BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of METATRON, INC. For Review of Action Taken by FINRA	Admin. Proc. File No. 3-18567

APPLICANT'S BRIEF IN RESPONSE TO THE COMMISSION'S ORDER REQUESTING ADDITIONAL BRIEFING

BAKER & HOSTETLER LLP
Randolf W. Katz, Esq.
600 Anton Boulevard, Suite 900
Costa Mesa, California 92626
Telephone: 714.966.8807
rwkatz@bakerlaw.com

Alissa K. Lugo, Esq.
200 South Orange Avenue, Suite 2300
Orlando, Florida 32801
Telephone: 407.649.4015
alugo@bakerlaw.com

Attorneys for Applicant / Appellant

June 26, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES[1]

Page(s)

Securities and Exchange Commission – Decisions

Federal Statutes

Securities and Exchange Commission – Rules and Regulations

FINRA Rules

[1] All of the authorities listed are attached hereto as exhibits.

Securities and Exchange Commission – Releases

EDGAR Filings

Other Authorities

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INTRODUCTION

Pursuant to the Securities and Exchange Commission's ("Commission") Order Requesting Additional Briefing ("Order"), Metatron, Inc. ("Company"), hereby submits this brief in further support of its application for review by the Commission of the decision of a subcommittee of the Financial Industry Regulatory Authority, Inc.'s ("FINRA") Uniform Practice Code Committee ("Subcommittee"). The Subcommittee's decision affirmed the Department of Operations' ("Department") denial of the Company's requested corporate action pursuant to FINRA Rule 6490(d)(3)(2), which, according to the Department, mandates that the Company be current in its reporting requirements to the Commission. The Department alleged that, because of the Company's failure to file 12 consecutive Annual and Quarterly Reports between March 2006 and December 2008 ("2006-2008 Reports"), it remained not current in those reporting requirements, thus, forming the basis for the Department's deficiency determination ("Deficiency Determination").[2]

[2] The 12 periodic Annual and Quarterly Reports are: (1) Form 10-K for the fiscal year ending March 31, 2006; (2,3,4) Form 10-Qs for the quarters ending June 30, September 30, and December 31, 2006; (5) Form 10-K for the fiscal year ending March 31, 2007; (6,7,8) Form 10-Qs for the quarters ending June 30, September 30, and December 31, 2007;

To date, the parties have focused on whether the Company has reporting obligations with respect to the 2006-2008 Reports because it registered its common stock pursuant to Section 12(g) ("Section 12(g)") of the Securities Exchange Act of 1934, as amended ("Exchange Act"), despite the Company terminating that registration by subsequently filing a Form 15 in April 2009 ("Form 15"). In its Order, the Commission requested additional briefing to discuss whether the Company had reporting obligations pursuant to Section 15(d) ("Section 15(d)") of the Exchange Act at the time that FINRA denied its request to process and approve the reverse stock split ("FINRA Denial"). For the reasons set forth herein, the Company contends that it did not have any reporting obligations pursuant to Sections 12(g) or 15(d) at the time of the FINRA Denial, nor should it be deemed to have triggered any Section 15(d) reporting obligations upon filing the Form 15. Therefore, the Commission should reverse the Deficiency Determination and order FINRA to process the Company's corporate action promptly.

FACTUAL BACKGROUND

I. Relevant Corporate History

In March 2002, the Company filed a Form 10-SB (General Form for Registration of Securities Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934) ("Form 10-SB") with the Commission to register its common stock pursuant to Section 12(g). RP 000001, 004619.[3] From March 2002 until April 2009, when the Company filed the Form 15 to deregister its common stock, the Company was a fully reporting issuer. 15 U.S.C. § 78l (2019); RP 004619-004620.

(9) Form 10-K for the fiscal year ending March 31, 2008; (10,11,12) Form 10-Qs for the quarters ending June 30, September 30, and December 31, 2008.

[3] "RP" refers to the page number in the certified record FINRA filed with the Commission on July 12, 2018, as corrected on August 2, 2018.

In January 2004, while a fully reporting issuer, the Company filed a Registration Statement on Form S-8 ("Initial S-8") to register 3,000,000 shares of common stock that were subject to its 2004 Non-Qualified Stock Option Plan. See Initial S-8, https://www.sec.gov/Archives/edgar/data/1168375/000089706904000106/dkm41.txt; see generally Helpeo, Inc., Exchange Act Release No. 82551, 2008 WL 487320, at *4 n.37 (Jan. 19, 2018) (taking official notice under Rule 323 of EDGAR filings). In February 2004, the Company filed Post-Effective Amendment No. 1 to the Initial S-8 ("Amended S-8"; and, together with the Initial S-8, "S-8") for the Company's Amended and Restated 2004 Non-Qualified Stock Option Plan ("Plan"). See Amended S-8, https://www.sec.gov/Archives/edgar/data/1168375/000089706904000512/dkm110.txt.

The Company filed the Form 15 with the Commission to terminate its Section 12(g) registration of its common stock and its status as a Section 12(g) reporting issuer based upon Rule 12g-4(a)(1) because it had fewer than 300 stockholders. 17 C.F.R. § 240.12g-4 (2019); RP 004619-004620. Shortly thereafter, the Company adopted and, since that date, has been following the Alternative Reporting Standards ("Standards") of the OTC Markets Group Inc. ("OTCM"). RP 004622. The Company's common stock is quoted on the OTCM's "OTC Pink" tier.

II. 2018 Reverse Stock Split

In February 2018, the Company requested that the Department approve its proposed 1:57 reverse stock split ("2018 Split"). RP 000001, 000143-000148. In April 2018, the Department advised the Company that its request was deficient pursuant to FINRA Rule 6490(d) because of its failure to file the 2006-2008 Reports. RP 004601-004606; FINRA Rule 6490(d).

The Company timely appealed the Deficiency Determination. RP 004617-004626. In June 2018, the Subcommittee affirmed the Deficiency Determination and stated that, based on the record, the Department should not process the Company's proposed 2018 Split because it had failed to "provide

information that would have allowed investors to make better-informed decisions about buying, selling, or holding the Company's stock." RP 004747, 004756.

In June 2018, the Company filed an Application for Review of FINRA Action with the Commission to appeal the Subcommittee's decision. RP 004759-004764. The Company filed its Opening Brief in September 2018 ("Opening Brief"). FINRA filed its Opposition Brief in October 2018. The Company filed its Reply Brief in October 2018 ("Reply Brief"). The Commission issued the Order in June 2019.

STATUTORY BACKGROUND

I. There are multiple ways in which an issuer can become subject to the reporting obligations of the Exchange Act.

There are numerous ways in which an issuer can become subject to the reporting obligations of the Exchange Act. First, an issuer filing a registration statement pursuant to the Securities Act of 1933, as amended ("Securities Act"), that is declared effective becomes subject to Section 15(d) reporting obligations. 15 U.S.C. § 78o(d) (2019). Second, an issuer, other than a bank or bank holding company, becomes subject to Section 12(g) reporting obligations based on certain size thresholds. See 15 U.S.C. § 78l(g)(1) (2019). Finally, an issuer must register the class of its securities that is listed on a national securities exchange pursuant to Section 12(b) of the Exchange Act ("Section 12(b)"). 15 U.S.C. § 78l(a) (2019). Separately, an issuer may voluntarily register a class of equity securities pursuant to Section 12(g). 15 U.S.C. § 78l(g)(1) (2019).

It is possible for an issuer to be subject to more than one section of the Exchange Act. However, an issuer may only register and report under one provision of the Exchange Act. Section 12 of the Exchange Act takes precedence over Section 15(d) because Section 15(d) provides that an issuer's Section 15(d) reporting obligations are suspended if the issuer has registered a class of securities under Section 12. 15 U.S.C. § 78o(d)(1) (2019). Section 12(b) takes precedence over Section 12(g). Section

12(g)(2)(A) provides that registration of a security pursuant to Section 12(g) is not required if that security is registered under Section 12(b). 15 U.S.C. § 78l(g)(2)(A) (2019).

II. Once subject to the Exchange Act reporting obligations, an issuer can terminate or suspend these obligations.

An issuer can terminate or suspend its Exchange Act reporting obligations by following several steps, depending on how it became subject to the obligations. An issuer with a security registered under Section 12(b) cannot deregister under the Exchange Act unless and until the securities exchange files a Form 25 with the Commission to delist the security. 17 C.F.R. § 240.12d2-2 (2019). If an issuer has a class of securities registered under Section 12(g), it can file a Form 15 with the Commission, which provides a certification and notice of termination of registration under Rule 12(g). 17 C.F.R. § 240.12g-4 (2019). An issuer, other than a bank or bank holding company, with a class of equity securities registered under Section 12(g) may terminate that registration pursuant to Rule 12g-4 if: (i) the number of record holders of that class is less than 300 or (ii) the number of record holders of that class is less than 500 and the issuer's assets at the end of each of its last three fiscal years were less than $10 million. Id.

In contrast to Sections 12(b) and 12(g), an issuer can only suspend, not terminate, its Section 15(d) reporting obligations. See 15 U.S.C. § 78o(d)(1) (2019); 17 C.F.R. § 240.15d-6 (2019); 17 C.F.R. § 240.12h-3 (2019). Section 15(d) provides that the duty to report is *automatically* suspended for any fiscal year, other than the year in which a Securities Act registration statement became effective, if, at the beginning of that fiscal year, the class of securities that initially triggered the Section 15(d) reporting obligations is held by fewer than 300 record holders. 15 U.S.C. § 78o(d)(1) (2019). An issuer can also suspend its Section 15(d) reporting obligations pursuant to Rule 12h-3 ("Rule 12h-3") if certain conditions are met. 17 C.F.R. § 240.12h-3 (2019).

ARGUMENT

The Company submits that, even if it triggered Section 15(d) reporting obligations by filing the Form 15 to terminate its Section 12(g) obligations, it should not be deemed to have any Section 15(d) reporting obligations (and certainly none after March 31, 2006 – the end of the fiscal year in which the S-8 automatically became effective due to the incorporation of the Company's last Annual Report) because the proposed S-8 offering was never consummated; thus, there were no investors that needed the protections afforded by Section 15(d). Even without any Sections 12(g) or 15(d) reporting obligations, the Company still maintains that it is current in its disclosure pursuant to the OTCM Standards and that this is dispositive in determining whether the FINRA Denial is proper pursuant to FINRA Rule 6490(d)(3)(2). Accordingly, for the reasons set forth herein, as well as in the Company's Opening Brief and Reply Brief, the Commission should reverse the Deficiency Determination.

I. The Company was subject to Section 12(g) from 2002 to 2009; however, filing the Form 15 in 2009 immediately terminated any Section 12(g) reporting obligations.

The Company filed the Form 10-SB in March 2002 to register its class of common stock pursuant to Section 12(g). RP 000001, 004619. In April 2009, the Company filed the Form 15 with the Commission pursuant to Exchange Act Section 12g-4(a)(1) because it had fewer than 300 stockholders of record. RP 004619-004620; 17 C.F.R. § 12g-4(a)(1) (2019). The filing of the Form 15 immediately suspended its Section 12(g) reporting obligations. 17 C.F.R. § 240.12g-4 (2019). Accordingly, the Company had not had any Section 12(g) reporting obligations for nine years at the time it filed its corporate action request with the Department and had been current in its disclosure under the OTCM Standards during that entire period.

II. The termination of the Company's registration under Section 12(g) may have triggered Section 15(d) reporting obligations; however, there are no public policy

reasons for interpreting Section 15(d) in a manner that would subject the Company to these reporting obligations.

An issuer filing any registration statement pursuant to the Securities Act that becomes effective incurs Section 15(d) reporting obligations, which subject the issuer to the same reporting requirements applicable to an issuer with a class of securities registered under Exchange Act Section 12. 15 U.S.C. § 78o(d) (2019).

The Company filed the Initial S-8 in January 2004 and the Amended S-8 in February 2004 for the purpose of registering 3,000,000 shares of common stock issuable by the Company under the terms of the Plan. See Initial S-8; see also Amended S-8. The Initial S-8 and the Amended S-8 each became effective upon filing. 17 C.F.R. § 230.462 (2019). Thus, after the Company terminated its Section 12(g) reporting obligations, it may have triggered Section 15(d) reporting obligations, which had been suspended while it was subject to Section 12(g). See 15 U.S.C. § 78o(d)(1) (2019).

A. The Company acknowledges that it did not meet the statutory requirements for suspending Section 15(d) reporting obligations at the time of its request for the Department to process the 2018 Split.

Section 15(d) provides for the automatic suspension of reporting obligations for any fiscal year other than the year in which a Securities Act registration statement became effective if, at the beginning of that fiscal year, the class of securities that initially triggered the Section 15(d) reporting requirement was held by fewer than 300 record holders. 15 U.S.C. § 78o(d)(1) (2019). Based upon a review of the Company's filings with the OTCM, the Company had more than 300 record holders of its common stock at the end of its 2017 fiscal year. See Metatron, Inc., OTC Disclosure & News, https://www.otcmarkets.com/stock/MRNJ/disclosure (last visited June 25, 2019). The Company acknowledges that, other than fiscal year 2009, the Company had more than 300 record holders of its common stock and, therefore, could not rely on an automatic statutory suspension of any Section 15(d) reporting obligations.

Despite not qualifying for an automatic statutory suspension of the Company's Section 15(d) reporting obligations, the Company asserts that, based on the absence of certain public policy reasons, it should not be deemed to have had any Section 15(d) reporting obligations at the time it requested the Department to process the 2018 Split, as discussed below.

B. The Company further acknowledges that it cannot avail itself of Rule 12h-3 to suspend any Section 15(d) reporting obligations.

Rule 12h-3 permits an issuer to suspend its Section 15(d) reporting obligations if, at any time, the issuer (i) is current in its Exchange Act reporting obligations; (ii) has (1) fewer than 300 record holders of the class of securities offered under the Securities Act registration statement or (2) fewer than 500 record holders and its assets that have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years; and (iii) has not had a Securities Act registration statement relating to that class of securities become effective in the fiscal year for which the issuer seeks to suspend reporting, or has not had a registration statement that was required to be updated by Securities Act Section 10(a)(3) during the fiscal year for which the issuer seeks to suspend reporting and, if the issuer is relying on the fewer than 500 record holders and $10 million in assets threshold, during the two preceding fiscal years. 17 C.F.R. § 240.12h-3 (2019). In order to rely on Rule 12h-3, the issuer must file a Form 15. See Compliance and Disclosure Interpretations, Sept. 30, 2008, Question 153.03, available at https://www.sec.gov/divisions/corpfin/guidance/exchangeactrules-interps.htm.

In 2010, the Commission issued Staff Legal Bulletin No. 18 ("Bulletin") to provide "blanket" relief for issuers seeking to rely on Rule 12h-3 to avoid filing periodic reports that otherwise would be due after an issuer is acquired, or where an initial public offering ("IPO") is abandoned. See Staff Legal Bulletin No. 18, Fed. Sec. L. Rep. (CCH) ¶ 60,018 (Mar. 15, 2010), available at http://www.sec.gov/interprs/legal/cfslb18.htm. This relief is necessary in situations in which any Securities Act registration statement became effective or had been updated, either automatically by incorporation by reference of an Annual Report, or otherwise, or was required to be updated prior to

the suspension of reporting obligations under Section 15(d). See Scott Lesmes, Frequently Asked Questions About Suspending/Terminating Reporting Obligations, MORRISON FOERSTER, https://media2.mofo.com/documents/faq-suspending-reporting-obligations.pdf (last visited June 25, 2019). Rule 12h-3(c) disallows suspension of an issuer's Section 15(d) obligation for the remainder of the fiscal year in which any of its Securities Act registration statements went effective or were required to be updated in accordance with Securities Act Section 10(a)(3). Id. Thus, outstanding registration statements can create a challenge for an issuer seeking to suspend its Section 15(d) reporting obligations.

To rely on the Commission's position in the Bulletin and file a Form 15 in reliance on Rule 12h-3, an issuer: (i) can no longer have a class of securities registered under Section 12; (ii) must comply with the other requirements of Rule 12h-3; (iii) must have deregistered any unsold securities under Securities Act registration statements and/or withdrawn any registration statements if there were no sales; and (iv) must not otherwise file Exchange Act reports during the time period in which the issuer wants to rely on Rule 12h-3 to suspend the Section 15(d) reporting obligations – in other words, such issuer cannot voluntarily file reports. See Staff Legal Bulletin No. 18, Fed. Sec. L. Rep. (CCH) ¶ 60,018 (Mar. 15, 2010).

The Company does not currently meet, and, in 2009 (the time it filed the Form 15) did not meet, the requirements to rely on either Rule 12h-3 or the Bulletin. In 2009, (the time it filed the Form 15) the Company's former management had failed to file the 2006-2008 Reports; thus, Rule 12h-3 would have been unavailable to suspend any Section 15(d) reporting obligations that may have been triggered once the Section 12(g) reporting obligations ceased. Further, the only fiscal year in which the Company had fewer than 300 record holders was 2009. If the Company could not rely on Rule 12h-3 to suspend its reporting obligations, then the only year in which the Company could statutorily suspend any Section 15(d) reporting obligations would have been 2009.

III. Despite not qualifying for either the statutory requirements of Section 15(d) or Rule 12h-3, the Company urges the Commission to find that it did not trigger any Section 15(d) reporting obligations upon filing the Form 15 or does not have any continuing Section 15(d) reporting obligations.

In 1964, Congress adopted certain amendments to the Securities Act, including adopting Section 15(d). See Pub. L. No. 467, 88th Cong. 2d Sess. (Aug. 20, 1964); see also Summary of the Securities Act Amendments of 1964, Securities Act Release No. 33-4725, 1964 WL 67875 (Sept. 15, 1964). The Commission cited certain policy concerns with respect to investors purchasing securities in a registered offering. The main objective of the amendments was "to afford investors in publicly-held companies whose securities are traded over-the-counter the same fundamental disclosure protections as have been provided to investors in companies whose securities are listed on an exchange" and ensure that investors had the benefit of continued disclosure, even if the issuer is not registered under the Exchange Act. See Summary of the Securities Act Amendments of 1964, 1964 WL 67875, at *1. Section 15(d) ensures that the filing of a Securities Act registration statement that becomes effective subjects that issuer to reporting obligations that mirror Section 12 reporting obligations in order to protect investors purchasing securities in the registered offering.

The Company believes that situations in which the Commission has granted no-action relief for issuers that had failed IPOs are persuasive for this case of first impression. For example, Synetics Solutions, Inc. ("Synetics") requested no-action relief and asked the Commission to find that the effectiveness of a registration statement during the fiscal year did not preclude it from utilizing Rule 12h-3. See Synetics Sols., Inc., SEC No-Action Letter, 2004 WL 7212164 (Oct. 15, 2004). Synetics filed a registration statement on Form S-1 for an IPO, as well as a registration statement on Form 8-A to register its common stock under Section 12(g). Id. After the registration statement was declared effective, Synetics and the lead underwriter postponed the IPO indefinitely. Id. Synetics withdrew the registration statement pursuant to Securities Act Rule 477(a) (and withdrew a post-effective amendment that was not yet effective), and filed a Form 15 to terminate the Section 12(g) registration

of its common stock. Id. Upon termination of Synetics' Section 12(g) reporting obligations, Synetics became subject to Section 15(d) reporting obligations. Id. The Commission granted no-action relief and permitted Synetics to rely on Rule 12h-3 to suspend its Section 15(d) reporting obligations. Id. The Commission noted that "in reaching this position, we particularly note that *no securities were sold pursuant to the registration statement* and [Synetics] has withdrawn the registration statement and post-effective amendment. . . pursuant to Rule 477 under the [Securities Act]." Id. (emphasis added); see also Engenio Info. Techs., Inc., SEC No-Action Letter, 2004 WL 7211974 (Sept. 13, 2004) (the Commission granted no-action relief, allowing the issuer to utilize Rule 12h-3 after a failed IPO and similarly noted that no securities had been sold pursuant to the registration statement and the issuer had withdrawn the registration statement).

A. The Plan was subject to stockholder approval and ratification, which was never obtained; thus, the Company could not, and did not, issue any shares of common stock registered under the S-8, resulting in a failed offering.

The Commission has repeatedly stated that "the purpose of [periodic reporting under] Section 15(d) is to assure a stream of current information about an issuer for the benefit of purchasers in the registered offering, and for the public, in situations where Section 13 of the Exchange Act would not otherwise apply." See Proposed Suspension of Periodic Reporting Obligation, Exchange Act Release No. 34-20263, 1983 WL 470474 at *2 (Oct. 5, 1983). The Commission further stated that the Rule 12h-3(c) limitation with respect to the fiscal year in which a registration statement under the Securities Act becomes effective "is in keeping with the philosophy reflected in Section 15(d) of the Exchange Act that generally the investing public should have available complete information about the issuer's activities at least through the end of the year in which it makes a registered offering." Id. at *3. These public policy reasons do not apply here.

Similar to Synetics Sols., Inc. and Engenio Info. Techs., Inc., the Company never sold any securities in the S-8 offering, or any other offering. The Plan was subject to approval and ratification

by the Company's stockholders, and any Plan awards made prior to such approval also required stockholder approval. See Amended S-8. However, the Company never obtained stockholder approval. See XRG Inc., Amendment No. 1 to Annual Report (Form 10-KSB), filed December 19, 2005,

https://www.sec.gov/Archives/edgar/data/1168375/000095014405012877/g98835e10ksbza.htm. Thus, no awards were ever granted under the Plan, which, in turn, means that no shares of common stock were issued pursuant to the S-8.[4,5] Even though the S-8 became effective upon filing, the offering that was registered thereunder was never consummated. Additionally, every other registration statement filed with the Commission was either withdrawn or never declared effective.

Furthermore, even though registration statements on Form S-8 do not expire (provided that an issuer continues to update the prospectus pursuant to Securities Act Section 10(a)(3)), the shares that are registered under a Form S-8 can only be issued for a set period of time. The Plan had a ten-year term; thus, even if stockholders approved the Plan, no options could be granted after 2014. See Amended S-8, Exhibit 4.1,

https://www.sec.gov/Archives/edgar/data/1168375/000089706904000512/dkm110a.txt. Options granted under the Plan would have had a ten-year term. Id.

The Company respectfully urges the Commission to interpret Section 15(d) in such a manner that would not impose reporting obligations on the Company merely because the unused S-8 was deemed

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[4] Subsequent to the adoption of the Plan, and before the Company publicly disclosed that it had not obtained stockholder approval, the Company granted options to its then-Chief Executive Officer. See XRG Inc., Amendment No. 2 to Quarterly Report (Form 10-QSB), filed December 19, 2005,
https://www.sec.gov/Archives/edgar/data/1168375/000095014405012883/g98832e10qsbza.htm. However, these options could not have been subject to the Plan because only non-employee directors or other consultants or advisors providing services to the Company and designated by the board of directors, were eligible to receive options. See Amended S-8, Exhibit 4.1.

[5] In April 2005, the Company granted options to one of its then-executive officers. However, this grant occurred after the Company publicly disclosed that it had not received stockholder approval of its Plan and the options were granted to an employee of the Company. Therefore, this grant also could not have been subject to the Plan and, correspondingly, could not have been subject to the S-8. See XRG Inc., Amendment No. 1 to Annual Report (Form 10-KSB), filed December 19, 2005.

effective upon filing. The Company argues that it did not technically "trigger" Section 15(d) reporting obligations because, even though the S-8 was effective upon filing, no shares were ever sold and, therefore, no investors purchased securities in that registered offering. Thus, the public policy of protecting investors in registered offerings does not apply here. Requiring the Company to file reports in accordance with Section 15(d) – an obligation that, if it existed at all, would have been triggered upon termination of the Company's Section 12(g) reporting obligations – would not further the public policy of providing the public with complete information about the issuer's activities through the end of the year in which an issuer makes an offering because the offering was never consummated. No one purchased shares under the S-8, and no one could. Further, this "trigger" of Section 15(d) reporting obligations would have occurred in 2009, nearly five years after the Company filed the S-8, and nearly four years after the Company disclosed that the Plan was never approved by stockholders.

The Company maintained current information during the period after it filed the S-8 through the time that, it disclosed that the Plan had not received stockholder approval – the period in which it conceivably could have engaged in an offering pursuant to the S-8. Without stockholder approval of the Plan, the S-8 was essentially rendered a nullity. Furthermore, the S-8 could only be used for so long as the Company incorporated the information required by Section 10(a)(3). After the Company failed to file its 2006 Annual Report, the S-8 could not be used even had the stockholders approved the Plan.

The Company acknowledges that it should have formally withdrawn the S-8 by submitting a withdrawal request pursuant to Rule 477 under the Securities Act. See Compliance and Disclosure Interpretations, Jan. 26, 2009, Question 249.01, available at https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm. The Company is willing to do so now if the Commission believes that such withdrawal would assist in remedying the situation the Company is attempting to resolve with the Commission and the Department.

B.e The benefits of periodic reporting required by Section 15(d) for a failed offeringe are not commensurate with the burdens imposed on the Company.e

The Commission has also repeatedly indicated that a literal reading of Rule 12h-3 is not always justified by public policy reasons. See Mango Capital, Inc., SEC No-Action Letter, 2012 WL 12354619 (Mar. 28, 2012). In the Commission's proposing release, it acknowledged "that Congress recognized, ewith respect to Section 15(d) of the Exchange Act, that the benefits of periodic reporting by an issuere might not always be commensurate with the financial and administrative burdens imposed..." Id.; seee also Proposed Suspension of Periodic Reporting Obligation, 1983 WL 470474 at *2.e

The preparation of Exchange Act reports imposes a significant financial burden on issuers and involves significant management efforts. It is clear that, by the 2005 fiscal year, the Company was in a challenged position. The Company had commenced an interim turnaround plan. See XRG, Inc., Amendment No. 1 to Annual Report (Form 10-KSB), filed Dec. 19, 2005. It was a party to numerous legal proceedings and had granted registration rights to certain stockholders, which required the Company to pay significant liquidated damages upon its failure to register such shares for resale by the selling stockholders. See id. For the 2005 fiscal year, the Company incurred net losses of approximately $14.2 million, had total liabilities of $11.3 million, and had no cash. See id. After December 2005, the Company failed to file any additional periodic reports. In January 2006, less than one month after its last filing of a periodic report, the Company filed a Current Report, disclosing that, *inter alia*, the Company had (i) incurred additional debt to satisfy interim working capital requirements; (ii) incurred liquidated damages for failure to register for resale certain shares of common stock on behalf of selling stockholders; and (iii) defaulted on certain promissory notes. See XRG Inc., Current Report (Form 8-K), filed Jan. 4, 2006, https://www.sec.gov/Archives/edgar/data/1168375/000095014406000040/g99016e8vk.htm. In March 2006, the Company filed another Current Report that , *inter alia*, disclosed (i) the issuances of promissory notes and common stock for funds to meet its interim working capital requirements and

(ii) the termination of an agreement that affected the Company's then-ability to maintain its business and revenue of one of its subsidiaries. RP 000653-000660. The Company filed its final Current Report three years later in April 2009 to disclose a change in control and a change in management. RP 000673-000676. Less than a month later, the Company filed the Form 15. Simply put, the Company was facing financial difficulties and only had the financial or staffing resources to follow OTCM Standards, but not to prepare and file Exchange Act reports.

CONCLUSION

Without relief from the Commission, the Company is caught between a rock and a hard place with no path to move forward. The simple act of filing the never utilized S-8 may have subjected the Company to Section 15(d) reporting obligations – obligations that the Company acknowledges that, statutorily, it can never really "terminate." However, the Company never conducted a registered offering, whether pursuant to the S-8, or otherwise. No Company investors need the protections contemplated by Section 15(d) as no investors purchased shares pursuant to the S-8 or any other registration statements.

In light of the foregoing, the Company respectfully requests that the Commission (A) find that (i) the Company did not trigger Section 15(d) obligations when it filed its Form 15 in 2009 and, therefore, does not have any continuing Exchange Act reporting obligations and (ii) for purposes of FINRA Rule 6490(d)(3)(2), the Company only needs to remain current in its information disclosure pursuant to the OTCM Standards and (B) (i) reverse the Deficiency Determination in all respects and (ii) order FINRA to process the 2018 Split promptly.

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Respectfully Submitted,

June 26, 2019

By: _____

Randolf W. Katz, Esq.
BAKER & HOSTETLER LLP
600 Anton Boulevard, Suite 900
Costa Mesa, California 92626
Telephone: 714.966.8807
rwkatz@bakerlaw.com

Alissa K. Lugo, Esq.
BAKER & HOSTETLER LLP
200 South Orange Avenue, Suite 2300
Orlando, Florida 32801
Telephone: 407.649.4015
alugo@bakerlaw.com
Attorneys for Applicant / Appellant

CERTIFICATE OF SERVICE

I, Alissa Lugo, certify that on this 26th day of June, 2019, I caused to be filed the original and three copies of the Applicant's Brief In Response to the Commission's Order Requesting Additional Briefing, Administrative Proceeding No. 3-18567, to be served via overnight mail on:

Brent J. Fields, Secretary
Securities Exchange Commission
100 F. St., NE
Room 10915
Washington, DC 20549-1090,

and a true and complete copy of such package via overnight mail upon the following party entitled to notice:

Jante C. Turner
FINRA – Office of General Counsel
1735 K Street, NW
Washington, DC 20006.

Respectfully submitted,

Alissa K. Lugo
BAKER & HOSTETLER LLP
200 S. Orange Avenue, Suite 2300
Orlando, Florida 32801
407.649.4015

CERTIFICATE OF COMPLIANCE

I, Alissa Lugo, certify that this Applicant's Brief in Response to the Commission's Order Requesting Additional Briefing, Administrative Proceeding No. 3-18567, complies with the length limitation set forth in the Securities and Exchange Commission's Order Requesting Additional Briefing. I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4,992 words, excluding the cover page, table of contents, and table of authorities.

Alissa K. Lugo
BAKER & HOSTETLER LLP
200 South Orange Avenue, Suite 2300
Orlando, Florida 32801
Telephone: 407.649.4015
alugo@bakerlaw.com

EXHIBITS

Securities and Exchange Commission – Decisions

SEC No Action Ltrs. WSB File No. 0927200404 (C.C.H.), 2004 WL 7211974

SEC No Action Letters

Securities and Exchange Commission

Broker-Dealers

Section 15(d) — Form 10-K, Broker-Dealers

Ruling: No-Action-Letter

September 13, 2004

ENGENIO INFORMATION TECHNOLOGIES, INC.

Public Availability Date: September 13, 2004

WSB File No. 0927200404

Fiche Locator No. None

WSB Subject Categories: 70, 72, 92

References:

Securities Exchange Act of 1934, Section 12(h); Rule 12h-3

Securities Exchange Act of 1934, Section 13(a)

Securities Exchange Act of 1934, Section 15(d)

Washington Service Bureau Summary

[INQUIRY LETTER]
September 13, 2004

Via Email, Facsimile and Overnight Delivery
Securities and Exchange Commission
Division of Corporation Finance
Office of the Chief Counsel
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Engenio Information Technologies, Inc. Commission File Nos. 333-112959 and 001-32257

Ladies and Gentlemen:

On behalf of Engenio Information Technologies, Inc., a Delaware corporation (the " **Company**"), we hereby request that a no-action letter be issued advising us that the staff of the Division of Corporation Finance (the " **Staff**") of the Securities and Exchange Commission (the " **Commission**") concurs in the Company's view that the effectiveness of the Company's registration statement on Form S-1 during the fiscal year ending December 31, 2004 would not preclude the Company from utilizing Rule 12h-3 under the Securities Exchange Act of 1934, as amended (the " **Exchange Act**"), suspending the Company's duty to file with the Commission periodic reports required by Sections 15(d) and 13 of the Exchange Act and the rules and regulations promulgated thereunder, with respect to the fiscal year in which the Company's registration statement on Form S-1 became effective (*i.e.*, the fiscal year ending December 31, 2004). Alternatively, we request an exemption for the Company from the requirement to file such reports pursuant to Section 12(h) of the Exchange Act. This letter amends and restates the Company's prior request for a no-action letter, which was submitted to the Staff by letter dated August 30, 2004, as updated by letters dated September 2, 2004 and September 10, 2004.

Factual Background

Engenio is a subsidiary of LSI Logic Corporation (" **LSI Logic**"), which is the beneficial and record owner of all 50,000,000 outstanding shares of the Company's Class B common stock (the " **Class B Common Stock**"). The Company and LSI Logic have entered into agreements providing for the separation of the Company's business from that of LSI Logic.

On February 19, 2004, pursuant to the Securities Act of 1933, as amended (the " **Securities Act**"), the Company filed a registration statement on Form S-1 (File No. 333-112959), as most recently amended on July 27, 2004 (the " **S-1 Registration Statement**"), which proposed an initial public offering of up to 12,500,000 shares of the Company's Class A common stock, par value $0.001 per share (the " **Class A Common Stock**"). On July 27, 2004, pursuant to the Exchange Act, the Company filed a registration statement on Form 8-A (File No. 001-32257) (the " **8-A Registration Statement**"), registering the Class A Common Stock under Section 12(b) of the Exchange Act. Thereafter, the New York Stock Exchange (the " **NYSE**") certified to the Commission that the Class A Common Stock had been approved for listing on the NYSE upon notice of issuance.

Both registration statements were then declared effective on July 29, 2004, with the expectation that information concerning the public offering price, underwriting syndicate and related matters would be contained in a form of prospectus filed pursuant to Rule 424(b) of the Securities Act as permitted by Rule 430A of the Securities Act. However, the Company, in consultation with the managing underwriters of the offering, decided to postpone the initial public offering due to market conditions. Since that decision, the Company has not taken any further action with respect to recommencing the offering, and on August 16, 2004, the Company filed with the Commission a letter requesting withdrawal of the S-1 Registration Statement pursuant to Rule 477 under the Securities Act. No shares of the Class A Common Stock have been issued pursuant to the S-1 Registration Statement. Because the 8-A Registration Statement was declared effective, however, the Company's Class A Common Stock is registered under Section 12(b) of the Exchange Act even though the Class A Common Stock did not commence trading on the NYSE.

As disclosed in the S-1 Registration Statement, the Company has a total of seven stockholders. All 50,000,000 of the outstanding shares of the Company's Class B Common Stock are owned beneficially and of record by LSI Logic, which acquired the shares pursuant to a private placement exemption from registration under the Securities Act. The Class B Common Stock will automatically convert into Class A Common Stock if such shares are transferred to a person other than LSI Logic or one of its wholly-owned subsidiaries, and in addition, LSI Logic may elect to convert shares of the Class B Common Stock into shares of Class A Common Stock. All conversions will be effected on a one-for-one

basis. In addition, there are currently outstanding 37,500 shares of the Company's Class A Common Stock, of which 25,000 are owned by the Company's chief financial officer and of which 2,500 are owned by each of the Company's five non-employee directors, each of whom acquired the shares pursuant to a private placement exemption from registration under the Securities Act. There are also outstanding options to purchase a total of 2,025,000 shares of the Company's Class A Common Stock, which are owned by a total of sixteen individuals (each of whom is an executive officer, director or member of the senior management of the Company).

