

XSUNX INC
Form POS AM
March 29, 2011

As filed with the U.S. Securities and Exchange Commission on March 28, 2011

Registration No. 333-166427

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1
TO
FORM S-1
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Colorado (State or Other Jurisdiction of Incorporation (Exact Name of Registrant as Specified (I.R.S. Employer Identification No.) or Organization)	XSUNX, INC. in its Charter)	84-134159
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65 Enterprise
Aliso Viejo, California 92656
(949) 330-8060
(Address and Telephone Number
of Principal Executive Office)

3081
(Primary Standard Industrial
Classification Code Number)

Tom Djokovich
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(Name, Address and Telephone Number of
Agent for Service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer "

Accelerated filer "

Non-accelerated filer " (Do not check if a smaller reporting company)

Smaller reporting company x

EXPLANATORY NOTE

The Registrant's Registration Statement on Form S-1 (File No. 333-166427) originally filed with the Securities and Exchange Commission on April 30, 2010, was declared effective on June 30, 2010 (the "Original Registration Statement"). The Registrant is filing this Post-Effective Amendment No. 1 to the Original Registration Statement in order to update the Original Registration Statement to include, among other things, the Registrant's audited consolidated financial statements for the fiscal year ended September 30, 2010 and unaudited consolidated financial statements for the three months ended December 31, 2010, and other updated information about the Registrant.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

SUBJECT TO COMPLETION, DATED MARCH 28, 2011.

The information in this Prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the U.S. Securities and Exchange Commission is effective. This Prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

PROSPECTUS
XSUNX, INC.
27,500,000 Shares of Common Stock

This prospectus (“Prospectus”) relates to the sale of up to 27,500,000 shares of the common stock, no par value per share, of XsunX, Inc. (referred to herein as the “Company”, “XsunX”, or “we”, “us”, or “our”) by the “selling stockholder” Lincoln Park Capital Fund, LLC. Please refer to “Selling Stockholder” beginning on page 14.

The Company is not selling any shares of common stock in this offering and therefore will not receive any proceeds from this offering. All costs associated with this registration will be borne by the Company.

Shares of common stock are being offered for sale by the selling stockholder at prices established on the Over-the-Counter Bulletin Board (the “OTCBB”) during the term of this offering. On March 21, 2011, the last reported sale price of our common stock was \$0.097 per share. Our common stock is quoted on the OTCBB under the symbol “XSNX”. These prices will fluctuate based on the demand for the shares of our common stock and other factors.

Brokers or dealers effecting transactions in these shares should confirm that the shares are registered under the applicable state law or that an exemption from registration is available.

These securities are speculative and involve a high degree of risk. Please refer to “Risk Factors” beginning on page 7 for a discussion of these risks.

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this Prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The selling stockholder is an “underwriter” within the meaning of the Securities Act of 1933, as amended.

The date of this Prospectus is _____, 2011

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PROSPECTUS SUMMARY

The following is only a summary of the information, financial statements and the notes thereto included in this prospectus (the “Prospectus”). You should read the entire Prospectus carefully, including “Risk Factors” and our financial statements and the notes thereto before making any investment decision.

Business Overview

XsunX, Inc. is a Colorado corporation formerly known as Sun River Mining Inc. (referred to herein as the “Company”, “XsunX”, or “we”, “us” or “our”). The Company was originally incorporated on February 25, 1997.

XsunX is developing and has begun to market a hybrid manufacturing solution to produce high performance Copper Indium Gallium (di) Selenide (CIGS) thin film solar cells. Our patent pending system and processing technology, which we call CIGSolar™, focuses on the mass production of individual thin-film CIGS solar cells that match silicon solar cell dimensions and can be offered as a non-toxic, high-efficiency and lowest-cost alternative to the use of silicon solar cells. We intend to offer licenses for the use of the CIGSolar™ process technology thereby generating revenue streams through licensing fees and manufacturing royalties for the use of the technology.

Technology Overview

Our efforts have been focused on the development and customization of a series of specialized processing tools that when combined provide a turn-key high-throughput manufacturing system to produce CIGS solar cells.

Core attributes to our process method are the use of small area thermal co-evaporation techniques coupled with state-of-the-art sputter deposition technologies derived from the hard disc drive (HDD) industry to improve manufacturing output, increase cell efficiency, production yields, and lower the costs for the production of high efficiency CIGS cells.

