

CPI AEROSTRUCTURES INC
Form S-3
April 30, 2012

As filed with the Securities and Exchange Commission on April 30, 2012

Registration No. 333-_____

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-3

REGISTRATION STATEMENT UNDER

THE SECURITIES ACT OF 1933

CPI AEROSTRUCTURES, INC.

(Exact Name of Registrant as Specified in Its Charter)

New York 11-2520310
*(State or Other Jurisdiction of (I.R.S. Employer
Incorporation or Organization) Identification Number)*

91 Heartland Boulevard

Edgewood, New York 11717

(631) 586-5200

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Office)

Edward J. Fred

President and Chief Executive Officer

CPI Aerostructures, Inc.

91 Heartland Boulevard

Edgewood, New York 11717

(631) 586-5200

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

David Alan Miller, Esq.

Graubard Miller

405 Lexington Avenue, 19th Floor

New York, New York 10174

Telephone: (212) 818-8800

Fax: (212) 818-8881

Approximate date of commencement of proposed sale to the public: **From time to time after the effective date of this Registration Statement.**

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

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, other than securities offered only in connection with dividend or interest

reinvestment plans, 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.

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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. (Check one):

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input checked="" type="checkbox"/>
Non-accelerated filer <input type="checkbox"/>	Smaller reporting company <input type="checkbox"/>

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
Primary Offering:				
Common stock, par value \$.001 per share	(1)(2)	(1)(2)	(1)(2)	–
Preferred stock, par value \$.001 per share	(1)(2)	(1)(2)	(1)(2)	–
Warrants	(1)(2)	(1)(2)	(1)(2)	–
Debt Securities	(1)(2)	(1)(2)	(1)(2)	–
Units	(1)(2)	(1)(2)	(1)(2)	–
Total Primary Offering			\$20,000,000	\$2,292.00(3)
Secondary Offering:				
Common stock, par value \$.001 per share	817,167	\$ 16.05(4)	\$13,115,530	\$1,503.04
Total			\$33,115,530	\$3,795.04(5)

This registration statement covers such indeterminate number of shares of common stock and preferred stock, such indeterminate number of warrants and units, and such indeterminate principal amount of debt securities of the registrant as have an aggregate initial offering price not to exceed \$20,000,000. Any of the securities registered hereunder may be sold separately, or as units of other securities registered hereby. The securities registered hereunder are to be issued from time to time at prices to be determined. The securities registered hereunder also (1) include such indeterminate number of securities registered hereby as may be issued upon conversion or exchange of preferred stock or debt securities that provide for conversion or exchange, upon exercise of warrants or pursuant to the antidilution provisions of any such securities. In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover such additional number of securities as may be offered or issued in connection with any stock splits, stock dividends or similar transactions.

(2) Omitted pursuant to General Instruction II.D of Form S-3 and Rule 457(o) promulgated under the Securities Act of 1933, as amended. The proposed amount to be registered, maximum offering price per unit and maximum aggregate offering price per class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder.

(3) Calculated pursuant to Rule 457(o) promulgated under the Securities Act of 1933, as amended.

(4) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) of the Securities Act of 1933, as amended, using the average of the high and low prices as reported on the NYSE Amex on April 25, 2012, or \$16.05.

(5) Pursuant to Rule 457(p) under the Securities Act of 1933, the registrant hereby offsets the registration fee required in connection with this registration statement by \$2,644.06, representing the amount of the registration fee associated with unsold securities, which registration fee was previously paid in connection with the filing of the Registration Statement on Form S-3 (File No. 333-175732) filed by the registrant on July 22, 2011, under which no securities were sold. Accordingly, a registration fee of \$1,150.98 is being paid in connection with this registration statement.

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 the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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

Subject to Completion, dated April 30, 2012

Prospectus

CPI AEROSTRUCTURES, INC.