On August 16, 2004, the Company submitted a letter to the Commission by which the Company requested withdrawal of its 8-A Registration Statement in order to remove the securities from registration under Section 12(b) of the Exchange Act. On August 30, 2004, the Company submitted a letter to the NYSE, by which the Company requested the NYSE file an application and all other appropriate paperwork with the Commission, pursuant to Rule 12d2-2 of the Exchange Act, to withdraw its certification of the Form 8-A and to strike the Class A Common Stock from listing and registration under the Exchange Act. On August 31, 2004, the NYSE filed an application with the Commission, pursuant to Section 12(d) of the Exchange Act and Rule 12d2-2 thereunder, to strike the Company's Class A Common Stock from listing and registration, effective as of the opening of the trading session on September 10, 2004 (the " **NYSE Application**"). On September 10, 2004, the Division of Market Regulation granted the NYSE Application, effective as of the close of business on September 10, 2004. Pursuant to Section 12(d) of the Exchange Act and Rule 12d2-2 thereunder, the removal from listing and registration pursuant to the withdrawal of the 8-A Registration Statement and the NYSE Application has relieved the Company from continued compliance with the reporting requirements under Section 12 of the Exchange Act.

Due to the termination of its Exchange Act reporting obligations under Section 12, the Company has become subject to the reporting obligations imposed under Section 15(d) of the Exchange Act. Section 15(d) provides that the periodic reporting requirements of Section 13 are applicable to any issuer that files a registration statement that becomes effective under the Securities Act. Although Exchange Act Rule 12h-3 grants an automatic suspension from these requirements for any issuer that has filed a Form 15 which certifies, pursuant to Rule 12h-3(b)(1)(i), that it has a class of securities held of record by less than 300 persons, subsection (c) of Rule 12h-3 makes the suspension inapplicable to any fiscal year in which a registration statement under the Securities Act became effective. Thus, although all shares of the Company's Class A Common Stock that are issued and outstanding are held beneficially and of record by six stockholders (the Company's chief financial officer and five non-employee directors), who acquired the shares privately without registration under the Securities Act, Rule 12h-3(c) precludes the Company from utilizing Rule 12h-3(b)(1)(i) to suspend its reporting requirements under Section 15(d) of the Exchange Act with respect to the current fiscal year. Therefore, the Company hereby requests that a no-action letter be issued advising us that the Staff concurs in the Company's view that the effectiveness of the S-1 Registration Statement during the fiscal year ending December 31, 2004 would not preclude the Company from utilizing Rule 12h-3 under the Exchange Act, suspending the Company's duty to file with the Commission periodic reports required by Sections 15(d) and 13 of the Exchange Act and the rules and regulations promulgated thereunder, with respect to the fiscal year in which the S-1 Registration Statement became effective (*i.e.*, the fiscal year ending December 31, 2004).

Discussion

We respectfully submit that Section 15(d) of the Exchange Act and Rule 12h-3(c) thereunder should not be interpreted in a manner that would require the Company to file any Section 13(a) periodic reports merely because the S-1 Registration Statement was filed and became effective during 2004.

The Commission has stated that "the purpose of [periodic reporting under] Section 15(d) is to assure a stream of current information about an issuer for the benefit of purchasers in the registered offering, and for the public, in situations where Section 13 of the Exchange Act would not otherwise apply." Exchange Act Release No. 34-20263 (Oct. 5, 1983) (the " **Release**"). In the Release, the Commission stated that the Rule 12h-3(c) limitation with respect to the fiscal year in

which a registration statement under the Securities Act becomes effective "is in keeping with the philosophy reflected in Section 15(d) of the Exchange Act that generally the investing public should have available complete information about the issuer's activities at least through the end of the year in which it makes a registered offering." *Id.*

Although the S-1 Registration Statement was declared effective, the Company's initial public offering was not consummated and the Company has requested withdrawal of the S-1 Registration Statement pursuant to Rule 477 under the Securities Act. As a result, no securities of the Company were sold to the public pursuant to the S-1 Registration Statement, nor are there any public stockholders of the Company. Therefore, because the Company has no "investing public" to which information about its activities through the end of fiscal year 2004 should be made available, the policy rationale behind Rule 12h-3(c)'s limitation upon the use of Form 15 for a class of securities for any fiscal year in which a registration statement relating to that class becomes effective under the Securities Act is not applicable.

The Commission further stated in the Release that, "Congress recognized, with respect to Section 15(d), that the benefits of periodic reporting by an issuer might not always be commensurate with the burdens imposed..." *Id.* In the Company's case, the burdens imposed by the application of Rule 12h-3 clearly outweigh any benefits. The preparation and filing of periodic reports would impose a financial burden on the Company and would involve significant management efforts. Because the Company has no public stockholders and no purchasers in a registered public offering, the investing public would derive no benefit from requiring the Company to commence filing periodic reports required by Section 13 of the Exchange Act.

The Staff has recognized in a number of situations similar to the Company's, where no securities were sold pursuant to an effective registration statement and the issuer withdrew its registration statement pursuant to Rule 477 under the Securities Act, that the application of Rule 12h-3(c) is not always justified by public policy considerations and, accordingly, has taken a no-action position such as that requested herein. *See, e.g., NOMOS Corporation* (Nov. 12, 2002); *Medco Health Solutions, Inc.* (Aug. 13, 2002); *NeoGenesis Pharmaceuticals, Inc.* (Apr. 1, 2002); *OMP, Inc.* (Apr. 2, 2001); *Enfinity Corporation* (Nov. 30, 1998); and *Coral Systems, Inc.* (Mar. 31, 1997). Consequently, the Company hereby requests that a no-action letter be issued advising us that the Staff concurs in the Company's view that the effectiveness of the S-1 Registration Statement during the fiscal year ending December 31, 2004 would not preclude the Company from utilizing Rule 12h-3 under the Exchange Act, suspending the Company's duty to file with the Commission periodic reports required by Sections 15(d) and 13 of the Exchange Act and the rules and regulations promulgated thereunder, with respect to the fiscal year in which the S-1 Registration Statement became effective (*i.e.*, the fiscal year ending December 31, 2004).

Conclusion

The Staff has recognized that, with respect to Section 15(d) of the Exchange Act, the benefits to the investing public of periodic reporting by an issuer may not be justified in light of the burdens imposed. In the Company's case, the investing public derives no benefit from requiring the Company to file periodic reports required by Section 13(a) of the Exchange Act because LSI Logic and the Company's chief financial officer and non-employee directors are the Company's only seven stockholders and there have been no purchasers in a registered public offering. Moreover, the burden of imposing Exchange Act reporting obligations on the Company would be substantial.

In light of the foregoing, we request, on behalf of the Company, that the Staff issue a no-action letter advising us that the Staff concurs in the Company's view that the effectiveness of the S-1 Registration Statement during the fiscal year ending December 31, 2004 would not preclude the Company from utilizing Rule 12h-3 under the Exchange Act, suspending the Company's duty to file with the Commission periodic reports required by Sections 15(d) and 13 of the Exchange Act and the rules and regulations promulgated thereunder, with respect to the fiscal year in which the S-1 Registration Statement became effective (*i.e.*, the fiscal year ending December 31, 2004). Alternatively, we request on behalf of the Company an exemption pursuant to Section 12(h) of the Exchange Act from the requirement of filing such reports. If and when relief

is granted by the Staff with respect to the foregoing, the Company will file a Form 15 on or before the date on which the Company's next periodic report is due pursuant to the Exchange Act.

If you have any questions with respect to this request or require additional information, please do not hesitate to call the undersigned at (650) 565-3578. If you disagree with the views expressed in this letter, we would appreciate the opportunity to discuss this matter before a written response is provided. In accordance with Securities Act Release No. 33-6269 (Dec. 5, 1980), enclosed are seven additional copies of this letter. For the convenience of the Staff, we have also enclosed copies of the previous no-action letters cited herein. We would appreciate it if you would acknowledge receipt of this letter by date-stamping the extra enclosed copy of this letter and returning it to the undersigned in the enclosed, self-addressed stamped envelope.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI

Professional Corporation

/s/

Jonathan M. Block

Enclosures

cc: Jeffrey Werbitt, Esq. (with enclosures)

Grace Lee, Esq. (with enclosures)

David E. Sanders, Esq. (w/o enclosures)

Larry W. Sonsini, Esq. (w/o enclosures)

Matthew W. Sonsini, Esq. (w/o enclosures)

[STAFF REPLY LETTER]
September 13, 2004

Response of the Office of Chief Counsel Division of Corporation Finance

Re: Engenio Information Technologies, Inc. Incoming letter dated September 13, 2004

Based on the facts presented, it is the Division's view that the effectiveness of Engenio Information Technologies' registration statement on Form S-1 during fiscal year 2004 would not preclude Engenio Information Technologies from utilizing Rule 12h-3 under the Securities Exchange Act of 1934. In reaching this position, we particularly note that no securities were sold pursuant to the registration statement and Engenio Information Technologies has withdrawn the registration statement pursuant to Rule 477 under the Securities Act of 1933.

This position is based on the representations made to the Division in your letter. Any different facts or conditions might require the Division to reach a different conclusion. Further, this response expresses the Division's position on enforcement action only and does not express any legal conclusion on the question presented.

Sincerely,

/s/

Jonathan A. Ingram

Deputy Chief Counsel

...The staff concurs with the company's view that the effectiveness of its registration statement on Form S-1 during fiscal year 2004 would not preclude it from utilizing 1934 Act rule 12h-3, thus suspending its duty to file periodic reports required by 1934 Act sections 13 and 15(d) with respect to the fiscal year in which the Form S-1 becomes effective. In reaching this position, the staff notes that no securities were sold pursuant to the registration statement and that the company has withdrawn the registration statement pursuant to 1933 Act rule 477.

End of Document

Release No. 82551 (S.E.C. Release No.), Release No. 34-82551, 2018 WL 487320

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

IN THE MATTER OF HELPEO, INC.

Administrative Proceeding File No. 3-17668
January 19, 2018
Petition filed: October 25, 2016
Last brief received: November 29, 2016

ORDER DISMISSING PETITION TO TERMINATE TRADING SUSPENSION

*1 We dismiss the request filed by Helpeo, Inc. to terminate the Commission's order suspending trading in Helpeo's securities. The request is untimely because it was filed after the suspension's expiration. Even if the request were timely, we would have denied it on the merits because the public interest and the protection of investors required the suspension of trading.

I. Background

On September 26, 2016, we issued an order pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 suspending trading in the securities of Helpeo, Inc. (HLPN) (CIK No. 0001484055) and 36 other issuers for the period beginning September 26, 2017 and ending October 7, 2017. [1] Our order stated: "[T]here is a lack of current and accurate public information concerning the securities of each of [these] issuers ... because questions have arisen as to their operating status, if any." [2] As to Helpeo, the order stated that Commission staff "attempted to contact the issuer [3] and either the staff did not receive a response to its letter, the letters were returned as undeliverable, or the registered agent responded that they had no forwarding address for the issuer." [4] Accordingly, we were "of the opinion that the public interest and the protection of investors require a suspension of trading." [5]

The trading suspension terminated on October 7, 2016, ten business days after it began. On October 25, 2016, Helpeo filed a letter with the Commission asking that the suspension be "reconsider[ed]." The letter asserted that, "[f]or some reason," the records of Helpeo's registered agent had not been updated to reflect the company's current contact information and stated that the registered agent only "recently forwarded" the suspension order to Helpeo.

We directed the parties to file briefs addressing whether Helpeo's request for relief with respect to the trading suspension should be dismissed as untimely. [6] Helpeo's response did not address the timeliness of its request to "reconsider" the trading suspension.

II. Timeliness

Rule of Practice 550 governs petitions to terminate a temporary trading suspension. [7] Helpeo's request for relief from the suspension order is untimely under that Rule. We have held that the exclusive "means for Commission review of a Section 12(k)(1)(A) [suspension] order ... is the filing of a petition pursuant to Rule 550(a) 'requesting that the ... suspension be terminated' while the suspension order is still in effect." [8] Thus, "[i]f the suspension is no longer in effect

when the petition is filed, the petition is untimely." [9] As the Eleventh Circuit has recognized, the Commission's "deadlinee for submitting a petition advances important interests of efficiency and finality, and ensures a complete administrative record will be developed." [10] Helpeo's petition is untimely because it was filed after the trading suspension expired.e

*2 In other contexts, we have held that a party seeking to file an untimely petition for review of a law judge's initiale decision or an untimely application for review of a self-regulatory organization's disciplinary ruling must show that ite has been pursuing its rights diligently and that some extraordinary circumstance stood in the way of a timely filing. [11] In *Global Green, Inc.*, we reserved the issue of "what, if any, circumstances would warrant Commission consideration of an otherwise untimely [Rule 550] petition." [12] We again have no occasion to decide the appropriate test for excusing an untimely Rule 550 petition here because Helpeo has not satisfied any potentially applicable standard—whether that standard be extraordinary circumstances, good cause, or excusable neglect. [13]

The party seeking to excuse an untimely filing bears the burden of showing that it is entitled to such relief. [14] This ise because that party will have better access to relevant information and will be in the "best position to overcome any skepticism arising out of the lateness of [its] challenge." [15] Here, Helpeo did not even attempt to justify the late filing of its request for relief from the trading suspension; its brief addressed *only* Helpeo's failure to "respon[d] to the [staff's prior inquiry regarding] the operational status" of Helpeo. [16] As a result, Helpeo "failed to offer an acceptable excuse,e or any excuse at all, for its failure" to file a timely Rule 550 petition. [17] Accordingly, we enforce the deadline for filinge petitions under Rule 550 and dismiss Helpeo's untimely petition. [18e]

In any case, we find that the instant circumstances would not warrant excusing Helpeo's untimely request under any standard. The record shows that Helpeo's registered agent received notice of the trading suspension in time for Helpeo to file a Rule 550 petition while it was still in effect. Records maintained by the Commission's Office of the Secretary reflect that the trading suspension order was sent via U.S. Mail to Helpeo's agent, Nevada Processing Center, Inc., on September 26, 2016, the same day it was issued. We take official notice of the United States Postal Service's service standards, which specify that First-Class mail originating from Washington, D.C., the location of the Commission's headquarters, is expected to reach Nevada, the location of Helpeo's registered agent, within three business days. [19] There is no evidence that this mailing was returned as undeliverable, and we may presume that it was timely received by Helpeo's registered agent at least a week before the trading suspension's expiration. [20e]

*3 Helpeo's October 25, 2016 letter to the Commission stated that Nevada Processing Center only "recently" forwardede the Commission's trading suspension order to the issuer because, "[f]or some reason," its registered agent did not havee Helpeo's current address. The vagueness of these representations, even though the matters to which they pertain aree peculiarly within Helpeo's knowledge, suggests that the truth is unhelpful to Helpeo—*i.e.*, that Helpeo may have actuallye received the trading suspension before its expiration. [21] But even assuming for the sake of argument that there hade been a delay in Nevada Processing Center's forwarding of the order, such delay is immaterial because notice to Helpeo's registered agent constitutes notice to Helpeo.

An agent's knowledge is generally "imputed, as a matter of law," to the principal. [22] Under this "rule of imputation,"e the "principal is chargeable with the knowledge the agent has acquired, whether the agent communicates it or not." [23] And under Nevada law, "any ... notice ... to be served upon, or delivered to, a corporation may be served upon, or delivered to, the registered agent" designated by the corporation—including with respect to corporations, such as Helpeo, ewhose corporate charter has been revoked. [24] It was Helpeo's duty to ensure that its registered agent had up-to-date ande accurate contact information for the issuer. Any "neglect of [Helpeo's registered agent] in communicating ... to [Helpeo]e was [at most] neglect of an agent ..., and did not affect the validity" of notice. [25] Even if mere excusable inadvertencee

could warrant relief from the Rule 550 deadline,[26] Helpeo failed to present any evidence about why it was unable to file a timely request. Specifically, it failed to explain the precautions it had in place to ensure the prompt and reliable receipt of official communications— such as the Commission's trading suspension order—via its registered agent.[27] In short, Helpeo's request is untimely under Rule 550, we have no reason to overlook that lateness, and we accordingly dismiss the request.

III. Merits

Even if Helpeo had filed a timely Rule 550 petition to terminate the trading suspension, we would deny relief on the independent ground that its request lacks merit.[28] We continue to be of the opinion that the public interest and the protection of investors required the suspension of trading in Helpeo's securities. Section 12(k)(1) of the Exchange Act provides that "[i]f in its opinion the public interest and the protection of investors so require, the Commission is authorized by order ... summarily to suspend trading in any security" for up to ten business days.[29] The text, structure, and legislative history of this provision show that Congress conferred upon the Commission broad discretion in determining when to temporarily suspend trading in a security.[30] Thus, we are empowered to suspend trading without determining that an issuer has violated the securities laws.[31] Our inquiry turns solely on whether we are of the "opinion"e that a trading suspension is required in light of the "public interest" and the need for the ""protection of investors." "Congress did not intend to require the Commission to make any other findings."[32]

*4 This trading suspension authority is an important tool for alerting the public about our concerns about ane issuer, protecting investors against unfair or disorderly markets, and increasing the availability of information in thee marketplace. Consequently, we have found it necessary to suspend trading in a variety of circumstances.[33] For example, we have suspended trading when there was a lack of current, adequate, and accurate information about an issuer or when an issuer did not file required periodic reports with the Commission.[34]

Our decision to suspend trading in Helpeo's securities implicated a number of these concerns. When we suspended trading, Helpeo was a public issuer whose securities were quoted, on the OTC Link inter-dealer quotation system operated by OTC Markets Group, under the ticker symbol HLPN. At that time, Helpeo's license to do business in Nevada, its state of incorporation, expired on January 31, 2014 and its corporate status in Nevada had been revoked. Additionally, Helpeo had not filed any information with the Commission or submitted any information to OTC Markets Group since April 2013.[35] These facts before the Commission at the time of the trading suspension's issuance—which Helpeo does not dispute—constitute sufficient grounds for the Commission's opinion that a temporary suspension of trading was in the public interest and necessary for investor protection.[36]

Helpeo has urged the Commission to "reconsider [the] suspension." But we remain of the opinion that the public interest and the protection of investors required the suspension of trading. Although Helpeo asserted that "it would be in full compliance" with its filing obligations "on or before December 31, 2016," that date has passed. Helpeo remains delinquent in its periodic filings,[37] and the issuer has not been restored to active corporate status.[38] Moreover, even if Helpeo subsequently had provided some updated information about its operations—which it has not—current and accurate information was not available to the public when the Commission initially suspended trading. An issuer's "corrective disclosures, which occurred only after the Trading Suspension Order's issuance[,]" often will confirm the propriety of our having suspended trading, "because [by] promoting the public dissemination of accurate information, the trading suspension advanced the public interest and the protection of investors."[39]

Helpeo notes further that "finances are always a challenge" for microcap companies. But an asserted lack of resources does not relieve an issuer from its disclosure obligations under the securities laws. Indeed, it highlights the risks posed by

the microcap and penny stock market and the corresponding need to be "vigilant in exercising our trading-suspension authority" in this context in order to protect the public interest and investors. [40]

*5 Helpeo also argues that the trading suspension is "detrimental to the existing stakeholders and [its] staff incentive plans" and that vacatur of the suspension would "preserve the value of the [issuer]" and relieve it from having an "adverse regulatory" action on its records. We disagree for three reasons. First, Helpeo's characterization of the trading suspension's effects is inaccurate. The trading suspension "did not amount to a determination of liability against [Helpeo] or to a finding by the Commission that [Helpeo] had violated any law. Even while the trading suspension was in effect, it did not prevent [Helpeo] from continuing to operate its business. Nor did it prevent [Helpeo] from trying to secure other sources of funding (such as obtaining a loan from a bank) that did not involve transactions in its securities." [41] Second, the trading suspension has already expired; thus, existing shareholders are permitted to transact in Helpeo's shares. [42] Moreover, in determining to issue a trading suspension, we must also "consider the interests of *prospective* or *potential* investors who might be harmed because they purchase shares in reliance on potentially inaccurate or inadequate information about the issuer." [43] Third, our concerns about the availability of current and accurate information regarding Helpeo persist; it has been more than *four years* since Helpeo last filed a periodic report. As a result, even if we considered Helpeo's untimely submission on the merits, we would remain of the opinion that the public interest and the protection of investors required a trading suspension. [44]

***

It is ORDERED that Helpeo's request to terminate the trading suspension is DISMISSED as untimely. [45]

By the Commission.
Brent J. Fields
Secretary

Footnotes

1 *A.A. Importing Co., Inc., et al.*, Exchange Act Release No. 78928 (Sep. 26, 2016).

2 *Id.*

3 On May 19, 2016, the Division of Enforcement sent Helpeo a letter requesting that the issuer "contact us within 30 calendar days from the date of this letter and briefly describe [its] operational status." The letter cautioned that the Division "may recommend to the Commission that trading in your securities be suspended ... without further notice." The Division did not receive any response, and its attempts to reach the issuer by phone were also unsuccessful.

4 Exchange Act Release No. 78928.

5 *Id.*

6 *Helpeo, Inc.*, Exchange Act Release No. 79250, 2016 WL 6576419 (Nov. 7, 2016).

7 17 C.F.R. § 201.550.

8 *Accredited Business Consolidators, Corp.*, Exchange Act Release No. 73420, 2014 WL 5386875, at *1 (Oct. 23, 2014) (quoting 17 C.F.R. § 201.550(a)).

9 *Global Green, Inc.*, Exchange Act Release No. 73855, 2014 WL 7184234, at *1 (Dec. 16, 2014), *aff'd, Global Green, Inc. v. SEC*, 631 F. App'x 868 (11th Cir. 2016) (per curiam).

10 *Global Green, Inc. v. SEC*, 631 F. App'x 868, 870 (11th Cir. 2016) (per curiam).

11 *See Jacob Keith Cooper*, Exchange Act Release No. 77068, 2016 WL 453458, at *2-4 (Feb. 5, 2016); *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at *2 (May 8, 2014); Rule of Practice 420(b), 17 C.F.R. § 201.420(b).

12 *Global Green, Inc.*, 2014 WL 7184234, at *1 n.9.

13 *Cf.* supra note 11; Rule of Practice 100(c), 17 C.F.R. § 201.100(c); Fed. R. Civ. P. 55(c), 60(b)(1).

14 *See, e.g., United States v. Hartsock,* 347 F.3d 1, 10 (1st Cir. 2003); *Boos v. Runyon,* 201 F.3d 178, 185 (2d Cir. 2000); *Phillips v.eUSPS,* 695 F.2d 1389, 1390 (Fed. Cir. 1982); *United States v. Lucas,* 597 F.2d 243, 245 (10th Cir. 1979).e

15 *Hartsock,* 347 F.3d at 10 (quotation marks omitted); *see also In re Canopy Fin. Inc.*, 708 F.3d 934, 936 (7th Cir. 2013); *Bravoe Enters.*, Exchange Act Release No. 75775, 2015 WL 5047983, at *12 n.66 (Aug. 27¢2015) (noting "inference that missinge or unsupplied information peculiarly available to corporate insiders would have been unfavorable to an issuer seeking relief from a trading suspension").

16 *Cf.* supra note 3.

17 *Park Corp. v. Lexington Ins. Co.,* 812 F.2d 894, 896 (4th Cir. 1987) (explaining that the party seeking relief from a missed deadline must "specif[y] any facts or circumstances that would justify relief"); *accord In re Canopy Fin. Inc.*, 708 F.3d at 937 ("litigants need to supply those details" that might "excuse [their] failure to respond").

18 *See also Helpeo, Inc.*, 2016 WL 6576419, at *2 (order requesting written submissions regarding timeliness of Helpeo's Rule 550 request); *accord Hubbard v. MSPB,* 605 F.3d 1363, 1366 (Fed. Cir. 2010) (holding that the "failure even to respond to the [agency's] order directing [the petitioner] to file evidence and argument demonstrating that the appeal was timely filed or that good cause exists" warranted dismissal of appeal) (internal quotation marks omitted).

19 *See* United States Postal Service, *USPS Service Standards Map*, https://ribbs.usps.gov/ modernservicestandards/ssmaps/ find_map.cfm (last visited Jan. 19, 2018); Rule of Practice 323, 17 CFR § 201.323.

20 *See, e.g., Hagner v. United States,* 285 U.S. 427, 430 (1932) (setting forth "well settled" presumption of receipt); *In re Cendant Corp. Prides Litig.*, 311 F.3d 298, 304 (3d Cir. 2002).

21 *See Bravo Enters.*, 2015 WL 5047983, at *12 n.66; *see also In re Canopy Fin. Inc.*, 708 F.3d at 936.

22 *See, e.g., St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc.*, 819 F.3d 728, 733-34 (4th Cir. 2016); Restatement (Third) of Agency § 5.03.

23 *St. Paul Mercury Ins.*, 819 F.3d at 734 (quotation marks omitted); *N. Y. Univ. v. First Fin. Ins. Co.*, 322 F.3d 750, 753 & n.2 (2d Cir. 2003); Restatement (Third) of Agency § 5.02 cmt. b.

24 *See* Nev. Rev. Stat. §§ 78.090, 78.750; *Canarelli v. Dist. Ct.*, 265 P.3d 673, 675 n.2 (Nev. 2011) ("[S]ervice of process on a dissolved corporation may be made on ... the registered agent[.]"); *see also In re Martin-Trigona,* 763 F.2d 503, 505 (2d Cir. 1985) ("[F]ailure ... to change the address for service of process with the Secretary of State constitutes a willful disregard of legal process.") (per curiam).e

25 *See Knox County v. Harshman,* 133 U.S. 152, 156 (1890); *see also Sieg v. Int'l Envtl. Mgmt., Inc.*, 375 S.W.3d 145 (Mo. App. 2012); *Goodman Associates, LLC v. WP Mt. Properties, LLC,* 222 P.3d 310, 322 (Colo. 2010); *Rose v. Forester,* 688 S.E.2d 118, 2009 WL 3818848, at *3 (N.C. App. 2009). There is no evidence that Nevada Processing Center was acting adversely to Helpeo or had abandoned it such that it was no longer acting as Helpeo's agent. *Cf. Holland v. Florida,* 560 U.S. 631, 652-53 (2010) (explaining that equitable tolling might be appropriate under extraordinary circumstances).

26 We have reserved decision on whether the party seeking to excuse a late Rule 550 petition must demonstrate extraordinary circumstances or satisfy a less stringent standard, such as good cause or excusable neglect. *See supra* note 13 and accompanying text.

27 *See, e.g., Baez v. S.S. Kresge Co.*, 518 F.2d 349, 350 (5th Cir. 1975)¢("We think rather minimal internal procedural safeguards could and should have been established ...."); *Hensel Phelps Const. Co. v. Drywall Sys. Inc. of S. Florida,* 2007 WL 2433839, at *3 (S.D. Fla. Aug. 22, 2007); *see also In re Canopy Fin. Inc.*, 708 F.3d at 937; *Park Corp.*, 812 F.2d at 896-97.

28 Our briefing order directed that the briefs be limited to the issue of timeliness. *See Helpeo, Inc.*, 2016 WL 6576419, at *2. Nevertheless, both parties chose to address the merits of the trading suspension, and so we see no prejudice in doing the same. If we were persuaded that a *timely* filed Rule 550 petition had merit, we would have the authority to provide appropriate relief with respect to the potential collateral consequences of a trading suspension notwithstanding the suspension's expiration while we were disposing of the timely petition. *See Bravo Enters.*, 2015 WL 5047983, at *6 & n.54.

29 15 U.S.C. § 78*l*(k)(1).

30 *Bravo Enters.*, 2015 WL 5047983, at *2-4; *see also Myriad Interactive Media, Inc.*, Exchange Act Release No. 75791, 2015 WL 5081238, at *1-2 (Aug. 28, 2015).

31 *Bravo Enters.*, 2015 WL 5047983, at *3-4; *see also Myriad Interactive Media, Inc.*, 2015 WL 5081238, at *8 n.31.

32 *Bravo Enters.*, 2015 WL 5047983, at *4; *see also* H.R. Rep. No. 101-524, at p. 37, Pub. L. No. 101-432 (1990).

33 *Bravo Enters.*, 2015 WL 5047983, at *3 & nn.14-18, *5 & nn.30-32, 39-41.

34 *Id.* at *5 nn.30-32.

35 Generally, domestic equity securities may be quoted on the OTC Link marketplace only if the issuer makes periodic filings under Exchange Act Sections 13 or 15(d). *Id.* at *5 n.36 (citing FINRA Rule 6530(a)(2)).

36 See, e.g., *Commission Expresses Concern with Failure of Issuers To Timely and Properly File Periodic and Current Reports*, Exchange Act Release No. 10214, 1973 WL 149348, at *1 (June 11, 1973); Jennifer Gardner, *The SEC's Operation Shell Expel*, 33 Rev. Banking & Fin. L. 60, 61-64 (2013) (describing common abuses involving dormant microcap companies); *see also Bravo Enters.*, 2015 WL 5047983, at *5 & nn.30, 39 (collecting cases).

37 We take official notice of the information and filings in the Commission's EDGAR database pursuant to Rule of Practice 323, 17 C.F.R. § 201.323.

38 We take official notice of Nevada Secretary of State's records pursuant to Rule of Practice 323, 17 C.F.R. § 201.323. *See* Nevada Secretary of State, *Nevada Business Search, available at* http://nvsos.gov/sosentitysearch/ (last visited Jan. 19, 2018).

39 *Immunotech Labs., Inc.*, Exchange Act Release No. 75790, 2015 WL 5081237, at *7 (quoting *Bravo Enters.*, 2015 WL 5047983, at *9).

40 *Bravo Enters.*, 2015 WL 5047983, at *5; *see also Myriad Interactive Media, Inc.*, 2015 WL 5081238, at *7.

41 *Bravo Enters.*, 2015 WL 5047983, at *12 (citations and footnotes omitted).

42 *Id.* at *12 & n.72.

43 *Id.* at 13 (emphasis added); *Immunotech Labs., Inc.*, 2015 WL 5081237, at *10.

44 *See, e.g., Immunotech Labs., Inc.*, 2015 WL 5081237, at *10; *Bravo Enters.*, 2015 WL 5047983, at *12-13.

45 As described above, even if timely, we would reject Helpeo's request on the independent ground that it is without merit. *See supra* Section III. We have considered all of the parties' contentions. We have rejected or accepted them to the extent that they are inconsistent or in accord with the views expressed in this order.

Release No. 82551 (S.E.C. Release No.), Release No. 34-82551, 2018 WL 487320

End of Document

SEC No Action Ltrs. WSB File No. 0402201209 (C.C.H.), 2012 WL 12354619

SEC No Action Letters

Securities and Exchange Commission

Broker-Dealers

Section 15(d) — Form 10-K, Broker-Dealers

Ruling: No-Action-Letter

March 28, 2012

MANGO CAPITAL, INC.

WSB File No. 0402201209

WSB Subject Categories: 77, 72, 92

Public Availability Date: March 28, 2012

References:

Securities Exchange Act of 1934, Section 12(g); Rule 12g-4

Securities Exchange Act of 1934, Section 12(h)

Securities Exchange Act of 1934, Section 13(a)

Securities Exchange Act of 1934, Section 15(a)

Washington Service Bureau Summary

[INQUIRY LETTER]
March 28, 2012

Securities and Exchange Commission

Division of Corporation Finance

Office of Chief Counsel

100 F. Street, N.E.

Washington, D.C. 20549

Re: ***Mango Capital, Inc. (Commission File No. 000-30781) Request Pursuant to Rule 12h-3 of the Exchange Act and Sections 13(a) and 15(d) of the Exchange Act***

Dear Ladies and Gentlemen:

We are writing on behalf of Mango Capital, inc. (formerly MangoSoft, Inc.) (the " ***Company***") to request that a letter be issued advising the Company that the staff of the Division of Corporation Finance (the " ***Staff***") of the Securities and Exchange Commission (the " ***Commissiom***") concurs with the Company's view that the updating of the Company's two registration statements on Form S-8 (File Nos. 333-50764 and 333-58412) during the Company's 2009, 2010 and 2011 fiscal years would not preclude the Company from utilizing Rule I2h-3 under the Securities Exchange Act of 1934, as amended (the " ***Exchange Act***"), to suspend the Company's duty to file with the Commission the reports required by Sections 13(a) and 15(d) of the Exchange Act and the rules and regulations promulgated thereunder with respect to the Company's common stock, par value $ 0.001 per share (the " ***Common Stock***"), for the fiscal year in which the Company's above-referenced registration statements on Form S-8 were required to be updated pursuant to Section 10(a)(3) of the Securities Act of 1933, as amended (the " ***Securities Act***"). *See*, Intraop Medical Corp. (available May 12, 2010). We also ask that the Staff confirm that it will not recommend enforcement action by the Commission if the Company files a Form 15 pursuant to Rule 12h-3 under the Exchange Act on or before either (i) the due date (March 30,2012) for the Company's next periodic report, a Form 10-K for the year ended December 31, 2011, or (ii) if a favorable no-action response is not received by the Company from the Staff on or before March 30, 2012, then the due date for a Quarterly Report on Form 10-Q for the quarter ending March 31, 2012, to suspend the Company's reporting obligations under Section 15(d) of the Exchange Act.

Except as otherwise set forth herein, the information set forth in this letter regarding the Company is as provided to us by the Company. The Company has authorized us to make the statements set forth in this letter on its behalf. The Company will file with the Commission ail required periodic and current reports until the date the Company files with the Commission a Form 15 to suspend the Company's reporting obligations under Section 15(d) of the Exchange Act.

Background

The Company was incorporated in Nevada in 1995 under the name "First American Clock Co." The Company was formed to engage in the business of purchasing or otherwise acquiring antique, museum quality clocks and timepieces, principally from private collectors, for resale. However, this business was not successful, and during 1998 the Company discontinued operations with respect to such business venture.

In 1999, a wholly owned subsidiary of First American merged with and into MangoSoft Corporation. MangoSoft Corporation developed software solutions to address the needs of small businesses, workgroups and large enterprises. In conjunction with the merger, First American changed its name to MangoSoft, Inc.

By 2004, the Company had ceased to develop new software products or services but continued to market, sell and support its software services. The Company's strategy began to include seeking strategic business partnerships and distribution channels to leverage its patented technology.

The Company discontinued the direct marketing, sale and support of its software services as of January 1, 2010. On December 22, 2010, the Company acquired Structured Settlement Investments, L.P., which engaged in the business of originating, purchasing and reselling structured settlements from beneficiaries of insurance, litigation and lottery awards. In January of 2011, the Company changed its name to Mango Capital, Inc.