There are five (5) core process tools that when combined will initially produce 125mm format (about 5” square) solar cells, scaling to 156mm formats (about 6” square). We believe that it will be the ability of our system to minimize processing defects while maintaining exceptional per hour production rates that will provide superior commercial opportunities. CIGSolar™ cells will be manufactured on stainless steel squares sized to match silicon solar cells currently used in nearly 75% of all solar modules manufactured today.

This innovative approach bridges the gap between inexpensive thin-film and costly high efficiency silicon wafer technologies to produce a new breed of solar cell combining what we believe are the best attributes of each technology. The mass production of individual, high performance CIGS solar cells – like solar building blocks – we believe will allow solar power to finally compete effectively against other sources of electrical energy.

CIGS Thin Film Solar Devices

Copper Indium Gallium (di) Selenide (CIGS) exceeds all other thin film solar cell performance to date delivering nearly 20% conversions in laboratory environments. It is this high efficiency low cost potential for CIGS, and its wide array of uses and applications, that we believe provides the basis to drive the cost of energy production for alternative sources to unprecedented new lows. For this reason many major research institutes and agencies worldwide view CIGS as a significant solar technology and support continuous development and research efforts related to CIGS thin films.

We believe that through the successful combination of small area co-evaporation processing techniques with the high rate sputter processing techniques developed within the hard disc media industry, overall factory yields (total watts of

production per day) can be increased thereby resulting in lower production costs while still delivering the full energy and low cost potential that CIGS based devices can offer.

CIGS Experience

Our staff experience includes nearly 16 years of thin film and CIGS experience in successful technology development, equipment design, and production of several million square feet CIGS products in a commercial production setting. Our Chief Technology Officer has worked side by side with leading researchers at NREL and in fact shares an R&D 100 award with NREL staff for efforts related to CIGS technology development.

Our resident XsunX thin film CIGS technologists and manufacturing experts are working jointly with a leading producer of manufacturing equipment utilized in the hard disc market to create a unique process of coupling small area deposition (approximately 5X5 inch squares), material control, and material transport technologies from the disk drive industry for use in the production of thin film CIGS solar cells. We are combining the expertise and years of technological improvements derived from the sophisticated hard disc drive manufacturing industry with XsunX staff experience in the CIGS thin film industry.

About Us

We are a Colorado corporation. Our principal executive offices are located at 65 Enterprise, Aliso Viejo, California 92656. Our telephone number is (949) 330-8060. Our website can be accessed at www.xsunx.com.

The Offering

This Prospectus relates to the sale of up to 27,500,000 shares of the common stock, no par value per share, of XsunX, Inc. by certain persons who are stockholders of the Company. The selling stockholder is Lincoln Park Capital Fund, LLC ("LPC").

On March 30, 2010, we entered into a purchase agreement (the "Purchase Agreement") with LPC, whereby LPC agreed to purchase up to an aggregate of \$5,000,000 of our common stock (the "Purchase Shares"). Pursuant to the terms of the Purchase Agreement, LPC purchased an initial amount of \$500,000 of Purchase Shares (5,000,000 Purchase Shares) from us, and in consideration for LPC entering into the Purchase Agreement we agreed to the issuance of up to 2,500,000 shares of common stock (the "Commitment Shares") to LPC of which 1,250,000 were issued to LPC at the time of the initial purchase. Further, subject to our satisfaction of certain conditions, such as the effectiveness of a registration statement covering the shares under the Purchase Agreement, LPC agreed to buy more of the Purchase Shares at our direction, at any time, in any amount up to \$50,000 at a specified purchase price per share. Also, pursuant to the terms of the Purchase Agreement, after the SEC declared effective the registration statement, we have the right, over a 25-month period, to sell the remaining Purchase Shares to LPC in amounts up to \$500,000 per sale, subject to certain conditions as set forth in the Purchase Agreement, up to the aggregate commitment of \$5,000,000. The SEC declared the Registration Statement effective as of June 30, 2010. Since that date and including the initial purchase, we have sold a total of \$775,000 of Purchase Shares (8,123,158 shares) and issued 1,326,386 Commitment Shares for a total of 9,449,544 shares issued to LPC through March 21, 2011.

