31.2, 32.1 and 32.2.

Our Board of Directors, including our Audit Committee, concluded on October 24, 2006, to restate our audited financial results as of December 31, 2005 and 2004 and for the three years ended December 31, 2005, 2004 and 2003 and for other periods affected, including its unaudited financial statements for each quarterly period in 2005 and 2004 (the Restatement ). The Restatement reflects the following adjustments:

1. We have recorded asset values for securities received from Advocac Inc. ( Advocac ) (and the increases therein) since the completion of the restructuring of Advocac obligations pursuant to leases and mortgages for the facilities then operated by Advocac in 2000. These adjustments will increase total assets by \$5.4 million and \$5.1 million as of December 31, 2005 and 2004, respectively. These adjustments will also increase net income by \$1.6 million, \$1.9 million and \$0.0 million for the years ended December 31, 2005, 2004 and 2003, respectively. Changes in the fair value of the securities not currently recognized in net income will be reflected in other comprehensive income.

2. As a result of our holding of Advocat securities, we have recorded reserves related to a potential tax liability arising from our ownership of such securities. This tax liability along with related interest expense had not been previously accrued for and this adjustment will decrease net income by \$2.4 million, \$0.4 million and \$0.5 million for the years

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ended December 31, 2005, 2004 and 2003, respectively. The amount accrued represents the estimated liability, which remains subject to final resolution and therefore is subject to change.

3. Subsequent to October 25, 2006, we made a correction to our accounting for certain leases because these leases contain provisions (such as increases in rent based on the lesser of a fixed amount or two times the Consumer Price Index) that require us to record rental income on a straight-line basis subject to an appropriate evaluation of collectibility. We had not previously recorded rental income on these leases on a straight-line basis. As a result of this adjustment, our net income will increase by \$2.8 million, \$1.9 million and \$1.1 million for the years ended December 31, 2005, 2004 and 2003, respectively. In addition, net accounts receivable and retained earnings will increase by \$9.1 million and \$6.3 million as of December 31, 2005 and 2004, respectively, to reflect the effects of this adjustment from inception of the affected leases.

The impact of the adjustments related to the Restatement for the years ended December 31, 2005, 2004 and 2003 are summarized below:

	Net Income Year ended December 31,			Retained Earnings, December 31, 2002
	2005	2004	2003	
<b>As Previously Reported</b>	<b>\$ 36,688</b>	<b>\$ 16,738</b>	<b>\$ 23,030</b>	<b>\$ 151,245</b>
<b>Adjustments:</b>				
Advocat restructuring:				
Other investment income preferred stock accretion and dividend income	1,636	810		
Change in fair value of derivatives	(16 )	1,105		
Provision for income taxes	(2,385 )	(393 )	(520 )	
Revenues - straight-line rent	2,830	1,886	1,121	3,294
<b>Total Adjustments</b>	<b>\$ 2,065</b>	<b>\$ 3,408</b>	<b>\$ 601</b>	<b>\$ 3,294</b>
<b>As Restated</b>	<b>\$ 38,753</b>	<b>\$ 20,146</b>	<b>\$ 23,631</b>	<b>\$ 154,539</b>

Additional information about the decision to restate these financial statements can be found in our Current Report on Form 8-K, filed with the SEC on October 25, 2006.

### Item 1 - Business

#### Overview

We were incorporated in the State of Maryland on March 31, 1992. We are a self-administered real estate investment trust ( REIT ), investing in income-producing healthcare facilities, principally long-term care facilities located in the United States. We provide lease or mortgage financing to qualified operators of skilled nursing facilities ( SNFs ) and, to a lesser extent, assisted living facilities ( ALFs ), rehabilitation and acute care facilities. We have historically financed investments through borrowings under our revolving credit facilities, private placements or public offerings of debt or equity securities, the assumption of secured indebtedness, or a combination of these methods.

Our portfolio of investments, as of December 31, 2005, consisted of 227 healthcare facilities, located in 27 states and operated by 35 third-party operators. This portfolio was made up of:

- 193 long-term healthcare facilities and two rehabilitation hospitals owned and leased to third parties; and
- fixed rate mortgages on 32 long-term healthcare facilities.

As of December 31, 2005, our gross investments in these facilities, net of impairments and before reserve for uncollectible loans, totaled approximately \$1,102 million. In addition, we also held miscellaneous investments of approximately \$29 million at December 31, 2005, consisting primarily of secured loans to third-party operators of our facilities.



Our filings with the Securities and Exchange Commission ( SEC ), including our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports are accessible free of charge on our website at [www.omegahealthcare.com](http://www.omegahealthcare.com).

### Summary of Financial Information

The following tables summarize our revenues and real estate assets by asset category for 2005, 2004 and 2003. (See Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations, Note 3 Properties, Note 4 Mortgage Notes Receivable and Note 15 Restatement of Previously Issued Financial Statements to our audited consolidated financial statements).

#### Revenues by Asset Category (in thousands)

	Year ended December 31,		2003
	2005	2004	(Restated)
	(Restated)	(Restated)	
Core assets:			
Lease rental income	\$ 95,217	\$ 70,224	\$ 58,775
Mortgage interest income	6,527	13,266	14,656
Total core asset revenues	101,744	83,490	73,431
Other asset revenue	4,075	3,129	2,922
Miscellaneous income	4,459	831	