**\$20,000,000
of Common Stock, Preferred Stock, Warrants, Debt Securities and Units
Offered by the Company**

and

**817,167 Shares
of Common Stock
Offered by Selling Shareholders**

By this prospectus, we may offer and sell from time to time, in one or more offerings, our common stock, preferred stock, warrants, debt securities and units, which we sometimes refer to collectively as the “shelf securities,” at an aggregate initial offering price not to exceed \$20,000,000. In addition, by this prospectus, selling shareholders may offer and sell from time to time, in one or more offerings, up to 817,167 shares of our common stock, which we sometimes refer to as the “resale shares.” The securities may be offered separately, together, or in series, and in amounts, at prices and on other terms to be determined at the time of each offering. We will provide the specific terms of the securities to be sold in a prospectus supplement.

We and the selling shareholders may sell the securities directly to investors, through agents designated from time to time, or to or through underwriters or dealers, among other methods. The prospectus supplement for each offering will describe the specific methods by which we and the selling shareholders will sell the securities. The prospectus supplement also will set forth the price to the public of such securities and the net proceeds we and the selling shareholders expect to receive from the sale of the securities. We will not receive any of the proceeds from the sale of

resale shares by the selling shareholders.

This prospectus may not be used to consummate the sale of any securities unless accompanied by a prospectus supplement relating to the securities to be sold. You should read this prospectus and any prospectus supplements carefully before you invest.

Our common stock is listed for trading on the NYSE Amex under the symbol "CVU." On April 25, 2012, the last reported sale price of our common stock was \$16.00.

Investing in our securities involves a high degree of risk. See the section entitled "Risk Factors" appearing on page 3 in this prospectus and elsewhere in any supplements for a discussion of information that should be considered in connection with an investment in our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2012

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You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted.

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission using a “shelf” registration process. Under this shelf process, we may, from time to time, sell or issue any combination of shelf securities in one or more offerings with a maximum aggregate offering price of up to \$20,000,000. The selling shareholders may, from time to time, offer and resell up to an aggregate of 817,167 resale shares.

This prospectus provides you with a general description of the shelf securities we may offer and the resale shares the selling shareholders may offer. Each time securities are sold by us or the selling shareholders, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement, together with the additional information described below under the heading “Where You Can Find More Information.”

This prospectus may not be used to consummate the sale of any securities unless accompanied by a prospectus supplement relating to the securities offered.

You should not assume that the information appearing in this prospectus is accurate as of any date other than the date on the front cover of this prospectus. You should not assume that the information contained in the documents incorporated by reference in this prospectus is accurate as of any date other than the respective dates of those documents. Our business, financial condition, results of operations, and prospects may have changed since that date.

References in this prospectus to “CPI Aer[®],” the “Company” and “we,” “us” and “our” refer to CPI Aerostructures, Inc., a New York corporation.

THE COMPANY

General

We are engaged in the contract production of structural aircraft parts principally for the U.S. Air Force and other branches of the U.S. armed forces, either as a prime contractor or as a subcontractor to other defense prime contractors. We also act as a subcontractor to prime aircraft manufacturers in the production of commercial aircraft parts. Our strategy for growth has been focused primarily as a subcontractor for defense prime contractors. Due to our success as a subcontractor to defense prime contractors we have pursued opportunities to increase our commercial

subcontracting business.

We were incorporated under the laws of the State of New York in January 1980 under the name Composite Products International, Inc. We changed our name to Consortium of Precision Industries, Inc. in April 1989 and to CPI Aerostructures, Inc. in July 1992. In January 2005, we began doing business under the name CPI Aero®, a registered trademark of the Company. Our principal office is located at 91 Heartland Blvd., Edgewood, New York 11717 and our telephone number is (631) 586-5200.

We maintain a website at www.cpiaero.com. Information contained on our website or accessed through our website does not constitute a part of this prospectus.

