

Endeavor Acquisition Corp.
Form PRER14A
November 09, 2007
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

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

ENDEAVOR ACQUISITION CORP.

(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:
Common Stock of Endeavor Acquisition Corp.

Edgar Filing: Endeavor Acquisition Corp. - Form PRER14A

(2) Aggregate number of securities to which transaction applies:
37,258,065

(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):
Average of the bid and ask price for common stock as of November 1, 2007: (\$12.30)

(4) Proposed maximum aggregate value of transaction:
\$458,274,200

(5) Total fee paid:
\$16,954

x Fee paid previously with preliminary materials: \$13,845

.. 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:

Table of Contents

This proxy statement is dated November , 2007 and is first being mailed to Endeavor stockholders on or about November , 2007.

Endeavor Acquisition Corp.

590 Madison Avenue

21st Floor

New York, New York 10022

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON DECEMBER , 2007

TO THE STOCKHOLDERS OF ENDEAVOR ACQUISITION CORP.:

NOTICE IS HEREBY GIVEN that a special meeting of the stockholders of Endeavor Acquisition Corp. (Endeavor), a Delaware corporation, will be held at 10:00 a.m., eastern time, on December , 2007, at the offices of Graubard Miller, Endeavor s counsel, at The Chrysler Building, 405 Lexington Avenue, 19th Floor, New York, New York 10174. You are cordially invited to attend the meeting, which will be held for the following purposes:

(1) to consider and vote upon the adoption and approval of the Amended and Restated Agreement and Plan of Reorganization dated as of November 7, 2007 (the Acquisition Agreement), among Endeavor, AAI Acquisition, LLC, a California limited liability company and wholly owned subsidiary of Endeavor (Merger Sub), American Apparel Inc., a California corporation (AAI), American Apparel, LLC, a California limited liability company (LLC), each of American Apparel Canada Wholesale Inc. and American Apparel Canada Retail Inc. (together, the CI companies and, collectively with AAI and LLC, American Apparel), Dov Charney, a principal stockholder and member of AAI and LLC, respectively (Mr. Charney), Sang Ho Lim, the other principal stockholder and member of AAI and LLC, respectively (Mr. Lim), and the stockholders of each of the CI companies (the CI Stockholders), and the transactions contemplated thereby. The Acquisition Agreement amends and restates in its entirety that certain Agreement and Plan of Reorganization, dated as of December 18, 2006 (the Original Agreement), by and among Endeavor, AAI Acquisition Corp., AAI, LLC, the CI companies, Mr. Charney, Mr. Lim and the CI Stockholders. We refer to this proposal as the acquisition proposal. The board of directors and stockholders of each of AAI and each of the CI companies and the members of LLC have already approved and adopted the Acquisition Agreement.

(2) to consider and vote upon an amendment to the certificate of incorporation of Endeavor to change the name of Endeavor from Endeavor Acquisition Corp. to American Apparel, Inc. We refer to this proposal as the name change amendment proposal ;

(3) to consider and vote upon an amendment to the certificate of incorporation of Endeavor to increase the number of authorized shares of Endeavor common stock from 75,000,000 to 120,000,000. We refer to this proposal as the capitalization amendment proposal ;

(4) to consider and vote upon an amendment to the certificate of incorporation of Endeavor to remove the preamble and sections A through D, inclusive, of Article Sixth from the certificate of incorporation from and after the closing of the acquisition, as these provisions will no longer be applicable to Endeavor, and to redesignate section E of Article Sixth as modified as Article Sixth of Endeavor s restated and amended certificate of incorporation. We refer to this proposal as the Article Sixth amendment proposal ;

(5) to consider and vote upon the 2007 performance equity plan (an equity-based performance equity plan). We refer to this proposal as the performance equity plan proposal ; and

(6) to consider and vote upon a proposal to adjourn the special meeting to a later date or dates, if necessary, to permit further solicitation of proxies if, based upon the tabulated vote at the time of the special meeting, Endeavor is not authorized to consummate the acquisition we refer to this proposal as the adjournment proposal.

Table of Contents

These items of business are described in the attached proxy statement, which we encourage you to read in its entirety before voting. Only holders of record of Endeavor's common stock at the close of business on November 16, 2007 are entitled to notice of the special meeting and to vote and have their votes counted at the special meeting and any adjournments or postponements of the special meeting. Endeavor will not transact any other business at the special meeting or any adjournment or postponement of the meeting.

The acquisition proposal must be approved by the holders of a majority of the shares of Endeavor common stock sold in Endeavor's initial public offering (IPO) that are cast at the special meeting. Each of the name change amendment, capitalization amendment and Article Sixth amendment proposals must be approved by the holders of a majority of the outstanding shares of Endeavor common stock. The performance equity plan proposal must be approved by the holders of a majority of the shares of Endeavor common stock that are present in person or represented by proxy and entitled to vote at the meeting.

The adoption of the acquisition proposal is conditioned on the adoption of the name change amendment and the capitalization amendment, and neither the name change amendment nor the capitalization amendment will be presented to the meeting for adoption unless the acquisition proposal is approved. The adoption of the Article Sixth amendment and the performance equity plan proposals are not conditions to the adoption of the acquisition proposal or to the adoption of either of the name change amendment or the capitalization amendment proposals, but if the acquisition proposal is not approved, neither the Article Sixth amendment proposal nor the performance equity proposal will be presented at the meeting for adoption. The adjournment proposal will not be considered at the meeting unless, based on the tabulated vote at the time of the special meeting, Endeavor is not authorized to consummate the acquisition.