The Company's structured settlement business has been unprofitable to date and the Company is considering terminating that business. The Company's technology business currently generates no revenue. The Company is evaluating alternate applications for its intellectual property, including the possible sale or assignment of its intellectual property.

The Common Stock is quoted on the OTC Pink Sheets under the symbol "MCAP." According to the Company's transfer agent and the Company's DTC Securities Listing Position, as of February 23, 2012, the Company had 5,643,157 shares of Common Stock outstanding held by 317 record holders. The Company has not issued any additional shares since that date. As of March 13, 2012, the last sale of the Common Stock was at $0.151 on March 13, 2012 which implies a total current market capitalization of approximately $852,117.

The Company has filed all of its periodic and current reports through the date of this letter including, without limitation, such reports for the Company's 2009, 2010 and 2011 fiscal years. The Company's fiscal year ends on December 31 of each year.

The Company has issued no class of securities which are subject to the requirements of Section 15(d) of the Exchange Act other than the singular class of Common Stock, par value $0.001. On July 24, 2000 the Company filed a Registration Statement on Form SB-2 for the registration of 25,421,533 shares of Common Stock, par value $0.001, all of which have previously been sold and none remain available for sale. Also, On July 3, 2007 the Company filed a Registration Statement on Form S-3 for the registration of 2,400,000 of Common Stock, par value $0.001, all of which have previously been sold and none remain available for sale. On March 13, 2012, the Company filed with the Commission post-effective amendments to each of the Company's registration statements on Form S-8 to deregister any securities that remained unsold thereunder. The post-effective amendments became effective immediately upon filing.

The Common Stock and associated Common Stock Purchase Rights axe registered under Section 12(g) of the Exchange Act and constitute the only classes of the Company's securities that are registered under Section 12 of the Exchange Act and the Company has not registered any other class of stock nor is subject to Section 15(d) obligations for any other class of stock.

On March 13, 2012, pursuant to Rule i2g-4(aX2), the Company filed a Form 15 to deregister the Common Stock and Common Stock Purchase Rights under Section 12(g) of the Exchange Act. Pursuant to Rule 12g-4(a), deregistration of the Company's common stock under Section 12(g) of the Exchange Act is expected to be effective 90 days after such filing. However, under Rule 12g-4(b), the Company's duty to file any reports under Section 13(a) of the Exchange Act solely because of the registration of its common stock under Section 12(g) of the Exchange Act was suspended immediately upon the Company's filing of such Form 15.

Notwithstanding the suspension of the Company's reporting obligation pursuant to Rule I2g-4(b), in the absence of obtaining the relief sought by this letter, Section 15(d) of the Exchange Act would continue to require the Company to file reports because the Company's previously filed Form S-8 was automatically updated upon the incorporation therein of the Company's Annual Reports on Form 10-K for the years ended December 31, 2008, December 31, 2009, and December 31, 2010.

Except as referenced above the Company has not issued: (a) any class of securities registered or that is required to be registered under Section 12 of the Exchange Act; or (b) any class of securities, including any class of debt security, subject to the requirements of Section 15(d) of the Exchange Act. Four (4) executive officers and directors hold options to acquire an aggregate of 797,150 shares of Common Stock as described in more detail below. The Company is not required pursuant to any agreement or obligation to submit, provide or file reports under the Exchange Act with the Commission, and the Company will not do so on a voluntary basis or otherwise.

The total assets of the Company have not exceeded $10 million on the last day of each of the Company's three most recent fiscal years (2009, 2010 & 2011). The total assets of the Company on the last day of its 2011, 2010 and 2009 fiscal years were $204,315; $3,788,317; and $1,789,803, respectively.

Subject to the receipt of the no-action relief sought in this letter, the Company intends to file the Form 15 to suspend immediately its duty to file reports under Section 15(d) of the Exchange Act pursuant to Rule 12h-3.

The Company acknowledges that, if on the first day of any subsequent fiscal year there are (a) 300 or more holders of record of Common Stock and the Company's total assets have exceeded $10 million on the last day of any of the Company's three most recent fiscal years or (b) 500 or more holders of record of Common Stock, the suspension of reporting obligations under Section 15(d) of the Exchange Act will lapse, and the Company will be required to resume periodic reporting under Section 15(d) of the Exchange Act, as, provided in Rule 12h-3 under the Exchange Act.

Registration Statements

The Company has on file with the Commission the following registration statements on Form S-8 under the Securities Act:

Form S-8 (File No. 333-50764, filed and effective November 27, 2000): This registration statement registered the offer and sale of 8,000,000 shares of Common Stock issuable under the Company's 1999 Incentive Compensation Plan (the " *Plan*").

Form S-8 (File No. 333-58412, filed and effective April 6, 2001): This registration statement registered the offer and sale of 115,122 shares of Common Stock issuable under the Plan.

The first registration statement on Form S-8 (File No. 333-50764) identified above became effective during the Company's 2000 fiscal year and was automatically updated during the Company's 2009, 2010 and 2011 fiscal years under Section 10(a)(3) of the Securities Act in connection with the filing of the Company's Annual Reports on Form 10-K for its fiscal years ended December 31, 2008 December 31, 2009 and December 31, 2010. No sales have been made under such registration statement since at least January 1, 2009. The second registration statement on Form S-8 (File No. 333-58412) identified above was automaticaily updated during the Company's 2008, 2009 and 2010 fiscal years under Section 10(a) (3) of the Securities Act in connection with the filing of the Company's Annual Reports on Form 10-K for its fiscal yearse ended December 31, 2008, December 31, 2009 and December 31, 2010. No sales have been made under such registratione statement since at least January 1, 2009. The Company does not have any other registration statements on file thate became effective or were automatically updated under Section 10(a)(3) of the Securities Act during the Company's 2009,e 2010 or 2011 fiscal years.e

On March 13, 2012, the Company filed with the Commission post-effective amendments to each of the Company's registration statements on Form S-8 identified above to deregister any Common Stock that remained unsold thereunder. The post-effective amendments became effective immediately upon filing. Accordingly, no investors will be able to purchase securities pursuant to those registration statements and so the protection of Section 15(d) is no longer necessary for potential purchasers.

Discussion

Rule 12g-4(a) under the Exchange Act provides that an issuer is entitled to terminate its registration of a class of securities under Section 12(g) of the Exchange Act if the issuer certifies to the Commission that such class of securities is: (a) held of record by less than 300 persons; or (b) held of record by less than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years (2009, 2010 & 2011). The issuer's duty to file any reports required under Section 13(a) is suspended immediately upon the filing of the necessary

certification on Form 15. Since the Company satisfies the requirements of Rule 12g-4(a), the Company is eligible to deregister the Common Stock under Section 12(g) of the Exchange Act. Accordingly, on March 13, 2012, pursuant to Rule 12g-4(a)(2), the Company filed a Form 15 to deregister the Common Stock and Common Stock Purchase Rightse under Section 12(g) of the Exchange Act.e

Rule 12h-3(a) under the Exchange Act provides that, subject to the provisions of paragraphs (c) and (d) of the rule, an issuer's duty under Section 15(d) of the Exchange Act to file reports required by Section 13(a) of the Exchange Act with respect to a class of securities specified in Rule 12h-3(b) shall be suspended immediately upon the filing of a Form 15 if the issuer has filed all reports required by Section 13(a), without regard to Rule 12b-25 under the Exchange Act, for the shorter of its most recent three fiscal years (2009, 2010 & 2011) and the portion of the current year preceding the date of the filing, or the peried since the issuer became subject to such reporting obligation. The Company has filed all required reports under Section 13(a) of the Exchange Act for the period specified in Rule 12h-3(a), and the Common Stock meets the criteria set forth in Rule 12h-3(b) in that the Common Stock is held of record by less than 500 persons and the total assets of the Company have not exceeded $10 million on the last day of each of the Company's three most recent fiscal years (2009, 2010 & 2011).

However, Rule 12h-3(c) under the Exchange Act provides that the suspension of an issuer's duty to file reports under Section 15(d) of the Exchange Act is not available to any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act or is required to be updated pursuant to Section 10(a)(3) of the Securities Act, and, in the case of an issuer that satisfies the criteria set forth in paragraph (b)(1)(ii) of Rule 12h-3 but not the criteria set forth in paragraph (b)(1)(i) of Rule 12h-3, the two succeeding fiscal years. As stated above, (a) the Company's registration statement on Form S-8 (File No. 333-50764) became effective during the Company's 2000e fiscal year and the Company's registration statement on Form S-8 (333-58412) became effective during the Company'se 2001 fiscal year, and each was automatically updated during the Company's 2009, 2010 and 2011 fiscal years undere Section 10(a)(3) of the Securities Act in connection with the filing of the Company's Annual Reports on Form 10-K fore its fiscal years ended December 31, 2008, December 31, 2009 and December 31, 2010. As such, a literal interpretatione of Rule 12h-3(c) would prevent the Company from suspending its duty under Section 15(d) to file reports required bye Section 13(a), despite satisfying Rule 12h-3(a) and (b), because the Company's registration statements on Form S-8 eithere became effective or were updated by reference under Section 10(a)(3) upon the filing of the Company's Annual Reportse on Form 10-K during each of the Company's 2009, 2010 and 2011 fiscal years.e

The purpose of Rule 12h-3 is to permit a company to suspend its reporting obligations when its securities are held by a small number of persons and the value of the company's assets is relatively low. The Staff has repeatedly indicated that a literal reading of Rule 12h-3(c) is not always justified by public policy reasons. In the proposing release to revise Rule 12h-3(c), the Commission stated that the purpose of periodic reporting under Section 15(d) is "to assure a stream of current information about an issuer for the benefit of purchasers in the registered offering, and for the public, in situations where Section 13 of the Exchange Act would not otherwise apply" and that "this [Rule 12h-3(c)] limitation is in keeping with the philosophy reflected in Section 15(d) of the Exchange Act that generally the investing public should have available complete information about the issuer's activities at least through the end of the year in which it makes a registered offering." Exchange Act Release No. 34-20263 (October 5, 1983) (the" ***Proposing Release***"). *See also*, Intraop Medical Corp. (available May 12, 2010); International Wire Group, Inc. (available November 6, 2009); GrandSouth Bancorporation (available March 24, 2010); Harrington West Financial Group Inc. (available March 24, 2010); PureDepth, Inc. (available March 8, 2010); Craftmade International, Inc. (available January 27, 2010); DATATRAK International, Inc. (available August 12, 2009); Neuro-Hitech, Inc. (available July 30, 2009); Interlink Electronics, Inc. (available March 26, 2009); Metro One Telecommunications, Inc. (available March 4, 2009); I.C. Isaacs & Company, Inc. (available August 13, 2008); Questar Assessment, Inc. (available June 13, 2008).

The Company submits that if the purpose of Rule 12h-3(c) is to give the investing public complete information about the issuer's activities through the end of the year in which the issuer makes an offering, then requiring the Company to

continue to report now would not further that purpose because no one has purchased shares under the subject registration statements during the Company's current fiscal year or the Company's immediately two preceding fiscal years.

On March 13, 2012, the Company filed with the Commission a post-effective amendments to each of the Company's registration statements on Form S-8 identified above to deregister any Common Stock that remained unsold thereunder. The post-effective amendments became effective immediately upon filing. Accordingly, no investors will be able to purchase securities pursuant to those registration statements and the protection of Section 15(d) is no longer necessary for potential purchasers.

The Staff has previously found that a sale of shares under a registration statement that had been automatically updated by periodic reports did not preclude an issuer, otherwise eligible under Rule 12h-3 under the Exchange Act, from filing a Form 15 to suspend any further obligations to file periodic reports. *See e.g.*, Neuro-Hitech, Inc. (available July 30, 2009); Mountain Valley Bancshares, Inc. (available March 30, 2009); I.C. Isaacs & Company, Inc. (available August 13, 2008); Questar Assessment, Inc. (available June 13, 2008). The Staff has also concurred in allowing issuers to file a Form 15 notwithstanding that such issuers had effective registration statements that had been automatically updated during the current fiscal year. *See e.g.*, Craftmade International, Inc. (available January 27, 2010); Neuro-Hitech, Inc. (available July 30, 2009); I.C. Isaacs & Company, Inc. (available August 13, 2008). The Company respectfully submits that the rationale for allowing the Company to suspend reporting under Section 15(d) is even stronger because no sales have occurred under either of the Company's registration statements on Form S-8 identified above during the prior three fiscal years nor did either such registration statement first become effective during the prior three fiscal years.

In the Proposing Release, the Commission acknowledged that Congress recognized, with respect to Section 15(d) of the Exchange Act, that the benefits of periodic reporting by an issuer may not always be commensurate with the financial and administrative burdens imposed, particularly where smaller companies with a small number of public stockholders are involved. *See e.g.*, Intraop Medical Corp. (available May 12, 2010); GrandSouth Bancorporation (available March 24, 2010); Harrington West Financial Group Inc. (available March 24, 2010); PureDepth, Inc. (available [* 17] March 8, 2010); Craftmade International, Inc. (available January 27, 2010); Silverstar Holdings, Ltd. (available May 15, 2009); Interlink Electronics, Inc. (available March 26, 2009); Questar Assessment, Inc. (available June 13, 2008); Planet Technologies, Inc. (available February 7, 2008).

The preparation of periodic and current reports required by the Commission imposes a material financial burden on the Company and involves significant management efforts. Such burdens and efforts are disproportionate to the number of record holders and value of the Company, and disproportionate to the benefits to be derived given the very limited trading activity in the Common Stock. Based on public filings, 70.7% of the outstanding Common Stock is beneficially owned by only three holders. In addition, the Common Stock has historically seen low turnover, and trading activity is extremely thin. The trading in the Common Stock during the last 12 months ended March 13, 2012 has been minimal: during this period, there were 230 trading days on which there were no transactions in the Common Stock, and only 22 days on which there were transactions, on the OTC Pink Sheets, and the aggregate value of all of such transactions was only $5,921.98. As stated above, the Company's number of record stockholders is less than the 500 persons specified by Rule 12h-3(b)(1)(ii) and the total assets of the Company have not exceeded $10 million on the last day of each of the Company's three most recent fiscal years (2009, 2010 & 2011).

Options (" ***Options***") to purchase 797,150 shares of Common Stock granted under the Plan are held by four (4) officers or directors of the Company. The average closing price of the Company's stock for the preceding one year period is $.08. The lowest exercise price for any such Option is $0.11. Given that the lowest exercise price for an outstanding Option is lower than the one year average price at which the Common Stock has been quoted on the OTC Pink Sheets, is not likely that those holders will exercise their Options prior to expiration.

It is the Company's view that the benefit to those few persons holding Options granted under the Plan is outweighed by the excessive cost to the Company of continuing to file reports. In this instance, there is very little benefit to the investing public to be had by requiring the Company to make filings under the Exchange Act. Conversely, the Company would undoubtedly incur substantial time and expense in preparing the required filings. The policy rationale underlying Rule 12h-3(c) is not applicable to the Company's effective registration statements on Form S-8. The Company has complied with its reporting obligations under the Exchange Act and, in doing so, has complied with its undertakings to keep its effective registration statements current. We note that the Staff has granted no-action relief in a range of circumstances where the literal application of Rule 12h-3(c) would yield relatively little public benefit in light of the burdens on the issuer of compliance with reporting requirements under the Exchange Act. *See e.g.*, Intraop Medical Corp. (available May 12, 2010); Craftmade International, Inc. (available January 27, 2010); Neuro-Hitech, Inc. (available July 30, 2009); Interlink Electronics, Inc. (available March 26, 2009); I.C. Isaacs & Company, Inc. (available August 13, 2008); Questar Assessment, Inc, (available June 13, 2008); Planet Technologies, Inc. (available February 7, 2008).

In the Company's circumstances, the financial burdens of continued reporting are disproportionate to any benefits. As disclosed in its periodic reports, the Company has reported net losses for each of its last three completed fiscal years and expects to continue to incur operating losses as well as negative cash flow from operations in future periods. The Company believes that the funds spent to ensure compliance with Commission regulations could be used more effectively by investing them in internal projects intended to increase stockholder returns, such as exploring the possible sale or assignment of its intellectual property. Under the circumstances, the costs associated with reporting are unnecessary and excessively burdensome, particularly in light of the limited benefits the Company's stockholders and the investing public are likely to receive through continued registration and reporting.

Once the Company terminates its reporting status, Rule 701 under the Securities Act will permit the Company to offer and sell securities pursuant to the Plan in compliance with Rule 701. *See*, Intraop Medical Corp. (available May 12, 2010); NewCity Communications, Inc. (available October 6, 1988). The Company has informed us that after the filing of the Form 15, the Company intends to comply with all requirements applicable to it to ensure that the issuance of securities pursuant to the Plan to the above-described Option holders will be in accordance with Rule 701. Rule 701 exempts from the registration requirements of the Securities Act certain offers and sales of securities made under the terms of compensatory benefit plans and written compensation arrangements by an issuer not subject to the reporting requirements of the Exchange Act. The Plan satisfies the eligibility requirements of Rule 701, and upon the effectiveness of the Form 15 certification, the Company will become eligible as an issuer to utilize the exemption under Rule 701. Secuiities issued under Rule 701 will be restricted securities as defined in Rule 144 under the Securities Act and may only be resold pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from registration under the Securities Act. *See e.g.*, Intraop Medical Corp. (available May 12, 2010); Beverly Hills Bancorp Inc. (available March 13, 2009); Metro One Telecommunications, Inc. (available March 4, 2009); Planet Technologies, Inc. (available February 7, 2008).

Conclusion

Under the circumstances described in this letter and for the reasons discussed above, we respectfully request that the Staff confirm that it concurs with the Company's view that the updating of the Company's registration statements on Form S-8 pursuant to Section 10(a)(3) of the Securities Act during the Company's 2011 fiscal year will not preclude the Company from utilizing Rule 12h-3 under the Exchange Act to suspend the Company's duty to file with the Commission reports required by Section 15(d) of the Exchange Act and the rules and regulations thereunder with respect to the Common Stock for the fiscal year in which the Company's registration statements on Form S-8 were required to be updated pursuant to Section 10(a)(3) of the Securities Act, including (x) if the Staff grants the relief sought by this letter on or before the date that such filing is required to be filed (without regard to Rule 12b-25 under the Exchange Act), the Company's duty to file its next periodic report; an Annual Report on Form 10-K for the year ended December 31, 2011, and (y) if the Staff does not grant the relief sought by this letter on or before March 30, 2012, then the Quarterly Report on Form 10-Q for the quarter ending March 31, 2010. If the Staff grants the relief sought by this letter, the Company

intends to file a Form 15 requesting the suspension of its obligations to file periodic and current reports under Sections 13(a) and 15(d) of the Exchange Act.

Should the Staff disagree with any of the views discussed in this letter, we would appreciate an opportunity to discuss the matter with the Staff before it issues a written response to this letter. You may call me at (908) 470-0200 or email me at HeimerlLawFirm@att.net with any questions or comments. In accordance with footnote 68 of SEC Release No. 33-7427 (July 1, 1997), we are transmitting a copy of this letter by electronic filing.e

Very truly yours,

/s/

Wolfgang Heimerl

[STAFF REPLY LETTER]
March 28, 2012

Response of the Office of Chief Counsel Division of Corporation Finance

Re: Mango Capital, Inc. Incoming letter dated March 28, 2012

Based on the facts presented, the Division will not object if Mango Capital stops filing periodic and current reports under the Securities Exchange Act of 1934, including its annual report on Form 10-K for the year ended December 31, 2011. In reaching this position, we note that Mango Capital has filed post-effective amendments removing from registration unsold securities under all effective registration statements on Forms S-8, and those post-effective amendments are effective. We assume that, consistent with the representations made in your letter, Mango Capital will file a certification on Form 15 making appropriate claims under Exchange Act Rule 12h-3 on or before the due date of its Form 10-K for the year ended December 31, 2011.

This position is based on the representations made to the Division in your letter. Any different facts or conditions might require the Division to reach a different conclusion. Further, this response expresses the Division's position on enforcement action only and does not express any legal conclusion on the question presented.

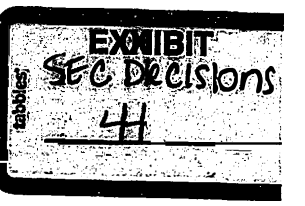
Sincerely,

Carmen Moncada-Terry

Special Counsel

...The staff will not object if this company stops filing periodic and current reports under 1934 Acte The staff notes that the company has filed post-effective amendments removing from registration unsold securities under all effectivee registration statements on Forms S-8, and those post-effective amendments are effective. The staff assumes that thee company will file a certification of Form 15 making the appropriate claims under 1934 Act Rule 12h-3 on or beforee the date of its Form 10-K for the year ended December 31, 2011. The company represents that it filed a Form 15 toe deregister its common share and common share purchase rights under Section 12(g) and that its duty to file any reportse under Section 13(a) of the Exchange Act was suspended immediately upon the filing of Form 15. However, without thee requested relief, the company would still be required to file reports because of the company's previously filed Form S-8,e which was automatically updated upon the incorporation of the company's annual reports on Form 10-K.e

End of Document



SEC No Action Ltrs. WSB File No. 1025200402 (C.C.H.), 2004 WL 7212164

SEC No Action Letters

Securities and Exchange Commission

Other 1934 Act Provisions

Section 12 — Registrations

Ruling: No-Action-Letter

October 15, 2004

SYNETICS SOLUTIONS, INC.

Public Availability Date: October 15, 2004

WSB File No. 1025200402

Fiche Locator No. None

WSB Subject Category: 70

References:

Securities Exchange Act of 1934, Section 12(h); Rule 12h-3

Washington Service Bureau Summary

[INQUIRY LETTER]
October 14, 2004

Mr. David Lynn
Division of Corporation Finance
Office of Chief Counsel
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0402

Re: Synetics Solutions, Inc. - No-Action Request Commission File Nos. 333-115065 and 000-50844

Ladies and Gentlemen:

On behalf of our client, Synetics Solutions, Inc., an Oregon corporation ("Synetics"), we hereby request that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concurs in Synetics' view that the effectiveness of its registration statement on Form S-1 during the fiscal year ending February 28, 2005 would not preclude Synetics from utilizing Rule 12h-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), suspending its duty to file with the Commission periodic reports required by Sections 15(d) and 13 of the Exchange Act and the rules and regulations promulgated thereunder, with respect to the fiscal year in which Synetics' registration statement on Form S-1 became effective (i.e., the fiscal year ending February 28, 2005). Alternatively, we hereby request that the Commission exempt Synetics from the requirement to file such reports pursuant to Section 12(h) of the Exchange Act. This letter is intended to replace the previous no-action letter requests dated October 8, 2004 and October 13, 2004 and filed with the Commission on behalf of Synetics.

Factual Background

On April 30, 2004, pursuant to the Securities Act of 1933, as amended (the "Securities Act"), Synetics filed a registration statement on Form S-1 (File No. 333-115065), as most recently amended on July 21, 2004 (the "Registration Statement"), which proposed an initial public offering (the "Initial Public Offering") of up to 6,900,000 shares (including an over-allotment option of up to 900,000 shares) of Synetics' common stock (the "Common Stock"). Synetics also filed a registration statement on Form 8-A under the Exchange Act (File No. 000-50844) registering its Common Stock under Section 12(g) of the Exchange Act (the "Form 8-A Registration Statement") on July 13, 2004. The Registration Statement (as amended through such date) was declared effective by the Commission on July 20, 2004, whereupon the Form 8-A Registration Statement automatically became effective. After the Registration Statement (as amended through July 19, 2004) was declared effective, Synetics filed a Post-Effective Amendment No. 1 to Form S-1 on July 21, 2004, which, among other things, reduced the estimated price range of the Initial Public Offering. Synetics thereafter expected that the public offering price, underwriting syndicate and related matters would be contained in a form of prospectus filed pursuant to Rule 424(b) of the Securities Act as permitted by Rule 430A of the Securities Act.

However, after discussion with Adams, Harkness & Hill, Inc., the lead underwriter for the Initial Public Offering, Synetics decided to postpone for an indefinite period of time the Initial Public Offering due to market conditions. Since that decision, Synetics has not taken any further action with respect to commencing the Initial Public Offering and, on October 8, 2004, Synetics filed with the Commission a letter requesting the withdrawal of the Registration Statement pursuant to Rule 477(a) under the Securities Act (and an additional letter requesting withdrawal of Post-Effective Amendment No. 1 to the Registration Statement which amendment has not yet been declared effective by the Commission). The Company has since received notification from the Commission that its request to withdraw the Registration Statement and Post-Effective Amendment No. 1 to the Registration Statement has been granted and both the Registration Statement and Post-Effective Amendment No. 1 to the Registration Statement have been withdrawn. Synetics has not issued and will not issue any shares of Common Stock pursuant to the Registration Statement.

As of the date of the effectiveness of the Registration Statement, the outstanding shares of Common Stock were, and are as of the date of this letter, held beneficially and of record by a total of three holders. Such holders acquired the shares privately without registration under the Securities Act.

On October 8, 2004, Synetics filed a Form 15 to terminate the registration of its Common Stock under Section 12(g) of the Exchange Act and Rule 12g-4(a)(1)(i) thereunder. In accordance with Rule 12g-4(b), Synetics' obligation under Section 12(g) to file reports pursuant to Section 13(a) of the Exchange Act has been suspended immediately upon the filing of the Form 15.

Due to the suspension of its Exchange Act reporting obligations under Section 12, Synetics has become subject to the reporting obligations imposed under Section 15(d) of the Exchange Act. Section 15(d) provides that the periodic

reporting requirements of Section 13 are applicable to any issuer that files a registration statement that becomes effective under the Securities Act.

Although Exchange Act Rule 12h-3 provides that these requirements will be suspended immediately upon the filing of a Form 15 by any issuer with respect to a class of securities held of record by less than 300 persons, subsection (c) of Rule 12h-3 states that such rule is unavailable in any fiscal year in which such registration statement became effective. Thus, although all shares of Synetics' Common Stock that are issued and outstanding are held beneficially and of record by three shareholders, all of whom acquired the shares privately without registration under the Securities Act, Rule 12h-3(c) precludes Synetics from utilizing Rule 12h-3(b)(1)(i) to suspend its reporting requirements under Section 15(d) of the Exchange Act with respect to the current fiscal year.

Discussion

We respectfully submit to the Staff that Section 15(d) of the Exchange Act and Rule 12h-3(c) thereunder should not be interpreted in a manner that would require Synetics to file any Section 13(a) periodic reports merely because the Registration Statement became effective during the fiscal year ending February 28, 2005.

The Commission has stated that "[t]he purpose of [periodic reporting under] Section 15(d) is to assure a stream of current information about an issuer for the benefit of purchasers in the registered offering, and for the public, in situations where Section 13 of the Exchange Act would not otherwise apply." *Exchange Act Release No. 34-20263 (October 5, 1983)* (the "Release"). In the Release, the Commission stated that the Rule 12h-3(c) limitation with respect to the fiscal year in which a registration statement under the Securities Act becomes effective "is in keeping with the philosophy reflected in Section 15(d) of the Exchange Act that generally the investing public should have available complete information about the issuer's activities at least through the end of the year in which it makes a registered offering." *Id.*

Even though the Registration Statement became effective, the Initial Public Offering was not consummated and Synetics has requested withdrawal of the Registration Statement pursuant to Rule 477 under the Securities Act. No securities of Synetics were sold to the public pursuant to the Registration Statement. Therefore, because Synetics does not currently have any "investing public" to which information about its activities in the quarter ended August 31, 2004 or through the end of the current fiscal year ending February 28, 2005 should be made available, the policy rationale behind Rule 12h-3(c)'s limitation upon the use of Rule 12h-3 with respect to a class of securities for any fiscal year in which a registration statement relating to that class becomes effective under the Securities Act is not applicable.

The Commission further stated in the Release that, "Congress recognized, with respect to Section 15(d), that the benefits of periodic reporting by an issuer might not always be commensurate with the burdens imposed...." *Id.* The Staff has also recognized in a number of circumstances essentially identical to Synetics' circumstances (i.e., where no securities were sold pursuant to an effective registration statement and the issuer withdrew its registration statement pursuant to Rule 477 under the Securities Act), that a literal reading of Rule 12h-3(c) is not always justified by public policy considerations, and accordingly has taken a no-action position similar to that requested herein. See, e.g., *Engenio Information Technologies, Inc.*, 2004 WL 2152288 (September 13, 2004); *NOMOS Corporation*, 2002 WL 31626922e (November 12, 2002), *NeoGenesis Pharmaceuticals, Inc.* 2002 SEC No-Act. LEXIS 311 (April 1, 2002); *OMP, Inc.*, 2001e SEC No-Act. LEXIS 442 (April 2, 2001); *Enfinity Corporation*, 1998 SEC No-Act. LEXIS 1012 (November 30, 1998);e *Coral Systems, Inc.*, 1997 SEC No-Act. LEXIS 481 (March 31, 1997); *Vandalia National Corporation*, 1995 SEC No-Act. LEXIS 475 (April 21, 1995); *Professional Medical Products, Inc.*, 1994 SEC No-Act. LEXIS 539 (June 3, 1994);e *Central Point Software, Inc.*, 1992 SEC No-Act. LEXIS 842 (August 7, 1992); *CareNetwork, Inc.*, 1991 SEC No-Act.e LEXIS 128 (January 30, 1991); *Bizmart, Inc.*, 1991 SEC No-Act. LEXIS 914 (July 23, 1991); *York International Corp.*, 1990 SEC No-Act. LEXIS 621 (March 30, 1990); *AIA Services Corporation*, 1990 SEC No-Act. LEXIS 175 (Februarye 6, 1990). Therefore, we respectfully request that the Staff exempt Synetics from the reporting requirements of Sectionse 15(d) and 13 of the Exchange Act.e

Conclusion

The Staff has recognized that, with respect to Section 15(d) of the Exchange Act, the benefits to the investing public of periodic reporting by an issuer may not be justified in light of the burdens imposed.

In Synetics' case, the burdens imposed by the application of Rule 12h-3 clearly outweigh any benefits. The preparation and filing of periodic reports would impose a financial burden on Synetics and would involve significant management efforts. Because Synetics has only three shareholders, none of whom purchased shares of Common Stock in a registered public offering, the investing public will not realize a benefit from requiring Synetics to file periodic reports required by Section 13(a) of the Exchange Act.

In light of the foregoing, we request, on behalf of Synetics, that a no-action letter be issued advising us that the Staff concurs in Synetics' view that the effectiveness of the S-1 Registration Statement during the fiscal year ending February 28, 2005 would not preclude Synetics from utilizing Rule 12h-3 under the Exchange Act suspending its duty to file with the Commission periodic reports required by Sections 15(d) and 13 of the Exchange Act and the rules and regulations promulgated thereunder, with respect to the fiscal year in which the S-1 Registration Statement became effective (i.e., the fiscal year ending February 28, 2005). Alternatively, we request an exemption on behalf of our client, Synetics, pursuant to Section 12(h) of the Exchange Act from the requirement to file such reports.

As required by *Securities Act Release No. 33-6269*, one original and seven copies of this letter are being submitted herewith. In addition, a copy of this letter is being submitted via facsimile. As noted earlier, this letter is intended to replace the two previous no-action letter requests filed with the Commission on behalf of Synetics dated October 8, 2004 and October 13, 2004.

We note that, in the absence of Synetics' ability to rely on Rule 12h-3 to exempt it from the reporting obligations of Section 15(d) of the Exchange Act (or similar exemptive relief), Synetics could be required to file a Quarterly Report on Form 10-Q as early as October 15, 2004. Accordingly, any assistance that the Staff could provide in responding to this no-action request prior to such date would be greatly appreciated.

Please acknowledge receipt of this filing by stamping the enclosed copy of this letter to show the date of receipt and returning it to the undersigned in the self-addressed, stamped envelope provided.

If the Staff has any questions concerning this request or requires additional information, please contact either Brendan N.eO'Scannlain (503-294-9886) or Todd A. Bauman (503-294-9812) of Stoel Rives LLP. If the Staff disagrees with anye of the statements expressed herein, we respectfully request the opportunity to discuss such issues with the Staff prior toe the issuance of any written response to this letter.e

Very truly yours,

/s/

Brendan N. O'Scannlain

cc: James W. Cruckshank

Todd A. Bauman

[STAFF REPLY LETTER]

Response of the Office of Chief Counsel Division of Corporation Finance

October 15, 2004

Re: Synetics Solutions, Inc.

Incoming letter dated October 14, 2004

Based on the facts presented, it is the Division's view that the effectiveness of Synetics Solutions' registration statement on Form S-1 during the fiscal year ending.February 28, 2005, would not preclude Synetics Solutions from utilizing Rule 12h-3 under the Securities Exchange Act of 1934. In reaching this position, we particularly note that no securities were sold pursuant to the registration statement and Synetics Solutions has withdrawn the registration statement and the post effective amendment to the registration statement pursuant to Rule 477 under the Securities Act of 1933.

This position is based on the representations made to the Division in your letter. Any different facts or conditions might require the Division to reach a different conclusion. Further, this response expresses the Division's position on enforcement action only and does not express any legal conclusion on the question presented.

Sincerely,

/s/

Jeffrey S. Cohan

Special Counsel

...The staff concurs with the company's view that the effectiveness of its registration statement on Form S-1 during the fiscal year ending February 28, 2005 would not preclude it from using 1934 Act rule 12h-3, thus suspending its duty to file periodic reports required by 1934 Act sections 13 and 15(d) with respect to the fiscal year in which the Form S-1 becomes effective. In reaching this position, the staff notes that no securities were sold pursuant to the registration statement and that the company has withdrawn the registration statement pursuant to 1933 Act rule 477.

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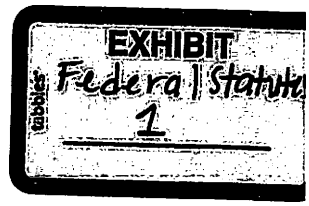
Federal Statutes



Contents

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(g)(2), [15 USC 78l(g)(2)] [Exemptions from Registration Requirements]

Pooled Income Funds

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(g)(3), [15 USC 78l(g)(3)] [Exemption of Foreign Issuer]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(g)(4), [15 USC 78l(g)(4)] [Termination of Registration]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(g)(5), [15 USC 78l(g)(5)] [Definitions]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(g)(6), [15 USC 78l(g)(6)] [Exclusion for persons holding certain securities]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(h), [15 USC 78l(h)] [Exemption from Provisions]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(i), [15 USC 78l(i)] [Securities Issued by Banks]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(j), [15 USC 78l(j)] [Denial, Suspension, or Revocation of Registration of Security]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(k)(1), [15 USC 78l(k)(1)] [Suspension of Trading]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(k)(2), [15 USC 78l(k)(2)] [Emergency Orders]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(k)(3), [15 USC 78l(k)(3)] [Termination of Emergency Actions]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(k)(4), [15 USC 78l(k)(4)] [Compliance]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(k)(5), [15 USC 78l(k)(5)] [Review of Orders]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(k)(6), [15 USC 78l(k)(6)] [Consultation]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(k)(7), [15 USC 78l(k)(7)] [Definitions]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(l), [15 USC 78l(l)] [Form or Format of Security]

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(m), [Repealed.]