Overview of Our Business

As a subcontractor to leading defense prime contractors such as Northrop Grumman Corporation (“NGC”), The Boeing Company (“Boeing”), Lockheed Martin Corporation (“Lockheed”), Sikorsky Aircraft Corporation (“Sikorsky”) and Bell Helicopter, we deliver various pods and modular and structural assemblies for military aircraft such as the E-2D “Hawkeye” surveillance aircraft, UH-60 “Black Hawk” helicopter, the A-10 “Thunderbolt” attack jet, the MH-60S mine counter measure helicopter and the C-5A “Galaxy” cargo jet. Seventy seven percent (77%), 73% and 43% of our revenue in 2011, 2010 and 2009, respectively, was generated by subcontracts with defense prime contractors.

We also operate as a subcontractor to prime contractors, including Sikorsky and Spirit AeroSystems, Inc. (“Spirit”), in the production of commercial aircraft parts. For Spirit we deliver leading edges for the G650 executive jet. For Sikorsky, we deliver various kits and assemblies for the S-92 civilian helicopter. Fourteen percent (14%), 17% and 29% of our revenue in 2011, 2010 and 2009, respectively, was generated by commercial contract sales.

Additionally, we perform as a prime contractor supplying structural aircraft parts to the U.S. Government. In this role, we have delivered skin panels, leading edges, flight control surfaces, engine components, wing tips, cowl doors, nacelle assemblies and inlet assemblies for military aircraft such as the C-5A cargo jet, the T-38 “Talon” jet trainer, the C-130 “Hercules” cargo jet, the A-10 attack jet, and the E-3 “Sentry” AWACS jet. Nine percent (9%), 10% and 28% of our revenue in 2011, 2010 and 2009, respectively, was generated by prime government contract sales.

We have over 30 years of experience as a contractor, completing over 2,500 contracts to date. Most members of our management team have held management positions at large aerospace contractors, including NGC, Lockheed and The Fairchild Corporation. Our technical team possesses extensive technical expertise and program management and integration capabilities. Our competitive advantage lies in our ability to offer large contractor capabilities with the flexibility and responsiveness of a small company, while staying competitive in cost and delivering superior quality products. While the larger prime contractors compete for significant modification awards and subcontract components to other suppliers, they generally do not compete for awards for smaller modifications or spare and repair parts, even for planes for which they are the original manufacturer. We qualify as a “small business” in connection with U.S. government contract awards because we have less than 1,000 employees, and this allows us to compete for military awards set aside for companies with this small business status.

Significant Contracts

Some of our significant contracts are as follows:

Military Aircraft – Subcontracts with Prime Contractors

E-2D “Hawkeye”. The NGC E-2 Hawkeye is an all-weather, aircraft carrier-based tactical Airborne Early Warning (AEW) aircraft. The twin turboprop aircraft was designed and developed in the 1950s by Grumman for the United States Navy as a replacement for the E-1 Tracer. The United States Navy aircraft has been progressively updated with the latest variant, the E-2D, first flying in 2007. In 2008, we received an initial \$7.9-million order from NGC to provide structural kits for the E-2D. We value the long-term agreement at approximately \$98 million over an eight-year period, with the potential to be in excess of \$195 million over the life of the aircraft program. The cumulative orders we have received on this program through January 2012 exceed \$34 million.

A-10 “Thunderbolt”. The A-10 Thunderbolt II is a single-seat, twin-engine, straight-wing jet aircraft developed by Fairchild-Republic for the United States Air Force to provide close air support of ground forces by attacking tanks, armored vehicles, and other ground targets with a limited air interdiction capability. It is the first U.S. Air Force aircraft designed exclusively for close air support. The A-10's official name comes from the Republic P-47 Thunderbolt of World War II, a fighter that was particularly effective at close air support. The A-10 is more commonly known by its nickname "Warthog" or simply "Hog". In 2008, we received an initial order of \$3.2 million from the Boeing Integrated Defense Systems unit of The Boeing Company (“Boeing”) in support of its \$2 billion award to produce up to 242 enhanced wings for the A-10. The cumulative orders we have received on this program through January 2012 exceed \$47 million.