Your broker, bank or nominee cannot vote your shares on any proposal unless you provide instructions on how to vote in accordance with the information and procedures provided to you by your broker, bank or nominee. Abstentions will have the same effect as a vote AGAINST the name change amendment, capitalization amendment, Article Sixth amendment, the performance equity plan and adjournment proposals but will have no effect on the acquisition proposal. Broker non-votes, while considered present for the purposes of establishing a quorum, will have the same effect as a vote AGAINST the name change amendment, capitalization amendment, Article Sixth amendment and adjournment proposal, but will have no effect on the acquisition proposal or the performance equity plan proposal. However, since the adoption of the acquisition proposal is conditioned on the adoption of the name change amendment and capitalization amendment proposals, any broker non-vote with respect to the name change amendment or capitalization amendment proposals will decrease the likelihood of the adoption of such proposals and thus also reduce the likelihood of the effectuation of the acquisition proposal.

Each Endeavor stockholder that holds shares of common stock issued in Endeavor's IPO has the right to vote against the acquisition proposal and demand that Endeavor convert such stockholder's shares into cash equal to a pro rata portion of the funds held in the trust account into which a substantial portion of the net proceeds of Endeavor's IPO was deposited. The exact conversion price will be determined as of a date which is two business days prior to the anticipated date of the consummation of the acquisition. As of November 1, 2007, the conversion price would have been approximately \$7.97 in cash for each share of Endeavor common stock issued for the IPO. These shares will be converted into cash only if the acquisition is consummated. If, however, the holders of 20% (approximately 3,232,149 shares) or more shares of common stock issued in Endeavor's IPO both vote against the acquisition proposal and demand conversion of their shares, Endeavor will not consummate the acquisition. Prior to exercising conversion rights, Endeavor stockholders should verify the market price of Endeavor's common stock as they may receive higher proceeds from the sale of their common stock in the public market than from exercising their conversion rights. Shares of Endeavor's common stock are quoted on the American Stock Exchange under the symbol EDA. On November 1, 2007, the last sale price of Endeavor's common stock was \$12.30.

Endeavor's initial stockholders who purchased their shares of common stock prior to Endeavor's IPO, and which include all of Endeavor's current directors and executive officers and their affiliates and are referred to

(ii)

Table of Contents

collectively in this proxy statement as the Endeavor Inside Stockholders, currently own an aggregate of approximately 18.8% of the outstanding shares of Endeavor common stock. Each of the Endeavor Inside Stockholders has agreed to vote all of the shares they purchased prior to the IPO on the acquisition proposal in accordance with the vote of the majority of the votes cast by the holders of shares issued in the IPO. The Endeavor Inside Stockholders have also indicated that they intend to vote such shares FOR the adoption of the name change amendment, the capitalization amendment, the Article Sixth amendment and the performance equity plan proposals, as well as the adjournment proposal if considered at the special meeting. These Endeavor insiders also have indicated they intend to vote any shares they acquire after the IPO for all of the proposals. As of the record date, these Endeavor insiders have not acquired any additional shares of Endeavor common stock since the IPO.

After careful consideration, Endeavor's board of directors has determined that the acquisition proposal and the other proposals are fair and in the best interests of Endeavor's stockholders.

Endeavor's board of directors unanimously recommends that you vote or give instruction to vote FOR the adoption of the acquisition proposal, the name change amendment proposal, the capitalization amendment proposal, the Article Sixth amendment proposal and the performance equity plan proposal and, if considered at the special meeting, the adjournment proposal.

All Endeavor stockholders are cordially invited to attend the special meeting in person. However, to ensure your representation at the meeting, you are urged to complete, sign, date and return the enclosed proxy card as soon as possible. If you are a stockholder of record of Endeavor common stock, you may also cast your vote in person at the special meeting. If your shares are held in an account at a brokerage firm or bank, you must instruct your broker or bank on how to vote your shares. If you do not vote or do not instruct your broker or bank how to vote, it will have the same effect as voting against the name change amendment, the capitalization amendment and the Article Sixth amendment proposals.

A complete list of Endeavor stockholders of record entitled to vote at the special meeting will be available for ten days before the special meeting at the principal executive offices of Endeavor for inspection by stockholders during ordinary business hours for any purpose germane to the special meeting.

Your vote is important regardless of the number of shares you own. Whether you plan to attend the special meeting or not, please sign, date and return the enclosed proxy card as soon as possible in the envelope provided.

Thank you for your participation. We look forward to your continued support.

NOVEMBER , 2007

By Order of the Board of Directors
Sincerely,

Eric J. Watson
Chairman and Treasurer

Neither the Securities and Exchange Commission nor any state securities commission has determined if this proxy statement is truthful or complete. Any representation to the contrary is a criminal offense.

Endeavor maintains a website at www.endeavoracq.com. The contents of that website are not part of this proxy statement.

SEE RISK FACTORS FOR A DISCUSSION OF VARIOUS FACTORS THAT YOU SHOULD CONSIDER IN CONNECTION WITH THE ACQUISITION.