Securities Exchange Act of 1934 Laws, Registration Requirements for Securities—Sec. 12

Securities Exchange Act of 1934 Laws
Securities Exchange Act of 1934 Laws
Registration Requirements for Securities—Sec. 12

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Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(a),[15 USC 78l(a)] [Unlawful to Effect Transactions in Unregistered Securities]

1934 Securities Exchange Act Sec. 12(a)
15 U.S.C. §78l
15 U.S.C. §78l(a)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,001

It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title, and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

.001 Historical comment.—
Act of December 21, 2000, (Commodity Futures Modernization Act of 2000, which was incorporated into the Consolidated Appropriations Act, 2001), H.R. 5660 (incorporated into and signed into law as H.R. 4577) Sec. 208, Pub. Law 106-554, 114 Stat. 2763, amended Exchange Act Sec. 12(a) by adding at the end the text "The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange."

Securities Exchange Act of 1934 Laws, Securities Exempted from Exchange Registration

Securities Exchange Act of 1934 Laws
Securities Exchange Act of 1934 Laws
Registration Requirements for Securities—Sec. 12 :: Securities Exempted from Exchange Registration

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Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(b),[15 USC 78l(b)] [Procedure for Registration of Securities on Exchange]

1934 Securities Exchange Act Sec. 12(b)
15 U.S.C. §78l
15 U.S.C. §78l(b)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,011

A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(b)(1),[15 USC 78l(b)(1)] [Data to Be Supplied in Application for Registration]

1934 Securities Exchange Act Sec. 12(b)(1)
15 U.S.C. §78l
15 U.S.C. §78l(b)
15 U.S.C. §78l(b)(1)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(b)
Federal Securities Law Reporter ¶23,015

Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

12(b)(1)(A) the organization, financial structure and nature of the business;

12(b)(1)(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

12(b)(1)(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

12(b)(1)(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

12(b)(1)(E) remuneration to others than directors and officers exceeding $20,000 per annum;

12(b)(1)(F) bonus and profit-sharing arrangements;

12(b)(1)(G) management and service contracts;

12(b)(1)(H) options existing or to be created in respect of their securities;

12(b)(1)(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

12(b)(1)(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;

12(b)(1)(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and

12(b)(1)(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

.001 **Historical comment.**—Act of July 30, 2002, (Sarbanes-Oxley Act of 2002), H.R.3763, Sec. 205, Pub. Law 107-204, 116 Stat. 745, ¶62,801, amended the Exchange Act:
(1) in section 12(b)(1), by striking "independent public accountants" each place that term appears and inserting "a registered public accounting firm"; and
(2) in section 17(e) and (i), by striking "an independent public accountant" each place that term appears and inserting "a registered public accountingfirm".
Act of August 20, 1964, Sec. 3(a), effective July 1, 1964 (¶60,451), 78 Stat. 565, added paragraph I and redesignated paragraphs J, K, and L in section 12(b)(1).—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(b)(2),[15 USC 78l(b)(2)] [Documents Required by Commission]

1934 Securities Exchange Act Sec. 12(b)(2)
15 U.S.C. §78l
15 U.S.C. §78l(b)
15 U.S.C. §78l(b)(2)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(b)
Federal Securities Law Reporter ¶23,017

Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(b)(3),[15 USC 78l(b)(3)] [Copies of Material Contracts]

1934 Securities Exchange Act Sec. 12(b)(3)
15 U.S.C. §78l
15 U.S.C. §78l(b)
15 U.S.C. §78l(b)(3)
1934 Securities Exchange Act Sec. 12

1934 Securities Exchange Act Sec. 12(b)
Federal Securities Law Reporter ¶23,018

Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

.001 Historical comment.—
Act of August 20, 1964, Sec. 3(a)(3), effective July 1, 1964 (¶60,451), 78 Stat. 565, added paragraph (3) to subsection (b) of Sec. 12.—CCH.

Securities Exchange Act of 1934 Laws, Exchange Act Industry Guides

Securities Exchange Act of 1934 Laws
Securities Exchange Act of 1934 Laws
Registration Requirements for Securities—Sec. 12 :: Exchange Act Industry Guides

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Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(c),[15 USC 78l(c)] [Other Information]

1934 Securities Exchange Act Sec. 12(c)
15 U.S.C. §78l
15 U.S.C. §78l(c)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,061

If in the judgment of the Commission any information required under subsection (b) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(d),[15 USC 78l(d)] [Time of Effectiveness of Registration—Withdrawal or Striking from Listing or Registration]

1934 Securities Exchange Act Sec. 12(d)
15 U.S.C. §78l
15 U.S.C. §78l(d)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,071

If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer

shall be relieved from further compliance with the provisions of this section and section 13 of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken.

Securities Exchange Act of 1934 Laws, Suspension of Trading, Withdrawal, and Striking from Listing and Registration

Securities Exchange Act of 1934 Laws
Securities Exchange Act of 1934 Laws
Registration Requirements for Securities—Sec. 12 :: Suspension of Trading, Withdrawal, and Striking from Listing and Registration

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Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(d), [15 USC 78l(d)] [Registration of Unissued Securities]

1934 Securities Exchange Act Sec. 12(d)
15 U.S.C. §78l
15 U.S.C. §78l(d)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,201

An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

.001 Historical comment.—
Act of August 10, 1954, Sec. 202, Public Law 577, effective October 9, 1954, repealed the last sentence of subsection (d) which read as follows: "Such rules and regulations shall limit the registration of an unissued security to cases where such security is a right or the subject of a right to subscribe or otherwise acquire such security granted to holders of a previously registered security and where the primary purpose of such registration is to distribute such unissued security to such holders." CCH.

Securities Exchange Act of 1934 Laws, Unlisted Trading

Securities Exchange Act of 1934 Laws
Securities Exchange Act of 1934 Laws
Registration Requirements for Securities—Sec. 12 :: Unlisted Trading

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Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(e),[15 USC 78l(e)] [Temporary Registration Until July 1, 1935]

1934 Securities Exchange Act Sec. 12(e)
15 U.S.C. §78l

15 U.S.C. §78l(e)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,211

Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(f)(1),[15 USC 78l(f)(1)] [Continuation and Extension of Unlisted Trading Privileges]

1934 Securities Exchange Act Sec. 12(f)(1)
15 U.S.C. §78l
15 U.S.C. §78l(f)
15 U.S.C. §78l(f)(1)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(f)
Federal Securities Law Reporter ¶23,221

12(f)(1)(A) Notwithstanding the preceding subsections of this section, any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to—

12(f)(1)(A)(i) any security that is listed and registered on a national securities exchange, subject to subparagraph (B); and

12(f)(1)(A)(ii) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration provided in subparagraph (B) or (G) of subsection (g)(2), subject to subparagraph (E) of this paragraph.

12(f)(1)(B) A national securities exchange may not extend unlisted trading privileges to a security described in subparagraph (A)(i) during such interval, if any, after the commencement of an initial public offering of such security, as is or may be required pursuant to subparagraph (C).

12(f)(1)(C) Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation or 240 days after such date of enactment, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next day of trading.

12(f)(1)(D) The Commission may prescribe, by rule or regulation such additional procedures or requirements for extending unlisted trading privileges to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

12(f)(1)(E) No extension of unlisted trading privileges to securities described in subparagraph (A)(ii) may occur except pursuant to a rule, regulation, or order of the Commission approving such extension or extensions. In promulgating such rule or regulation or in issuing such order, the Commission—

12(f)(1)(E)(i) shall find that such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title;

12(f)(1)(E)(ii) shall take account of the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

12(f)(1)(E)(iii) shall not permit a national securities exchange to extend unlisted trading privileges to such securities if any rule of such national securities exchange would unreasonably impair the ability of a dealer to solicit or effect transactions in such securities for its own account, or would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

12(f)(1)(F) An exchange may continue to extend unlisted trading privileges in accordance with this paragraph only if the exchange and the subject security continue to satisfy the requirements for eligibility under this paragraph, including any rules and regulations issued by the Commission pursuant to this paragraph, except that unlisted trading privileges may continue with regard to securities which had been admitted on such exchange prior to July 1, 1964, notwithstanding the failure to satisfy such requirements. If unlisted trading privileges in a security are discontinued pursuant to this subparagraph, the exchange shall cease trading in that security, unless the exchange and the subject security thereafter satisfy the requirements of this paragraph and the rules issued hereunder.

12(f)(1)(G) For purposes of this paragraph—

12(f)(1)(G)(i) a security is the subject of an initial public offering if—

12(f)(1)(G)(i)(I) the offering of the subject security is registered under the Securities Act of 1933; and

12(f)(1)(G)(i)(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 13 or 15(d) of this title; and

12(f)(1)(G)(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

.001 Historical comment.—

Act of October 25, 1994 (Unlisted Trading Privileges Act) Sec. 2, P.L. 103-389, 108 Stat. 4081, amended Sec. 12(f)(1), which formerly read:

"(f)(1) Notwithstanding the foregoing provisions of this section, any national securities exchange, subject to the terms and conditions hereinafter set forth—

(A) may continue unlisted trading privileges to which a security had been admitted on such exchange prior to July 1, 1964;e

(B)upon application to and approval of such application by the Commission, may extend unlisted trading privileges to anye security listed and registered on any other national securities exchange; ande

(C)upon application to and approval of such application by the Commission, may extend unlisted trading privileges to anye security registered pursuant to section 12 of this title or which would be required to be so registered except for the exemptione from registration provided in subsection (g)(2)(B) or (g)(2)(G) of that section.e

If an extension of unlisted trading privileges to a security is based upon its listing and registration on another national securitiese exchange, such privileges shall continue in effect only so long as such security remains listed and registered on a nationale securities exchange." CCH.e

Act of June 4, 1975, Sec. 8(1), 89 Stat. 117, amended Sec. 12(f)(1) which formerly read:e

"(f)(1) Notwithstanding the foregoing provisions of this section, any national securities exchange, subject to the terms ande conditions hereinafter set forth—

(A)may continue unlisted trading privileges to which a security had been admitted on such exchange prior to the effective datee of subsection (g)(1) of section 12 of this title.e

(B)upon application to and approval of such application by the Commission, may extend unlisted trading privileges to anye security duly listed and registered on any other national securities exchange.e

If an extension of unlisted trading privileges to a security was originally based upon its listing and registration on another nationale securities exchange, such privileges shall continue in effect only so long as such security shall remain listed and registered one any other national securities exchange." CCH.e

Act of August 20, 1964, Sec. 3(b), 78 Stat. 565-566 designated the first paragraph of Sec. 12(f) as (1), redesignated clausese (1)and (2) of this paragraph as clauses (A) and (B) and repealed former clause (3). Prior to the 1964 amendment, the firste paragraph of Sec. 12(f) read as follows:e

"(f) Notwithstanding the foregoing provisions of this section, any national securities exchange, upon application to and approvale of such application by the Commission and subject to the terms and conditions hereinafter set forth, (1) may continue unlistede trading privileges to which a security had been admitted on such exchange prior to March 1, 1934; or (2) may extend unlistede trading privileges to any security duly listed and registered on any other national securities exchange, but such unlisted tradinge privileges shall continue in effect only so long as such security shall remain listed and registered on any other national securitiese exchange; or (3) may extend unlisted trading privileges to any security in respect of which there is available from a registratione statement and periodic reports or other data filed pursuant to rules or regulations prescribed by the Commission under this titlee or the Securities Act of 1933, as amended, information substantially equivalent to that available pursuant to rules or regulationse of the Commission in respect of a security duly listed and registered on a national securities exchange, but such unlisted tradinge privileges shall continue in effect only so long as such a registration statement remains effective and such periodic reports ore other data continue to be so filed." CCH.e

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(f)(2),[15 USC 78l(f)(2)] [Power to Suspend Unlisted Trading Privileges]

1934 Securities Exchange Act Sec. 12(f)(2)
15 U.S.C. §78l
15 U.S.C. §78l(f)
15 U.S.C. §78l(f)(2)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(f)
Federal Securities Law Reporter ¶23,231

12(f)(2)(A) At any time within 60 days of commencement of trading on an exchange of a security pursuant to unlisted trading privileges, the Commission may summarily suspend such unlisted trading privileges on the exchange. Such suspension shall not be reviewable under section 25 of this title and shall not be deemed to be a final agency action for purposes of section 704 of title 5, United States Code. Upon such suspension—

12(f)(2)(A)(i) the exchange shall cease trading in the security by the close of business on the date of such suspension, or at such time as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title; and

12(f)(2)(A)(ii) if the exchange seeks to extend unlisted trading privileges to the security, the exchange shall file an application to reinstate its ability to do so with the Commission pursuant to such procedures as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

12(f)(2)(B) A suspension under subparagraph (A) shall remain in effect until the Commission, by order, grants approval of an application to reinstate, as described in subparagraph (A)(ii).

12(f)(2)(C) A suspension under subparagraph (A) shall not affect the validity or force of an extension of unlisted trading privileges in effect prior to such suspension.

12(f)(2)(D) The Commission shall not approve an application by a national securities exchange to reinstate its ability to extend unlisted trading privileges to a security unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title. If the application is made to reinstate unlisted trading privileges to a security described in paragraph (1)(A)(ii), the Commission—

12(f)(2)(D)(i) shall take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such a security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

12(f)(2)(D)(ii) shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of a dealer to solicit or effect transactions in such security for its own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of marketmakers who are specialists and such dealers who are not specialists.

.001 Historical comment.—

Act of October 25, 1994 (Unlisted Trading Privileges Act) Sec. 2, P.L. 103-389, 108 Stat. 4081, amended Sec. 12(f)(2), which formerly read:

"(2) No application pursuant to this subsection shall be approved unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange, the Commission shall, among other matters, take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system and shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of any dealer to solicit or effect transactions in

such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists."
Act of June 4, 1975, Sec. 8(1), 89 Stat. 118, amended Sec. 12(f)(2) by revising the last phrase of the first sentence and by adding the second sentence. Sec. 12(f)(2) formerly read:
"(f)(2) No application pursuant to this subsection shall be approved unless the Commission finds, after appropriate notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is necessary or appropriate in the public interest or for the protection of investors." CCH.
Act of August 20, 1964, Sec. 3(b), 78 Stat. 566, designated the second paragraph of Sec. 12(f) as (2) and replaced the extended list of terms and conditions required for extension of unlisted trading privileges with the above requirement that such extension be "in the public interest or for the protection of investors".
Prior to the 1964 amendment, the second paragraph of Sec. 12(f) read as follows:
"No application pursuant to this subsection shall be approved unless the Commission finds that the continuation or extension of unlisted trading privileges pursuant to such application is necessary or appropriate in the public interest or for the protection of investors. No application to extend unlisted trading privileges to any security pursuant to clause (2) or (3) of this subsection shall be approved except after appropriate notice and opportunity for hearing. No application to extend unlisted trading privileges to any security pursuant to clause (2) or (3) of this subsection shall be approved unless the applicant exchange shall establish to the satisfaction of the Commission that there exists in the vicinity of such exchange sufficiently widespread public distribution of such security and sufficient public trading activity therein to render the extension of unlisted trading privileges on such exchange thereto necessary or appropriate in the public interest or for the protection of investors. No application to extend unlisted trading privileges to any security pursuant to clause (3) of this subsection shall be approved except upon such terms and conditions as will subject the issuer thereof, the officers and directors of such issuer, and every beneficial owner of more than 10 per centum of such security to duties substantially equivalent to the duties which would arise pursuant to this title if such security were duly listed and registered on a national securities exchange; except that such terms and conditions need not be imposed in any case or class of cases in which it shall appear to the Commission that the public interest and the protection of investors would nevertheless best be served by such extension of unlisted trading privileges. In the publication or making available for publication by any national securities exchange, or by any person directly or indirectly controlled by such exchange, of quotations or transactions in securities made or effected upon such exchange, such exchange or controlled person shall clearly differentiate between quotations or transactions in listed securities, and quotations or transactions in securities for which unlisted trading privileges on such exchange have been continued or extended pursuant to this subsection. In the publication or making available for publication of such quotations or transactions otherwise than by ticker, such exchange or controlled person shall group under separate headings (A) quotations or transactions in listed securities, and (B) quotations or transactions in securities for which unlisted trading privileges on such exchange has been continued or extended pursuant to this subsection."—CCH.

Securities Exchange Act of 1934 Laws, UNLISTED TRADING

Securities Exchange Act of 1934 Laws
Securities Exchange Act of 1934 Laws
Registration Requirements for Securities—Sec. 12 :: UNLISTED TRADING

http://prod.resource.cch.com/resource/scion/document/default/wkus24688a5e3a242f184e22211cd17ff2a7?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(f)(3),[15 USC 78l(f)(3)] [Suspension of Unlisted Trading Privileges]

1934 Securities Exchange Act Sec. 12(f)(3)
15 U.S.C. §78l
15 U.S.C. §78l(f)
15 U.S.C. §78l(f)(3)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(f)
Federal Securities Law Reporter ¶23,251

Notwithstanding paragraph (2), the Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this title.

.001 Historical comment.—
Act of October 25, 1994 (Unlisted Trading Privileges Act) Sec. 2, P.L. 103-389, 108 Stat. 4081, amended Sec. 12(f)(3) by striking "The Commission" and inserting "Notwithstanding paragraph (2), the Commission".
Act of August 20, 1964, Sec. 3(b), 78 Stat. 566, redesignated this paragraph as paragraph (3).— CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(f)(4),[15 USC 78l(f)(4)] [Termination of Unlisted Trading Privileges]

1934 Securities Exchange Act Sec. 12(f)(4)
15 U.S.C. §78l
15 U.S.C. §78l(f)
15 U.S.C. §78l(f)(4)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(f)
Federal Securities Law Reporter ¶23,261

On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

.001 Historical comment.—
Act of August 20, 1964, Sec. 3(b), 78 Stat. 566, deleted from the former Sec. 12(f) the sentence immediately preceding the redesignated Sec. 12(f)(4). The deleted sentence read as follows: "Unlisted trading privileges continued for any security pursuant to clause (1) of this subsection shall be terminated by order, after appropriate notice and opportunity for hearing, if it appears at any time that such security has been withdrawn from listing on any exchange by the issuer thereof, unless it shall be established to the satisfaction of the Commission that such delisting was not designed to evade the purposes of this title or unless it shall appear to the Commission that, notwithstanding any such purpose of evasion, the continuation of such unlisted trading privileges is nevertheless necessary or appropriate in the public interest or for the protection of investors." The words "that by reason of inadequate public distribution of such security in the vicinity of said exchange, or by reason of inadequate public trading activity or of the character of trading therein on said exchange", which followed the word "hearing", were also deleted.—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(f)(5),[15 USC 78l(f)(5)] [Notices Regarding Unlisted Trading Privileges]

1934 Securities Exchange Act Sec. 12(f)(5)
15 U.S.C. §78l
15 U.S.C. §78l(f)
15 U.S.C. §78l(f)(5)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(f)
Federal Securities Law Reporter ¶23,271

In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

.001 Historical comment.—
The Act of August 20, 1964, Sec. 3(b), 78 Stat. 566, redesignated this paragraph as paragraph (5).—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(f)(6),[15 USC 78l(f)(6)] [Securities Granted Unlisted Trading Privileges Deemed to Be Listed]

1934 Securities Exchange Act Sec. 12(f)(6)
15 U.S.C. §78l
15 U.S.C. §78l(f)
15 U.S.C. §78l(f)(6)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(f)
Federal Securities Law Reporter ¶23,281

Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this title. The powers and duties of the Commission under this title shall be applicable to the rules of an exchange in respect to any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of sections 13, 14, or 16 of this title.

.001 Historical comment.—
The Act of June 4, 1975, Sec. 8(2), 89 Stat. 118, amended Sec. 12(f)(6) by deleting the phrase "section 19(b) of" from the second sentence of Sec. 12(f)(6). CCH.
Act of August 20, 1964, Sec. 3(b), 78 Stat. 566, designated this paragraph as paragraph (6), and simplified the reference to Sec. 19(b) by replacing the phrase "subsection (b) of section 19 of this title".—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(g)(1),[15 USC 78l(g)(1)] [Registration by Issuers Engaged in Interstate Commerce]

1934 Securities Exchange Act Sec. 12(g)(1)
15 U.S.C. §78l
15 U.S.C. §78l(g)
15 U.S.C. §78l(g)(1)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(g)
Federal Securities Law Reporter ¶23,291

Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

12(g)(1)(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

12(g)(1)(A)(i) 2,000 persons, or

12(g)(1)(A)(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and

12(g)(1)(B) in the case of an issuer that is a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

.001 Historical comment.—
Act of December 4, 2015 (Fixing America's Surface Transportation Act of 2015), amended subsection 12(g)(1)(B) of the Securities Exchange Act of 1934 by adding, "a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act", after "is a bank" effective December 4, 2015, H.R. 22, Sec. 85001, Pub. Law 114-94, 129 Stat. 1312.
Act of April 5, 2012 (The Jumpstart Our Business Startups Act) amended Section 12(g)(1) of the Securities Exchange Act of 1934 effective April 5, 2012. H.R. 3606, Secs. 501 and 601(a)(1), Pub. Law 112-106, 126 Stat. 306, by including additional language in secs. 12(g)(1)(A) and 12(g)(1)(B).
Act of August 20, 1964, Sec. 3(c), effective July 1, 1964, 78 Stat. 565—577 added paragraph (g)(1) to Sec. 12.—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(g)(2),[15 USC 78l(g)(2)] [Exemptions from Registration Requirements]

1934 Securities Exchange Act Sec. 12(g)(2)
15 U.S.C. §78l
15 U.S.C. §78l(g)
15 U.S.C. §78l(g)(2)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(g)
Federal Securities Law Reporter ¶23,301

The provisions of this subsection shall not apply in respect of—

12(g)(2)(A) any security listed and registered on a national securities exchange.

12(g)(2)(B) any security issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940.

12(g)(2)(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

12(g)(2)(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940.

12(g)(2)(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

12(g)(2)(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

12(g)(2)(G) any security issued by an insurance company if all of the following conditions are met:

12(g)(2)(G)(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

12(g)(2)(G)(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

12(g)(2)(G)(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title.

12(g)(2)(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintain by an insurance company which interest or participation is issued in connection with (i) a stock-bonus pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

.001 Historical comment.—
The Act of October 25, 2004, H.R.1533, Pub. Law 108-359, 118 Stat. 1666, amended Sec. 12(g)(2)(H):
(A) by striking "or" at the end of clause (i); and
(B) by inserting before the period at the end the following: ", or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940".
Act of December 8, 1995 (Philanthropy Protection Act of 1995), Sec. 4(d), Pub. Law 104-62, 109 Stat. 682, amended Sec. 12(g)(2)(D) by inserting before the period "; or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940".
Act of December 14, 1970, Sec. 28(c) 84 Stat. 1435, added subparagraph (H) to Section 12(g)(2).
Act of August 20, 1964, Sec. 3(c), 78 Stat. 567—568, added paragraph (g)(2) to Sec. 12.— CCH.

Securities Exchange Act of 1934 Laws, Pooled Income Funds

Securities Exchange Act of 1934 Laws
Securities Exchange Act of 1934 Laws
Registration Requirements for Securities—Sec. 12 :: Pooled Income Funds

http://prod.resource.cch.com/resource/scion/document/default/wkus381f0e57f9b9973c3fd19bb4b7f85be6?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

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Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(g)(3),[15 USC 78l(g)(3)] [Exemption of Foreign Issuer]

1934 Securities Exchange Act Sec. 12(g)(3)
15 U.S.C. §78l
15 U.S.C. §78l(g)
15 U.S.C. §78l(g)(3)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(g)
Federal Securities Law Reporter ¶23,311

The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

.001 Historical comment.—
Act of August 20, 1964, Sec. 3(c), 78 Stat. 568, added paragraph (3) to Sec. 12(g).—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(g)(4),[15 USC 78l(g)(4)] [Termination of Registration]

1934 Securities Exchange Act Sec. 12(g)(4)
15 U.S.C. §78l
15 U.S.C. §78l(g)
15 U.S.C. §78l(g)(4)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(g)

Federal Securities Law Reporter ¶23,321

Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons [*sic*]. The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

.001 Historical comment.—
Act of December 4, 2015 (Fixing America's Surface Transportation Act of 2015), amended subsection 12(g)(4) of the Securities Exchange Act of 1934 by adding, "a savings and loan company (as defined in section 10 of the Home Owners' Loan Act)," after "case of a bank" effective December 4, 2015, H.R. 22, Sec. 85001, Pub. Law 114-94, 129 Stat. 1312.e
Act of April 5, 2012 (The Jumpstart Our Business Startups Act) amended Section 12(g)(4) of the Securities Exchange Acte of 1934 effective April 5, 2012. H.R. 3606, Sec. 601(a)(2), Pub. Law 112-106, 126 Stat. 306, by striking "three hundred" ande inserting "300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Homee Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956e (12 U.S.C. 1841), 1,200 persons".
Act of August 20, 1964, Sec. 3(c), 78 Stat. 568, added paragraph (g)(4) to Sec. 12.—CCH.e

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(g)(5),[15 USC 78l(g)(5)] [Definitions]

1934 Securities Exchange Act Sec. 12(g)(5)
15 U.S.C. §78l
15 U.S.C. §78l(g)
15 U.S.C. §78l(g)(5)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(g)
Federal Securities Law Reporter ¶23,331

CCH Note: Section 502 of the Jumpstart Our Business Startups Act purports to amend Exchange Act Section 12(g)(5)(A), as amended by Section 302 of the JOBS Act. However, the reference to Section 302 of the Jumpstart Our Business Startups Act appears to be to Section 302 as it appeared in the House version of Title III, which was removed and replaced by the Senate version of Title III. The final version of Title III of the Jumpstart Our Business Startups Act does not contain the subparagraph (A) referenced in Section 502 of the Act. The language purported to be added to Exchange Act Section 12(g)(5)(A) by Section 502 of the Jumpstart Our Business Startups Act has been added at the end of Section 12(g)(5).

For the purposes of this subsection the term "class" shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms "total assets" and "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product.

For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of "held of record" shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.

.001 Historical comment.—
Act of April 5, 2012 (The Jumpstart Our Business Startups Act) amended Section 12(g)(5) of the Securities Exchange Act of 1934 effective April 5, 2012. H.R. 3606, Sec. 502, Pub. Law 112-106, 126 Stat. 306, by adding text at the end.
Act of December 21, 2000, (Commodity Futures Modernization Act of 2000, which was incorporated into the Consolidated Appropriations Act, 2001), H.R. 5660 (incorporated into and signed into law as H.R. 4577) Sec. 208, Pub. Law 106-554, 114 Stat. 2763, amended Exchange Act Sec. 12(g)(5) by adding at the end the text "For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product."
The Act of August 20, 1964, Sec. 3(c), 78 Stat. 568, added paragraph (g)(5) to Sec. 12.—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(g)(6),[15 USC 78l(g)(6)] [Exclusion for persons holding certain securities]

1934 Securities Exchange Act Sec. 12(g)(6)
15 U.S.C. §78l
15 U.S.C. §78l(g)
15 U.S.C. §78l(g)(6)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(g)
Federal Securities Law Reporter ¶23,337

12(g)(6) Exclusion for persons holding certain securities.— The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.

.001 Historical comment.—
Act of April 5, 2012 (The Jumpstart Our Business Startups Act) added Section 12(g)(6) of the Securities Exchange Act of 1934 effective April 5, 2012. H.R. 3606, Sec. 303(a), Pub. Law 112-106, 126 Stat. 306.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(h),[15 USC 78l(h)] [Exemption from Provisions]

1934 Securities Exchange Act Sec. 12(h)
15 U.S.C. §78l
15 U.S.C. §78l(h)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,341

The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 13, 14, or 15(d) or may exempt from section 16 any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this title, classify issuers and prescribe requirements appropriate for each such class.

.001 Historical comment.—
Act of August 20, 1964, Sec. 3(d), 78 Stat. 568, added paragraph (h) to Sec. 12.—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(i),[15 USC 78l(i)] [Securities Issued by Banks]

1934 Securities Exchange Act Sec. 12(i)
15 U.S.C. §78l
15 U.S.C. §78l(i)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,351

In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with Federal Deposit Insurance Act, the powers, functions, and duties vested in the Commission to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of the date of enactment of this subsection, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

.001 Historical comment.—
Act of July 21, 2010 (Dodd-Frank Wall Street Reform and Consumer Protection Act) amended Section 12(i) of the Securities Exchange Act of 1934 effective July 21, 2011, H.R. 4173, Sec. 376(2), Pub. Law 111-203, 124 Stat. 1376, by making following changes:
in paragraph (1), by inserting after "national banks" the following: "and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation";
by striking "(3)" and all that follows through "vested in the Office of Thrift Supervision" and inserting "and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation"; and
in the second sentence, by striking "the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision" and inserting "and the Federal Deposit Insurance Corporation".
Act of October 30, 2004 (2004 District of Columbia Omnibus Authorization Act), Pub. Law 108-386, 118 Stat. 2232, amended Sec. 12(i) by striking "and banks operating under the Code of Law for the District of Columbia".
Act of July 30, 2002, (Sarbanes-Oxley Act of 2002), H.R.3763, Sec. 3, Pub. Law 107-204, 116 Stat. 745, ¶62,801, amended section 12(i) by (A) striking "sections 12," each place it appears and inserting "sections 10A(m), 12," and (B) striking "and 16,"

each place it appears and inserting "and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002,".

Act of August 9, 1989 (Financial Institutions Reform, Recovery, and Enforcement Act of 1989), Sec. 744(v)(2), Pub. Law 101-73, 103 Stat. 183, amended Sec. 12(i) as follows:

(A) in the first sentence—

(i) by inserting "and savings associations" after "banks" the first place it appears;

(ii) by striking "or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation"; and

(iii) by striking paragraph (4) and inserting "(4) with respect to savings associations the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Office of Thrift Supervision"; and

(B) in the second sentence, by striking "the Federal Home Loan Bank Board" and inserting "the Office of Thrift Supervision".

Act of October 28, 1974, Sec. 105(b), 88 Stat. 1503, amended Section 12(i) by requiring the various banking regulatory agencies to adopt "substantially similar regulations to regulations and rules issued by the Commission under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16" unless unnecessary in the public interest.

Act of July 29, 1968, 82 Stat. 454, amended Sec. 12(i) by adding Sections 14(d) and 14(f) to "... under this title to administer and enforce sections ..." in the first sentence.

Act of August 20, 1964, Sec. 3(e), 78 Stat. 569, added paragraph (i) to Sec. 12.—CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(j),[15 USC 78l(j)] [Denial, Suspension, or Revocation of Registration of Security]

1934 Securities Exchange Act Sec. 12(j)
15 U.S.C. §78l
15 U.S.C. §78l(j)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,361

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

.001 Historical comment.—
The Act of June 4, 1975, Sec. 9, 89 Stat. 118, added Sec. 12(j). CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(k)(1),[15 USC 78l(k)(1)] [Suspension of Trading]

1934 Securities Exchange Act Sec. 12(k)(1)
15 U.S.C. §78l
15 U.S.C. §78l(k)
15 U.S.C. §78l(k)(1)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(k)
Federal Securities Law Reporter ¶23,371

12(k)(1) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

12(k)(1) TRADING SUSPENSIONS.— If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

12(k)(1)(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

12(k)(1)(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision.

If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

.001 Historical comment.—

Act of December 21, 2000, (Commodity Futures Modernization Act of 2000, which was incorporated into the Consolidated Appropriations Act, 2001), H.R. 5660 (incorporated into and signed into law as H.R. 4577) Sec. 206, Pub. Law 106-554, 114 Stat. 2763, added to the end of Exchange Act Sec. 12(k)(1) the following text: "If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission."

Act of October 16, 1990 (Market Reform Act of 1990), Sec. 2, Pub. Law 101-432, 104 Stat. 963, amended Sec. 12(k) which formerly read:

"If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended."

The Act of June 4, 1975, Sec. 9, 89 Stat. 118, added Sec. 12(k). CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(k)(2),[15 USC 78l(k)(2)] [Emergency Orders]

1934 Securities Exchange Act Sec. 12(k)(2)
15 U.S.C. §78l
15 U.S.C. §78l(k)
15 U.S.C. §78l(k)(2)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(k)
Federal Securities Law Reporter ¶23,372

12(k)(2) EMERGENCY ORDERS.—

12(k)(2)(A) IN GENERAL- The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors —

12(k)(2)(A)(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

12(k)(2)(A)(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

12(k)(2)(A)(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of —

12(k)(2)(A)(I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or

12(k)(2)(A)(II) the transmission or processing of securities transactions (other than transactions in exempted securities).

12(k)(2)(B) EFFECTIVE PERIOD- An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

12(k)(2)(C) EXTENSION- An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

12(k)(2)(D) SECURITY FUTURES- If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

12(k)(2)(E) EXEMPTION- In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of —

12(k)(2)(E)(i) section 19(c); or

12(k)(2)(E)(ii) section 553 of title 5, United States Code.

.001 Historical comment.—

Act of December 21, 2000, (Commodity Futures Modernization Act of 2000, which was incorporated into the Consolidated Appropriations Act, 2001), H.R. 5660 (incorporated into and signed into law as H.R. 4577) Sec. 206, Pub. Law 106-554, 114 Stat. 2763, added after the first sentence of Exchange Act Sec. 12(k)(2)(B) the following text: "If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission."

Sec. 12(k)(2) was added by Act of October 16, 1990 (Market Reform Act of 1990), Sec. 2, Pub. Law 101-432, 104 Stat. 963.

Act of December 17, 2004, 108 Pub. Law 458, 118 Stat. 3638 (The Emergency Securities Response Act of 2004) amended Sec. 12(k)(6), which formerly read as follows:

(2) EMERGENCY ORDERS. —

(A) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under this title, as the Commission determines is necessary in the public interest and for the protection of investors —

(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities); or

(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities).