Please refer to "Selling Stockholder" beginning on page 14.

The Company is not selling any shares of common stock in this offering and therefore will not receive any proceeds from this offering. However, it may receive up to \$5,000,000 from LPC in connection with the initial sale of the Purchase Shares under the Purchase Agreement. Any proceeds from LPC that we receive under the Purchase Agreement will be used for working capital and general corporate purposes. All costs associated with this registration will be borne by the Company.

Shares of common stock are being offered for sale by the selling stockholder at prices established on the Over-the-Counter Bulletin Board (the "OTCBB") during the term of this offering. On March 21, 2011, the last reported sale price of our common stock was \$0.097 per share. Our common stock is quoted on the OTCBB under the symbol "XSUNX.OB". These prices will fluctuate based on the demand for the shares of our common stock.

Common Stock Offered 27,500,000 shares by the selling stockholder

Offering Price Market price

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Common Stock Currently Outstanding	219,297,821 shares as of March 21, 2011
Use of Proceeds	We will not receive any proceeds of the shares offered by the selling stockholders. See "Use of Proceeds" on page 17 herein.
Risk Factors	The securities offered hereby involve a high degree of risk. See "Risk Factors" on page 7 herein.
Over-the-Counter Bulletin Board Symbol	XSNX.OB

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RISK FACTORS

We are subject to various risks that may materially harm our business, financial condition and results of operations. An investor should carefully consider the risks and uncertainties described below and the other information in this filing before deciding to purchase our common stock. If any of these risks or uncertainties actually occurs, our business, financial condition or operating results could be materially harmed. In that case, the trading price of our common stock could decline or we may be forced to cease operations.

RISKS RELATED TO OUR BUSINESS

We have a limited operating history with significant losses and expect losses to continue for the foreseeable future, as such we expect that we will need to obtain additional financing to continue to operate our business, including capital expenditures to complete the development of marketable thin film manufacturing technologies, and financing may be unavailable or available only on disadvantageous terms which could cause the Company to curtail its business operations and delay the execution of its business plan.

We are a development stage company and, to date, have not generated any significant revenues. The accompanying financial statements have been prepared in conformity with accounting principles generally accepted in the U.S., which contemplate our continuation as a going concern. Net loss for the years ended September 30, 2010 and 2009 was \$2,210,603 and \$10,634,133, respectively. Net cash used for operations was \$(1,347,395) and \$(2,862,327) for the years ended September 30, 2010 and 2009, respectively. From inception through September 30, 2010, we had an accumulated deficit of \$33,919,805. Our revenues have not been sufficient to sustain our operations and we expect that our revenues will not be sufficient to sustain our operations for the foreseeable future. As such, we expect that we will continue to need significant financing to operate our business. Furthermore, there can be no assurance that additional financing will be available or that the terms of such additional financing, if available, will be acceptable to us. If additional financing is not available or not available on terms acceptable to us, our ability to fund our operations, complete the development of marketable technologies, develop a sales network, maintain our research and development efforts or otherwise respond to competitive pressures may be significantly impaired. We could also be forced to curtail our business operations, reduce our investments, decrease or eliminate capital expenditures and delay the execution of our business plan, including, without limitation, all aspects of our operations, which would have a material adverse affect on our business. The items discussed above raise substantial doubt about our ability to continue as a going concern. We cannot assure you that we can achieve or sustain profitability in the future. Our operations are subject to the risks and competition inherent in the establishment of a business enterprise. There can be no assurance that future operations will be profitable. Revenues and profits, if any, will depend upon various factors, including whether our product development can be completed, whether our products will achieve market acceptance and whether we obtain additional financing. We may not achieve our business objectives and the failure to achieve such goals would have a materially adverse impact on us.

We may be required to raise additional financing by issuing new securities with terms or rights superior to those of our shares of common stock, which could adversely affect the market price of our shares of common stock and our business.

We will require additional financing to fund future operations, including expansion in current and new markets, development and acquisition, capital costs and the costs of any necessary implementation of technological innovations or alternative technologies. We may not be able to obtain financing on favorable terms, if at all. If we raise additional funds by issuing equity securities, the percentage ownership of our current stockholders will be reduced, and the holders of the new equity securities may have rights superior to those of the holders of shares of common stock, which could adversely affect the market price and the voting power of shares of our common stock. If we raise additional funds by issuing debt securities, the holders of these debt securities would similarly have some rights senior to those

of the holders of shares of common stock, and the terms of these debt securities could impose restrictions on operations and create a significant interest expense for us which could have a materially adverse affect on our business.