Table of Contents

TABLE OF CONTENTS

| | Page |
|---|-------------|
| <u>Summary of Material Terms of the Acquisition</u> | 1 |
| <u>Questions and Answers About the Proposals</u> | 3 |
| <u>Summary of the Proxy Statement</u> | 7 |
| <u>Selected Summary Historical and Pro Forma Consolidated Financial Information</u> | 13 |
| <u>Risk Factors</u> | 29 |
| <u>Forward-Looking Statements</u> | 44 |
| <u>Special Meeting of Endeavor Stockholders</u> | 45 |
| <u>The Acquisition Proposal</u> | 50 |
| <u>The Acquisition Agreement</u> | 83 |
| <u>Unaudited Pro Forma Condensed Combined Financial Statements</u> | 95 |
| <u>Name Change Amendment Proposal</u> | 115 |
| <u>Capitalization Amendment Proposal</u> | 116 |
| <u>Article Sixth Amendment Proposal</u> | 117 |
| <u>2007 Performance Equity Plan Proposal</u> | 119 |
| <u>The Adjournment Proposal</u> | 126 |
| <u>Other Information Related to Endeavor</u> | 127 |
| <u>Business of American Apparel</u> | 136 |
| <u>American Apparel's Management's Discussion And Analysis of Financial Condition and Results Of Operations</u> | 150 |
| <u>Directors and Executive Officers of Endeavor Following the Acquisition</u> | 195 |
| <u>Beneficial Ownership of Securities</u> | 206 |
| <u>Certain Relationships and Related Party Transactions</u> | 209 |
| <u>Description of Endeavor Common Stock and Other Securities</u> | 213 |
| <u>Price Range of Endeavor Securities</u> | 215 |
| <u>Appraisal Rights</u> | 215 |
| <u>Stockholder Proposals</u> | 215 |
| <u>Independent Auditors</u> | 216 |
| <u>Delivery of Documents to Stockholders</u> | 216 |
| <u>Where You Can Find More Information</u> | 216 |
| <u>Index to Financial Statements</u> | FS-1 |
| | |
| Annex A - <u>Amended and Restated Agreement and Plan of Reorganization</u> | A-1 |
| Annex B - <u>Amended and Restated Certificate of Incorporation</u> | B-1 |
| Annex C - <u>2007 Performance Equity Plan</u> | C-1 |
| Annex D - <u>Lock-Up Agreement</u> | D-1 |
| Annex E - <u>Voting Agreement</u> | E-1 |
| Annex F - <u>Opinion of Jefferies & Company, Inc.</u> | F-1 |
| Annex G - <u>Form of Escrow Agreement</u> | G-1 |
| Annex H - <u>Form of Registration Rights Agreement</u> | H-1 |
| Annex I - <u>Form of Tax Opinion to be issued by Graubard Miller</u> | I-1 |
| Annex J - <u>Form of Employment Agreement between Endeavor and Mr. Charney</u> | J-1 |

Table of Contents

SUMMARY OF MATERIAL TERMS OF THE ACQUISITION

Parties

The parties to the acquisition are:

Endeavor Acquisition Corp. (Endeavor),

AAI Acquisition LLC (Merger Sub), a wholly owned subsidiary of Endeavor that was formed solely for the purpose of effecting the acquisition as described herein,

American Apparel Inc. (AAI),

American Apparel, LLC (inactive) (LLC),

Dov Charney, an owner of 50% of the outstanding capital stock of AAI, 50% of the outstanding membership interests of LLC and 100% of the securities of the CI companies (as defined below). (Mr. Charney),

Sang Ho Lim, the owner of the remaining 50% of the outstanding capital stock of AAI and the remaining 50% of the outstanding membership interests of LLC (Mr. Lim), and

Each of American Apparel Canada Wholesale Inc. and American Apparel Canada Retail Inc. (together, the CI companies and, collectively with AAI and LLC, American Apparel or the American Apparel companies).
See the section entitled *Summary of Certain Provisions of the Proxy Statement - Parties*.

The Acquisition

Under the terms of the Acquisition Agreement:

prior to the closing of the acquisition (the Closing), Mr. Charney will have the right, but not the obligation, to purchase all of the outstanding capital stock and membership interests of the American Apparel companies owned by Mr. Lim (the Lim Buyout), provided that, if the Lim Buyout is not consummated by Mr. Charney prior to the Closing, the Lim Buyout shall be consummated directly by Endeavor at its sole cost and expense;

prior to the Closing, all of the membership interests of LLC will be transferred to AAI;

AAI will be merged with and into Merger Sub, with Merger Sub surviving the merger as a wholly owned subsidiary of Endeavor; and

Edgar Filing: Endeavor Acquisition Corp. - Form PRER14A

all of the outstanding capital stock of each of the CI companies, as successors in interest to the Canadian entities that were original signatories to the Acquisition Agreement, will be acquired by Endeavor, with each of them surviving the transaction as a wholly owned subsidiary of Endeavor.

See the section entitled *The Acquisition Proposal*.