Commercial Aircraft – Subcontracts with Prime Contractors

Gulfstream G650. In March 2008, Spirit awarded us a contract to provide Spirit with leading edges for the Gulfstream G650 business jet, a commercial program that Spirit is supporting. During 2009, we renegotiated the unit pricing for add-on work, engineering changes and tooling charges with Spirit for this multi-year contract. As a result of this renegotiation, we estimate the value of this contract to be approximately \$46.9 million. In addition, the tooling portion of this contract of approximately \$5.6 million was paid in four installments through July 2011. The cumulative orders we have received on this program through January 2012 exceed \$41 million.

Military Aircraft – Prime Contracts with U.S. Government

C-5A “Galaxy”. The C-5A Galaxy cargo jet is one of the largest aircraft in the world and can carry a maximum cargo load of 270,000 pounds. Lockheed delivered the first C-5A in 1970. The C-5A Galaxy carries fully equipped combat-ready military units to any point in the world on short notice and then provides field support to sustain the fighting force. The Air Force has created a comprehensive program to ensure the capabilities of its C-5A fleet until 2040. We are one of the leading suppliers of structural spare parts and assemblies for the C-5A aircraft. We assemble numerous C-5A parts, including panels, slats, spoilers and wing-tips and are the only supplier of C-5A wing-tips to the U.S. government. Like the C-5A itself, the wing-tip is a large structure and is expensive – costing up to \$750,000 for each replacement piece. Our first C-5A contract was approximately \$590,000 of structural spares and was awarded in 1995. In 2004, the Air Force awarded us a seven-year TOP contract to build an assortment of parts for the C-5A, including wing tips and panels. The ordering period for the C-5 TOP contract ended in May of 2011. Since 1995, we have received releases under contracts for C-5A parts aggregating approximately \$103 million, including \$45.5 million from the TOP contract.

RISK FACTORS

Any investment in our securities involves a high degree of risk. Potential investors are urged to read and consider the risk factors relating to an investment in our company set forth in our SEC filings, including our Annual Report on Form 10-K for the year ended December 31, 2011.

NOTE ON FORWARD-LOOKING STATEMENTS

Some of the statements contained in this prospectus and incorporated by reference herein are forward-looking statements that relate to possible future events, our future performance and our future operations. In some cases, you can identify these forward-looking statements by the use of words such as “may,” “will,” “should,” “anticipates,” “believes,” “expects,” “plans,” “future,” “intends,” “could,” “estimate,” “predict,” “potential,” “continue,” or the negative of these terms or

similar expressions. These statements are only our predictions. We cannot guarantee future results, levels of activities, performance or achievements. Our actual results could differ materially from these forward-looking statements for many reasons, including as a result of those risks described from time to time in our SEC filings and those risks identified under sections entitled "Risk Factors" in any prospectus supplement. Important factors, among others, that may affect our actual results include:

- changes in the expense and revenue estimates used in our percentage-of-completion method of accounting;
- any suspension of or prohibition on our contracting with the Federal government;
- changes in Federal funding that affect our projects;
- changes in priorities in the Federal government due to military transformation and planning and/or the nature of war-related activity;

the ability of the Federal government to terminate contracts, in whole or in part, without prior notice, for convenience;

- the time and expense of the Federal government's competitive bidding process;

- environmental regulation at the Federal, state and local levels;

regulation by the Federal Aviation Administration under the provisions of the Federal Aviation Act of 1958, as amended;

- reliance on subcontractors to perform a portion of the services that we must provide to our customers;

- increased costs on our fixed price contracts;

- differences between contract value and revenue received with respect to our backlog;

- our ability to attract and retain highly qualified senior officers and engineers;

- our ability to obtain sufficient credit lines;

- the cyclical nature of the commercial aerospace industry; and

- the unpredictable nature of new programs and new technologies.

We are under no duty to update or revise any of the forward-looking statements or risk factors to conform them to actual results or to changes in our expectations.