Particularly, we may direct LPC to purchase shares of our common stock over a 25 month period generally in amounts of up to \$50,000 every 2 business days. However, LPC shall not have the right nor the obligation to purchase any shares of our common stock on any business day that the market price of our common stock is less than \$0.08.

The extent that we rely on LPC as a source of funding will depend on a number of factors including, the prevailing market price of our common stock and the extent to which we are able to secure working capital from other sources such as through the sale of our products. If obtaining sufficient funding from LPC were to prove unavailable or prohibitively dilutive and if we are unable to sell enough of our products, we may need to secure another source of funding in order to satisfy our working capital needs. Even if we sell all \$5,000,000 worth of common stock under the Purchase Agreement to LPC, we may still need additional capital to fully implement our business, operating and development plans. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, the consequences could be a material adverse effect on our business, operating results, financial condition and prospects.

If future products based on technologies we are developing cannot be developed for manufacture and sold commercially or our products become obsolete or noncompetitive, we may be unable to recover our investments or achieve profitability which will have a materially adverse affect on our business.

There can be no assurance that our research and development efforts will be successful or that we will be able to develop commercial applications for our products and technologies. Further, the areas in which we are developing technologies and products are characterized by rapid and significant technological change. Rapid technological development may result in our products becoming obsolete or noncompetitive. If future products based on our technologies cannot be developed for manufacture and sold commercially or our products become obsolete or noncompetitive, we may be unable to recover our investments or achieve profitability. In addition, the commercialization schedule may be delayed if we experience delays in meeting development goals, if products based on our technologies exhibit technical defects, or if we are unable to meet cost or performance goals. In this event, potential purchasers of products based on our technologies may choose alternative technologies and any delays could allow potential competitors to gain market advantages.

There is no assurance that the market will accept our products once development has been completed which could have an adverse affect on our business.

There can be no assurance that products based on our technologies will be perceived as being superior to existing products or new products being developed by competing companies or that such products will otherwise be accepted by consumers. The market prices for products based on our technologies may exceed the prices of competitive products based on existing technologies or new products based on technologies currently under development by competitors. There can be no assurance that the prices of products based on our technologies will be perceived by consumers as cost-effective or that the prices of such products will be competitive with existing products or with other new products or technologies. If consumers do not accept products based on our technologies, we may be unable to recover our investments or achieve profitability.

Other companies, many of which have greater resources than we have, may develop competing products or technologies which cause products based on our technologies to become noncompetitive which could have an adverse affect on our business.

We will be competing with firms, both domestic and foreign, that perform research and development, as well as firms that manufacture and sell solar products. In addition, we expect additional potential competitors to enter the markets for solar products in the future. Some of these current and potential competitors are among the largest industrial companies in the world with longer operating histories, greater name recognition, access to larger customer bases, well-established business organizations and product lines and significantly greater resources and research and development staff and facilities. There can be no assurance that one or more such companies will not succeed in developing technologies or products that will become available for commercial sale prior to our products, that will have performance superior to products based on our technologies or that would otherwise render our products noncompetitive. If we fail to compete successfully, our business would suffer and we may lose or be unable to gain market share.

The loss of strategic relationships used in the development of our thin film manufacturing technologies and products could impede our ability to complete the development of our products and have a material adverse affect on our business.

We have established a plan of operations under which a portion of our operations rely on strategic relationships with third parties, to provide systems design, assembly and support. A loss of any of our third party relationships for any reason could cause us to experience difficulties in implementing our business strategy. There can be no assurance that

we could establish other relationships of adequate expertise in a timely manner or at all.

We may suffer the loss of key personnel or may be unable to attract and retain qualified personnel to maintain and expand our business which could have a material adverse affect on our business.

Our success is highly dependent on the continued services of a limited number of skilled managers, scientists and technicians. The loss of any of these individuals could have a material adverse effect on us. In addition, our success will depend upon, among other factors, the recruitment and retention of additional highly skilled and experienced management and technical personnel. There can be no assurance that we will be able to retain existing employees or to attract and retain additional personnel on acceptable terms given the competition for such personnel in industrial, academic and nonprofit research sectors.