Acquisition Consideration

In return for all of the capital stock in each of the American Apparel companies, Mr. Charney will receive from Endeavor up to an aggregate of 37,258,065 shares of Endeavor common stock, subject to downward adjustment if American Apparel's net debt, as defined in the Acquisition Agreement, at the close of business on the date two business days prior to the Closing is more than \$150,000,000. Following the Closing, Endeavor will pay and expense as part of its operations an aggregate of \$2.5 million of cash bonuses to existing American Apparel employees. As of September 30, 2007, American Apparel's net debt does not exceed \$150,000,000 and it is not anticipated to exceed \$150,000,000 at Closing. Accordingly, it is unlikely that any adjustment will be made to the number of shares issued to Mr. Charney. See the section entitled *The Acquisition Agreement Acquisition Consideration*.

Table of Contents

Post-Closing Ownership of Endeavor Common Stock

As a result of the acquisition, and assuming that there is no adjustment to the number of shares issued based on American Apparel's net debt and that:

no Endeavor stockholder demands that Endeavor convert its shares to cash as permitted by Endeavor's certificate of incorporation, Mr. Charney will own approximately 65.2% of the outstanding Endeavor common stock and the current stockholders of Endeavor will own approximately 34.8% of the outstanding Endeavor common stock immediately following the Closing;

assuming approximately 19.99% of the common stock issued in Endeavor's initial public offering votes against the acquisition and such stock is converted into cash, Mr. Charney will own approximately 69.1% of the outstanding Endeavor common stock and the current stockholders of Endeavor will own approximately 30.9% of the outstanding common stock of Endeavor immediately following the Closing.

The foregoing percentages do not take into account any exercise of outstanding warrants to purchase shares of Endeavor common stock (which warrants will become exercisable at Closing) or any outstanding options.

Escrow Agreement

At the closing of the acquisition, 8,064,516 of the Endeavor shares to be issued to Mr. Charney will be placed in escrow until the later of (a) the first anniversary of the Closing and (b) the thirtieth day after the date that Endeavor files its Annual Report on Form 10-K for the year ended December 31, 2007, as a fund for the payment of indemnification claims that may be made by Endeavor as a result of any breaches of American Apparel's covenants, representations and warranties in the Acquisition Agreement and certain lawsuits to which American Apparel is a party. See the section entitled *The Acquisition Agreement Escrow Agreement*.

Lock-Up Agreement

Mr. Charney has agreed not to sell any of the shares of Endeavor common stock he receives in the acquisition before the third anniversary of the Closing, subject to certain exceptions. See the section entitled *The Acquisition Agreement Lock-up Agreement*.

Post-Acquisition Executive Officers and Employment Agreements

At the closing of the acquisition Mr. Charney, who is currently the chief executive officer of AAI, will become Endeavor's chief executive officer and president. None of Endeavor's current officers will continue with Endeavor after the acquisition. All of the current officers of American Apparel will continue in their current or related positions with American Apparel following the acquisition. Mr. Charney will enter into an employment agreement with Endeavor and American Apparel, effective as of the closing of the acquisition. See the section entitled *Directors and Executive Officers of Endeavor Following the Acquisition Executive Compensation Employment Agreement and Non-Competition Covenants*.

Post-Acquisition Board of Directors; Voting Agreement

After the acquisition, the board of directors of Endeavor will have nine members comprised of four persons designated by Mr. Charney, four persons designated by certain of Endeavor's current stockholders and one person mutually designated by the parties in accordance with a voting agreement that will be executed by the parties immediately prior to closing. The voting agreement will provide that the parties thereto will vote their shares of Endeavor common stock in favor of such designees to serve as directors of Endeavor through the annual meeting of stockholders of Endeavor to be held in 2010. See the section entitled *The Acquisition Agreement Election of Directors; Voting Agreement*.

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE PROPOSALS

- Q. Why am I receiving this proxy statement?**
- A.** Endeavor and American Apparel have agreed to a business combination under the terms of the Amended and Restated Agreement and Plan of Reorganization, dated as of November 7, 2007, as described in this proxy statement. This agreement is referred to as the Acquisition Agreement. A copy of the Acquisition Agreement is attached to this proxy statement as *Annex A*, and we encourage you to read it in its entirety.

In order to complete the acquisition, Endeavor stockholders must vote in favor of (i) the Acquisition Agreement, (ii) an amendment to Endeavor's certificate of incorporation to change the name of Endeavor from Endeavor Acquisition Corp. to American Apparel, Inc. and (iii) an amendment to Endeavor's certificate of incorporation to increase the number of shares of authorized common stock from 75,000,000 to 120,000,000. Endeavor stockholders also will be asked to vote to approve (a) an amendment to Endeavor's certificate of incorporation to make certain modifications to Article Sixth thereof and (b) the performance equity plan, but such approvals are not conditions to the acquisition. The performance equity plan has been approved by Endeavor's board of directors and will be effective upon Closing, if approved by the stockholders. Endeavor's amended and restated certificate of incorporation, as it will appear if all amendments proposed hereby are approved, is attached to this proxy statement as *Annex B*. The performance equity plan is attached to this proxy statement as *Annex C*.

Endeavor will hold a special meeting of its stockholders to obtain these approvals. This proxy statement contains important information about the proposed acquisition, the other proposals and the special meeting of Endeavor stockholders. You should read it carefully.

Your vote is important. We encourage you to vote as soon as possible after carefully reviewing this proxy statement.

