

Edgar Filing: LIQUID AUDIO INC - Form SC 13D/A

LIQUID AUDIO INC  
Form SC 13D/A  
July 31, 2002

United States  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

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SCHEDULE 13D

Under the Securities Exchange Act of 1934  
(Amendment No. 1 )\*

Liquid Audio, Inc.

-----  
(Name of Issuer)

Common Stock, par value \$.001

-----  
(Title of Class of Securities)

53631T 10 2

-----  
(CUSIP Number)

Jonathan Brooks  
JMB Capital Partners, L.P.  
1999 Avenue of the Stars, Suite 2040  
Los Angeles, CA 90067  
(310) 286-2929

-----  
(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

July 30, 2002

-----  
(Date of Event which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box .

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

(Page 1 of 8 Pages)

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\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

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The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 53631T 10 2

13D

Page 2 of 8 Pages

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1 NAME OF REPORTING PERSONS  
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)  
  
JMB Capital Partners, L.P.

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2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*  
  
(a)   
(b)

---

3 SEC USE ONLY

---

4 SOURCE OF FUNDS\*  
  
WC

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5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) OR 2(e)

---

6 CITIZENSHIP OR PLACE OF ORGANIZATION  
  
California

---

7 SOLE VOTING POWER  
  
NUMBER OF 1,163,800  
SHARES

---

8 SHARED VOTING POWER  
  
0  
BENEFICIALLY OWNED BY

---

9 SOLE DISPOSITIVE POWER  
  
EACH 1,163,800  
REPORTING PERSON

---

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WITH 10 SHARED DISPOSITIVE POWER  
0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
1,163,800

---

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

---

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
5.1%

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14 TYPE OF REPORTING PERSON\*  
PN

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\*SEE INSTRUCTIONS BEFORE FILLING OUT!

CUSIP No. 53631T 10 2

13D

Page 3 of 8 Pages

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1 NAME OF REPORTING PERSONS  
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)  
Smithwood Partners, LLC

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2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*  
(a)   
(b)

---

3 SEC USE ONLY

---

4 SOURCE OF FUNDS\*  
WC

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5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) OR 2(e)

---

6 CITIZENSHIP OR PLACE OF ORGANIZATION

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California

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	7	SOLE VOTING POWER
NUMBER OF		1,163,800
SHARES		
BENEFICIALLY	8	SHARED VOTING POWER
OWNED BY		0
EACH	9	SOLE DISPOSITIVE POWER
REPORTING		1,163,800
PERSON		
WITH	10	SHARED DISPOSITIVE POWER
		0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,163,800

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

5.1%

14 TYPE OF REPORTING PERSON\*

HC

\*SEE INSTRUCTIONS BEFORE FILLING OUT!

CUSIP No. 53631T 10 2

13D

Page 4 of 8 Pages

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1 NAME OF REPORTING PERSONS  
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

Jonathan Brooks

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2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

(a)

(b)

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3 SEC USE ONLY

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4 SOURCE OF FUNDS\*

WC

---

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2(d) OR 2(e)

---

6 CITIZENSHIP OR PLACE OF ORGANIZATION

California

---

7 SOLE VOTING POWER

NUMBER OF 1,163,800

SHARES

---

8 SHARED VOTING POWER

BENEFICIALLY 0

OWNED BY

---

9 SOLE DISPOSITIVE POWER

EACH 1,163,800

REPORTING

---

10 SHARED DISPOSITIVE POWER

PERSON 0

WITH

---

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,163,800

---

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

---

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

5.1%

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14 TYPE OF REPORTING PERSON\*

IN, HC

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\*SEE INSTRUCTIONS BEFORE FILLING OUT!

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Item 1. Security and Issuer.

This Amendment No. 1 to Schedule 13D relates to shares of common stock par value \$.001 per share ("Common Stock") of Liquid Audio, Inc., a Delaware corporation (the "Issuer"). The principal executive offices of the Issuer are located at 800 Chesapeake Drive, Redwood City, CA 94063. Amendment No. 1 amends items nos. 4 and 5 of the Schedule 13D.

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Item 2. Identity and Background.

- (a) This Amendment No. 1 to Schedule 13D is being filed by JMB Capital Partners, L.P., Smithwood Partners, LLC and Mr. Jonathan Brooks (collectively, the "Reporting Persons").