(B) An order of the Commission under this paragraph (2) shall continue in effect for the period specified by the Commission, and may be extended, except that in no event shall the Commission's action continue in effect for more than 10 business days, including extensions. If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(k)(3),[15 USC 78l(k)(3)] [Termination of Emergency Actions]

1934 Securities Exchange Act Sec. 12(k)(3)
15 U.S.C. §78l
15 U.S.C. §78l(k)
15 U.S.C. §78l(k)(3)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(k)
Federal Securities Law Reporter ¶23,373

TERMINATION OF EMERGENCY ACTIONS BY PRESIDENT.— The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

.001 Historical comment.—
Sec. 12(k)(3) was added by Act of October 16, 1990 (Market Reform Act of 1990), Sec. 2, Pub. Law 101-432, 104 Stat. 963.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(k)(4),[15 USC 78l(k)(4)] [Compliance]

1934 Securities Exchange Act Sec. 12(k)(4)
15 U.S.C. §78l
15 U.S.C. §78l(k)
15 U.S.C. §78l(k)(4)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(k)
Federal Securities Law Reporter ¶23,374

COMPLIANCE WITH ORDERS. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

.001 Historical comment.—
Sec. 12(k)(4) was added by Act of October 16, 1990 (Market Reform Act of 1990), Sec. 2, Pub. Law 101-432, 104 Stat. 963.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(k)(5),[15 USC 78l(k)(5)] [Review of Orders]

1934 Securities Exchange Act Sec. 12(k)(5)
15 U.S.C. §78l
15 U.S.C. §78l(k)
15 U.S.C. §78l(k)(5)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(k)
Federal Securities Law Reporter ¶23,375

LIMITATIONS ON REVIEW OF ORDERS.— An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

.001 Historical comment.—
Sec. 12(k)(5) was added by Act of October 16, 1990 (Market Reform Act of 1990), Sec. 2, Pub. Law 101-432, 104 Stat. 963.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(k)(6),[15 USC 78l(k)(6)] [Consultation]

1934 Securities Exchange Act Sec. 12(k)(6)
15 U.S.C. §78le
15 U.S.C. §78l(k)
15 U.S.C. §78l(k)(6)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(k)
Federal Securities Law Reporter ¶23,376

CONSULTATION.— Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

.001 Historical comment.—

Sec. 12(k)(6) was added by Act of October 16, 1990 (Market Reform Act of 1990), Sec. 2, Pub. Law 101-432, 104 Stat. 963.
Act of December 17, 2004, 108 Pub. Law 458, 118 Stat. 3638 (The Emergency Securities Response Act of 2004) amended Sec. 12(k)(6), which formerly read as follows:
(6)DEFINITION OF EMERGENCY. —For purposes of this subsection, the term "emergency" means a major market disturbancee characterized by or constituting —
(A) udden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderlye markets, ore
(B)a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities, or ae substantial threat thereof.e

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Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(k)(7),[15 USC 78l(k)(7)] [Definitions]

1934 Securities Exchange Act Sec. 12(k)(7)
15 U.S.C. §78le
15 U.S.C. §78l(k)
15 U.S.C. §78l(k)(7)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(k)
Federal Securities Law Reporter ¶23,377

12(k)(7) DEFINITION— For purposes of this subsection, the term 'emergency' means—
12(k)(7)(A) a major market disturbance characterized by or constituting—

12(k)(7)(A)(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

12(k)(7)(A)(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

12(k)(7)(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

12(k)(7)(B)(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

12(k)(7)(B)(ii) the transmission or processing of securities transactions.

.001 Historical comment.—

Act of July 21, 2010 (Dodd-Frank Wall Street Reform and Consumer Protection Act) amended section 12(k)(7) of the Securities Exchange Act of 1934 effective July 22, 2010, H.R. 4173, Sec. 986(a)(2), Pub. Law 111-203, 124 Stat. 1376, by striking paragraph (7) and inserting new paragraph (7).
Act of December 17, 2004, 108 Pub. Law 458, 118 Stat. 3638 (The Emergency Securities Response Act of 2004) added Sec. 12(k)(7).

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(l),[15 USC 78l(l)] [Form or Format of Security]

1934 Securities Exchange Act Sec. 12(l)
15 U.S.C. §78l
15 U.S.C. §78l(l)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,381

It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

.001 Historical comment.—
The Act of June 4, 1975, Sec. 9, 89 Stat. 118, added Sec. 12 *(l)*. CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(m),[Repealed.]

1934 Securities Exchange Act Sec. 12(m)
15 U.S.C. §78l
15 U.S.C. §78l(m)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,391

[Ownership in Street Name]

.001 Historical comment.—

Act of December 4, 1987 (Securities and Exchange Commission Authorization Act of 1987), Sec. 314, Pub. Law 100-181, 101 Stat. 1249, repealed Sec. 12(m) which formerly read as follows:

"The Commission is authorized and directed to make a study and investigation of the practice of recording the ownership of securities in the records of the issuer in other than the name of the beneficial owner of such securities and to determine (1) whether such practice is consistent with the purposes of this title, with particular reference to subsection (g) of this section and sections 13, 14, 15(d), 16, and 17A, and (2) whether steps can be taken to facilitate communications between issuers and the beneficial owners of their securities while at the same time retaining the benefits of such practice. The Commission shall report to the Congress its preliminary findings within six months after the date of enactment of the Securities Acts Amendments of 1975, and its final conclusions and recommendations within one year of such date."

The Act of June 4, 1975, Sec. 9, 89 Stat. 119, added Sec. 12(m). CCH.

Securities Exchange Act of 1934 Laws, 1934 Securities Exchange Act Sec. 12(a),[15 USC 78l(a)] [Unlawful to Effect Transactions in Unregistered Securities]

Securities Exchange Act of 1934 Laws
1934 Securities Exchange Act Sec. 12(a)
15 U.S.C. §78l
15 U.S.C. §78l(a)
1934 Securities Exchange Act Sec. 12
Federal Securities Law Reporter ¶23,001

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40EAD01+FSLR-P23001%29sec018aed1fac7b4f100087d500215ad7877404?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title, and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

.001 Historical comment.—
Act of December 21, 2000, (Commodity Futures Modernization Act of 2000, which was incorporated into the Consolidated Appropriations Act, 2001), H.R. 5660 (incorporated into and signed into law as H.R. 4577) Sec. 208, Pub. Law 106-554, 114 Stat. 2763, amended Exchange Act Sec. 12(a) by adding at the end the text "The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange."

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(g)(1),[15 USC 78l(g)(1)] [Registration by Issuers Engaged in Interstate Commerce]

Securities Exchange Act of 1934 Laws
1934 Securities Exchange Act Sec. 12(g)(1)
15 U.S.C. §78l
15 U.S.C. §78l(g)
15 U.S.C. §78l(g)(1)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(g)
Federal Securities Law Reporter ¶23,291

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40EAD01+15USC78l%28g%29%281%29%29sec018aed21827b4f1000b97d00215ad78774011a?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

12(g)(1)(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

12(g)(1)(A)(i) 2,000 persons, or

12(g)(1)(A)(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and

12(g)(1)(B) in the case of an issuer that is a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 12(g)(2),[15 USC 78l(g)(2)] [Exemptions from Registration Requirements]

Securities Exchange Act of 1934 Laws
1934 Securities Exchange Act Sec. 12(g)(2)
15 U.S.C. §78l
15 U.S.C. §78l(g)
15 U.S.C. §78l(g)(2)
1934 Securities Exchange Act Sec. 12
1934 Securities Exchange Act Sec. 12(g)
Federal Securities Law Reporter ¶23,301

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40EAD01+15USC78l%28g%29%282%29%29sec018aed22227b4f1000849000215ad787740147?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

The provisions of this subsection shall not apply in respect of—

12(g)(2)(A) any security listed and registered on a national securities exchange.

12(g)(2)(B) any security issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940.

12(g)(2)(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

12(g)(2)(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940.

12(g)(2)(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

12(g)(2)(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

12(g)(2)(G) any security issued by an insurance company if all of the following conditions are met:

12(g)(2)(G)(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

12(g)(2)(G)(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

12(g)(2)(G)(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title.

12(g)(2)(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintain by an insurance company which interest or participation is issued in connection with (i) a stock-bonus pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

.001 Historical comment.—

The Act of October 25, 2004, H.R.1533, Pub. Law 108-359, 118 Stat. 1666, amended Sec. 12(g)(2)(H):

(A) by striking "or" at the end of clause (i); and

(B) by inserting before the period at the end the following: ", or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940".

Act of December 8, 1995 (Philanthropy Protection Act of 1995), Sec. 4(d), Pub. Law 104-62, 109 Stat. 682, amended Sec. 12(g)(2)(D) by inserting before the period "; or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940".

Act of December 14, 1970, Sec. 28(c) 84 Stat. 1435, added subparagraph (H) to Section 12(g)(2).

Act of August 20, 1964, Sec. 3(c), 78 Stat. 567—568, added paragraph (g)(2) to Sec. 12.— CCH.

Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 15(d),SUPPLEMENTARY AND PERIODIC INFORMATION.—

Securities Exchange Act of 1934 Laws
1934 Securities Exchange Act Sec. 15(d)
15 U.S.C. §78o
15 U.S.C. §78o(d)
1934 Securities Exchange Act Sec. 15
Federal Securities Law Reporter ¶25,141

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40EAD01+FSLR-P25141%29sec01fb4a80767cdc1000b348d8d385ad169404c9?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

[15 USC 78o(d)] [Reporting Requirements]

15(d)(1) IN GENERAL.— Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this title in respect of a security registered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons [*sic*]. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

15(d)(2) ASSET-BACKED SECURITIES.—

15(d)(2)(A) SUSPENSION OF DUTY TO FILE.— The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

15(d)(2)(B) CLASSIFICATION OF ISSUERS.— The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuers of asset-backed securities.

.001 Historical comment.—
Act of December 4, 2015 (Fixing America's Surface Transportation Act of 2015), amended subsection 15(d)(1) of the Securities Exchange Act of 1934 by striking "case of bank" and inserting "case of a bank, a savings and loan holding company (as defined

in section 10 of the Home Owners' Loan Act)," effective December 4, 2015, H.R. 22, Sec. 85001, Pub. Law 114-94, 129 Stat. 1312.

Act of April 5, 2012 (The Jumpstart Our Business Startups Act) amended Section 15(d) of the Securities Exchange Act of 1934 effective April 5, 2012. H.R. 3606, Sec. 601(b), Pub. Law 112-106, 126 Stat. 306, amended in the third sentence, by striking "three hundred" and inserting "300 persons, or, in the case of bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons".

Act of July 21, 2010 (Dodd-Frank Wall Street Reform and Consumer Protection Act) amended Section 15(d) of the Securities Exchange Act of 1934 effective July 22, 2010, H.R. 4173, Sec. 942(a), Pub. Law 111-203, 124 Stat. 1376 by making the following changes:

(1) by striking "(d) Each" and inserting the following:

"(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

"(1) IN GENERAL.—Each";e

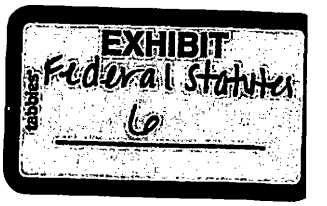
(2) in the third sentence, by inserting after "securities of each class" the following: ", other than any class of asset-backede securities,"; ande

(3) by adding at the end new paragraph (2).e

Sec. 15(d) was amended by the Act of December 19, 1977, Sec. 204, 91 Stat. 1500. The 1977 amendment added the next toe the last sentence to Sec. 15(d).e

Act of August 20, 1964, Sec. 6(d), 78 Stat. 574, amended paragraph 15(d), which formerly read as follows:

"Each registration statement hereafter filed pursuant to the Securities Act of 1933, as amended, shall contain an undertakinge by the issuer of the issue of securities to which the registration statement relates to file with the Commission, in accordancee with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant toe section 13 of this title in respect of a security listed and registered on a national securities exchange; but such undertaking shall become operative only if the aggregate offering price of such issue of securities, plus the aggregate value of all other securities of such issuer of the same class (as hereinafter defined) outstanding, computed upon the basis of such offering price, amount toe $2,000,000 or more. The issuer shall file such supplementary and periodic information, documents, and reports pursuant to suche undertaking, except that the duty to file shall be automatically suspended if and so long as (1) such issue of securities is listed and registered on a national securities exchange, or (2) by reason of the listing and registration of any other security of suche issuer on a national securities exchange, such issuer is required to file pursuant to section 13 of this title information, documents,e and reports substantially equivalent to such as would be required if such issue of securities were listed and registered on a national securities exchange, or (3) the aggregate value of all outstanding securities of the class to which such issue belongs ise reduced to less than $1,000,000, computed upon the basis of the offering price of the last issue of securities of said class offerede to the public. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer whiche are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof or to any other security which the Commission may by rules and regulations exempt as not comprehended within the purposes of this subsection."—CCH.e



Federal Securities Law Reporter, 1934 Securities Exchange Act Sec. 15(d),SUPPLEMENTARY AND PERIODIC INFORMATION.—

Securities Exchange Act of 1934 Laws
1934 Securities Exchange Act Sec. 15(d)
15 U.S.C. §78o
15 U.S.C. §78o(d)
1934 Securities Exchange Act Sec. 15
Federal Securities Law Reporter ¶25,141

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[15 USC 78o(d)] [Reporting Requirements]

15(d)(1) IN GENERAL.— Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this title in respect of a security registered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons [*sic*]. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

15(d)(2) ASSET-BACKED SECURITIES.—

15(d)(2)(A) SUSPENSION OF DUTY TO FILE.— The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

15(d)(2)(B) CLASSIFICATION OF ISSUERS.— The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuers of asset-backed securities.

.001 Historical comment.—
Act of December 4, 2015 (Fixing America's Surface Transportation Act of 2015), amended subsection 15(d)(1) of the Securities Exchange Act of 1934 by striking "case of bank" and inserting "case of a bank, a savings and loan holding company (as defined

in section 10 of the Home Owners' Loan Act)," effective December 4, 2015, H.R. 22, Sec. 85001, Pub. Law 114-94, 129 Stat. 1312.

Act of April 5, 2012 (The Jumpstart Our Business Startups Act) amended Section 15(d) of the Securities Exchange Act of 1934 effective April 5, 2012. H.R. 3606, Sec. 601(b), Pub. Law 112-106, 126 Stat. 306, amended in the third sentence, by striking "three hundred" and inserting "300 persons, or, in the case of bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons".

Act of July 21, 2010 (Dodd-Frank Wall Street Reform and Consumer Protection Act) amended Section 15(d) of the Securities Exchange Act of 1934 effective July 22, 2010, H.R. 4173, Sec. 942(a), Pub. Law 111-203, 124 Stat. 1376 by making the following changes:

(1) by striking "(d) Each" and inserting the following:

"(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

"(1) IN GENERAL—Each";e

(2)ən the third sentence, by inserting after "securities of each class" the following: ", other than any class of asset-backed securities,"; and

(3) by adding at the end new paragraph (2).

Sec. 15(d) was amended by the Act of December 19, 1977, Sec. 204, 91 Stat. 1500. The 1977 amendment added the next to the last sentence to Sec. 15(d).

Act of August 20, 1964, Sec. 6(d), 78 Stat. 574, amended paragraph 15(d), which formerly read as follows:

"Each registration statement hereafter filed pursuant to the Securities Act of 1933, as amended, shall contain an undertakinge by the issuer of the issue of securities to which the registration statement relates to file with the Commission, in accordancee with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for thee protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant toe section 13 of this title in respect of a security listed and registered on a national securities exchange; but such undertaking shalle become operative only if the aggregate offering price of such issue of securities, plus the aggregate value of all other securities of such issuer of the same class (as hereinafter defined) outstanding, computed upon the basis of such offering price, amount to $2,000,000 or more. The issuer shall file such supplementary and periodic information, documents, and reports pursuant to suche undertaking, except that the duty to file shall be automatically suspended if and so long as (1) such issue of securities is listede and registered on a national securities exchange, or (2) by reason of the listing and registration of any other security of suche issuer on a national securities exchange, such issuer is required to file pursuant to section 13 of this title information, documents,e and reports substantially equivalent to such as would be required if such issue of securities were listed and registered on a national securities exchange, or (3) the aggregate value of all outstanding securities of the class to which such issue belongs is reduced to less than $1,000,000, computed upon the basis of the offering price of the last issue of securities of said class offered to the public. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. Nothing in thise subsection shall apply to securities issued by a foreign government or political subdivision thereof or to any other security whiche the Commission may by rules and regulations exempt as not comprehended within the purposes of this subsection."—CCH.e

Securities and Exchange Commission – Rules and Regulations

Federal Securities Law Reporter, Reg. §230.462., Securities and Exchange Commission, Immediate effectiveness of certain registration statements and post-effective amendments.

Securities Act of 1933 Rules
17 C.F.R. §230.462
Rule 462 under the Securities Act of 1933
Rule 462 of Regulation C
Federal Securities Law Reporter ¶3870

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40EAD01+17CFR230.462%29sec0109013e2c842e876c?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

Proposed to be amended in Release No. 33-10619 (¶82,270), comments due June 10, 2019, 84 F.R. 14448.

(a) A registration statement on Form S-8 (§ 239.16b of this chapter) and a registration statement on Form S-3 (§ 239.13 of this chapter) or on Form F-3 (§ 239.33 of this chapter) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

(b) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is for registering additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission;

(2) The new registration statement is filed prior to the time confirmations are sent or given; and

(3) The new registration statement registers additional securities in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price set forth for each class of securities in the "Calculation of Registration Fee" table contained in such earlier registration statement.

(c) If the prospectus contained in a post-effective amendment filed prior to the time confirmations are sent or given contains no substantive changes from or additions to the prospectus previously filed as part of the effective registration statement, other than price-related information omitted from the registration statement in reliance on Rule 430A of the Act (§ 230.430A), such post-effective amendment shall become effective upon filing with the Commission.

(d) A post-effective amendment filed solely to add exhibits to a registration statement shall become effective upon filing with the Commission.

(e) An automatic shelf registration statement, including an automatic shelf registration statement filed in accordance with Rule 415(a)(6) (§ 230.415(a)(6)), and any post-effective amendment thereto, including a post-effective amendment filed to register additional classes of securities pursuant to Rule 413(b) (§ 230.413(b)), shall become effective upon filing with the Commission.

(f) A post-effective amendment filed pursuant to paragraph (e) of this section for purposes of adding a new issuer and its securities as permitted by Rule 413(b) (§ 230.413(b)) that satisfies the requirements of Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), as applicable, including the signatures required

by Rule 402(e) (§ 230.402(e)), and contains a prospectus satisfying the requirements of Rule 430B (§ 230.430B), shall become effective upon filing with the Commission.

[Adopted in Release No. 33-6867 (¶84,605), effective July 13, 1990, 55 F.R.23909; amended in Release No. 33-6964 (¶85,053), effective October 29, 1992; 57 FR 48970; Release No. 33-7053 (¶85,331), effective April 26, 1994, 59 FR 21644; Release No. 33-7168 (¶85,620), effective June 7, 1995, 60 FR 26604; and Release No. 33-7431 (¶85,953), effective September 2, 1997, 62 F.R. 39755; Release No. 33-8591 (¶87,421), effective December 1, 2005, 70 F.R. 44722.]

Federal Securities Law Reporter, Reg. §240.12d2-2., Securities and Exchange Commission, Removal from listing and registration of matured, redeemed or retired securities.

Securities Exchange Act of 1934 Rules
17 C.F.R. §240.12d2-2
Rule 12d2-2 under the Securities Exchange Act of 1934
Federal Securities Law Reporter ¶23,162

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40BANK-REG+17CFR240.12d2-2%29sec018aed20e27b4f1000adb400215ad78774094?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

PRELIMINARY NOTE: The filing of the Form 25 (Sec. 249.25 of this chapter) by an issuer relates solely to the withdrawal of a class of securities from listing on a national securities exchange and/or from registration under section 12(b) of the Act (15 U.S.C. 78l(b)), and shall not affect its obligation to be registered under section 12(g) of the Act and/or reporting obligations under section 15(d) of the Act (15 U.S.C. 78o(d)).

Implementation. The rules of each national securities exchange must be designed to meet the requirements of this section and must be operative no later than April 24, 2006. Each national securities exchange must submit to the Commission a proposed rule change that complies with section 19(b) of the Act (15 U.S.C. 78s and) Rule 19b-4 (17 CFR 240.19b-4) thereunder, and this section no later than October 24, 2005.

(a) A national securities exchange must file with the Commission an application on Form 25 (17 CFR 249.25) to strike a class of securities from listing on a national securities exchange and/or registration under section 12(b) of the Act within a reasonable time after the national securities exchange is reliably informed that any of the following conditions exist with respect to such a security:

(1) The entire class of the security has been called for redemption, maturity or retirement; appropriate notice thereof has been given; funds sufficient for the payment of all such securities have been deposited with an agency authorized to make such payments; and such funds have been made available to security holders.

(2) The entire class of the security has been redeemed or paid at maturity or retirement.

(3) The instruments representing the securities comprising the entire class have come to evidence, by operation of law or otherwise, other securities in substitution therefor and represent no other right, except, if such be the fact, the right to receive an immediate cash payment (the right of dissenters to receive the appraised or fair value of their holdings shall not prevent the application of this provision).

(4) All rights pertaining to the entire class of the security have been extinguished; *provided, however*, that where such an event occurs as a result of an order of a court or other governmental authority, the order shall be final, all applicable appeal periods shall have expired, and no appeals shall be pending.

(b)

(1) In cases not provided for in paragraph (a) of this section, a national securities exchange may file an application on Form 25 to strike a class of securities from listing and / or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the national securities exchange's board of directors, or to a committee designated by the board; and

(iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice under this paragraph shall be disseminated no fewer than 10 days before the delisting becomes effective pursuant to paragraph (d)(1) of this section, and must remain posted on its Web site until the delisting is effective.

(2) A national securities exchange must promptly deliver a copy of the application on Form 25 to the issuer.

(c)

(1) The issuer of a class of securities listed on a national securities exchange and/or registered under section 12(b) of the Act may file an application on Form 25 to notify the Commission of its withdrawal of such securities from listing on such national securities exchange and its intention to withdraw the securities from registration under section 12(b) of the Act.

(2) An issuer filing Form 25 under this paragraph must satisfy the requirements in paragraph (c)(2) of this section and represent on the Form 25 that such requirements have been met:

(i) The issuer must comply with all applicable laws in effect in the state in which it is incorporated and with the national securities exchange's rules governing an issuer's voluntary withdrawal of a class of securities from listing and/or registration.

(ii) No fewer than 10 days before the issuer files an application on Form 25 with the Commission, the issuer must provide written notice to the national securities exchange of its determination to withdraw the class of securities from listing and/or registration on such exchange. Such written notice must set forth a description of the security involved, together with a statement of all material facts relating to the reasons for withdrawal from listing and/or registration.

(iii) Contemporaneous with providing written notice to the exchange of its intent to withdraw a class of securities from listing and/or registration, the issuer must publish notice of such intention, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, posting such notice on that Web site. Any notice provided on an issuer's Web site under this paragraph shall remain available until the delisting on Form 25 has become effective pursuant to paragraph (d)(1) of this section. If the issuer has not arranged for listing and/or registration on another national securities exchange or for quotation of its security in a quotation medium (as defined in § 240.15c2-11), then the press release and posting on the Web site must contain this information.

(3) A national securities exchange, that receives, pursuant to paragraph (c)(2)(ii) of this section, written notice from an issuer that such issuer has determined to withdraw a class of securities from listing and/or registration on such exchange, must provide notice on its Web site of the issuer's intent to delist and/or withdraw from registration its securities by the next business day. Such notice must remain posted on the exchange's Web site until the delisting on Form 25 is effective pursuant to paragraph (d)(1) of this section.

(d)

(1) An application on Form 25 to strike a class of securities from listing on a national securities exchange will be effective 10 days after Form 25 is filed with the Commission.

(2) An application on Form 25 to withdraw the registration of a class of securities under section 12(b) of the Act will be effective 90 days, or such shorter period as the Commission may determine, after filing with the Commission.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, the Commission may, by written notice to the exchange and issuer, postpone the effectiveness of an application to delist and/or to deregister to determine whether the application on Form 25 to strike the security from registration under section 12(b) of the Act has been made in accordance with the rules of the exchange, or what terms should be imposed by the Commission for the protection of investors.

(4) Notwithstanding paragraph (d)(2) of this section, whenever the Commission commences a proceeding against an issuer under section 12 of the Act prior to the withdrawal of the registration of a class of securities, such security will remain registered under section 12(b) of the Act until the final decision of such proceeding or until the Commission otherwise determines to suspend the effective date of, or revoke, the registration of a class of securities.

(5) An issuer's duty to file any reports under section 13(a) of the Act (15 U.S.C. 78m(a)) and the rules and regulations thereunder solely because of such security's registration under section 12(b) of the Act will be suspended upon the effective date for the delisting pursuant to paragraph (d)(1) of this section. If, following the effective date of delisting on Form 25, the Commission, an exchange, or an issuer delays the withdrawal of a security's registration under section 12(b) of the Act, an issuer shall, within 60 days of such delay, file any reports that would have been required under section 13(a) of the Act and the rules and regulations thereunder, had the Form 25 not been filed. The issuer also shall timely file any subsequent reports required under section 13(a) of the Act for the duration of the delay.

(6) An issuer whose reporting responsibilities under section 13(a) of the Act are suspended for a class of securities under paragraph (d)(5) of this section is, nevertheless, required to file any reports that an issuer with such a class of securities registered under section 12 of the Act would be required to file under section 13(a) of the Act if such class of securities:

(i) Is registered under section 12(g) of the Act; or

(ii) Would be registered, or would be required to be registered, under section 12(g) of the Act but for the exemption from registration under section 12(g) of the Act provided by section 12(g)(2)(A) of the Act.

(7)

(i) An issuer whose reporting responsibilities under section 13(a) of the Act are suspended under paragraph (d)(5) of this section is, nevertheless, required to file any reports that would be required under section 15(d) of the Act but for the fact that the reporting obligations are:

(A) Suspended for a class of securities under paragraph (d)(5) of this section; and

(B) Suspended, terminated, or otherwise absent under section 12(g) of the Act.

(ii) The reporting responsibilities of an issuer under section 15(d) of the Act shall continue until the issuer is required to file reports under section 13(a) of the Act or the issuer's reporting responsibilities under section 15(d) of the Act are otherwise suspended.

(8) In the event removal is being effected under paragraph (a)(3) of this section and the national securities exchange has admitted or intends to admit a successor security to trading under the temporary exemption provided for by § 240.12a-5, the effective date of the Form 25, as set forth in paragraph (d)(1) of this section, shall not be earlier than the date the successor security is removed from its exempt status.

(e) The following are exempt from section 12(d) of the Act and the provisions of this section:

(1) Any standardized option, as defined in § 240.9b-1, that is:

(i) Issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) or; and

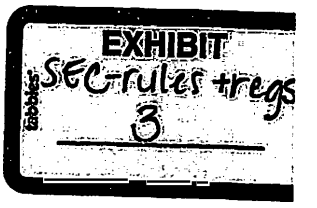
(ii) Traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)); and

(2) Any security futures product that is:

(i) Traded on a national securities exchange registered under section 6(a) of the Act or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)); and

(ii) Cleared by a clearing agency registered as a clearing agency pursuant to section 17A of the Act or is exempt from registration under section 17A(b)(7) of the Act.

[Adopted in Release No. 34-235, May 16, 1935; amended by Release No. 34-1887, September 10, 1938; Release No. 34-3438, May 29, 1943, 13 F.R. 8177; Release No. 34-3861, October 8, 1946, 13 F.R. 8177; Release No. 34-4706, May 26, 1952, 17 F.R. 3621; Release No. 34-4990. January 28, 1954, 19 F.R. 670; Release No. 34-7011, February 15, 1963, 28 F.R. 1506; Release No. 34-52029 (¶87,418), effective August 22, 2005, 70 F.R. 42456.]



Federal Securities Law Reporter, Reg. §240.12g-4., Securities and Exchange Commission, Certifications of termination of registration under section 12(g).

Securities Exchange Act of 1934 Rules
17 C.F.R. §240.12g-4
Rule 12g-4 under the Securities Exchange Act of 1934
Federal Securities Law Reporter ¶23,322

(a) Termination of registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 (§ 249.323 of this chapter) that the class of securities is held of record by:

(1) Fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons; or

(2) Fewer than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.

(b) The issuer's duty to file any reports required under section 13(a) shall be suspended immediately upon filing a certification on Form 15. *Provided, however,* That, if the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of such withdrawal or denial, file with the Commission all reports which would have been required had the certification on Form 15 not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the certification shall be filed by the successor issuer.

[Adopted in Release No. 34-12551 (¶80,603), June 17, 1976, 41 F. R. 27961, effective August 2, 1976; adopted in Release No. 34-16078 (¶82,168), August 2, 1979, effective September 17, 1979, 44 F. R. 46447; amended in Release No. 34-18647 (¶83,204), April 15, 1982, 47 F. R. 17046; in Release No. 34-20784 (¶83,508), effective March 30, 1984, 49 F. R. 12688; Release No. 34-23406 (¶84,012), effective August 15, 1986, 51 F. R. 25360; Release No. 34-37157 (¶85,801), effective May 9, 1996, 61 F.R. 21354; Release No. 34-55540 (¶87,785), 72 F.R. 16934; Release No. 33-10075 (¶81,350), effective June 9, 2016, 81 F.R. 28689.]

Federal Securities Law Reporter, Reg. §240.12g-4., Securities and Exchange Commission, Certifications of termination of registration under section 12(g).

Securities Exchange Act of 1934 Rules
17 C.F.R. §240.12g-4
Rule 12g-4 under the Securities Exchange Act of 1934
Federal Securities Law Reporter ¶23,322

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40BANK-REG+17CFR240.12g-4%29sec018aed248e7b4f1000913d00215ad787740177?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

(a) Termination of registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)) shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 (§ 249.323 of this chapter) that the class of securities is held of record by:

(1) Fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons; or

(2) Fewer than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.

(b) The issuer's duty to file any reports required under section 13(a) shall be suspended immediately upon filing a certification on Form 15. *Provided, however,* That, if the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of such withdrawal or denial, file with the Commission all reports which would have been required had the certification on Form 15 not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the certification shall be filed by the successor issuer.

[Adopted in Release No. 34-12551 (¶80,603), June 17, 1976, 41 F. R. 27961, effective August 2, 1976; adopted in Release No. 34-16078 (¶82,168), August 2, 1979, effective September 17, 1979, 44 F. R. 46447; amended in Release No. 34-18647 (¶83,204), April 15, 1982, 47 F. R. 17046; in Release No. 34-20784 (¶83,508), effective March 30, 1984, 49 F. R. 12688; Release No. 34-23406 (¶84,012), effective August 15, 1986, 51 F. R. 25360; Release No. 34-37157 (¶85,801), effective May 9, 1996, 61 F.R. 21354; Release No. 34-55540 (¶87,785), 72 F.R. 16934; Release No. 33-10075 (¶81,350), effective June 9, 2016, 81 F.R. 28689.]

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Federal Securities Law Reporter, Reg. §240.12h-3., Securities and Exchange Commission, Suspension of duty to file reports under Section 15(d).

Securities Exchange Act of 1934 Rules
17 C.F.R. §240.12h-3
Rule 12h-3 under the Securities Exchange Act of 1934
Federal Securities Law Reporter ¶23,345

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40BANK-REG+17CFR240.12h-3%29sec018aed248e7b4f1000a22000215ad78774018f?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

(a) Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by section 13(a) of the Act with respect to a class of securities specified in paragraph (b) of this section shall be suspended for such class of securities immediately upon filing with the Commission a certification on Form 15 [17 CFR 249.323] if the issuer of such class has filed all reports required by Section 13(a), without regard to Rule 12b-25 [17 CFR 249.322], for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

(b) The classes of securities eligible for the suspension provided in paragraph (a) of this section are:

(1) Any class of securities, other than any class of asset-backed securities, held of record by:

(i) Fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons; or

(ii) Fewer than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years; and

(2) Any class of securities deregistered pursuant to section 12(d) of the Act if such class would not thereupon be deemed registered under section 12(g) of the Act or the rules thereunder.

Note to Paragraph (B): The suspension of classes of asset-backed securities is addressed in § 240.15d-22.

(c) This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraph (b)(1)(ii), the two succeeding fiscal years. Provided, however, That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

(d) The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and

shall continue as long as either criteria (i) or (ii) of paragraph (b)(1) is met on the first day of any subsequent fiscal year. Provided, however, That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

(e) If the suspension provided by this section is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) of this section on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) of the Act by filing an annual report on Form 10-K for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

[Adopted in Release No. 34-16078 (¶82,168), August 2, 1979, 44 F. R. 46447; made effective in Release No. 34-16211, (¶82,310), September 17, 1979, 44 F. R. 55168; redesignated as Rule 12h-3 and amended in Release No. 34-18647 (¶83,204), April 15, 1982, 47 F. R. 17046; Release No. 34-20784 (¶83,508), effective March 30, 1984, 49 F. R. 12688; Release No. 34-23406 (¶84,012), effective August 15, 1986, 51 F. R. 25360; and Release No. 34-37157 (¶85,801), effective May 9, 1996, 61 F.R. 21354; Release No. 34-55540 (¶87,785), 72 F.R. 16934; Release No. 33-8876 (¶88,029), effective February 4, 2008, 73 F.R. 934; Release No. 34-65148 (¶89,605), effective September 22, 2011, 76 F.R. 52549; Release No. 33-10075 (¶81,350), effective June 9, 2016, 81 F.R. 28689.]

Federal Securities Law Reporter, Reg. §240.15d-6., Securities and Exchange Commission, Suspension of duty to file reports.

Securities Exchange Act of 1934 Rules
17 C.F.R. §240.15d-6
Rule 15d-6 under the Securities Exchange Act of 1934
Rule 15d-6 of Regulation 15D
Federal Securities Law Reporter ¶25,145B

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40BANK-REG+17CFR240.15d-6%29sec01fb4a808a7cdc1000a159d8d385ad169404d2?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

If the duty of an issuer to file reports pursuant to section 15(d) of the Act as to any fiscal year is suspended as provided in section 15(d) of the Act, such issuer shall, within 30 days after the beginning of the first fiscal year, file a notice on Form 15 informing the Commission of such suspension unless Form 15 has already been filed pursuant to Rule 12h-3. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice shall be filed by the successor issuer.

[Adopted in Release No. 34-9100 (¶77,972), effective with respect to fiscal years beginning on or after January 1, 1971, provided that reports required by Rule 15d-6 for any fiscal year beginning on or before April 15, 1971 may be filed within 30 days after that date, 36 F. R. 5784; amended in Release No. 34-18647 (¶83,204), April 15, 1982, 47 F. R. 17046; amended in Release No. 34-20784 (¶83,508), effective March 30, 1984, 49 F.R. 12688.]
[For Form 15d-6, see ¶32,301. CCH.]