- Q. Do I have conversion rights?**
- A.** If you hold shares of common stock issued in Endeavor's IPO, then you have the right to vote against the acquisition proposal and demand that Endeavor convert such shares into a pro rata portion of the trust account in which a substantial portion of the net proceeds of Endeavor's IPO are held. We sometimes refer to these rights to vote against the acquisition and demand conversion of the shares into a pro rata portion of the trust account as conversion rights.

- Q. How do I exercise my conversion rights?**
- A.** If you wish to exercise your conversion rights, you must (i) vote against the acquisition proposal, (ii) demand that Endeavor convert your shares into cash, (iii) continue to hold your shares through the closing of the acquisition and (iv) then deliver your shares to our transfer agent within the period specified in a notice you will receive from Endeavor, which period will be not less than 20 days. In lieu of delivering your stock certificate, you may deliver your shares to the transfer agent electronically using Depository Trust Company's DWAC (Deposit Withdrawal at Custodian) System.

Any action that does not include an affirmative vote against the acquisition will prevent you from exercising your conversion rights. Your vote on any proposal other than the acquisition proposal will have no impact on your right to seek conversion.

Table of Contents

You may exercise your conversion rights either by checking the box on the proxy card or by submitting your request in writing to Endeavor at the address listed at the end of this section. If you (i) initially vote for the acquisition proposal but then wish to vote against it and exercise your conversion rights or (ii) initially vote against the acquisition proposal and wish to exercise your conversion rights but do not check the box on the proxy card providing for the exercise of your conversion rights or do not send a written request to Endeavor to exercise your conversion rights, or (iii) initially vote against the acquisition but later wish to vote for it, or (iv) otherwise wish to correct or change your proxy card, you may request Endeavor to send you another proxy card on which you may indicate your intended vote and, if that vote is against the acquisition proposal, exercise your conversion rights by checking the box provided for such purpose on the proxy card. You may make such request by contacting Endeavor at the phone number or address listed at the end of this section.

Any corrected or changed proxy card or written demand of conversion rights must be received by Endeavor prior to the special meeting. No demand for conversion will be honored unless the holder's stock certificate has been delivered to Endeavor's transfer agent within the period specified in the notice that will be provided by Endeavor as described above.

If, notwithstanding your negative vote, the acquisition is completed, then you will be entitled to receive a pro rata portion of the trust account, including any interest earned thereon, calculated as of two business days prior to the anticipated date of the consummation of the acquisition. As of the record date, there was approximately \$128.7 million in the trust account, which would amount to approximately \$7.96 per share sold in the IPO upon conversion. If you exercise your conversion rights, then you will be exchanging your shares of Endeavor common stock for cash and will no longer own these shares. See the section entitled *Special Meeting of Endeavor Stockholders Conversion Rights* for the procedures to be followed if you wish to convert your shares into cash.

Exercise of your conversion rights does not result in either the conversion or a loss of your warrants. Your warrants will continue to be outstanding and exercisable following a conversion of your common stock unless we do not consummate the acquisition. A registration statement must be in effect to allow you to exercise any warrants you may hold or to allow Endeavor to call the warrants for redemption if the redemption conditions are satisfied.

- Q. Do I have appraisal rights if I object to the acquisition?** **A.** Endeavor stockholders do not have appraisal rights in connection with the acquisition under the General Corporation Law of the State of Delaware (DGCL).

Table of Contents

- Q. What happens to the funds deposited in the trust account after consummation of the acquisition?**
- A.** After consummation of the acquisition, Endeavor stockholders properly electing to exercise their conversion rights will receive their pro rata portion of the funds in the trust account. If Endeavor is required to effect the Lim Buyout, \$60 million plus an additional cash amount based on the date on which the Lim Buyout is completed shall be used from the trust account and will therefore be unavailable to the combined companies. If the acquisition were to be consummated on December 14, 2007, and Endeavor was required to effect the Lim Buyout on the same date, Endeavor would pay Mr. Lim approximately \$67.8 million. See the section entitled *The Acquisition Agreement Acquisition Consideration Lim Buyout*. In addition, if Endeavor is required to convert 19.99% of the Public Shares into cash, approximately \$25.7 million of the proceeds in trust would be paid to the holders thereof. Accordingly, the minimum amounts available to the combined companies at consummation of the acquisition would range from approximately \$35.2 million to \$60.9 million. Regardless of the amount of proceeds delivered to the combined companies at closing of the acquisition, approximately \$19.4 million will be used to repay existing indebtedness, \$3.2 million will be used to make certain prescribed distributions to stockholders of AAI in connection with their personal income tax responsibilities; and \$2.5 million will be used to pay cash bonuses to retained American Apparel personnel. In addition, a portion of the proceeds will be used to pay the costs associated with the acquisition, including professional and printing fees. The balance of the funds in the trust account will be released to Endeavor and will become funds of the consolidated companies.
- Q. What happens if the acquisition is not consummated?**
- A.** If Endeavor does not complete the acquisition by December 15, 2007, it will be dissolved pursuant to Section 275 of the Delaware General Corporation Law. In connection with such dissolution, the expected procedures of which are set forth in the section entitled *Other Information Related to Endeavor Liquidation If No Business Combination*, Endeavor will liquidate and distribute to all of its public stockholders, in proportion to their respective equity interests, an aggregate sum equal to the amount in the trust account, inclusive of any interest, plus remaining assets. Holders of Endeavor common stock acquired prior to the IPO, including all of Endeavor's officers and directors, have waived any right to any liquidation distribution with respect to those shares.
- Q. When do you expect the acquisition to be completed?**
- A.** It is currently anticipated that the Closing will occur promptly following the Endeavor special meeting on December 14, 2007. For a description of the conditions to completion of the acquisition, see the sections entitled *The Acquisition Agreement Conditions to the Closing of the Acquisition*.
- Q. What do I need to do now?**
- A.** Endeavor urges you to read carefully and consider the information contained in this proxy statement, including the annexes, and to consider how the acquisition will affect you as a stockholder of Endeavor. You should then vote as soon as possible in accordance with the instructions provided in this proxy statement and on the enclosed proxy card.
- Q. How do I vote?**
- A.** If you are a holder of record of Endeavor common stock at the close of business on November 16, 2007, which is the record date for the special meeting, you may vote in person at the special meeting or by submitting a proxy for the special meeting. You may submit your proxy by completing, signing, dating and returning the enclosed proxy card in the accompanying pre-addressed postage paid envelope. If you hold your shares in street