USE OF PROCEEDS

Unless otherwise indicated in the applicable prospectus supplement, we intend to use the net proceeds from the sale of shelf securities offered hereby for general corporate purposes, which may include working capital, capital expenditures, debt repayment or acquisitions. Pending the application of such proceeds, we expect to invest the proceeds in short-term, interest bearing, investment-grade marketable securities or money market obligations.

We will not receive any of the proceeds from the sale of resale shares by the selling shareholders.

RATIO OF EARNINGS TO FIXED CHARGES

The table below sets forth our ratio of earnings to fixed charges on a historical basis for the periods indicated. The information set forth in the table should be read in conjunction with the financial information incorporated by reference into this prospectus.

	For the Fiscal Year Ended December 31,				
	2011	2010	2009	2008	2007
Total earnings	\$11,231,321	\$811,435	\$6,242,556	\$4,030,707	\$3,199,573
Fixed charges	\$692,393	\$268,539	\$381,549	\$177,094	\$182,677
Ratio of earnings to fixed charges	16.22	3.02	16.36	22.76	17.51

The ratios are calculated by dividing earnings by fixed charges. For the purposes of computing the ratio of earnings to fixed charges, earnings consist of pretax income from continuing operations plus fixed charges. Fixed charges consist of interest expensed and the interest element of rentals.

We had no shares of preferred stock outstanding for any period presented.

SELLING SHAREHOLDERS

The selling shareholders may sell a total of up to 817,167 shares of our common stock, the “resale shares,” under this prospectus.

The selling shareholders include our executive officers and directors and an affiliate of one of our directors (Crescendo Partners II, L.P. Series L (“Crescendo Partners II”). The selling shareholders (other than Crescendo Partners II) acquired their resale shares from time to time in connection with awards under our equity incentive plans and in open market purchases. Crescendo Partners II acquired its resale shares in our public offering consummated on February 19, 2003. When we refer to “selling shareholders” in this prospectus, we mean the individuals listed in the table below, and the pledgees, donees, permitted transferees, assignees, successors and others who later come to hold any of the selling shareholders’ interests in shares of our common stock other than through a public sale.

The following table sets forth, as of the date of this prospectus, the name of the selling shareholders for whom we are registering shares for resale to the public, the number of shares beneficially owned by them prior to this offering, the number of shares that the selling shareholders may offer pursuant to this prospectus and the number of shares and percentage of outstanding shares of common stock to be beneficially owned by them after this offering. The table is based on information provided to us by the selling shareholders. It assumes that the selling shareholders will sell all of the resale shares offered by this prospectus and will not acquire any additional shares of our common stock during the offering. We cannot advise you as to whether the selling shareholders will in fact sell any or all of such shares. In addition, the selling shareholders may have sold, transferred or otherwise disposed of, or may sell, transfer or otherwise dispose of, at any time and from time to time, the resale shares in transactions exempt from the registration requirements of the Securities Act after the date of this prospectus.

The percentage of common stock owned after the offering by each selling shareholder was calculated based on 7,007,719 shares of our common stock outstanding as of April 25, 2012.

Name of Selling Shareholder	Number of Shares of Common Stock Owned Prior to the Offering	Number of Shares of Common Stock Offered in the Offering	Number of Shares of Common Stock Owned After the Offering*	Percentage of Common Stock Owned After the Offering	
Harvey J. Bazaar(1)	137,689	25,000	112,689	1.6	%
Edward J. Fred(2)	371,339	200,000	171,339	2.4	%
Douglas McCrosson(3)	78,209	50,000	28,209	0.4	%
Kenneth McSweeney(4)	79,949	10,000	69,949	1.0	%

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Vincent Palazzolo(5)	91,995	25,000	66,995	1.0	%
Walter Paulick(6)	66,319	5,000	61,319	0.9	%
Eric Rosenfeld(7)	277,548	60,500	217,048	3.0	%
Crescendo Partners II, L.P. Series L(8)	883,334	441,667	441,667	6.3	%

* Assumes that the selling shareholders will sell all of the resale shares offered by this prospectus. There is no assurance that the selling shareholders will sell all or any of their shares.