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We may not be successful in protecting our intellectual property and proprietary rights and may be required to expend significant amounts of money and time in attempting to protect these rights. If we are unable to protect our intellectual property and proprietary rights, our competitive position in the market could suffer.

Our intellectual property consists of patents, trade secrets, and trade dress. Our success depends in part on our ability to obtain patents and maintain adequate protection of our other intellectual property for our technologies and products in the U.S. and in other countries. The laws of some foreign countries do not protect proprietary rights to the same extent as do the laws of the U.S., and many companies have encountered significant problems in protecting their proprietary rights in these foreign countries. These problems may be caused by, among other factors, a lack of rules and methods for defending intellectual property rights.

Our future commercial success requires us not to infringe on patents and proprietary rights of third parties, or breach any licenses or other agreements that we have entered into with respect to our technologies, products and businesses. The enforceability of patent positions cannot be predicted with certainty. We intend to apply for patents covering both our technologies and our products, if any, as we deem appropriate. Patents, if issued, may be challenged, invalidated or circumvented. There can be no assurance that no other relevant patents have been issued that could block our ability to obtain patents or to operate as we would like. Others may develop similar technologies or may duplicate technologies developed by us.

We are not currently a party to any litigation with respect to any of our patent positions or trade secrets. However, if we become involved in litigation or interference proceedings declared by the United States Patent and Trademark Office, or other intellectual property proceedings outside of the U.S., we might have to spend significant amounts of money to defend our intellectual property rights. If any of our competitors file patent applications or obtain patents that claim inventions or other rights also claimed by us, we may have to participate in interference proceedings declared by the relevant patent regulatory agency to determine priority of invention and our right to a patent of these inventions in the U.S. Even if the outcome is favorable, such proceedings might result in substantial costs to us, including, significant legal fees and other expenses, diversion of management time and disruption of our business. Even if successful on priority grounds, an interference proceeding may result in loss of claims based on patentability grounds raised in the interference proceeding. Uncertainties resulting from initiation and continuation of any patent or related litigation also might harm our ability to continue our research or to bring products to market.

An adverse ruling arising out of any intellectual property dispute, including an adverse decision as to the priority of our inventions would undercut or invalidate our intellectual property position. An adverse ruling also could subject us to significant liability for damages, prevent us from using certain processes or products, or require us to enter into royalty or licensing agreements with third parties. Furthermore, necessary licenses may not be available to us on satisfactory terms, or at all.

Confidentiality agreements with employees and others may not adequately prevent disclosure of trade secrets and other proprietary information and such disclosure could hurt our competitive position in the market.

To protect our proprietary technologies and processes, we rely on trade secret protection as well as on formal legal devices such as patents. Although we have taken security measures to protect our trade secrets and other proprietary information, these measures may not provide adequate protection for such information. Our policy is to execute confidentiality and proprietary information agreements with each of our employees and consultants upon the commencement of an employment or consulting arrangement with us. These agreements generally require that all confidential information developed by the individual or made known to the individual by us during the course of the individual's relationship with us be kept confidential and not be disclosed to third parties. These agreements also generally provide that technology conceived by the individual in the course of rendering services to us shall be our exclusive property. Even though these agreements are in place there can be no assurances that that trade secrets and

proprietary information will not be disclosed, that others will not independently develop substantially equivalent proprietary information and techniques or otherwise gain access to our trade secrets, or that we can fully protect our trade secrets and proprietary information. Violations by others of our confidentiality agreements and the loss of employees who have specialized knowledge and expertise could harm our competitive position and cause our sales and operating results to decline as a result of increased competition. Costly and time-consuming litigation might be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection might adversely affect our ability to continue our research or bring products to market.

Downturns in general economic conditions could adversely affect our profitability.

Downturns in general economic conditions can cause fluctuations in demand for our products, product prices, volumes and margins. Future economic conditions may not be favorable to our industry. A decline in the demand for our products or a shift to lower-margin products due to deteriorating economic conditions could adversely affect sales of our intended products and our profitability and could also result in impairments of certain of our assets.