Table of Contents

name, which means your shares are held of record by a broker, bank or nominee, you must provide the record holder of your shares with instructions on how to vote your shares.

- Q. If my shares are held in street name, will my broker, bank or nominee automatically vote my shares for me?**
- A.** No. Your broker, bank or nominee cannot vote your shares on any proposal unless you provide instructions on how to vote in accordance with the information and procedures provided to you by your broker, bank or nominee.
- Q. Can I change my vote after I have mailed my signed proxy or direction form?**
- A.** Yes. Send a later-dated, signed proxy card to Endeavor’s secretary at the address of Endeavor’s corporate headquarters prior to the date of the special meeting or attend the special meeting in person and vote. You also may revoke your proxy by sending a notice of revocation to Endeavor’s secretary, which must be received by Endeavor’s secretary prior to the special meeting.
- Q. Do I need to send in my stock certificates?**
- A.** Endeavor stockholders who do not elect to have their shares converted into a pro rata share of the trust account should not submit their stock certificates now or after the acquisition, because their shares will not be converted or exchanged in the acquisition. Endeavor stockholders who vote against the acquisition and exercise their conversion rights must deliver their shares to Endeavor’s transfer agent (either physically or electronically) after the meeting.
- Q. What should I do if I receive more than one set of voting materials?**
- A.** You may receive more than one set of voting materials, including multiple copies of this proxy statement and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you will receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a holder of record and your shares are registered in more than one name, you will receive more than one proxy card. Please complete, sign, date and return each proxy card and voting instruction card that you receive in order to cast a vote with respect to all of your Endeavor shares.
- Q. Who can help answer my questions?**
- A.** If you have questions about the acquisition or if you need additional copies of the proxy statement or the enclosed proxy card you should contact:
- Martin Dolfi
- Endeavor Acquisition Corp.
- 590 Madison Avenue, 21st Floor
- New York, New York 10022
- Tel: (212) 683-5350
- You may also obtain additional information about Endeavor from documents filed with the SEC by following the instructions in the section entitled *Where You Can Find More Information*.
- If you intend to vote against the acquisition and seek conversion of your shares, you will need to deliver your shares (either physically or electronically) to Endeavor’s transfer agent at the address below after the meeting. If you have questions regarding the certification of your position or delivery of your shares, please contact:
- Mark Zimkind
- Continental Stock Transfer & Trust Company
- 17 Battery Place, 8th Floor
- New York, New York 10004
- Telephone: (212) 845-3287

Table of Contents

SUMMARY OF THE PROXY STATEMENT

Parties

Endeavor is a blank check company formed on July 22, 2005 to effect a merger, capital stock exchange, asset acquisition or other similar business combination with an operating business. Its mailing address is 590 Madison Avenue, New York, New York 10022. After the consummation of the acquisition, its mailing address will be 747 Warehouse Street, Los Angeles, California 90021, which is American Apparel's corporate headquarters. Its present website address is *www.endeavoracq.com*. After the consummation of the acquisition its website address will be *www.americanapparel.net*, which is presently the website address of American Apparel.

American Apparel is a vertically-integrated manufacturer, distributor, and retailer of branded fashion basic apparel. As of September 30, 2007, American Apparel operated 165 retail stores in 13 countries, including the United States, Canada, Mexico, England, Germany, France, Switzerland, the Netherlands, Israel, Italy, Japan, Sweden and South Korea. American Apparel also operates a leading wholesale business that supplies t-shirts and other casual wear to distributors and screen printers. In addition to its retail stores and wholesale operations, American Apparel operates an online retail e-commerce website at *www.americanapparelstore.net*. See the section entitled *Business of American Apparel*.