Mr. Bazaar is a member of our board of directors. The number of shares of common stock beneficially owned by (1) Mr. Bazaar prior to the offering includes 112,689 common shares that Mr. Bazaar has the right to acquire upon exercise of options. Mr. Bazaar is offering 25,000 shares previously acquired upon the exercise of options.

Mr. Fred is our chief executive officer and president and a member of our board of directors. The number of shares of common stock beneficially owned by Mr. Fred prior to the offering includes 100,000 common shares that Mr. Fred has the right to acquire upon exercise of options. Mr. Fred is offering 189,136 shares previously acquired upon the exercise of options and 10,864 shares granted to him under our equity incentive plans as part of his annual bonus.

Mr. McCrosson is our chief operating officer. The number of shares of common stock beneficially owned by Mr. McCrosson prior to the offering includes 75,000 common shares that Mr. McCrosson has the right to acquire upon exercise of options. Mr. McCrosson is offering 50,000 of the shares subject to options.

Mr. McSweeney is a member of our board of directors. The number of shares of common stock beneficially owned by Mr. McSweeney prior to the offering includes 45,640 common shares that Mr. McSweeney has the right to acquire upon exercise of options. Mr. McSweeney is offering 10,000 shares previously acquired upon the exercise of options.

Mr. Palazzolo is our chief financial officer. The number of shares of common stock beneficially owned by Mr. Palazzolo prior to the offering includes 75,000 common shares that Mr. Palazzolo has the right to acquire upon exercise of options. Mr. Palazzolo is offering 10,000 of the shares subject to options, 12,500 shares granted to him under our equity incentive plans as part of his annual bonus, and 2,500 shares acquired in open market purchases.

Mr. Paulick is a member of our board of directors. The number of shares of common stock beneficially owned by Mr. Paulick prior to the offering includes 45,640 common shares that Mr. Paulick has the right to acquire upon exercise of options. Mr. Paulick is offering 5,000 shares previously acquired upon the exercise of options.

Mr. Rosenfeld is our chairman of the board. The number of shares of common stock beneficially owned by Mr. Rosenfeld prior to the offering represents (a) 75,000 common shares owned individually, (b) 46,000 common shares owned as joint tenants by Mr. Rosenfeld and his wife, and (c) 156,548 common shares that Mr. Rosenfeld has the right to acquire upon exercise of options. Mr. Rosenfeld is offering all 46,000 shares owned as joint tenants by Mr. Rosenfeld and his wife, which were acquired by them in open market purchases, and 14,500 shares owned by Mr. Rosenfeld individually, which were previously acquired by him upon the exercise of options. Mr. Rosenfeld is the senior managing member of the sole general partner of Crescendo Partners II. Mr. Rosenfeld disclaims beneficial ownership of the shares held by Crescendo Partners II, except to the extent of his pecuniary interest therein.

Crescendo Partners II may be deemed to be controlled by Eric Rosenfeld, our chairman of the board.

DESCRIPTION OF CAPITAL STOCK

The following description of the material terms our common stock and preferred stock is subject to and qualified in its entirety by reference to our amended articles of incorporation, bylaws and the New York Business Corporation Law. We urge you to read our amended articles of incorporation and bylaws, which are incorporated by reference as exhibits to the registration statement of which this prospectus forms a part, and the applicable provisions of the New York Business Corporation Law (“NYBCL”). For information on how to obtain copies of our amended articles of incorporation and bylaws, see “Where You Can Find Additional Information.”