JMB Capital Partners, L.P. is a California limited partnership ("JMB Capital").

Smithwood Partners, LLC, a California limited liability company ("Smithwood"), is the general partner of JMB Capital.

Mr. Brooks is the sole member and manager of Smithwood.

- (b) The principal address of each of the Reporting Persons is 1999 Avenue of the Stars, suite 2040, Los Angeles, CA 90067.
- (c) The principal business of JMB Capital and Smithwood is investing in companies. The principal occupation of Mr. Brooks is investment management.
- (d) None of the Reporting Persons have, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).
- (e) None of the Reporting Persons have, during the last five years, been party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.
- (f) Mr. Brooks is a citizen of the United State of America.

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Item 3. Source and Amount of Funds or Other Consideration.

The aggregate purchase price of the 1,163,800 shares of Common Stock owned by the Reporting Persons is \$2,810,210. The source of funds used by JMB capital to purchase the Common Stock was working capital derived from capital contributions from its limited partners.

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### Item 4. Purpose of Transaction.

On July 23, 2002, JMB Capital sent a letter to the Board of Directors of the Issuer suggesting, among other things, that the Issuer discontinue its operations and distribute its cash to the shareholders of the Issuer, and that the Issuer terminate its pending merger proposal with Alliance Entertainment. The Issuer responded to JMB Capital by letter dated July 24, 2002, a copy of which was filed with the Securities and Exchange Commission on July 24, 2002 pursuant to Rule 425 under the Securities Act of 1933, a copy of which is filed as Exhibit 2 to this Amendment No. 1 to the Schedule 13D and is incorporated herein by reference. On July 30, 2002, JMB Capital further responded to the Issuer. A copy of JMB Capital's response, dated July 30, 2002, is filed as Exhibit 3 to this Amendment No. 1 to Schedule 13D and is incorporated herein by reference.

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### Item 5. Interest in Securities of the Issuer.

- (a) The aggregate percentage of shares of Common Stock reported owned by each of the Reporting Persons is based upon 22,745,624 shares of the Common Stock outstanding as of May 6, 2002, which is the total number of outstanding shares of Common Stock as reported in the Issuer's Definitive Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on May 28, 2002.
- (b) JMB Capital beneficially owns 1,163,800 shares of Common Stock, constituting approximately 5.1% of the shares of Common Stock outstanding. JMB Capital has sole voting and dispositive power with respect to the 1,163,800 shares owned by it. As general partner of JMB Capital, Smithwood beneficially owns 1,163,800 shares of Common Stock, constituting approximately 5.1% of the shares outstanding. As general partner of JMB Capital, Smithwood has sole voting and dispositive power with respect to the 1,163,800 shares owned by JMB Capital by virtue of its authority to vote and dispose of such shares. As the sole member and manager of Smithwood, Mr. Brooks beneficially owns 1,163,800 shares of Common Stock constituting approximately 5.1% of the shares of Common Stock outstanding. As the sole member and manager of Smithwood, Mr. Brooks has sole voting and dispositive power with respect to the 1,163,800 shares owned by JMB Capital by virtue of his authority to vote and dispose of such shares.
- (c) No transactions in the Common Stock were effected since the most recent filing on Schedule 13D by any of the Reporting Persons.
- (d) No person, other than the Reporting Persons, is known to have the right to receive, or the power to direct the receipt of dividends from or proceeds from the sale of such shares of the Common Stock.
- (e) Not Applicable.

CUSIP No. 53631T 10 2

13D

Page 7 of 8 Pages

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### Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

Not Applicable

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### Item 7. Material to be Filed as Exhibits.

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- Exhibit No. 1      Joint Filing Agreement.
- Exhibit No. 2      Letter from the Issuer to JMB Capital, dated July 24, 2002.
- Exhibit No. 3      Letter from JMB Capital to the Board of Directors  
of the Issuer, dated July 30, 2002.
- 

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: July 30, 2002

JMB CAPITAL PARTNERS, L.P.  
By: Smithwood Partners, LLC,  
General Partner

By: /s/ Jonathan Brooks  
-----  
Jonathan Brooks,  
Sole Member and Manager

SMITHWOOD PARTNERS, LLC

By: /s/ Jonathan Brooks  
-----  
Jonathan Brooks,  
Sole Member and Manager

/s/ Jonathan Brooks  
-----  
Jonathan Brooks, individually