Our common stock is considered a “penny stock” and as a result, related broker-dealer requirements may hamper its trading and liquidity.

Our common stock is considered to be a “penny stock” since it meets one or more of the definitions in Rules 15g-2 through 15g-6 promulgated under Section 15(g) of the Exchange Act. These include but are not limited to the following: (i) the common stock trades at a price less than \$5.00 per share; (ii) the common stock is not traded on a “recognized” national exchange; (iii) the common stock is not quoted on the NASDAQ Stock Market, or (iv) the common stock is issued by a company with average revenues of less than \$6.0 million for the past three (3) years. The principal result or effect of being designated a “penny stock” is that securities broker-dealers cannot recommend our common stock to investors, thus hampering its liquidity.

Section 15(g) and Rule 15g-2 require broker-dealers dealing in penny stocks to provide potential investors with documentation disclosing the risks of penny stocks and to obtain a manually signed and dated written receipt of the documents before effecting any transaction in a penny stock for the investor’s account. Potential investors in our common stock are urged to obtain and read such disclosure carefully before purchasing any of our shares.

Moreover, Rule 15g-9 requires broker-dealers in penny stocks to approve the account of any investor for transactions in such stocks before selling any penny stock to that investor. This procedure requires the broker-dealer to (i) obtain from the investor information concerning his or her financial situation, investment experience and investment objectives; (ii) reasonably determine, based on that information, that transactions in penny stocks are suitable for the investor and that the investor has sufficient knowledge and experience as to be reasonably capable of evaluating the risks of penny stock transactions; (iii) provide the investor with a written statement setting forth the basis on which the broker-dealer made the determination in (ii) above; and (iv) receive a signed and dated copy of such statement from the investor, confirming that it accurately reflects the investor’s financial situation, investment experience and investment objectives.

The trading market in our common stock is limited and may cause volatility in the market price which may adversely affect stockholders’ ability to trade.

Our common stock is currently traded on a limited basis and quoted on the OTCBB. The OTCBB provides quotes for an inter-dealer, over-the-counter market that provides significantly less liquidity than the NASDAQ Stock Market and the other national markets. Quotes for stocks included on the OTCBB are not listed in the financial sections of newspapers as are those for the NASDAQ Stock Market. Therefore, prices for securities quoted on the OTCBB may be difficult to obtain.

The quotation of our common stock on the OTCBB does not assure that a meaningful, consistent and liquid trading market currently exists, and in recent years such market has experienced extreme price and volume fluctuations that have particularly affected the market prices of many smaller companies like us. Thus, the market price for our common stock is subject to volatility and holders of common stock may be unable to resell their shares at or near their original purchase price or at any price. In the absence of an active trading market:

- investors may have difficulty buying and selling or obtaining market quotations;
- market visibility for our common stock may be limited; and
- a lack of visibility for our common stock may have a depressive effect on the market for our common stock.

Due to the low price of the securities, many brokerage firms may not be willing to effect transactions in the securities. Even if a purchaser finds a broker willing to effect a transaction in these securities, the combination of brokerage

commissions, state transfer taxes, if any, and any other selling costs may exceed the selling price. Further, many lending institutions will not permit the use of such securities as collateral for any loans. Such restrictions could have a materially adverse affect on our business.

We may have difficulty raising necessary capital to fund operations as a result of market price volatility for our shares of common stock.

The market price of our common stock is likely to be highly volatile and could fluctuate widely in price in response to various factors, many of which are beyond our control, including:

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- technological innovations or new products and services by us or our competitors;
 - additions or departures of key personnel;
 - sales of our common stock;
- our ability to integrate operations, technology, products and services;
 - our ability to execute our business plan;
 - operating results below expectations;
 - loss of any strategic relationship;
 - industry developments;
 - economic and other external factors; and
- period-to-period fluctuations in our financial results.

Because we have a limited operating history with limited revenues to date, you may consider any one of these factors to be material. Our stock price may fluctuate widely as a result of any of the above listed factors. In recent years, the securities markets in the U.S. have experienced a high level of price and volume volatility, and the market price of securities of many companies have experienced wide fluctuations that have not necessarily been related to the operations, performances, underlying asset values or prospects of such companies. For these reasons, our shares of common stock can also be expected to be subject to volatility resulting from purely market forces over which we will have no control. If our business development plans are successful, we may require additional financing to continue to develop and exploit existing and new technologies and to expand into new markets. The exploitation of our technologies may, therefore, be dependent upon our ability to obtain financing through debt and equity or other means.