Acquisition Structure

Under the terms of the Acquisition Agreement:

prior to the Closing, Mr. Charney will have the right, but not the obligation to purchase all of the outstanding capital stock and membership interests of the American Apparel companies owned by Mr. Lim (the Lim Buyout), provided that, if the Lim Buyout is not consummated by Mr. Charney prior to the Closing, the Lim Buyout shall be consummated directly by Endeavor at its sole cost and expense;

prior to the Closing, all of the membership interests of LLC will be transferred to AAI;

AAI will be merged with and into Merger Sub, with Merger Sub surviving the merger as a wholly owned subsidiary of Endeavor; and

all of the outstanding capital stock of each of the CI companies will be acquired by Endeavor, with all of the CI companies surviving the transaction as wholly owned subsidiaries of Endeavor.

The stockholders owning all of the outstanding voting stock or membership interests of each of the American Apparel companies have approved and adopted the Acquisition Agreement in accordance with the applicable corporate or company laws of each such company's jurisdiction of formation.

See the section entitled *The Acquisition Proposal*.

Acquisition Consideration

In return for all of the capital stock in each of the American Apparel companies, Mr. Charney will receive from Endeavor up to an aggregate of 37,258,065 shares of Endeavor common stock, subject to downward adjustment if American Apparel's net debt, as defined in the Acquisition Agreement, at the close of business on the date two business days prior to the Closing is more than \$150,000,000. Following the Closing, Endeavor will pay and expense as part of its operations an aggregate of \$2.5 million of cash bonuses to existing American Apparel employees. See the section entitled *The Acquisition Agreement Acquisition Consideration*.

Lim Buyout

Edgar Filing: Endeavor Acquisition Corp. - Form PRER14A

Mr. Charney shall purchase all of Mr. Lim's equity interests in the American Apparel companies prior to the Closing. The purchase price shall be \$60 million plus an additional cash price determined by the date on which

Table of Contents

the Lim Buyout is completed. In the event that the Lim Buyout is not consummated by Mr. Charney prior to closing of the acquisition for any reason, Endeavor shall effect the Lim Buyout as part of the acquisition by paying Mr. Lim cash for all of his equity interests in the American Apparel companies. The consideration to be received by Mr. Charney in connection with the Closing will not be reduced or otherwise affected should the Lim Buyout be consummated by Endeavor. If the acquisition were to be consummated on December 14, 2007, and Endeavor was required to effect the Lim Buyout on the same date, Endeavor would pay Mr. Lim approximately \$67.8. See the section entitled *The Acquisition Agreement Acquisition Consideration Lim Buyout*.

Other Proposals

In addition to voting on the acquisition, the stockholders of Endeavor will vote on proposals to change its name to American Apparel, Inc., to increase the number of shares of common stock it is authorized to issue from 75,000,000 to 120,000,000, to amend its charter to delete certain provisions that will no longer be operative after the acquisition and to approve the performance equity plan. In addition, if, based on the tabulated vote at the time of the special meeting, Endeavor is not authorized to consummate the acquisition, the stockholders of Endeavor will vote on the adjournment proposal. See the sections entitled *Name Change Amendment Proposal*, *Capitalization Amendment Proposal*, *Article Sixth Amendment Proposal*, *2007 Performance Equity Plan Proposal* and *The Adjournment Proposal*.

Interests of Endeavor's Directors and Officers in the Acquisition

Certain of Endeavor's officers and directors have interests in the acquisition that differ from, or are in addition to, those of Endeavor stockholders generally. In particular:

if the acquisition is not approved and Endeavor is required to liquidate, the 3,750,000 shares of common stock held by Endeavor's officers and directors that were acquired prior to the IPO for an aggregate purchase price of \$25,000 will be worthless. In the event the acquisition is not consummated, all 3,750,000 shares held by Endeavor's officers and directors, which had an aggregate market value of approximately \$46,125,000 as of November 1, 2007, would expire and be worthless.

As of November 1, 2007, Endeavor owes an aggregate of \$575,000 to Mr. Eric Watson and Mr. Jonathan Ledecy, Endeavor's current chairman of the board and president, respectively, and their affiliates. If the business combination is not consummated, Messrs. Watson and Ledecy will be repaid only to the extent Endeavor has sufficient funds available to it outside of the trust account. As of November 1, 2007, Endeavor had only nominal funds outside of the trust account. Accordingly, in the event the acquisition is not consummated, Messrs. Watson and Ledecy will not be repaid.

If Endeavor is unable to complete a business combination and is required to liquidate, Messrs. Watson and Ledecy will be personally liable under certain circumstances (for example, if a vendor does not waive any rights or claims to the trust account) to ensure that the proceeds in the trust account are not reduced by the claims of certain prospective target businesses and vendors or other entities that are owed money by Endeavor for services rendered or products sold to it.

See the section entitled *The Acquisition Proposal Interests of Endeavor's Directors and Officers in the Acquisition*.

Interests of American Apparel's Directors and Officers in the Acquisition

In addition, we urge you to consider the interests of certain directors and officers of American Apparel in the acquisition. In particular:

in connection with the consummation of the acquisition, Mr. Charney shall receive an aggregate of up to 37,258,065 shares of Endeavor's common stock, subject to downward adjustment, which will result in Mr. Charney owning up to 69.1% of the outstanding Endeavor common stock immediately

Table of Contents

following the Closing, assuming that approximately 19.99% of the common stock issued in Endeavor's initial public offering votes against the acquisition and such stock is converted into cash. In the event the acquisition is not consummated, none of the 37,258,065 shares issuable to Mr. Charney, which have an aggregate market value of approximately \$458,274,200 as of November 1, 2007, would be issued. In addition, Mr. Charney will enter into an employment agreement with Endeavor concurrently with the Closing under which he shall receive an annual base salary of \$750,000 and also be entitled to receive an annual bonus of up to 150% of his base salary and a long-term bonus over the initial three-year term of the employment agreement of up to 300% of his base salary upon attainment by Endeavor of performance objectives to be determined by Endeavor's compensation committee following the Closing.