Common Stock

We are authorized to issue up to 50,000,000 shares of common stock, par value \$0.001 per share. As of April 25, 2012 there were 7,007,719 shares of our common stock outstanding. In addition, as of such date, there were 680,517 shares of common stock subject to outstanding stock options. Holders of our common stock are entitled to one vote per share on all matters submitted to a vote of shareholders and may not cumulate votes for the election of directors. Common shareholders have the right to receive dividends when, as, and if declared by the board of directors from funds legally available therefor. In the event of our liquidation, dissolution or winding up, holders of our common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preferences of any outstanding shares of preferred stock. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. There are no sinking fund provisions applicable to the common stock. When the applicable consideration has been paid in accordance with the NYBCL, shares of our common stock are nonassessable. Our common stock is subject to the express terms of our preferred stock and any series thereof.

Preferred Stock

We are authorized to issue up to 5,000,000 shares of preferred stock, par value \$.001 per share. As of April 25, 2012, there were no preferred shares issued or outstanding. If issued, the shares of preferred stock will have such rights and preferences as our board of directors will determine, from time to time. The issuance of preferred stock, while providing desirable flexibility in connection with possible acquisition and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or discourage a third party from acquiring, a majority of our outstanding common stock. Our board of directors may issue preferred stock with voting and conversion rights that could adversely affect the voting power of the holders of our common stock or holders of other series of preferred stock. The shares of preferred stock will be issued in series under certificates of amendment to be adopted by our board of directors. The following outlines some of the general terms and provisions of the series of preferred stock that we may issue from time to time. Additional or different terms of the series of preferred stock and the applicable certificate of amendment will be set forth in the applicable prospectus supplement.

We will file as an exhibit to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of any certificate of amendment that describes the terms of the series of preferred stock we are offering before the issuance of that series of preferred stock. The following summaries of material provisions of the preferred stock are subject to, and qualified in their entirety by reference to, all of the provisions of the certificate of amendment applicable to a particular series of preferred stock. We urge you to read the applicable prospectus supplements, as well as the complete certificate of amendment that contains the terms of the series of preferred stock.

The prospectus supplement relating to a particular series of preferred stock will describe the terms of that series of preferred stock and the price or prices at which we will offer the shares of that series of preferred stock. The description may include:

the title of the series of preferred stock and the number of shares offered;

the price at which the preferred stock will be issued;

the dividend rate, if any, the dates on which the dividends will be payable and other terms relating to the payment of dividends on the preferred stock;

the voting rights of the preferred stock;

whether the preferred stock is redeemable or subject to a sinking fund, and the terms of any such redemption or sinking fund;

whether the preferred stock is convertible into any other securities, and the terms and conditions of any such conversion;

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the liquidation preference of the preferred stock;

whether the holders of the preferred stock have any preemptive rights;

the relative ranking and preferences of the preferred stock as to dividend or other distribution rights and rights if we liquidate, dissolve or wind up our affairs;

any limitations on issuance of any series of preferred stock ranking senior to or on a parity with the series of preferred stock being offered as to distribution rights and rights upon the liquidation, dissolution or winding up of our affairs, and any limitations on the repurchase or redemption of, or distributions to, any shares of any class of capital stock;

whether the terms of the preferred stock may be modified other than by the vote of a majority of the preferred stock, voting as a class; and

any additional rights, preferences and limitations of the preferred stock.

When issued and the applicable consideration has been paid in accordance with the NYBCL, shares of our preferred stock will be nonassessable.

Provisions of New York Law and Our Charter and Bylaws

Certain provisions of New York law and of our charter and bylaws could make our acquisition by a third party, a change in our incumbent management, or a similar change of control more difficult. The provisions described below, and the board of directors' right to issue shares of our preferred stock from time to time in one or more classes or series without shareholder approval, as described above, may discourage certain types of coercive takeover practices and inadequate takeover bids and encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that these provisions help to protect our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us, and that this benefit outweighs the potential disadvantages of discouraging such a proposal because our ability to negotiate with the proponent could result in an improvement of the terms of the proposal.