RISKS RELATED TO THIS OFFERING

The sale of our common stock to LPC may cause dilution and the sale of the shares of common stock acquired by LPC could cause the price of our common stock to decline.

In connection with entering into the Purchase Agreement, we authorized the sale to LPC of up to 25,000,000 shares of our common stock of which LPC has already purchased 8,123,158 shares as of March 21, 2011, and the issuance of up to 2,500,000 shares of common stock as a commitment fee of which 1,326,386 shares as of March 21, 2011 have been issued to LPC. The number of shares ultimately offered for sale by LPC under this Prospectus is dependent upon the number of shares purchased by LPC under the agreement. The purchase price for the common stock to be sold to LPC pursuant to the Purchase Agreement will fluctuate based on the price of our common stock. All 27,500,000 shares registered in this offering are expected to be freely tradable. It is anticipated that shares registered in this offering will be sold over a period of up to 25 months from the initial effective date of the registration statement underlying this Prospectus. Depending upon market liquidity at the time, a sale of shares under this offering at any given time could cause the trading price of our common stock to decline. We can elect to direct purchases in our sole discretion but no sales may occur if the price of our common stock is below \$0.08 and therefore, LPC may ultimately purchase all, some or none of the remaining Purchase Shares registered in this offering (such Purchase Shares not

including the pro rata Commitment Shares that may be issued under the Purchase Agreement, as described in “Selling Stockholder” on page 14.) After it has acquired such shares, it may sell all, some or none of such shares. Therefore, sales to LPC by us under the Purchase Agreement may result in substantial dilution to the interests of other holders of our common stock. The sale of a substantial number of shares of our common stock under this offering, or anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales. However, we have the right to control the timing and amount of any sales of our shares to LPC and the agreement may be terminated by us at any time at our discretion without any cost to us.

The price you pay in this offering will fluctuate and may be higher or lower than the prices paid by other people participating in this offering.

The price in this offering will fluctuate based on the prevailing market price of our common stock as quoted on the OTCBB. Accordingly, the price you pay in this offering may be higher or lower than the prices paid by other people participating in this offering.

The market price of our common stock is highly volatile.

The market price of our common stock has been and is expected to continue to be highly volatile. Factors, including announcements of technological innovations by us or other companies, regulatory matters, new or existing products or procedures, concerns about our financial position, operating results, litigation, government regulation, developments or disputes relating to agreements, patents or proprietary rights, may have a significant impact on the market price of our common stock. In addition, potential dilutive effects of future sales of shares of common stock by stockholders and by the Company, including the selling stockholder pursuant to this Prospectus, and subsequent sale of common stock by the holders of warrants and options could have an adverse effect on the market price of our shares.

FORWARD-LOOKING STATEMENTS

Information included or incorporated by reference in this Prospectus may contain forward-looking statements. This information may involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from the future results, performance or achievements expressed or implied by any forward-looking statements. Forward-looking statements, which involve assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words “may”, “should”, “expect”, “anticipate”, “estimate”, “believe”, “intend” or “project” or the negative of these words or other variations on these words or comparable terminology.

This Prospectus contains forward-looking statements, including statements regarding, among other things, (a) our projected sales and profitability, (b) our growth strategies, (c) anticipated trends in our industry, (d) our future financing plans and (e) our anticipated needs for working capital. These statements may be found under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Description of Business”, as well as in this Prospectus generally. Actual events or results may differ materially from those discussed in forward-looking statements as a result of various factors, including, without limitation, the risks outlined under “Risk Factors” and matters described in this Prospectus generally. In light of these risks and uncertainties, there can be no assurance that the forward-looking statements contained in this Prospectus will in fact occur.

SELLING STOCKHOLDER

The following table presents information regarding our selling stockholder, Lincoln Park Capital, LLC (“LPC”), who intends to sell up to 27,500,000 shares of our common stock. The following table presents information regarding the selling stockholder. Neither the selling stockholder nor any of its affiliates has held a position or office, or had any other material relationship, with us at any time.

Selling Stockholder	Shares Beneficially Owned Before Offering
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