FINRA Rules

FINRA Manual, 6490., Financial Industry Regulatory Authority, Processing of Company-Related Actions

FINRA Manual
FINRA Rule 6490

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40EGM01+FINRA-RULE6490%2909013e2c865f6a47?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

(a) General

(1) In furtherance of FINRA's obligations to foster cooperation and coordination of the clearing, settling and processing of transactions in equity and debt securities of any issuer with a class of publicly traded, non-exchange listed, securities in the OTC market and, in general, to protect investors and the public interest, FINRA's Operations Department ("Department") reviews and processes documents related to announcements for SEA Rule 10b-17 Actions and Other Company-Related Actions to facilitate the orderly trading and settlement of OTC securities.

(2) For purposes of this Rule, the term "SEA Rule 10b-17 Actions" includes, dividends or other distributions in cash or kind, stock splits or reverse stock splits, or rights or other subscription offerings, and such other actions as are provided for in SEA Rule 10b-17; and the term "Other Company-Related Actions" includes, but is not limited to, any issuance or change to a symbol or name, mergers, acquisitions, dissolutions or other company control transactions; and bankruptcy or liquidations.

(3) This Rule details the advance notification, supporting documentation and fees required by FINRA to process documentation related to such requests.

(b) Request for FINRA Action

(1) An issuer or other duly authorized representative of the issuer may request that FINRA process documentation related to an SEA Rule 10b-17 Action or Other Company-Related Action by submitting a signed request in the manner and form required by FINRA ("Requesting Party"). Initial symbol set up requests may also be submitted by members or associated persons of members in order to comply with regulatory reporting requirements.

(2) All requests to process documentation related to an SEA Rule 10b-17 Action must be complete and submitted to the Department, in the manner and form required, no later than the time frame specified in SEA Rule 10b-17. A Requesting Party that does not submit a completed request to the Department, in the manner and form required, within the time frame specified in SEA Rule 10b-17, shall be deemed "late" and, as set forth in this Rule, subject to an additional fee before the request may be processed. Nothing in the Rule shall alter the obligations of an issuer under SEA Rule 10b-17 and the processing of documentation related to a "late" SEA Rule 10b-17 Action request by FINRA shall not relieve an issuer of any violations under such rule.

(3) All requests to process documentation related to Other Company-Related Actions must be complete and submitted to the Department, in the manner and form required, no later than the time period prescribed for such Other Company-Related Action by FINRA. Notice and information submitted for Other Company-Related Actions must be submitted no later than 10 calendar days prior to the effective date of the company action. A Requesting Party that does not submit a completed FINRA action form to the Department, in the manner and form prescribed, at least ten (10) calendar days prior to the proposed effective date of the company action, shall be deemed "late" and as set forth in this Rule, subject to an additional fee before being processed.

(4) The Department may request such additional information or documentation as may be necessary for the Department to review the request to process documentation related to an SEA Rule 10b-17 Action or Other Company-Related Action and verify the accuracy of the information submitted.

(c) Fees The Requesting Party shall pay the following non-refundable fees for the review and processing of documentation related to an SEA Rule 10b-17 Action and Other Company-Related Action:

SEA Rule 10b-17Action	**Fee**
Timely SEA Rule 10b-17 Notification	$200
Late SEA Rule 10b-17 Notification Submitted at least 5 calendar days prior to Corporate Action Date	$1,000
Late SEA Rule 10b-17 Notification Submitted at least 1 calendar day prior to Corporate Action Date	$2,000
Late SEA Rule 10b-17 Notification Submitted on or after Corporate Action Date	$5,000
Other Company-Related Action	**Fee**
Voluntary Symbol Request Change	$500
Initial Symbol Set Up	No Charge
Symbol Deletion	No Charge
Appeals	**Fee**
Action Determination Appeal Fee	$4,000

(d) Procedures for Reviewing Submissions

(1) Review The Department shall review all requests to process documentation related to SEA Rule 10b-17 Actions and Other Company-Related Actions that are submitted pursuant to this Rule, including any additional documents or information requested in accordance with paragraph (b) above. All such requests must be accompanied by proof of payment of the requisite fee when appropriate in accordance with paragraph (c) above.

(2) Lapsed Requests Where a Requesting Party does not, in the reasonable determination of the Department, sufficiently respond to any request by the Department for additional information or documentation pursuant to paragraph (b)(3) above within 90 calendar days following such Department request, such party's request shall be deemed "lapsed" and be closed.

(3) Deficiency Determination In circumstances where an SEA Rule 10b-17 Action or Other Company-Related Action is deemed deficient, the Department may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets, that documentation related to such SEA Rule 10b-17 Action or Other Company-Related Action will not be processed. In instances where the Department makes such a deficiency determination, the request to process documentation related to

the SEA Rule 10b-17 Action or Other Company-Related Action, as applicable, will be closed, subject to paragraphs (d)(4) and (e) of this Rule. The Department shall make such deficiency determinations solely on the basis of one or more of the following factors: (1) FINRA staff reasonably believes the forms and all supporting documentation, in whole or in part, may not be complete, accurate or with proper authority; (2) the issuer is not current in its reporting requirements, if applicable, to the SEC or other regulatory authority; (3) FINRA has actual knowledge that the issuer, associated persons, officers, directors, transfer agent, legal adviser, promoters or other persons connected to the issuer or the SEA Rule 10b-17 Action or Other Company-Related Action are the subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations; (4) a state, federal or foreign authority or self-regulatory organization has provided information to FINRA, or FINRA otherwise has actual knowledge indicating that the issuer, associated persons, officers, directors, transfer agent, legal adviser, promoters or other persons connected with the issuer or the SEA Rule 10b-17 Action or Other Company-Related Action may be potentially involved in fraudulent activities related to the securities markets and/or pose a threat to public investors; and/or (5) there is significant uncertainty in the settlement and clearance process for the security.

(4) Notice Regarding Determination If the Department determines that a request to process documentation related to a SEA Rule 10b-17 Action or a Other Company-Related Action is deficient, FINRA staff shall provide written notice to the Requesting Party. Any notice issued under this paragraph shall state the specific factor(s) that caused the request to be deemed deficient and the Requesting Party may appeal a determination pursuant to paragraph (e) of this Rule.

(5) Notice Issuance A notice issued under this paragraph shall be issued by facsimile or electronic mail, or pursuant to Rule 9134.

(e) Request for an Appeal to Subcommittee of Uniform Practice Code Committee A Requesting Party issued a notice under this Rule may appeal a determination made under paragraph (d)(3) of this Rule to a three-member subcommittee comprised of current or former industry members of FINRA's Uniform Practice Code Committee in writing, via facsimile, electronic mail or otherwise in writing, within seven (7) calendar days after service of the notice. The written request for an appeal must be accompanied by proof of payment of the non-refundable Action Determination Appeal Fee. A request for an appeal must set forth with specificity any and all defenses to the Department's determination that a request was unacceptable or otherwise deficient. An appeal to the subcommittee shall operate to stay the processing of the company-related action (i.e., the requested company-related action shall not be processed during the period that the Requesting Party requests an appeal or while any such appeal is pending). Once a written appeal has been received, the Requesting Party may submit any additional supporting written documentation, via facsimile, electronic mail or otherwise, up until the time the appeal is considered by the subcommittee. The subcommittee shall convene once each calendar month to consider all appeals received under this Rule during the prior month. The subcommittee shall render a determination within three (3) business days following the day the appeal is considered by the subcommittee. The subcommittee's determination shall constitute final action by FINRA. The subcommittee's determination shall not constitute an estoppel as to FINRA nor bind FINRA in any subsequent administrative, civil, or disciplinary proceeding. If the Requesting Party fails to file a written request for an appeal within seven (7) calendar days after service of the notice by the Department, the Department's determination shall constitute final action by FINRA.

• • • Supplementary Material:

.01 SEA Rule 10b-17 Fee Accumulations. In accordance with the time-frames specified in SEA Rule 10b-17, OTC issuers must provide FINRA with written notice prior to a dividend or any other distribution in cash or in kind, rights or other subscription offerings, forward stock splits, and reverse stock splits. In addition, pursuant

to Rule 6490 OTC issuers must pay any applicable fees. Notwithstanding the timeliness of the SEA Rule 10b-17 Action submission or the failure to pay applicable fees, FINRA will make its best efforts to process documentation related to SEA Rule 10b-17 Actions that are not otherwise deemed incomplete or otherwise deficient by FINRA because of the critical nature of this information to the marketplace. Although FINRA may process documentation related to SEA Rule 10b-17 Actions even if a fee remains unpaid, FINRA accumulates all unpaid SEA Rule 10b-17 Action fees associated with a specific OTC issuer symbol. Regardless of the current ownership status or transaction history of an OTC issuer, FINRA will not process documentation related to Voluntary Symbol Request Changes until all unpaid accumulated late fees have been paid for the associated OTC symbol.

.02 Requests by Third-Parties. Pursuant to SEA Rule 10b-17, OTC issuers must provide FINRA with written notice generally within the time-frames specified in SEA Rule 10b-17. In certain circumstances, FINRA is contacted by a third-party, such as DTCC, foreign exchanges or regulators, members or associated persons, regarding an SEA Rule 10b-17 Action or Other Company Related Action. In such cases, FINRA requests that the third-party contact the issuer in question regarding its obligations under SEA Rule 10b-17 or other rules and regulations, as applicable, and instruct such issuer to contact FINRA directly to provide notice and complete the requisite forms. However, FINRA may in its discretion review and process an SEA Rule 10b-17 Action or Other Company-Related Action based on information from a third-party when it believes such action is necessary for the protection of the market and investors and/or FINRA has been unable to obtain notification from the issuer.

[Adopted by SR-FINRA-2009-089 eff. Sept. 27, 2010; amended by SR-FINRA-2010-057 eff. Nov. 12, 2010.]

Selected Notice: 10-38.

FINRA Manual, 6490., Financial Industry Regulatory Authority, Processing of Company-Related Actions

FINRA Manual
FINRA Rule 6490

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40EGM01+FINRA-RULE6490%2909013e2c865f6a47?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

(a) General

(1) In furtherance of FINRA's obligations to foster cooperation and coordination of the clearing, settling and processing of transactions in equity and debt securities of any issuer with a class of publicly traded, non-exchange listed, securities in the OTC market and, in general, to protect investors and the public interest, FINRA's Operations Department ("Department") reviews and processes documents related to announcements for SEA Rule 10b-17 Actions and Other Company-Related Actions to facilitate the orderly trading and settlement of OTC securities.

(2) For purposes of this Rule, the term "SEA Rule 10b-17 Actions" includes, dividends or other distributions in cash or kind, stock splits or reverse stock splits, or rights or other subscription offerings, and such other actions as are provided for in SEA Rule 10b-17; and the term "Other Company-Related Actions" includes, but is not limited to, any issuance or change to a symbol or name, mergers, acquisitions, dissolutions or other company control transactions; and bankruptcy or liquidations.

(3) This Rule details the advance notification, supporting documentation and fees required by FINRA to process documentation related to such requests.

(b) Request for FINRA Action

(1) An issuer or other duly authorized representative of the issuer may request that FINRA process documentation related to an SEA Rule 10b-17 Action or Other Company-Related Action by submitting a signed request in the manner and form required by FINRA ("Requesting Party"). Initial symbol set up requests may also be submitted by members or associated persons of members in order to comply with regulatory reporting requirements.

(2) All requests to process documentation related to an SEA Rule 10b-17 Action must be complete and submitted to the Department, in the manner and form required, no later than the time frame specified in SEA Rule 10b-17. A Requesting Party that does not submit a completed request to the Department, in the manner and form required, within the time frame specified in SEA Rule 10b-17, shall be deemed "late" and, as set forth in this Rule, subject to an additional fee before the request may be processed. Nothing in the Rule shall alter the obligations of an issuer under SEA Rule 10b-17 and the processing of documentation related to a "late" SEA Rule 10b-17 Action request by FINRA shall not relieve an issuer of any violations under such rule.

(3) All requests to process documentation related to Other Company-Related Actions must be complete and submitted to the Department, in the manner and form required, no later than the time period prescribed for such Other Company-Related Action by FINRA. Notice and information submitted for Other Company-Related Actions must be submitted no later than 10 calendar days prior to the effective date of the company action. A Requesting Party that does not submit a completed FINRA action form to the Department, in the manner and form prescribed, at least ten (10) calendar days prior to the proposed effective date of the company action, shall be deemed "late" and as set forth in this Rule, subject to an additional fee before being processed.

(4) The Department may request such additional information or documentation as may be necessary for the Department to review the request to process documentation related to an SEA Rule 10b-17 Action or Other Company-Related Action and verify the accuracy of the information submitted.

(c) Fees The Requesting Party shall pay the following non-refundable fees for the review and processing of documentation related to an SEA Rule 10b-17 Action and Other Company-Related Action:

SEA Rule 10b-17 Action	**Fee**
Timely SEA Rule 10b-17 Notification	$200
Late SEA Rule 10b-17 Notification Submitted at least 5 calendar days prior to Corporate Action Date	$1,000
Late SEA Rule 10b-17 Notification Submitted at least 1 calendar day prior to Corporate Action Date	$2,000
Late SEA Rule 10b-17 Notification Submitted on or after Corporate Action Date	$5,000
Other Company-Related Action	**Fee**
Voluntary Symbol Request Change	$500
Initial Symbol Set Up	No Charge
Symbol Deletion	No Charge
Appeals	**Fee**
Action Determination Appeal Fee	$4,000

(d) Procedures for Reviewing Submissions

(1) Review The Department shall review all requests to process documentation related to SEA Rule 10b-17 Actions and Other Company-Related Actions that are submitted pursuant to this Rule, including any additional documents or information requested in accordance with paragraph (b) above. All such requests must be accompanied by proof of payment of the requisite fee when appropriate in accordance with paragraph (c) above.

(2) Lapsed Requests Where a Requesting Party does not, in the reasonable determination of the Department, sufficiently respond to any request by the Department for additional information or documentation pursuant to paragraph (b)(3) above within 90 calendar days following such Department request, such party's request shall be deemed "lapsed" and be closed.

(3) Deficiency Determination In circumstances where an SEA Rule 10b-17 Action or Other Company-Related Action is deemed deficient, the Department may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets, that documentation related to such SEA Rule 10b-17 Action or Other Company-Related Action will not be processed. In instances where the Department makes such a deficiency determination, the request to process documentation related to

the SEA Rule 10b-17 Action or Other Company-Related Action, as applicable, will be closed, subject to paragraphs (d)(4) and (e) of this Rule. The Department shall make such deficiency determinations solely on the basis of one or more of the following factors: (1) FINRA staff reasonably believes the forms and all supporting documentation, in whole or in part, may not be complete, accurate or with proper authority; (2) the issuer is not current in its reporting requirements, if applicable, to the SEC or other regulatory authority; (3) FINRA has actual knowledge that the issuer, associated persons, officers, directors, transfer agent, legal adviser, promoters or other persons connected to the issuer or the SEA Rule 10b-17 Action or Other Company-Related Action are the subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations; (4) a state, federal or foreign authority or self-regulatory organization has provided information to FINRA, or FINRA otherwise has actual knowledge indicating that the issuer, associated persons, officers, directors, transfer agent, legal adviser, promoters or other persons connected with the issuer or the SEA Rule 10b-17 Action or Other Company-Related Action may be potentially involved in fraudulent activities related to the securities markets and/or pose a threat to public investors; and/or (5) there is significant uncertainty in the settlement and clearance process for the security.

(4) Notice Regarding Determination If the Department determines that a request to process documentation related to a SEA Rule 10b-17 Action or a Other Company-Related Action is deficient, FINRA staff shall provide written notice to the Requesting Party. Any notice issued under this paragraph shall state the specific factor(s) that caused the request to be deemed deficient and the Requesting Party may appeal a determination pursuant to paragraph (e) of this Rule.

(5) Notice Issuance A notice issued under this paragraph shall be issued by facsimile or electronic mail, or pursuant to Rule 9134.

(e) Request for an Appeal to Subcommittee of Uniform Practice Code Committee A Requesting Party issued a notice under this Rule may appeal a determination made under paragraph (d)(3) of this Rule to a three-member subcommittee comprised of current or former industry members of FINRA's Uniform Practice Code Committee in writing, via facsimile, electronic mail or otherwise in writing, within seven (7) calendar days after service of the notice. The written request for an appeal must be accompanied by proof of payment of the non-refundable Action Determination Appeal Fee. A request for an appeal must set forth with specificity any and all defenses to the Department's determination that a request was unacceptable or otherwise deficient. An appeal to the subcommittee shall operate to stay the processing of the company-related action (i.e., the requested company-related action shall not be processed during the period that the Requesting Party requests an appeal or while any such appeal is pending). Once a written appeal has been received, the Requesting Party may submit any additional supporting written documentation, via facsimile, electronic mail or otherwise, up until the time the appeal is considered by the subcommittee. The subcommittee shall convene once each calendar month to consider all appeals received under this Rule during the prior month. The subcommittee shall render a determination within three (3) business days following the day the appeal is considered by the subcommittee. The subcommittee's determination shall constitute final action by FINRA. The subcommittee's determination shall not constitute an estoppel as to FINRA nor bind FINRA in any subsequent administrative, civil, or disciplinary proceeding. If the Requesting Party fails to file a written request for an appeal within seven (7) calendar days after service of the notice by the Department, the Department's determination shall constitute final action by FINRA.

• • • Supplementary Material:

.01 SEA Rule 10b-17 Fee Accumulations. In accordance with the time-frames specified in SEA Rule 10b-17, OTC issuers must provide FINRA with written notice prior to a dividend or any other distribution in cash or in kind, rights or other subscription offerings, forward stock splits, and reverse stock splits. In addition, pursuant

to Rule 6490 OTC issuers must pay any applicable fees. Notwithstanding the timeliness of the SEA Rule 10b-17 Action submission or the failure to pay applicable fees, FINRA will make its best efforts to process documentation related to SEA Rule 10b-17 Actions that are not otherwise deemed incomplete or otherwise deficient by FINRA because of the critical nature of this information to the marketplace. Although FINRA may process documentation related to SEA Rule 10b-17 Actions even if a fee remains unpaid, FINRA accumulates all unpaid SEA Rule 10b-17 Action fees associated with a specific OTC issuer symbol. Regardless of the current ownership status or transaction history of an OTC issuer, FINRA will not process documentation related to Voluntary Symbol Request Changes until all unpaid accumulated late fees have been paid for the associated OTC symbol.

.02 Requests by Third-Parties. Pursuant to SEA Rule 10b-17, OTC issuers must provide FINRA with written notice generally within the time-frames specified in SEA Rule 10b-17. In certain circumstances, FINRA is contacted by a third-party, such as DTCC, foreign exchanges or regulators, members or associated persons, regarding an SEA Rule 10b-17 Action or Other Company Related Action. In such cases, FINRA requests that the third-party contact the issuer in question regarding its obligations under SEA Rule 10b-17 or other rules and regulations, as applicable, and instruct such issuer to contact FINRA directly to provide notice and complete the requisite forms. However, FINRA may in its discretion review and process an SEA Rule 10b-17 Action or Other Company-Related Action based on information from a third-party when it believes such action is necessary for the protection of the market and investors and/or FINRA has been unable to obtain notification from the issuer.

[Adopted by SR-FINRA-2009-089 eff. Sept. 27, 2010; amended by SR-FINRA-2010-057 eff. Nov. 12, 2010.]

Selected Notice: 10-38.

Securities and Exchange Commission – Releases

Release No. 4725 (S.E.C. Release No.), Release No. 7425,
Release No. 33-4725, Release No. 34-7425, 1964 WL 67875

Securities and Exchange Commission (S.E.C.)
Securities Act of 1933
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

Summary and Interpretation of Amendments to Securities Act of 1933 and Securities Exchange Act of 1934 Contained in the Securities Acts Amendments of 1964

September 29, 1964

*1 *Summary of the Securities Acts Amendments of 1964.* On August 20, 1964 President Johnson signed the Securities Actse Amendments of 1964 ('1964 Amendments'), which legislation revises the Securities Exchange Act of 1934 ('Exchangee Act') extensively and amends the Securities Act of 1933 ('Securities Act') in one respect. These amendments, the moste significant statutory advance in federal securities regulation and investor protection since 1940, affect the obligationse of both broker-dealers and issuers of securities. The purpose of this release is to facilitate an understanding of ande compliance with the new law. The release is written in general terms and is not intended to be a conclusive interpretatione of the new amendments. [1e]

The 1964 Amendments achieve two major objectives. The first is to afford investors in publicly-held companies whose securities are traded over-the-counter the same fundamental disclosure protections as have been provided to investors in companies whose securities are listed on an exchange. For this purpose the registration, periodic reporting, proxy solicitation and insider reporting and trading provisions of the Exchange Act have been extended to a significant portion of the securities traded in the over-the-counter markets. The second is to strengthen the standards of entrance into the securities business and to make more effective the disciplinary controls of the Securities and Exchange Commission and the rules of industry self-regulatory organizations over securities brokers and dealers and persons associated with them. In addition, the Exchange Act was amended to strengthen the periodic reporting and proxy provisions which have now been made applicable with respect to securities traded on the exchanges and in the over-the-counter markets. The Securities Act was also amended to extend from 40 to 90 days the period during which dealers are required to deliver prospectuses for securities of issuers which have not previously registered securities under the Securities Act and to authorize the Commission to shorten either period.

The effects of these amendments are briefly summarized in this release. For convenience, the discussion is divided into six parts, as follows:

I.ePrivisions Affecting Issuers of Over-The-Counter Securities.e

II.ePrivisions Affecting Issuers of Over-The-Counter and Listed Securities.e

III.ePrivisions Affecting Issuers of Securities With Unlisted Trading Privileges on Exchanges.e

IV.ePrivisions Relating to Enforcement, Disclosure and Civil Liabilities.e

V.ePrivisions Affecting Broker-Dealers and Persons Associated With Broker-Dealers.e

VI. Provisions Affecting Registered Securities Associations and Their Members.e

*2 In addition, reference should be made to the provisions of the 1964 Amendments, to the legislative history of thosee amendments[2] and to the Commission's rules and regulations under the Exchange Act. The provisions of the Securitiese Act and those of the Exchange Act relating to issuers of securities are administered by the Division of Corporatione Finance. The provisions of the Exchange Act relating to broker-dealers and associated persons, as well as to nationale securities exchanges and registered securities associations are administered by the Division of Trading and Markets.e Inquiries concerning the provisions of the 1964 Amendments should be addressed to the appropriate division.e

From time to time the Commission will propose rules and regulations to implement the new legislation and will make appropriate revisions in its forms. Persons desiring notice of these proposals should write to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549, and request to be placed on the mailing list.

I. Provisions Applicable to Issuers of Over-The-Counter Securities. The 1964 Amendments will extend the registration, periodic reporting, proxy solicitation and insider reporting and trading provisions of the Exchange Act to issuers with total assets in excess of $1,000,000 and a class of equity security which is held of record by 750 or more persons, if the issuer is engaged in interstate commerce or in a business affecting interstate commerce, or its securities are traded by use of the mails or any means or instrumentality of interstate commerce. After July 1, 1966, these requirements will be applicable to issuers with total assets in excess of $1,000,000 and a class of equity securities held of record by 500 or more persons.

A number of exemptions from the new registration requirements are available. These include exemptions for securities listed and registered on a national securities exchange; securities issued by registered investment companies; securities (other than stock generally representing non-withdrawable capital) of savings and loan associations and similar institutions; securities of certain non-profit organizations operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes; securities of certain agricultural marketing cooperatives; securities of certain non-profit mutual or cooperative organizations which supply a commodity or service primarily to members; and direct obligations issued or guaranteed by the United States or any State or political subdivision thereof.

Insurance companies are exempt from the new registration requirements which are contained in new section 12(g) of the Exchange Act, provided the insurance company is regulated by its state of incorporation in all three of the following respects:
(1)eIt is required to and does file annual reports with a state official or agency substantially in accordance with thee requirements prescribed by the National Association of Insurance Commissioners;e

*3 (2) It is regulated in the solicitation of proxies in accordance with the requirements prescribed by the Nationale Association of Insurance Commissioners; ande

(3) After July 1, 1966, the purchase and sale of securities issued by the insurance company by beneficial owners, directorse or officers of the company are subject to regulation (including reporting) substantially in the manner provided in sectione 16 of the Exchange Act. The periodic reporting requirements of section 15(d) of the Exchange Act will continue toe be applicable to insurance companies as in the past, and to insurance companies which file Securities Act registratione statements in the future. Insurance companies registered on a national securities exchange, or which register under newe section 12(g), will be subject to the periodic reporting, proxy solicitation and insider reporting and trading provisionse of the Exchange Act.e

Although the Exchange Act applies to all banks, the registration, periodic reporting, proxy solicitation, and insider reporting and trading provisions with respect to bank securities, whether listed or unlisted, will now be administered and enforced by the Federal bank regulatory agencies; the Comptroller of the Currency with respect to securities issued

by national and District of Columbia banks; the Board of Governors of the Federal Reserve System with respect to state banks which are members of the Federal Reserve System; and the Federal Deposit Insurance Corporation with respect to all other insured banks. Banks which are not subject to regulation by a Federal bank regulatory agency will be required to comply with these requirements as administered by this Commission. Banks, insurance companies and interested investors, therefore, may wish to contact the appropriate regulatory agency to determine the nature of the obligation and the procedure to be followed with respect to these requirements.

The 1964 Amendments also empower the Commission to exempt, in whole or in part, any issuer or class of issuers from the registration, periodic reporting and proxy solicitation provisions and to grant exemptions from the insider reporting and trading provisions if such exemption is not inconsistent with the public interest or the protection of investors. In addition, the 1964 Amendments specifically authorize the Commission to exempt from these requirements securities of foreign issuers and certificates of deposits issued against such securities. The Commission has indicated to the Congress that it will provide by rule a temporary exemption for all such foreign securities. Such a rule is now under consideration. After further study by the Commission and after an opportunity for interested persons to present their views, the Commission will make appropriate findings and issue orders or adopt rules with respect to specific foreign companies or classes thereof.

Registration under section 12(g). New section 12(g) of the Exchange Act requires an issuer to file a registration statement within 120 days after the last day of its first fiscal year end after July 1, 1964 on which it has both total assets in excess of $1,000,000 and a class of non-exempt equity security held of record by 750 or more persons. Whether registration is required is determined at the fiscal year end and the entire fiscal period need not expire after the effective date of this amendment, July 1, 1964. However, the Commission has authority to extend the registration date specified in section 12(g). It presently has under consideration a rule to extend the date an issuer which meets these tests will first be required to file a registration statement. The rule will apply only to an issuer whose fiscal year ends before December 31, 1964, and will not be applicable to an issuer filing reports under sections 13 or 15(d). The registration statement will become effective 60 days after filing with the Commission or within such shorter period as the Commission may direct. An issuer may, at its option, register any class of equity security which is not required to be registered under new section 12(g). Securities of issuers registered under these new requirements may sometimes be referred to as 'OTC registered.'

***4** Although new section 12(g) requires an issuer to file a registration statement with respect to each class of securitiese held of record by the specified number of persons, the Commission is devising rules, regulations and forms which wille substantially reduce duplication of filings by companies filing reports under the Exchange Act, or initially registeringe more than one class of equity securities.e

As described above, registration is dependent upon the existence of several key factors at the end of the issuer's fiscal year, i.e., 'total assets' in excess of $1,000,000 and a 'class' of 'equity security' which is 'held of record' initially by 750 persons, and after July 1, 1966 by 500 persons.

Sections 3(a)(11) of the Exchange Act defines 'equity security' to mean any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right. The term 'class' is defined in section 12(g)(5) to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission has published proposed Rule 12g5–2 which defines the term 'total assets' to be generally as shown on its balance sheet, as in the case of an issuer with a subsidiary or subsidiaries, by its consolidated balance sheet, whichever is larger, prepared in accordance with the pertinent provisions of Regulation S–X. The Commission has also published proposed Rule 12g5–1 which will define the term 'held of record.' The application of the Exchange Act to a particular issuer will be dependent upon the definitions of these terms as finally adopted by the Commission.

The required registration statement must be filed on the appropriate form for registration under the Exchange Act which will be similar to the forms for application for registration on an exchange. These forms are currently being revised by the Commission, but, in general, require the issuer to furnish information with respect to its business, its management,e and the securities being registered. The revised forms will also require the issuer to file material contracts, not made in the ordinary course of business, to implement a new provision of the Exchange Act.e

Current regulations require most issuers to file a balance sheet, and statements of profit and loss and surplus for the preceding three fiscal years, certified by an independent public accountant. The Commission's requirements with respect to the capacity of an independent public accountant and as to the independence of an accountant are set forth in Rule 2.01 of Regulation S–X, and in the Commission's Accounting Series Releases, in particular, Accounting Series Release No. 81. In general, an accountant is not deemed independent if, during the period covered by his certification, he had any direct or material indirect financial interest in the issuer, its parent, or its subsidiaries, or had any other relationshipse or arrangements which might affect the exercise of his independent judgment.e

*5 Periodic reporting under *section 13*. Section 13 of the Exchange Act and rules thereunder require an issuer to keepe the information in the registration statement current by filing reports on Form 8–K within 10 days after the end of any month during which certain major company events occur, and by filing within 120 days after each fiscal year end an annual report on Form 10–K, or other appropriate annual report form, containing, among other things, financial statements certified (with some exceptions) by an independent public accountant. Most registered companies will also be required to file with the Commission semi-annual reports on Form 9–K concerning the company's first six months operating results, within 45 days after the end of the period for which they are filed. These requirements will be applicable to issuers registered under new section 12(g).e

Proxy solicitations. Section 14(a) of the Exchange Act empowers the Commission to regulate the solicitation of proxies from security holders of a registered class of securities. The Commission's proxy solicitation requirements, which are contained in Regulation 14, require that the person solicited be furnished a proxy statement describing the matters for which the proxy is solicited and a form of proxy. The proxy statement and form of proxy must comply with thee Commission's requirements and must be filed in preliminary form with this Commission at least 10 days before definitive copies are sent to security holders.e

Under the 1964 Amendments these requirements are now extended to solicitations with respect to securities registerede under section 12(g) The 1964 amendments have also amended section 14(b) and added section 14(c). These sections are discussed below on page 9.e

Insider reporting and trading. Section 16 of the Exchange Act and the rules thereunder set forth the insider reporting and trading provisions which will now be applicable to the officers and directors of issuers of securities registered undere the Exchange Act and beneficial owners of more than 10 percent of the outstanding securities of a registered class. This section requires these persons to file an initial report on Form 3 stating the amount of each class of the issuer's equity securities, whether or not registered, which are owned beneficially by such person. The report must be filed bye the effective date of the registration statement or within 10 days after a person becomes a director, officer or holderofe more than 10 percent ofa class ofa registered equity security. Thereafter, each such person must report on Form 4 any change in his beneficial ownership of the issuer's equity securities within 10 days after the end of each calendar monthe in which any transaction takes place. The section allows recovery by or on behalf of the issuer of any profit made by such persons in the purchase and sale or sale and purchase of any of the issuer's equity securities, whether or not of a registered class, within a period of six months. It also prohibits such person from selling 'short', or from refraining frome delivering promptly after sale the issuer's equity security which he owns—sometimes referred to as 'selling against the box.' The 1964 Amendments exempt market-making transactions by broker-dealers (otherwise than on an exchange) from the profit recovery, short sale and 'selling against the box' provisions of the Exchange Act. This exemption is moree fully discussed below at pages 18–19.e

*6 *Termination of registration.* The 1964 Amendments provide that an issuer may terminate registration of a class of securities registered under section 12(g) by filing a certification with the Commission that the securities are held of record by less than 300 persons. Registration will be terminated 90 days after an issuer files the certification or within such shorter period as the Commission may direct, unless the Commission determines, after notice and opportunity for hearing, that the certification is untrue.

An issuer with securities registered under section 12(g) will continue to be subject to the periodic reporting, proxy solicitation and insider trading provisions of the Exchange Act until registration has been terminated for each class of its registered equity securities. Any class of securities for which registration has been terminated thereafter will be subject to registration if on the last day of any fiscal year the class of securities are held of record by the requisite number of persons and the issuer has total assets in excess of $1,000,000.

Periodic reporting under section 15(d). Prior to the 1964 Amendments, many issuers with securities traded in the over-the-counter market were subject to the reporting requirements of the Exchange Act pursuant to the provisions of section 15(d). The section required that a registration statement filed under the Securities Act contain an undertaking to comply with the reporting requirements of section 13 if the value of the securities offered, plus the value of all other outstanding securities of the same class, was $2,000,000 or more. The duty to file is suspended if, and so long as, the value of the securities outstanding is reduced to less than $1,000,000 or the issuer has become subject to an equivalent reporting requirement. Under the 1964 Amendments, the requirement of an undertaking to file reports has been deleted with respect to registration statements filed after August 20, 1964. As amended, section 15(d) now automatically requires issuers filing Securities Act registration statements after that date to file reports under the Exchange Act during the fiscal year a registration statement for its securities becomes effective and during each fiscal year thereafter in which any class of securities to which a registration statement relates is held of record by 300 or more persons at the beginning of the fiscal year.

Issuers required to file under section 15(d) which meet the above described asset and shareholder tests of section 12(g) will be required to register under that section. Although their obligation to file reports pursuant to section 15(d) will be suspended while a class of securities is registered under the Exchange Act, they nevertheless will be required to file periodic reports under section 13 by virtue of being registered under section 12(g) of the Act. An issuer which is not registered under section 12(g) but which has filed a Securities Act registration statement on or prior to August 20, 1964, whether or not it becomes effective after that date, generally will be obligated to file reports pursuant to the terms of the undertaking contained in its registration statement. However, in addition to the provisions for suspension of the duty to file reports specified by the undertaking, the duty to file reports is now automatically suspended for any fiscal year, if at the beginning of such year, each class of securities offered under the registration statement is held of record by less than 300 persons, unless a Securities Act registration statement of the issuer becomes effective during that fiscal year. Thus, the obligation of an issuer presently filing reports under section 15(d) may now be automatically suspended if it has not offered securities under a Securities Act registration statement within its last fiscal year and if, at the beginning of its last fiscal year, it did not have any class of securities offered under a Securities Act registration statement which were held by 300 or more persons.

*7 *II. Provisions affecting Issuers of over-the-counter and listed securities—Proxy solicitation.* In addition to the extension of the proxy solicitation requirements to issuers of securities registered under section 12(g) described above, the 1964 Amendments added new section 14(c). This section allows the Commission to promulgate rules and regulations requiring an issuer to send to holders of a security registered and listed on a national securities exchange or registered under section 12(g), from whom it does not solicit proxies, information substantially equivalent to the information that would be required to be sent if a solicitation were made. However, issuers will not be subject to this requirement until such time as the Commission has implemented the provision by rules and regulations.

Section 14(b) of the Exchange Act has been amended to empower the Commission to promulgate rules requiring registered broker-dealers to transmit proxy solicitation materials to their customers and to give proxies with respect to any registered security held in 'street name'. The application of this provision to broker-dealers is discussed below. This amendment also will have no effect until the Commission has adopted implementing rules and regulations.