Mr. Charney has the right, but not the obligation to purchase all of Mr. Lim's equity interest in the American Apparel companies prior to Closing for \$60 million plus an additional cash price to be determined based upon the date on which the Lim Buyout is completed. However, in the event that Mr. Charney does not consummate the Lim Buyout prior to the Closing, Endeavor shall effect the Lim Buyout as part of the transaction at its sole cost and expense. Assuming the acquisition is consummated on December 14, 2007 and Endeavor is required to purchase Mr. Lim's equity interest, Endeavor would pay Mr. Lim approximately \$67.8 million.

certain key officers and other employees of American Apparel may receive a cash bonus in connection with the consummation of the acquisition. The aggregate total of cash bonuses to be awarded has been set at \$2.5 million.

all outstanding unsecured indebtedness currently due and owing from American Apparel to Messrs. Charney and Lim, as well as certain members of their respective families and officers of American Apparel, shall be paid by Endeavor immediately following the Closing. At September 30, 2007, the aggregate amount of such indebtedness was approximately \$18.7 million.

Please see the sections entitled *The Acquisition Agreement*, *Acquisition Consideration* and *Certain Relationships and Related Party Transactions*, *American Apparel Related Party Transactions* for a more detailed discussion of these interests.

Federal Income Tax Consequences

The merger of AAI into Merger Sub and the acquisition by Endeavor of all of the outstanding capital stock of the CI companies will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code and no gain or loss will be recognized by Endeavor or American Apparel as a result of the acquisition. Further, no gain or loss will be recognized by non-converting stockholders of Endeavor as a result of the acquisition. See the section entitled *The Acquisition Proposal*, *Material Federal Income Tax Consequences of the Acquisition*.

Opinion of Jefferies & Company, Inc.

In connection with the acquisition as contemplated by the Original Agreement, Endeavor's board of directors received an opinion from Jefferies & Company, Inc., or Jefferies, as to (i) the fairness to the holders of Endeavor common stock (other than any affiliates of Endeavor), from a financial point of view and as of the date of Jefferies' opinion, of the consideration of approximately 32.3 million shares of Endeavor common stock that was to be paid by Endeavor pursuant to the Original Agreement, and (ii) whether the fair market value of American Apparel was at least equal to 80% of Endeavor's net assets. The full text of Jefferies' opinion, which sets forth the assumptions made, matters considered and limitations on the scope of review undertaken by Jefferies in rendering its opinion, is attached to this proxy statement as *Annex F*.

Endeavor encourages stockholders to read this opinion carefully and in its entirety. Jefferies' opinion addresses only the fairness to the holders of Endeavor common stock (other than any affiliates of Endeavor), from a financial point of view and as of the date of Jefferies' opinion, of the consideration of approximately

Table of Contents

32.3 million shares of Endeavor common stock that was to be paid by Endeavor under the terms of the Original Agreement, and whether the fair market value of American Apparel was at least equal to 80% of Endeavor's net assets. Jefferies' opinion does not address any other aspect of the acquisition or the terms of the Acquisition Agreement, which amends and restates the Original Agreement in its entirety. Jefferies' opinion does not constitute a recommendation as to how any holder of Endeavor common stock should vote on the acquisition or any matter related thereto.

Recommendation of Endeavor Board of Directors

Endeavor's board of directors:

has unanimously determined that the acquisition proposal and each of the name change amendment, the capitalization amendment, the Article Sixth amendment and the performance equity plan proposals are fair to and in the best interests of Endeavor and its stockholders;

has unanimously approved the acquisition proposal and each of the name change amendment, the capitalization amendment, the Article Sixth amendment and the performance equity plan proposals;

unanimously recommends that Endeavor's common stockholders vote FOR the acquisition proposal;

unanimously recommends that Endeavor's common stockholders vote FOR the name change amendment proposal;

unanimously recommends that Endeavor's common stockholders vote FOR the capitalization amendment proposal;

unanimously recommends that Endeavor's common stockholders vote FOR the Article Sixth amendment proposal;

unanimously recommends that Endeavor's common stockholders vote FOR the proposal to approve the performance equity plan; and

if necessary, unanimously recommends that Endeavor's common stockholders vote FOR the proposal to approve an adjournment of the special meeting.

American Apparel Stockholders Approval

All of the stockholders of the American Apparel companies have approved the acquisition by written consent for purposes of the corporate and company laws of the State of California and the applicable Canadian federal and provincial law. Accordingly, no further action by the American Apparel stockholders is needed to approve the acquisition.

Reasons for the Acquisition

Endeavor believes that American Apparel is positioned for continued growth in its markets and believes that a business combination with American Apparel will provide Endeavor stockholders with an opportunity to participate in an enterprise with significant growth potential. American Apparel had an annual growth