Directors. Our board of directors is divided into three classes. The members of each class are elected for a term of three years and only one class of directors is elected annually. Thus, it would take at least two annual elections to replace a majority of our board of directors. Nominations for our board of directors may be made by our board or, in certain situations, by any holder of common stock. A shareholder entitled to vote for the election of directors may nominate a person for election as director only if the shareholder provides written notice of his nomination to our secretary not later than 120 days in advance of the same day and month that our proxy statement was released to shareholders in connection with the previous year's annual meeting of shareholders or, if no annual meeting was held

in the previous year, then by the end of the fiscal year to which the annual meeting in which the nomination will be made relates.

Meetings. A special meeting of our shareholders may be called only by our board of directors or our chairman of the board, if one has been elected, or our president. Any action required or permitted to be taken by a vote of our shareholders may be taken without a meeting by written consent, except that such written consent must be signed by the holders of all of the shares entitled to vote thereon.

New York anti-takeover law. We are subject to certain “business combination” provisions of Section 912 of the NYBCL and expect to continue to be so subject if and for so long as we have a class of securities registered under Section 12 of the Exchange Act. Section 912 provides, with certain exceptions, that a New York corporation may not engage in a “business combination” (e.g., merger, consolidation, recapitalization or disposition of stock) with any “interested shareholder” for a period of five years from the date that such person first became an interested shareholder unless the business combination or the transaction resulting in a person becoming an interested shareholder was approved by the board of directors of the corporation prior to that person becoming an interested shareholder. Furthermore, no New York corporation may engage at any time in any business combination with an interested shareholder other than (i) a business combination that is approved by the board of directors of the corporation prior to that person becoming an interested shareholder, or where the transaction resulting in a person becoming an interested shareholder was approved by the board of directors of the corporation prior to that person becoming an interested shareholder; (ii) a business combination that is approved by a majority of the outstanding stock not held by the interested shareholder or an affiliate of the interested stockholder at a meeting called no earlier than five years after the interested shareholder’s stock acquisition date; or (iii) the business combination that meets certain valuation requirements for the consideration paid.

An “interested shareholder” is defined as any person who (a) is the beneficial owner of 20% or more of the outstanding voting stock of a New York corporation or (b) is an affiliate or associate of a corporation that at any time during the prior five years was the beneficial owner, directly or indirectly, of 20% or more of the then outstanding voting stock. A “business combination” includes mergers, asset sales and other transactions resulting in a financial benefit to the interested shareholder. The “stock acquisition date,” with respect to any person and any New York corporation, means the date that such person first becomes an interested shareholder of such corporation.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC, 6201 15th Avenue, Brooklyn, New York 11219, and can be reached at (800) 937-5449. The transfer agent and registrar for any series of preferred stock will be set forth in the applicable prospectus supplement.

DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of common or preferred stock or any of the other securities that may be sold under this prospectus, or any combination of these securities. Warrants may be issued independently or together with other securities and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between a warrant agent and us. The warrant agent will act solely as our agent in connection with the warrants and will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. The following outlines some of the general terms and provisions of the warrants that we may issue from time to time. Additional or different terms of the warrants and the applicable warrant agreement will be set forth in the applicable prospectus supplement.

We will file as an exhibit to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of warrant agreement that describes the terms of the series of warrants we are offering before the issuance of those warrants. The following summaries of material provisions of the warrants are subject to, and qualified in their entirety by reference to, all of the provisions of the warrant agreement applicable to a particular series of warrants. We urge you to read the applicable prospectus supplements, as well as the complete warrant agreement that contains the terms of the series of warrants.

General

The prospectus supplement relating to a particular issue of warrants will describe the terms of those warrants and the price or prices at which will offer the warrants. The description may include:

· the title of the warrants;

· the offering price for the warrants, if any;

· the aggregate number of the warrants;

- the designation and/or terms of the securities purchasable upon exercise of the warrants;

if applicable, the designation and/or terms of the securities that the warrants are issued with and the number of warrants issued with each security;

if applicable, the date from and after which the warrants and any securities issued with the warrants will be separately transferable;

- the amount and price of securities that may be purchased upon exercise of a warrant;

- the dates on which the right to exercise the warrants commence and expire;

- if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;