Material contracts. The 1964 Amendments empower the Commission to adopt rules and regulations requiring issuers to file copies of and make appropriate disclosures with respect to material contracts not made in the ordinary course of business which were made not more than two years before the filing of an application or registration statement under section 12 of the Exchange Act, or which are to be performed in whole or in part at or after such filing. The 1964 Amendments also clarify the Commission's authority to require that issuers keep reasonably current the information and documents (including material contracts) included in or filed with such an application or registration statement. Under this authority the Commission may require issuers which have previously filed an application for registration on an exchange to file material contracts which were made within two years prior to the filing date of the application or which were not then wholly performed, but the Commission may not require the filing of such contracts if wholly performed prior to July 1, 1962. The Commission is currently revising its forms to implement these new provisions.

Filing of reports. Prior to the 1964 Amendments, an issuer with securities listed and registered on a national securities exchange was required by section 13 to file periodic reports, and to file duplicate originals with the Commission. Section 13 has been amended to require the issuer to file the original (and such copies as may be required) with the Commission and the duplicate original with the exchange.

A similar change has been made with respect to the reporting requirements under section 16(a) of the Exchange Act. Officers, directors and holders of more than 10 percent of a class of a registered equity security required to file reports under that section will now file the originals (and such copies as may be required) with the Commission and duplicate originals with the Exchange.

*8 *III. Provisions Affecting Issuers of Securities With Unlisted Trading Privileges on Exchanges.* Prior to the 1964 Amendments, section 12(f)(3) permitted national securities exchanges, upon application to and approval by the Commission, to extend unlisted trading privileges to any security as to which the disclosure requirements and other duties and obligations of the issuer and its management were substantially equivalent to those applicable to listed securities. This provision has been deleted and the Commission is now authorized to extend unlisted trading privileges only for securities listed and registered on another national securities exchange.

The provisions of section 12(f) of the Exchange Act governing the extension, continuation, suspension and termination of unlisted trading privileges have also been amended in several other respects.

First, unlisted trading privileges on a national securities exchange for all securities granted such privileges before July 1, 1964 are continued without the necessity of an application to or approval by the Commission. To prevent a cessation of unlisted trading in securities granted unlisted trading privileges between July 1, 1964 and the date of enactment of the 1964 Amendments, the Commission has adopted a rule which grants a thirty day continuation of such privileges to permit exchanges to file new applications pursuant to the provisions of the Exchange Act, as amended.

Second, the standards by which the Commission must judge applications for unlisted trading privileges have been broadened. The 1964 Amendments have deleted from section 12(f) the requirement that an applicant exchange demonstrate the existence of widespread public distribution and public trading activity in the security in the vicinity of the exchange. Although information relating to public distribution and public trading activity continues to be relevant, the tests for extension, suspension or termination of unlisted trading privileges are amended to allow the Commission to consider all factors affecting the public interest or the protection of investors.

Third, the provision contained in prior section 12(f) requiring national securities exchanges, in the publication of exchange transactions or quotations, to differentiate between transactions or quotations in listed and unlisted securities has been deleted by the 1964 Amendments.

The Commission has proposed a revision of Rule 12f–4 adopted under the Exchange Act. Issuers of securities which have not been registered for listing on a national securities exchange but which have been admitted to unlisted trading privileges on such exchange will under the proposed revision of that rule be subject to the registration, periodic reporting, proxy and insider reporting and trading provisions of the Exchange Act, if they meet the statutory tests of section 12(g), to the same extent as any other issuer.

Many issuers of securities admitted to unlisted trading privileges on an exchange have been required to comply with the periodic reporting requirements pursuant to the provisions of section 15(d). Section 12(f)(6) of the Exchange Act provides that securities admitted to unlisted trading privileges are deemed to be registered under section 12 of the Act. Since section 15(d) has now been amended to suspend the duty of filing reports under that section for issuers of securities registered under section 12, and since the Commission's present Rule 12f–4 exempts issuers of securities admitted to unlisted trading privileges from the requirement of filing reports with the exchange, the Commission's proposed amendment to Rule 12f–4 will require the continued filing of reports by such companies pursuant to the provisions of section 13. When Rule 12f–4 is amended, such issuers will be required to file copies of their periodic reports with the exchange as well as with the Commission.

*9 *IV. Provisions Relating to Enforcement, Disclosure and Civil Liabilities.* Under the 1964 Amendments, the Commission is empowered by new section 15(c)(4) of the Exchange Act to conduct administrative proceedings to determine whether any issuer subject to the registration or reporting provisions of the Exchange Act, or any rule or regulation thereunder, has failed to comply with any such provision, rule, or regulation in any material respect. If the Commission finds, after notice and opportunity for hearing, that there has been such a failure to comply, the Commission may publish its findings and issue an order requiring compliance with the provision, rule, or regulation upon such terms and conditions and within such time as the Commission may specify in the order. Under prior law the Commission had more limited powers with respect to securities registered on a national securities exchange. Under section 19(a)(2) the Commission could deny, suspend the effectiveness, or withdraw the registration of a security on such an exchange, if the issuer of the security failed to comply with any provision of the Exchange Act or the rules and regulations thereunder. As noted, the 1964 Amendments now empower the Commission by order to require compliance. The Exchange Act also provides for enforcement of any such order in the United States district courts.

The 1964 Amendments further provide the Commission in new section 15(c)(5) with authority summarily to suspend over-the-counter trading in any security (except an exempted security) for a period not exceeding 10 days. Broker-dealers are prohibited from trading in any such security during the period or periods of suspension. This provision is a counterpart to section 19(a)(4) of the Exchange Act, which provides for the summary suspension of trading in securities listed on a national securities exchange. As under section 19(a)(4), the Commission may summarily suspend trading in a security for a period not exceeding 10 days if in its opinion the public interest and protection of investors so require. The application of this section to broker-dealers is discussed below.

These new enforcement powers are in addition to those already included in the Exchange Act, under which the Commission may apply to the courts for injunctions to restrain violations of the Act or the rules or regulations adopted thereunder; conduct administrative proceedings to discipline broker-dealers and for other purposes; and in appropriate cases refer violations to the Department of Justice for criminal prosecution.

The Exchange Act also provides civil remedies for damages to persons who have purchased securities in reliance upon any false or misleading statements in any document filed with the Commission. However, issuers which file under the new registration requirements of section 12(g) will be exempt from civil liability under section 18 of the Exchange Act

until the registration statement is effective. In addition, section 20(c) of the Exchange Act also has been amended to make it unlawful '* * * for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report, or information under the Exchange Act or any rule or regulation thereunder without just cause to hinder, delay, or obstruct the making or filing of any such document, report, or information.' It should be noted, however, that although section 18 of the Exchange Act provides express civil liabilities, the courts have implied civil liabilities for violations of a number of sections of the Act.

***10** *V. Provisions affecting Broker-Dealers and persons Associated with Broker-Dealers—Registration.* Under thee amended Exchange Act, a broker-dealer (other than one whose business is exclusively intrastate) continues to bee prohibited from using the mails or any means or instrumentality of interstate commerce to effect any over-the-countere transaction (other than a transaction in an exempted security, commercial paper, bankers' acceptances or commerciale bills) unless registered with the Commission. However, the Exchange Act under section 15(a)(2) now permits thee Commission by rule, regulation or order to exempt broker-dealers or classes of broker-dealers, either unconditionallye or upon specified terms or conditions, or for specified periods, from the requirement of registration. A broker-dealere whose entire business is transacted on a national securities exchange or whose business is exclusively in exemptede securities, commercial paper, bankers' acceptances or commercial bills would continue, as before, to be excluded frome the registration requirements, so long as his business is so limited.e

Removal of requirement of showing use of Federal instrumentalities by registered broker-dealers. The Exchange Act and rules thereunder prohibit certain acts and practices if committed through use of the mails or any means or instrumentality of interstate commerce. The Act has now been amended to provide specifically that any such act, practice, or a course of business engaged in by or on behalf of a registered broker-dealer shall be prohibited even though the mails or facilities of interstate commerce have not been employed. Under this change, it will, for example, no longer be necessary for the Commission to prove the use of interstate instrumentalities in connection with a violation by a registered broker-dealer of the antifraud provisions of the Exchange Act.

The application of the broker-dealer registration requirements of the Exchange Act would, of course, continue to depend ultimately on the interstate commerce clause and the use of the mails, for a broker-dealer would be required to register with the Commission only if he makes use of the mails or a means or instrumentality of interstate commerce in inducing or effecting non-exempt transactions.

Direct disciplinary power over individuals. Under prior law, if an individual member or employee of a securities firm defrauded customers or otherwise violated the law the Commission could take disciplinary action only by proceeding against the firm. Section 15(b)(7) of the Exchange Act, as amended, permits the Commission to proceed directly against any person associated with a broker-dealer [3] without joining the firm with whom such person is or was associated, and toe censure or bar (or suspend for a period not exceeding 12 months) the right of such person to be associated with a broker-dealer, if the Commission finds that such person has committed or omitted any act or omission which would be a basis for revocation or denial if such person were a broker-dealer, and if the Commission finds it in the public interest so to act. (See discussion below of grounds for denial or revocation of registration.) It is contemplated that in appropriate cases the Commission will proceed both against individuals and against the firm. The new authority enables the Commission to impose varying sanctions upon individuals and upon the firm, as justice may require.

***11** It is unlawful for a person who is barred or suspended by order of the Commission under section 15(b)(7) toe become, or to be, associated with any broker-dealer while such bar or suspension is in effect, without the consent of thee Commission. Section 15(b)(7) also makes it unlawful and a basis for disciplinary proceedings against a broker-dealere for the broker-dealer, without the consent of the Commission, to allow such person to become, or to be, associated withe him, if the broker-dealer knew, or in the exercise of reasonable care, should have known, of such order.e

Sanctions of censure or suspension. Under prior law the Commission's authority to discipline a broker-dealer included the power to revoke or deny the broker-dealer's registration, to expel from or suspend a broker-dealer's membership in a registered securities association, or to suspend or remove a member from a national securities exchange. Although the Commission has imposed lesser sanctions deemed to be appropriate in a particular case in the context of an offer of settlement, the 1964 Amendments grant the Commission the discretion to impose the lesser sanctions of suspension of registration for a period not to exceed twelve months, or formal censure, without resorting to any process of negotiation.

Changes in grounds for denial or revocation of registration. The amended statute provides in section 15(b)(5) additional grounds for the Commission to deny or revoke the registration of a broker-dealer, and new powers to censure or suspend a broker-dealer upon a finding that it would be in the public interest to do so. Each registered broker-dealer should be aware of the revised statutory bars and of the requirement to file with the Commission an appropriate amendment to its broker-dealer registration if any person associated with it is under one or more such statutory bars. The list of disqualifying acts expressly incorporated into the statute is as follows:

1. Under prior law, denial or revocation could be based upon the fact that false statements were made in any applicatione for registration or supplemental document. The 1964 Amendments enlarge the grounds for disqualification to includee the willful filing with the Commission of any false report, if that report is required to be filed under the Exchange Act.e

2.eUnder prior law, the substantive offenses which could be a basis for revocation or denial of a broker-dealer'se registration included conviction of any felony or misdemeanor involving the purchase or sale of any security or arisinge out of the conduct of the business ofa broker or dealer. The 1964 Amendments add as disqualifications any conviction ofe a felony or misdemeanor arising out of the conduct of the business of an investment adviser, or involving embezzlement,e fraudulent conversion, misappropriation of funds or securities, or a violation of the provisions of the United States Codee dealing with various frauds and swindles committed by use of the mails, telephone, telegraph, radio or television.e

*12 3. Prior to the 1964 Amendments, a broker-dealer's registration could be revoked or denied on the basis of ae permanent or temporary injunction by a court of competent jurisdiction against engaging in or continuing any conduct ore practice in connection with the purchase or sale of any security. The 1964 Amendments add as a ground for disciplinarye action the existence of a permanent or temporary injunction prohibiting a broker-dealer or person associated with ae broker-dealer from acting as an investment adviser, underwriter, broker or dealer, or as an affiliated person or employeee of any investment company, bank or insurance company, or from engaging in or continuing any conduct or practice ine connection with any such activity.e

4.eThe 1964 Amendments have added a wilful violation of any provision of the Investment Advisers Act of 1940 or thee Investment Company Act of 1940 or any rule or regulation thereunder as a basis for disciplinary action. The prior lawe had provided as a basis for disciplinary action a wilful violation of the Securities Act of 1933 or the Exchange Act ore any rule or regulation thereunder.e

5.eA new provision specifically incorporates into the Exchange Act as a basis for discliplinary action against a broker-dealer the wilful aiding or abetting of any other person in a violation of the federal securities laws or rules and regulationse thereunder, or the failing reasonably to supervise other persons who commit such violations. With respect to failure toe supervise, the Commission has consistently held that supervisory personnel of a broker-dealer firm have a responsibilitye to supervise employees and that revocation or other appropriate sanctions may be imposed upon a broker-dealer whosee employees commit violations. This position is expressly incorporated into the amended Exchange Act by adding failuree to supervise as an independent ground for disciplinary action. The new provisions do not lessen the duty of a broker-dealer to supervise its associated persons or reduce its responsibility for the acts of such persons. A supervisory persone would, however, be responsible for violations by an employee only if the employee were subject to his supervision. Thee amended Act expressly provides that no person shall be deemed to have failed reasonably to supervise another person ife appropriate supervisory procedures and systems exist, and the supervisory person involved has reasonably discharged hise duties under these procedures and systems and has no reasonable cause to believe that they were not being complied with.

6.eThe association with any broker or dealer of a person barred or suspended from associating with a broker or dealere under section 15(b)(7) of the Exchange Act has been added as a ground for proceeding against the broker-dealer firm.e

Changes in procedure in denial proceedings. Section 15(b) of the Exchange Act, prior to amendment, provided that where necessary or appropriate in the public interest or for the protection of investors, the Commission could postpone the effective date of a broker-dealer's registration pending final determination whether such registration should be denied. Section 15(b)(6) of the amended statute provides that a hearing for the sole purposes of determining whether or not the effectiveness of an application for registration should be postponed pending final determination of a denial proceeding may be limited by the Commission to affidavits and oral argument.

13 *Regulation by the Commission of brokers or dealers not members of a registered securities association.* Broker-dealers who are not members of a registered securities association are now subject to certain additional regulation bye the Commission. The amended statute grants to the Commission power to prescribe qualifications for broker-dealerse who are not members of a registered securities association and for persons associated with such broker-dealers. Thesee qualifications would relate to training, experience and such other qualifications as the Commission finds necessary ore desirable. In addition, as is the case with registered securities association with respect to its members, the Commission ise empowered to prescribe rules and regulations governing such non-member broker-dealers designed to promote just ande equitable principles of trade, to provide safeguards against unreasonable profits or unreasonable rates of commissione or other charges, and in general to protect investors and the public interest and to remove impediments to and perfecte the mechanism of a free and open market. The 1964 Amendments require such non-member broker-dealers to pay toe the Commission fees which are designed to defray the additional costs to be incurred by the Commission in prescribinge qualifications, giving examinations and performing the additional regulatory duties required of it with respect to suche non-member broker-dealers. These provisions would become applicable upon the adoption of rules after notice ande opportunity for hearing afforded to all interested persons.e

Other provisions affecting broker-dealers. Broker-dealers should also note the following amendments:
1. The Commission is empowered, by amended section 14(b) of the Exchange Act, to promulgate rules requiring broker-dealers to give, or to refrain from giving, proxies in respect of any security registered pursuant to new section 12(g) ore registered on a national securities exchange and carried for the account of a customer. The scope of the section is alsoe enlarged to apply not only to all broker-dealers which are members of any national securities exchange but also to alle broker-dealers registered under section 15(b) of the Exchange Act. This section will have no effect until the Commissione adopts implementing rules and regulations.e

2.ePrior to the 1964 Amendments a broker-dealer represented on the board of directors of an issuer whose securitiese were not registered for listing on a national securities exchange was generally not subject to the insider reporting ande trading provisions of section 16. Now, a broker-dealer which is a holder of more than 10 percent of a class of equitye securities registered under section 12(g) or a broker-dealer's representative who is an officer or director of an issuer withe a class of equity securities registered under section 12(g), will be required for the first time to report pursuant to sectione 16(a) transactions in such issuer's equity securities in which he has a beneficial interest. Such persons will also be subjecte to profit recovery provisions of section 16(b) and the 'short sale' and the 'sale against the box' proscriptions of sectione 16(c). There is, however, an exemption from the 'insider trading' restrictions of sections 16(b) and 16(c), but only fore purchases and sales of a security made by a dealer in the ordinary course of business and incident to the establishmente or maintenance by him of a primary or secondary market for such securities other than on an exchange. The exemption,e however, is not available for any security that is or has at any time been held by the dealer in an investment account.e The Commission may, by such rules or regulations as it deems necessary or appropriate in the public interest, define ande prescribe the terms and conditions, including those under which securities are deemed to be held in an investment accounte

and transactions are deemed to be in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

*14 The exemption provided by new section 16(d) is also available for the market-making transactions of a broker-dealer in the securities of closed-end investment companies registered under the Investment Company Act of 1940.e Section 30(f) of that Act incorporates by reference the provisions of section 16 of the Exchange Act with respect to thesee securities.e

3.eThe Commission has been granted under section 15(c)(5) of the Exchange Act the authority summarily to suspende over-the-counter trading in any security (except in an exempted security) for periods of 10 days. Broker-dealers aree prohibited from trading in any such security during the period or periods of suspension.e

4.ePrior to the 1964 Amendments, section 4(1) of the Securities Act exempted dealers from the requirements for deliverye of prospectuses in connection with transactions in securities registered under that Act after 40 days from the effective datee of the registration statement or the date the security was bona-fide offered to the public, whichever was later. The periode during which delivery of prospectuses is required has now been extended from 40 to 90 days by the 1964 Amendmentse with respect to securities of an issuer which has not previously sold securities pursuant to an earlier effective Securitiese Act registration statement. However, the new requirement will not be applicable with respect to securities offered undere a registration statement effective on or prior to August 20, 1964. The Commission is empowered to shorten the 40 ore 90 day period by rule, regulation or order and presently has under consideration a proposed rule 174 which, undere certain circumstances, would shorten from 90 to 40 days the period during which prospectuses must be delivered if thee issuer has a class of securities registered under section 12(b) of the Exchange Act, and eliminates the prospectus deliverye requirements for certain types of offerings.e

The dealers' transaction exemption continues, as in the past, to be unavailable for 40 days after the security is bona-fide offered to the public, with respect to transactions in a securities for which a required Securities Act registration statement has not been filed. Also, the exemption continues to be unavailable for such time as a dealer is acting as an underwriter or is affecting transactions involving the dealer's allotment or subscription as a participant in the distribution of securities required to be registered under the Securities Act.

VI. Provisions Affecting Registered Securities Associations and Their Members—Rule-Making Powers. The 1964 Amendments provide a registered securities association with authority to adopt rules, subject to Commission approval, which will permit exclusion from membership, or association with members, of persons who have been suspended or expelled from an exchange for violation of any of the exchange's rules. However, if the exchange action was based on conduct inconsistent with just and equitable principles of trade, the present mandatory bar under section 15A(b)(4)(A) would still apply.

*15 A registered securities association will be required to adopt appropriate standards with respect to the training,e experience and other qualifications of members and persons associated with members and for that purpose appropriatelye to classify prospective members and other persons, specify the standards that shall be applicable to any class, requiree persons in appropriate classes to pass examinations, and to identify those classes of persons (other than prospectivee members, partners, officers and supervisory employees) for whom the experience requirement may be found to bee inappropriate. The 1964 Amendments also specifically authorize a registered securities association to establish standardse of financial responsibility for members.e

Finally, under the 1964 Amendments, a registered securities association is required to have rules designed to produce fair and informative quotations and to prevent fictitious and misleading quotations as well as to promote orderly procedures for collecting and publishing such quotations.

Disciplinary actions. Under section 15A of the Exchange Act, the Commission has authority to review disciplinary actions taken by a registered securities association against members of such associations and against persons associated, or seeking to become associated, with a member. The 1964 Amendments shortens the period within which an appeal from such disciplinary action can be taken from 60 to 30 days. The Commission retains its discretionary authority to extend the period for appeal.

The 1964 Amendments also provide that the Commission may order, after notice and opportunity for hearing, that an appeal from disciplinary action by an association will not stay the judgment of the association pending final decision on review by the Commission. Such a hearing may be limited by the Commission solely to affidavits and oral argument. Under prior law, an appeal always operated as a stay.

Finally, the Commission has the authority to suspend (for a period not to exceed 12 months) or bar an individual from being associated with a member of a registered securities association on the same grounds that a member may be suspended or expelled from such association by the Commission. This particular power is a correlative of section 15(b)(5) giving the Commission power to bar or suspend a person from being associated with a broker-dealer. These sanctions can be imposed if the Commission, after appropriate notice and opportunity for hearing, finds that the person committed any of the violations specified in section 15A(*l*)(2), and that the sanction is necessary or appropriate in the public interest or for the protection of investors, or to carry out the purpose of section 15A of the Exchange Act.

ORVAL L. DUBOIS, *Secretary.*

SEPTEMBER 14, 1964.
[F.R. Doc. 64–9874; Filed, Sept. 29, 1964; 8:45 a.m.]

Footnotes

1 The 1964 Amendments were enacted as Public Law 88–467. Pamphlet copies are now available from the Government Printing Office at a cost of 10 cents a copy. Pamphlet copies of the Securities Act and the Exchange Act revised to reflect the amendments will be available from the Government Printing Office in October.

2 See H.R. Rept. No. 1418, 88th Cong., 2d Sess. (1964); Senate Rept. No. 379, 88th Cong., 1st Sess. (1963); Hearings Before a Subcommittee of the House Committee on Interstate and Foreign Commerce on H.R. 6789, H.R. 6793, S. 1642, 88th Cong., 1st and 2d Sess. (1963–1964); Hearings Before a Subcommittee of the Senate Committee on Banking and Currency, on S. 1642, 88th Cong., 1st Sess. (1964); 109 Cong. Rec. 9963–70, 10175 (June 4, 1963); 109 Cong. Rec. 13715–29 (July 30, 1964); 110 Cong. Rec. 17320–17333 (daily ed., August 4, 1964); 110 Cong. Rec. 17596–17609, 17535–37 (daily ed., August 5, 1964); 110 Cong. Rec. 17793–17805 (daily ed., August 6, 1964).e

3 The term 'person associated with a broker or dealer' is defined to include any partner, officer, director, or branch manager (or any person performing similar functions) or any person directly or indirectly controlling or controlled by such broker or dealer, including any employee, but in most cases does not include persons employed in a clerical or ministerial capacity.

Release No. 4725 (S.E.C. Release No.), Release No. 7425, Release No. 33-4725, Release No. 34-7425, 1964 WL 67875

End of Document

Release No. 20263 (S.E.C. Release No.), Release No. 34-20263, 28 S.E.C. Docket 1290, 1983 WL 470474
17 CFR Parts 240 and 249

S.E.C. Release No.
Securities Exchange Act of 1934

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

Proposed Suspension of Periodic Reporting Obligation

File No. S7-997
October 5, 1983

*1 **AGENCY:** Securities and Exchange Commission.o

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing to revise its rules governing suspension from issuers' periodic reporting requirements. These revisions would make the conditions and procedures for effecting such suspension the same for all issuers. All issuers, whatever the source of their reporting obligation, would be permitted, under the proposed rule, to discontinue their filings immediately upon meeting the specified theresholds and other conditions of the rule. In addition, the proposed revisions would standardize the conditions and procedures for effecting such suspension and would consolidate such provisions in one rule. The Commission also is proposing a new, simplified form for reporting such suspension. These changes are intended to eliminate an unnecessary inconsistency in the provisions suspending the obligation of issuers to file periodic reports, and to standardize and to simplify the suspension process.

DATE: Comments must be received on or before December 5, 1983.

ADDRESSES: All communications on the matters discussed in the release should be submitted in triplicate to George A.dFitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.o Comments should refer to File No. S7-997 and will be available for public inspection and copying in the Commission'so Public Reference Room.o

FOR FURTHER INFORMATION CONTACT: William E. Toomey (202) 272-2573. Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment revisions to Rule 12h-3 under the Securities Exchange Act of 1934 that would extend the immediate suspension of the Section 15(d) reporting obligation to any class of securities held of record: (i) By less than 300 persons, or by less than 500 persons where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years; or (ii) in the case of a foreign private issuer, by less than 300 persons resident in the United States or by less than 500 persons resident in the United States where the total assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years: Because the proposed revisions to Rule 12h-3 would include the existing provisions of Rule 12h-4, the Commission is proposing to rescind that rule. Similarly, since the substantive provisions of Rule 15d-6 would be subsumed by the proposed amendments to Rule 12h-3, the Commission is proposing to revise Rule 15d-6 to provide simply for the filing of a notice of suspension where suspension of the reporting requirement is to be done solely on the basis of Section 15(d) of the Exchange Act. In order to provide notice of suspension under revised Rule 12h-3, the Commission is proposing the adoption of new Form 15 which would replace existing Form 12g-$^{4}/_{15}$dp-6. Finally,o the Commission is proposing to amend Rule 12g-4 to reflect the adoption of new Form 15. The Commission believes

that these actions will not only ease reporting burdens where appropriate, but also simplify the notice procedure for suspension of the duty to file reports under Section 15(d).

I. Background

*2 Section 13 of the Securities Exchange Act of 1934 (the 'Exchange Act') [15 U.S.C. 78a-78kk (1976 & Supp. V 1981),e *as amended by* Act of June 6, 1983, Pub. L. No. 98-38] establishes a periodic reporting obligation for every issuer of a classe of securities registered under Section 12 of the Exchange Act. Thus, issuers with securities listed on a national securitiese exchange under Section 12(b) of the Exchange Act, as well as issuers required by amount of total assets and number of e security holders to register certain classes of equity securities under Section 12(g) of the Act, must file prescribed periodice reports with the Commission. The purpose of Section 13 is to provide investors and the public with current informatione concerning the business activities of issuers with securities registered under Section 12. Section 15(d) of the Exchangee Act imposes a similar periodic reporting obligation on any issuer with respect to a class of securities registered under thee Securities Act of 1933 (the 'Securities Act') [15 U.S.C. 77a-77aa (1976 & Supp. V 1981). *as amended by* Bus Regulatorye Reform Act of 1982, Pub. L. No. 97-261, section 19(d), 96 Stat. 1121 (1982)]. The purpose of Section 15(d) is to assure ae stream of current information about an issuer for the benefit of purchasers in the registered offering, and for the public,e in situations where Section 13 of the Exchange Act would not otherwise apply.e

Congress recognized, with respect to Section 15(d), that the benefits of periodic reporting by an issuer might not always be commensurate with the burdens imposed, particularly where smaller companies were involved. Accordingly, Section 15(d) provides that the duty to file reports under that section shall be automatically suspended as to any fiscal year (other than the year in which the Securities Act registration statement becomes effective) if at the beginning of such fiscal year the securities of each class to which registration statement relates are held of record by less than 300 persons. In addition, Rule 15-6 [17 CFR 240.15d-6] under the Exchange Act permits suspension of the reporting obligation if at the beginning of a fiscal year, other than the year within which a registration statement under the Securities Act becomes effective ande the two succeeding years, all securities of each class registered are held of record by less than 500 persons and on the laste day of each of the issuer's three most recent fiscal years total assets of the issuer did not exceed $3 million. Rule 15d-6e also prescribes the current notice procedure for suspension of reporting under this provision.e

Pursuant to its exemptive authority under Section 12(h) of the Exchange Act, the Commission has expanded the situations in which the Section 15(d) reporting requirement can be suspended by adopting Rules 12h-3 and 12h-4 (17 CFR 240.12h-3 and 12h-4). [1] These rules provide for suspension of Section 15(d) reporting for certain securities deregisterede pursuant to Section 12(d) of the Exchange Act (Rule 12h-3) and for securities of a foreign issuer owned of record by less than 300 holders resident in the United States (Rule 12h-4). Unlike the provisions of Section 15(d) and Rule 15d-6, a suspension under Rule 12h-3 and 12h-4 does not depend on the number of record holders as of a particular date, but rather can be effected on any date the triggering events occur and the requisite filing requirements and other conditions are met.

II.eThe proposals

*3 The proposed revisions of Rule 12h-3 would combine the existing provisions of Rules 12h-3 and 12h-4, with somee revision, and would extend the immediate susnension of the Section 15(d) reporting obligation to any class of securitiese held of record: (i) By less than 300 persons, or by less than 500 persons where the total assets of the issuer have note exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years; or (ii) in the case of a foreigne private issuer, by less than 300 persons resident in the United States or by less than 500 persons resident in the Unitede States where the total assets of the issuer have not exceed $3,000,000 on the last day of each of the issuer's three moste recent fiscal years.e

This expansion of the immediate suspension of the reporting obligation under Section 15(d) is designed to parallel the provisions for the suspension of the reporting requirement for issuers whose securities are registered under Section 12(g) of the Exchange Act. The Commission believes that given the identical nature of the issuer periodic reporting obligations under Section 12(g) and Section 15(d), such obligations should be subject to comparable standards for suspension. At the present time, this is not the case. As pointed out previously, Section 15(d) issuers must continue to report through the end of the fiscal year in which the number of record holders falls below the specified number in Rule 15d-6, while Section 12(g) issuers can obtain reporting relief immediately upon meeting the same threshold specified in Rule 12g-4. There appears little reason for this distinction.

There would be one principal difference in the suspension proposed to be provided in revised Rule 12h-3 and that provided in current Rule 12g-4. The suspension provided under proposed Rule 12h-3 would not be available with respect to any fiscal year in which a registration statement under the Securities Act become effective or is required to be updated pursuant to Section 10(a)(3) of the Act.[2] This limitation is in keeping with the philosophy reflected in Section 15(d)e of the Exchange Act that generally the investing public should have available complete information about the issuer's activities at least through the end of the year in which it makes a registered offering.[3e]

In addition to extending the immediate suspension of the reporting obligation, the Commission is proposing to simplify and standardize the procedure for suspension. To accomplish this, the Commission is proposing to revise Rule 12h-3 to specify the situations for which a suspension is permitted and to provide uniform procedures for effecting suspension. If Rule 12h-3 is adopted, current Rule 12h-4 would be rescinded and its substance incorporated into revised Rule 12h-3. Rule 15d-6 would be revised to require only that a Form 15 be filed by a person relying solely on the provisions of Section 15(d) to suspend its reporting obligation.

1. Securities Eligible for Suspension

*4 The three categories of securities to which the proposed rule would apply are:e

(1)eAny class of securities held of record by: (i) Less than 300 persons; or (ii) by less than 500 persons, where the totale assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years;e

(2)eAny class of securities of a foreign private issuer, as defined in Rule 3b-4 [17 CFR 240.3b-4], held of record by: (i) Less than 300 persons resident in the United States, computed as specified in Rule 12g3-2(a) [17 CFR 240.12g3-2(a)]; ore (ii)dess than 500 persons resident in the United States computed as specified in Rule 12g3-2(a), where the total assets ofe the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years; ande

(3)eAny class of securities deregistered pursuant to Section 12(d) of the Exchange Act if such class would not thereupone be deemed registered under Section 12(g) of the Exchange Act or the rules thereunder.e

2. Conditions of the Rule

Under proposed Rule 12h-3, the suspension of the reporting obligation would be available only if two conditions are met. The first condition would require the issuer to file proposed Form 15 which is a certification that it qualifies for the suspension provided by the Rule. The purpose of this filing would be to provide public notice of the claimed suspension.

Second, as required by existing Rule 12h-3, the issuer must be current in its periodic reports. Under proposed Rule 12h-3, to be eligible for immediate suspension of its reporting obligations, an issuer must have filed all periodic reports required by Section 13(a) of the Exchange Act for the shorter of its three most recent fiscal years and that portion of the current fiscal year preceding the filing of the certification on Form 15 or the period since it become subject to such reporting obligations. For the purpose of determining whether a particular report was required to be filed, the due date specified

in the Form for that report would govern, without regard to the effect of Rule 12b-25 [17 CFR 240.12b-25] under the Exchange Act. Thus, for example, an issuer which had obtained an extension of time under Rule 12b-25 to file a required periodic report, and then filed a certification on Form 15 during the extension period, would still have to file the periodic report in question, since the original due date for the report elapsed prior to the filing of the Form 15 certification.

3. Limitations on Availability and Coverage

The Rule would not be available to an issuer with respect to any fiscal year in which a registration statement under the Securities Act became effective or was required to be updated pursuant to Section 10(a)(3) of the Act, except in the case of securities registered under the Securities Act in connection with the formation of a single subsidiary holding company, a structural change often used by banks. The Commission believes that such a reorganization is essentially technical in nature since it does not materially alter the interests of security holders, and therefore does not justify the imposition of the periodic reporting requirement. Accordingly, paragraphs (c) and (d) of the Rule provide, in effect, that no Section 15(d) reporting obligation will ever arise from a registration statement filed for this limited purpose. [4]

*5 The suspension of the reporting obligation will continue through each subsequent fiscal year in which the eligibility criteria are met on the first day of such year. If the eligibility criteria are not met at the commencement of the fiscal year, any report due to be filed on or after such date, including the Form 10-K relating to the preceding year, would have to be filed. The Commission is aware that this may necessitate audited financial statements for periods in which Form 10-Q reports have not been filed. However, this requirement is comparable to the requirement that a new Form 10 be filed by a former Section 12(g) issuer, that has terminated its reporting pursuant to Rule 12g-4, and then again meets the Section 12(g) criteria and is required to recommence reporting. The Commission believes audited financial statements are no less important when a suspended or terminated reporting obligation is revived than when a reporting obligation is initially incurred. The Commission recognizes that the Section 12(g) issuer has 120 days to file its Form 10 rather than the 90 days applicable to the Form 10-K, and solicits comment as to the appropriate period for the filing of the Form 10-K upon discontinuance of the suspension. Of course, if the number of record holders falls below the specified level after the reporting obligation has been revived, the issuer could immediately obtain another suspension of that obligation under the rule, provided it met all applicable conditions at that time.

Finally, as Rules 12h-3 and 12h-4 currently provide, the proposed revised rule states that if an issuer files a certification on Form 15 which is later withdrawn or denied, it will be required to file, within 60 days after the withdrawal or denial, all periodic reports it should have filed in the interim.

4. Proposed Form 15

Proposed Form 15 would replace existing Form 12g-$^4/_{15}$d-6, a combination form which has been used for a number of years to notify the Commission and the public of termination of registration under Section 12(g) of the Exchange Act, and suspension of reporting pursuant to Rule 15-6. The proposed new form would eliminate duplicative and unnecessary information currently required to be filed and would be simpler to prepare. Essentially, the Form would require the name and address of the issuer, the class of securities involved, the number of record holders thereof, and the rule provision relied on for suspension of the duty to file reports. The relevant rule provisions would be listed on the form and could be designated by check mark. While proposed Form 15 has been designed with a view to simplicity, it must be emphasized that the filing of the form would be a condition to the availability of the new rule, and that suspension of the duty to file reports would be contingent on the filing of the form. [5]

In the event Form 15 is adopted to replace Form 12g-$^4/_{15}$d-6, it also will be necessary to change all references to the old form that now exist in the Commission's rules. Accordingly, the Commission is proposing to amend Rules 12g-4 and Rule 15d-6 for this purpose.

III. Summary of Regulatory Flexibility Analysise

***6** The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603, regardinge the proposed revision of Rule 12h-3 and the associated amendments proposed herein.e

The analysis notes that the revisions to Rule 12h-3 and the related amendments are being proposed to standardize for issuers the provisions for obtaining relief from the periodic reporting requirements of the Exchange Act. At the present time, an issuer that files reports pursuant to Section 13 of the Exchange Act can suspend its reporting obligation whenever it has fewer than 300 security holders. An issuer filing similar reports pursuant to Section 15(d) of the Exchange Act, however, can suspend its obligation only when it has fewer than 300 security holders at the beginning of a fiscal year. The analysis notes that this different treatment may impose a hardship on the Section 15(d) issuer by requiring it to continue to file reports in circumstances where there may be little public interest in the company. Under the new proposals, a Section 15(d) issuer will be able to obtain immediate suspension of the periodic reporting obligation at any time that it has fewer than 300 security holders.

The Commission also stated that for purposes of the analysis, the Commission was using the definition for small business adopted in Securities Exchange Act Release No. 18452 (March 8, 1982) [47 FR 5215]. That definition provides that when used in reference to the Exchange Act, small business means any issuer whose total assets on the last day of its most recent fiscal year were $3 million or less. It is likely that the proposed changes will directly benefit a significant number of issuers who fall within the small business definition, and an even larger number of issuers whose size technically excludes them from the definition but which nonetheless might be considered smaller issuers. The proposals will not increase the Exchange Act reporting burden for any issuer, and no additional recordkeeping or reporting will be required except a notification to the Commission of the suspension of the reporting obligation. Such a notice may require the skills of a professional familiar with the securities laws and some services by management, but does not require any recordkeeping or reporting beyond that already required by the Exchange Act.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting William E. Toomey, Division of Corporation Finance, United States Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C., 20549, at (202) 272-2573.

IV.eList of Subjects in 17 CFR Parts 240 and 249e

Forms, Reporting and recordkeeping requirements, Securities.

V. Textof Proposalse

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising § 240.12h-3, Rule 12h-3, to read as follows:e

§e240.12h-3 Suspension of duty to file reports under section 15(d).e

***7** (a) Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by sectione 13(a) of the Act with respect to a class of securities specified in paragraph (b) of this section shall be suspended for suche class of securities immediately upon filing with the Commission a certification on Form 15 [17 CFR 249.323] if the issuere

of such class has filed all reports required by section 13(a), without regard to Rule 12b-25 [17 CFR 249.322], for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

(b) The classes of securities eligible for the suspension provided in paragraph (a) of this section are:e

(1) Any class of securities held of record by: (i) less than 300 persons; or (ii) by less than 500 persons, where the totale assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years;e

(2) Any class of securities of a foreign private issuer, as defined in Rule 3b-4 [§ 240.3b-4], held of record by: (i) Lesse than 300 persons resident in the United States or (ii) less than 500 persons resident in the United States where the totale assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years. Fore purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance withe the provisions of Rule 12g-3-2(a) [§ 240.12g3-2(a)]; ande

(3) Any class of securities deregistered pursuant to section 12(d) of the Act is such class would not thereupon be deemede registered under section 12(g) of the Act or the rules thereunder.e

(c)eThis section shall not be available to an issuer for a fiscal year in which a registration statement becomes effectivee under the Securities Act of 1983, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the casee of paragraphs (b)(1)(ii) and (b)(2)(ii), the two succeeding fiscal years. *Provided*, however, that this paragraph shall note apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significante assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity securitye holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, excepte for changes resulting from the exercise of dissenting shareholder rights under state law.e

(d)eThe suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a classe of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as criteria (i)e or (ii) in either paragraph (b)(1) or (b)(2) is met on the first day of any subsequent fiscal year. *Provided*, however, thate such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer withe no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in whiche equity security holders receive the same proportional interest in the holding company as they held in the non-reportinge issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.e

*8 2. By revising § 240.12g3-2, Rule 12g3-2, to remove paragraph (a)(2) and redesignate paragraph (a)(1) as (a).e

3.eBy revising § 240.12g-4, Rule 12g-4, to read as follows:e

§ 240.12g-4 Certification of termination of registration under section 12(g).e

(a) Termination of registration of a class of securities shall take effect in 90 days, or such shorter period as the Commissione may determine, after the issuer certifies to the Commission on Form 15 that:e

(1) Such class of securities is held of record by: (i) Less than 300 persons; or (ii) b less than 500 persons, where the totale assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years; ore

(2) Such class of securities of a foreign private issuer, as defined in Rule 3b-4 [§ 240.3b-4], is held of record by: (i) Lesse than 300 persons resident in the United States or (ii) less than 500 persons resident in the United States where the totale assets of the issuer have not exceeded $3,000,000 on the last day of each of the issuer's most recent three fiscal years. Fore purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance withe the provisions of Rule 12g3-2(a) [§ 240.12g3-2(a)].e

(b)eThe issuer's duty to file any reports required under section 13(a) shall be suspended immediately upon filing ae certification on Form 15, *Provided*, however, that if the certification on Form 15 is subsequently withdrawn or denied,e the issuer shall, within 60 days after the date of such withdrawal or denial, file with the Commission all reports whiche would have been required had the certification on Form 15 not been filed. If the suspension resulted from the issuer'se merger into, or consolidation with, another issuer or issuers, the certification shall be filed by the successor issuer.e

3.eBy removing in its entirety § 240.12h-4, Rule 12h-4.e

4. By revising § 240.15d-6, Rule 15d-6, to read as follows:e

§ 240.15d-6 Suspension of duty to file reports.

If the duty of an issuer to file reports pursuant to section 15(d) of the Act as to any fiscal year is suspended as provided in section 15(d) of the Act, such issuer shall, within 30 days after the beginning of the first such fiscal year, file a notice on Form 15 informing the Commission of such suspension. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice shall be filed by the successor issuer.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1.eBy redesignating Form 12g-4, described in 17 CFR 249.323, and Form 15d-6, described in 17 CFR 249.333, as Forme 15, 17 CFR 249.323 (Form 15 does not appear in the Code of Federal Regulations), and by revising 17 CFR 249.323e to read as follows:e

§e249.323 Form 15, certification of termination of registration of a class of security under sectione 12(g) or notice of suspension of duty to file reports pursuant to sections 13 and 15(d) of the Act.e

*9 (a) This form shall be filed by each issuer to certify that the number of holders of record of a class of securitye registered under section 12(g) of the Act is reduced to less than 300 persons, or that the number of holders of record ofe a class of security registered under section 12(g) of the Act is reduced to less than 500 persons and the total assets of thee issuer have not exceeded $3,000,000 on the last day of each of the issuer's three most recent fiscal years. Registratione terminates 90 days after the filing of the certificate or within such shorter time as the Commission may direct.e

(b) This form shall also be filed by each issuer required to file reports pursuant to section 15(d) of the Act, as a notification that the duty to file such reports is suspended in accordance with the provisions of Section 15(d) because all securities of each class of such issuer registered under the Securities Act of 1933 are held of record by less than 300 persons at the beginning of its fiscal year, or otherwise in accordance with the provisions of Rule 12h-3 [17 CFR 240.12h-3].

Securities and Exchange Commission

Washington, D.C. 20549

Form 15

Certification and Notice of Termination of Registration under Section 12(g) of the Securities Exchange Act of 1934 or Suspension of Duty to File Reports Under Sections 13 and 15(d) of the Securities Exchange Act of 1934.

Commission File Number ___

_____/(Exact name of registrant as specified in its charter)

_____/(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____/(Title of each class of securities covered by this Form)

_____/(Titles of all other classes of securities for which a duty to file reports under section 13(a) or 15(d) remains)

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to terminate or suspend the duty to file reports:

☐ Rule 12g-4(a)(1)(i)

☐ Rule 12g-4(a)(1)(ii)

☐ Rule 12g-4(a)(2)(i)

☐ Rule 12g-4(a)(2)(ii)

☐ Rule 12h-3(b)(1)(i)

☐ Rule 12h-3(b)(1)(ii)

☐ Rule 12h-3(b)(2)(i)

☐ Rule 12h-3(b)(2)(ii)

Approximate number of holders of record as of the certification or notice date:

(Record Holders) _____

(Date) _____

Pursuant to the requirements of the Securities Exchange Act of 1934 *(Name of registrant as specified in charter)* has caused this certification/notice to be signed on its behalf by the undersigned duly authorized person.

Date: _____

By: _____

Instruction: This form is required by Rules 12g-4, 12h-3 and 15d-6 of the General Rules and Regulations under the Securities Exchange Act of 1934. The registrant shall file with the Commission six copies of Form 15, one of which shall

be manually signed. It may be signed by an officer of the registrant, by counsel or by any other duly authorized person. The name and title of the person signing the form shall be typed or printed under the signature.

Statutory Authority

***10** The Commission is proposing the foregoing changes pursuant to Sections 12(h), 13(a), 15(d) and 23(a) of thee Securities Exchange Act of 1934.e

[Secs. 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; secs. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 82 Stat. 45; sec. 28(c), 84 Stat. 1435; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b) 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 771, 78m, 78*o*(d), 78w(a)]

By the Commission.
George A. Fitzsimmons,
Secretary.

[FR Doc. 83-28192 Filed 10-17-83; 8:45 am]

BILLING CODE 8010-01-M

Footnotes

1 Rule 15d-6(a)(2) was adopted pursuant to both Sections 12(h) and 15(d) of the Exchange Act.

2 Section 10(a)(3) of the Securities Act requires an issuer to update any registration statement being used by it to sell securities if the information is no longer current.

3 For example, in the case of a company that has an effective registration in year 1, but whose securities are held by less than 300 record holders at the beginning of year 2, the company could effect a suspension at the beginning of year 2 for all reports due following the date of such suspension, except the Form 10-K relating to year 1.

4 This exception applies only to a reporting obligation which arises solely from a registration statement filed for the purpose of forming a one subsidiary holding company. The provision affords no relief from a reporting obligation arising from the filing of another registration statement by the same issuer, nor does it extend to any reporting obligation which may stem from the inclusion of a separate offering in the initial holding company formation registration statement.

5 This would not be true of a suspension effected solely on the basis of the provisions of Section 15(d) of the Exchange Act. In that case, failure to file the Form would be a violation of the reporting requirements under the Exchange Act pursuant to Rule 15d-6.

Release No. 20263 (S.E.C. Release No.), Release No. 34-20263, 28 S.E.C. Docket 1290, 1983 WL 470474

EDGAR Filings

Registration No. 333-_____

As filed with the Securities and Exchange Commission on _____

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

XRG, Inc.
(Exact name of registrant as specified in its charter)

Delaware	58-2583457
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

5301 Cypress Street, Suite 111
Tampa, Florida 33607
(Address of principal executive offices)

2004 Non-Qualified Stock Option Plan
(Full title of the plan)

	Copy to:
Kevin P. Brennan, President & CEO XRG, Inc. 5301 Cypress Street, Suite 111 Tampa, Florida 33607 (813) 637-0700 (Name, address and telephone number, including area code, of agent for service)	Carolyn T. Long, Esquire Martin A. Traber, Esquire Foley & Lardner 100 North Tampa Street, Suite 2700 Tampa, Florida 33602 (813) 229-2300

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
Common Stock, $.001 par value	3,000,000	$.33	$990,000.00	$80.10

(1) The provisions of Rule 416 under the Securities Act of 1933, as amended (the "Securities Act") shall apply to this Registration Statement and the number of shares registered on this Registration Statement shall increase or decrease as a result of stock splits, stock dividends, or similar transactions.

(2) Estimated pursuant to Rule 457(c) under the Securities Act of 1933 solely for the purpose of calculating the registration fee based on the average (any day within five days) of the bid and ask price of the Registrant's Common Stock as reported on OTCBB on January 7, 2004.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document or documents containing the information specified in Part I are not required to be filed with the Securities and Exchange Commission ("Commission") as part of this Form S-8 Registration Statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents have been previously filed by XRG, Inc. (the "Company") with the Commission and are incorporated herein by reference:

(a) The Company's Annual Report on Form 10-KSB filed on July 14, 2003, for the fiscal year ended March 31, 2003 (including information specifically incorporated by reference into the Registrant's Form 10-KSB from the Registrant's definitive proxy statement).

(b) The Company's quarterly reports on Form 10-QSB filed on August 19, 2003 and November 24, 2003.

(c) The Company's current report on Form 8-K filed on August 22, 2003.

(d) The description of the Registrant's common stock contained in the Registrant's registration statement on Form 10-SB filed on March 4, 2002 pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and any amendments thereto or other reports filed for the purpose of updating such description.

(e) All documents filed by the Company pursuant to Sections 12(g), 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of filing of this Registration Statement and prior to such time as the Company files a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed incorporated herein by reference shall be deemed to be modified or superceded for the purpose of this registration statement to the extent that a statement contained herein or in any subsequently filed document which is also, or is deemed to be, incorporated herein by reference modifies or supercedes such statement. Any such statement so modified or superceded shall not be deemed, except as so modified or superceded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant is a Delaware corporation. The Registrant's Certificate of Incorporation provides that, to the fullest extent permitted by Delaware law, its directors shall not be liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. This provision in the Certificate of Incorporation does not eliminate the directors' fiduciary duty, and in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

The following exhibits have been filed (except where otherwise indicated) as part of this Registration Statement:

Exhibit No.	Exhibit
(4.1)	2004 Non-Qualified Stock Option Plan
(5)	Opinion of Foley & Lardner regarding legality of common stock
(23.1)	Consent of Pender Newkirk & Company, CPAs
(23.2)	Consent of Foley & Lardner (contained in Exhibit 5 hereto)
(24)	Power of Attorney relating to subsequent amendments (included on the signature page to this Registration Statement)

Item 9. Undertakings.

(1) The undersigned Registrant hereby undertakes:

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) of the Securities Act, if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in this Registration Statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

PROVIDED, HOWEVER, that paragraphs (a)(i) and (a)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference herein.

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tampa, and State of Florida, on this 8th day of January, 2004.

XRG, Inc.

By: /s/ Kevin P. Brennan

Kevin P. Brennan
President & CEO

POWER OF ATTORNEY

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in

the capacities and on the dates indicated. Each person whose signature appears below constitutes and appoints Kevin P. Brennan his true and lawful attorney-in-fact and agent, with full power of substitution and revocation, for him and in his, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agents, or either of them, may lawfully do or cause to be done by virtue hereof.

Signature	Title	Date
/s/ Kevin P. Brennan Kevin P. Brennan	President and Chief Executive Officer (Principal Executive Officer) and Director	January 8, 2004
/s/ Stephen Couture Stephen Couture	Vice President, Finance, Chief Financial Officer and Director	January 8, 2004
/s/ Donald G. Huggins, Jr. Donald G. Huggins, Jr.	Executive Vice President and Chairman of the Board	January 8, 2004

EXHIBIT INDEX

The XRG, Inc.
2004 Non-qualified stock option plan

Exhibit No.	Exhibit
(4.1)	2004 Non-Qualified Stock Option Plan
(5)	Opinion of Foley & Lardner regarding legality of common stock
(23.1)	Consent of Pender Newkirk & Company, CPAs
(23.2)	Consent of Foley & Lardner (contained in Exhibit 5 hereto)
(24)	Power of Attorney relating to subsequent amendments (included on the signature page to this Registration Statement)

Exhibit 4.1

XRG, INC.
2004 NON-QUALIFIED STOCK OPTION PLAN

Section 1. Establishment.

XRG, INC. (the "Company") hereby establishes a stock option plan for non-employee directors, consultants, and advisors, as described herein, which shall be known as the "XRG, INC. 2004 NON-QUALIFIED STOCK OPTION PLAN" (the "Plan"). It is intended that only nonstatutory stock options may be granted under the Plan.

Section 2. Purpose

The purpose of the Plan is to promote the long term growth and financial success of the Company. The Plan is intended to secure for the Company and its shareholders the benefits of the long term incentives inherent in increased common stock ownership by individuals who are not employees of the Company or its Affiliates. It is intended that the Plan will induce and encourage highly experienced and qualified individuals to be involved and assist the Company in promoting a greater identity of interest between the non-employee directors, consultants, and advisors and the shareholders of the Company.

Section 3. Definitions

The following terms shall have the respective meanings set forth below, unless the context otherwise requires:

(a) "Affiliate" shall mean any corporation, partnership, joint venture, or other entity in which the Company holds an equity, profit, or voting interest of more than fifty percent (50%).

(b) "Board" shall mean the Board of Directors of the Company.

(c) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(d) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(e) "Fair Market Value per Share" shall mean for any day the average of the high and low sales prices for a Share in the over the counter market, as reported by the Nasdaq Stock Market on the business day immediately preceding such day, or, if there were no trades of Shares on such business day, on the most recent preceding business day on which there were trades. If Shares are not listed or admitted to trading on the Nasdaq Stock Market when the determination of fair market value is to be made, Fair Market Value per Share shall be the mean between the highest and lowest reported sales prices of Shares on that date on the principal exchange on which the Shares are then listed. If the Shares are not listed on any national exchange, Fair Market Value per Share shall be the amount determined in good faith by the Board to be the fair market value of a Share at the relevant time.

(f) "Non-Employee Director" shall mean a member of the Board who is not an employee of the Company or any Affiliate.

(g) "Option" means the right to purchase shares at a stated price. "Options" will be "nonqualified stock options," which do not qualify for special tax treatment under Code Sections 421 or 422.

(h) "Shares" shall mean shares of common stock of the Company, $.001 par value per share,&bbsp;and such other securities or property as may become subject to Options pursuant to an adjustment made under Section 10 of the Plan.

(i) "Participant" means a consultant or advisor who provides services to the Company or its Affiliates who the Board designates to receive an Option under this Plan.

Section 4. Effective Date of the Plan

The effective date of the Plan is the date of its adoption by the Board, January 8, 2004, subject to the approval and ratification of the Plan by the shareholders of the Company, and any and all awards made under the Plan prior to such approval shall be subject to such approval.

Section 5. Shares Available for Options

Subject to adjustment in accordance with the provisions of Section 10, the number of Shares which may be issued pursuant to the Plan shall not exceed Three Million (3,000,000). Such Shares may be authorized and unissued Shares or treasury shares. If, after the effective date of the Plan, any Options terminate, expire or are canceled prior to the delivery of all of the Shares issuable thereunder, then the number of Shares counted against the number of Shares available under the Plan in connection with the grant of such Option, to

the extent of any such termination, expiration or cancellation, shall again be available for the granting of additional Options under the Plan. If the exercise price of any Option granted under the Plan is satisfied by tendering Shares (by either actual delivery or by attestation), only the number of Shares issued net of the Shares tendered shall be deemed delivered for purposes of determining the maximum number of Shares available for delivery under the Plan.

Section 6. Plan Operation

(a) Formula Plan. With respect to Non-Employee Directors, the Plan is intended to meet the "formula" plan requirements of Rule 16b 3 (or any successor provision thereto), as interpreted, adopted under the Exchange Act and accordingly is intended to be self governing.

(b) Administration. The Plan shall be administered by the Board. The Board may, by resolution, delegate part or all of its administrative powers with respect to the Plan. The Board shall have all of the powers vested in it by the terms of the Plan, such powers to include the authority, within the limits prescribed herein, to establish the form of the agreement embodying grants of Options made under the Plan. The Board shall, subject to the provisions of the Plan, have the power to construe the Plan, to determine all questions arising thereunder and to adopt and amend such rules and regulations for the administration of the Plan as it may deem desirable, such administrative decisions of the Board to be final and conclusive. Except to the extent prohibited by applicable law, the Board may authorize any one or more of their number or the Secretary or any other officer of the Company to execute and deliver documents on behalf of the Board.

Section 7. Nonstatutory Stock Option Awards

(a) Eligibility of Non-Employee Directors. Non-Employee Directors shall automatically be granted Options under the Plan in the manner set forth in this Section 7 for no cash consideration. A Non-Employee Director may hold more than one Option under the Plan in his or her capacity as a Non-Employee Director of the Company, but only on the terms and subject to the conditions set forth herein. On the first business day on which a Non-Employee is first elected or appointed as a Non-Employee during the existence of the Plan, each newly elected or appointed Non-Employee Director

shall be granted an Option to purchase Five Thousand (5,000) Shares under the Plan. On the first business day of January of each calendar year beginning in January, 2004, each Non-Employee at such time shall be granted an Option to purchase Five Thousand (5,000) Shares under the Plan.

(b) Eligibility of Participants. The Board may designate from time to time the Participants to receive Options under this Plan. The Board's designation of a Participant in any year will not require them to designate such person to receive an Option in any other year. The Board may consider such factors as it deems pertinent in selecting a Participant and in determining the amount of Options. Subject to the terms of this Plan, the Board has full power and authority to determine the number of Shares with respect to which an Option is granted to a Participant, and determine any terms and conditions of any Option granted to a Participant. The Committee's determinations need not be the same for each grant or for each Participant.

(c) Grant. The price per Share of the Company's common stock which may be purchased upon exercise of an Option shall be one hundred percent (100%) of the Fair Market Value per Share on the date the Option is granted. Such exercise price shall be subject to adjustment as provided in Section 10 hereof. The term of each Option granted to a Non-Employee Director or Participant shall be for ten (10) years from the date of grant, unless terminated earlier pursuant to the provisions of Section 9 hereof.

(d) Option Agreement. Each Option granted under the Plan shall be evidenced by a written agreement in such form as the Board shall from time to time adopt. Each agreement shall be subject to, and incorporate, by reference or otherwise, the applicable terms of the Plan.

(e) Option Period. No Option shall be granted under the Plan after the tenth anniversary of the effective date of the Plan. However, the term of any Option theretofore granted may extend beyond such date. Options shall automatically be granted to Non-Employee Directors under the Plan only for so long as the Plan remains in effect and a sufficient number of Shares are available hereunder for the granting of such Options.

Section 8. Exercise of Option

An Option may be exercised, subject to limitations on its exercise and the provisions of Section 9, from time to time, only by (i) providing written notice of intent to exercise the Option with respect to a specified number of Shares; and (ii) payment in full to the Company of the exercise price at the time the Option is exercised (except that, in the case of an exercise under paragraph (iii) below, payment may be made as soon as practicable after the exercise). Payment of the exercise price may be made:

(i) in cash or by certified check,

(ii) by delivery to the Company of Shares which shall have been owned for at least six (6) months and have a Fair Market Value per Share on the date of surrender equal to the exercise

price, or

(iii) by delivery (including by fax) to the Company or its designated agent of a properly executed exercise notice together with irrevocable instructions to a broker to sell or margin a sufficient portion of the Option Shares and promptly deliver to the Company the sale or margin loan proceeds required to pay the exercise price.

&bbsp; S-9

Section 9. Transferability of Options

The Options and rights under the Options are not assignable, alienable, saleable or transferable by a Non-Employee Director or Participant otherwise than by will or by the laws of descent and distribution, and may be exercised during the lifetime of the Non-Employee Director or Participant only by such individual or, if permissible under applicable law, by such individual's guardian or legal representative, except that a Non-Employee Director or Participant may, to the extent allowed by the Board and in a manner specified by the Board, designate in writing a beneficiary to exercise the Option after the Non-Employee Director or Participant's death.

Section 10. Capital Adjustment Provisions

In the event that the Board shall determine that any dividend or other distribution (whether in the form of cash, Shares, other securities or other property), recapitalization, reclassification, stock split, reverse stock split, reorganization, merger, consolidation, split up, spin off, combination, repurchase or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event (individually referred to as "Event" and collectively referred to as "Events") affects the Shares such that an adjustment is determined by the Board to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Board may, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares subject to the Plan and which thereafter may be made the subject of Options under the Plan; (ii) the number and type of Shares subject to outstanding Options; and (iii) the exercise price with respect to any Option (collectively referred to as "Adjustments"); provided, however, that Options subject to grant or previously granted to Non-Employee Directors or Participants under the Plan at the time of any such Event shall be subject to only such Adjustments as shall be necessary to maintain the proportionate interest of such persons and preserve, without exceeding, the value of such Options.

Section 11. Amendment and Termination of the Plan

The Plan shall terminate on January 8, 2014, unless sooner terminated as herein provided. The Board may at any time amend, alter, suspend, discontinue or terminate the Plan. Termination of the Plan shall not affect the rights of Non-Employee Directors and Participants with respect to Options previously granted to them, and all unexpired Options shall continue in force and effect after termination of the Plan, except as they may lapse or be terminated by their own terms and conditions. Any amendment to the Plan shall become effective when adopted by the Board, unless specified otherwise. Rights and obligations under any Option granted before any amendment of this Plan shall not be materially and adversely affected by amendment of the Plan, except with the consent of the person who holds the Option, which consent may be obtained in any manner that the Board deems appropriate.

Section 12. General Provisions

(a) Other Compensation. Nothing contained in the Plan shall prevent the Company or any Affiliate from adopting or continuing in effect other or additional compensation arrangements for Non-Employee Directors and Participants, and such arrangements may be either generally applicable or applicable only in specific cases.

(b) Securities Laws. Notwithstanding any other provision of the Plan, the Company shall have no liability to deliver any Shares under the Plan or make any other distribution of benefits under the Plan unless such delivery or distribution would comply with all applicable laws (including,

S-10

without limitation, the requirements of the Securities Act of 1933), and the applicable requirements of any securities exchange or similar entity.

(c) Governing Law. The validity, construction, and effect of the Plan and any rules and regulations relating to the Plan shall be determined in accordance with the internal laws of the State of Florida and applicable federal law.

(d) Miscellaneous. Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision hereof.

EXHIBIT 5

[GRAPHIC OMITTED]

January 8, 2004

FOLEY & LARDNER
100 North Tampa Street, Suite 2700
Tampa, Florida 33602-5810
P.O. Box 3391
Tampa, Florida 33601-3391
813.229.2300 TEL
813-221-4210 FAX
www.foleylardner.com

CLIENT/MATTER NUMBER
025584-0101

XRG, Inc.
5301 Cypress Street, Suite 111
Tampa, Florida 33607

Re: Registration Statement on Form S-8

Gentlemen:

We refer to the Registration Statement (the "Registration Statement") on Form S-8 filed today by XRG, Inc. (the "Company") with the Securities and Exchange Commission, for the purpose of registering under the Securities Act of 1933, as amended, an aggregate of 3,000,000 shares (the "Shares") of the authorized common stock, par value $.001 per share, which may be issued or acquired pursuant to the XRG, Inc. Nonqualified Stock Option Plan (the "Plan"). This opinion letter is rendered pursuant to Item 8 of Form S-8 and Item 601(b)(3) of Regulation S-K.

In connection with the foregoing registration, we have acted as counsel for the Company and have examined originals, or copies certified to our satisfaction, of such corporate records of the Company, certificates of public officials, and representatives of the Company, and other documents as we deemed necessary to deliver the opinion expressed below.

Based upon the foregoing, and having regard for legal considerations that we deem relevant, it is our opinion that the Shares will be, when and if issued in accordance with the terms and conditions of the Plan, will be duly authorized, validly issued, and fully paid and non-assessable.

This opinion letter is provided to you for your benefit and for the benefit of the Securities and Exchange Commission, in each case, solely with regard to the Registration Statement, may be relied upon by you and the Commission only in connection with the Registration Statement, and may not be relied upon by any other person or for any other purpose without our prior written consent. We hereby consent to the inclusion of this opinion as Exhibit 5 in the Registration Statement. In giving this consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules or regulations of the Commission promulgated thereunder

Very truly yours,

&bbsp; /S/ Foley & Lardner

FOLEY & LARDNER

EXHIBIT 23.1

CONSENT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the board of directors of XRG, Inc.

We hereby consent to the incorporation by reference in the foregoing Registration Statement of XRG, Inc. on Form S-8 of our report dated June 7, 2003, which appears in XRG, Inc.'s Annual Report on Form 10-KSB for the fiscal year ended March 31, 2003, filed with the Securities and Exchange Commission on July 14, 2003.

/s/ Pender Newkirk & Company

Pender Newkirk & Company, CPAs
Tampa, Florida

January 8, 2004

Registration No. 333-111796

As filed with the Securities and Exchange Commission on _____

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 1

TO

FORM S-8

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

XRG, Inc.
(Exact name of registrant as specified in its charter)

Delaware	58-2583457
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

5301 Cypress Street, Suite 111
Tampa, Florida 33607
(Address of principal executive offices)

2004 Non-Qualified Stock Option Plan
(Full title of the plan)

Kevin P. Brennan, President & CEO
XRG, Inc.
5301 Cypress Street, Suite 111
Tampa, Florida 33607
(813) 637-0700
(Name, address and telephone number, including area code, of agent for service)

Copy to:

Carolyn T. Long, Esquire
Martin A. Traber, Esquire
Foley & Lardner
100 North Tampa Street, Suite 2700
Tampa, Florida 33602
(813) 229-2300

INCORPORATION BY REFERENCE

OF

EARLIER REGISTRATION STATEMENT

XRG, Inc. (the "Registrant") has previously registered 3,000,000 shares of its Common Stock, par value $.001 per share, for issuance under its 2004 Non-Qualified Stock Option Plan (the "Plan"). The registration of such shares was effected on a Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 9, 2004, bearing the file number 333-111796 (the "Earlier Registration Statement"). This Registration Statement is being filed to in order file the Amended & Restated 2004 Non-Qualified Stock Option Plan ("Amended Plan"). Accordingly, pursuant to General Instruction E of Form S-8, the contents of the Earlier Registration Statement are hereby incorporated herein by reference.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits.

EXHIBIT NO.	EXHIBIT
(4.1)	Amended & Restated 2004 Non-Qualified Stock Option Plan
(5)	Opinion of Foley & Lardner regarding legality of common stock
(23.1)	Consent of Pender Newkirk & Company, CPAs
(23.2)	Consent of Foley & Lardner (contained in Exhibit 5 hereto)
(24)	Power of Attorney relating to subsequent amendments (included on the signature page to this Registration

Statement)

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tampa, and State of Florida, on this 26th day of February, 2004.

XRG, Inc.

By: /s/ Kevin P. Brennan

Kevin P. Brennan
President & CEO

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Kevin P. Brennan --- Kevin P. Brennan	President and Chief Executive Officer, (Principal Executive Officer) and Director	February 26, 2004
/s/ Stephen Couture --- Stephen Couture	Vice President, Finance, Chief Financial Officer and Director	February 26, 2004
/s/ Donald G. Huggins, Jr. --- Donald G. Huggins, Jr.	Executive Vice President and Chairman of the Board	February 26, 2004

EXHIBIT INDEX

XRG, INC.

2004 Non-Qualified Stock Option Plan

EXHIBIT NO.	EXHIBIT
(4.1)	Amended & Restated 2004 Non-Qualified Stock Option Plan
(5)	Opinion of Foley & Lardner regarding legality of common stock
(23.1)	Consent of Pender Newkirk & Company, CPAs
(23.2)	Consent of Foley & Lardner (contained in Exhibit 5 hereto)
(24)	Power of Attorney relating to subsequent amendments (included on the signature page to this Registration Statement)

EXHIBIT 4.1

XRG, INC.
Amended & Restated 2004 NON-QUALIFIED Stock Option Plan

Section 1. Establishment

XRG, INC. (the "Company") hereby establishes a stock option plan for non-employee directors, consultants, and advisors, as described herein, which shall be known as the "XRG, Inc. Amended & Restated 2004 Non-Qualified Stock Option Plan" (the "Amended Plan"). It is intended that only nonstatutory stock options may be granted under the Amended Plan.

Section 2. Purpose

The purpose of the Amended Plan is to promote the long term growth and financial success of the Company. The Amended Plan is intended to secure for the Company and its shareholders the benefits of the long term incentives inherent in increased common stock ownership by individuals who are not employees of the Company or its Affiliates. It is intended that the Amended Plan will induce and encourage highly experienced and qualified individuals to be involved and assist the Company in promoting a greater identity of interest between the non-employee directors, consultants, and advisors and the shareholders of the Company.

Section 3. Definitions

The following terms shall have the respective meanings set forth below, unless the context otherwise requires:

a. "Affiliate" shall mean any corporation, partnership, joint venture, or other entity in which the Company holds an equity, profit, or voting interest of more than fifty percent (50%).

b. "Board" shall mean the Board of Directors of the Company.

c. "Code" shall mean the Internal Revenue Code of 1986, as amended.

d. "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

e. "Fair Market Value per Share" shall mean for any day the average of the high and low sales prices for a Share in the over the counter market, as reported by the Nasdaq Stock Market on the business day immediately preceding such day, or, if there were no trades of Shares on such business day, on the most recent preceding business day on which there were trades. If Shares are not listed or admitted to trading on the Nasdaq Stock Market when the determination of fair market value is to be made, Fair Market Value per Share shall be the mean between the highest and lowest reported sales prices of Shares on that date on the principal exchange on which the Shares are then listed. If the Shares are not listed on any national exchange, Fair Market Value per Share shall be the amount determined in good faith by the Board to be the fair market value of a Share at the relevant time.

f. "Non-Employee Director" shall mean a member of the Board who is not an employee of the Company or any Affiliate.

g. "Option" means the right to purchase shares at a stated price. "Options" will be "nonqualified stock options," which do not qualify for special tax treatment under Code Sections 421 or 422.

h. "Shares" shall mean shares of common stock of the Company, $.001 par value per share, and such other securities or property as may become subject to Options pursuant to an adjustment made under Section 11 of the Amended Plan.

i. "Participant" means a consultant or advisor who provides services to the Company or its Affiliates who the Board designates to receive an Option under this Amended Plan.

Section 4. Effective Date of the Amended Plan

The effective date of the Amended Plan is the same date as the originally adopted 2004 Non-Qualified Stock Option Plan by the Board, January 8, 2004, and is subject to the approval and ratification of the Plan by the shareholders of the Company, and any and all awards made under the Amended Plan prior to such approval shall be subject to such approval.

Section 5. Shares Available for Options

Subject to adjustment in accordance with the provisions of Section 11, the number of Shares which may be issued pursuant to the Amended Plan shall not exceed Three Million (3,000,000). Such Shares may be authorized and unissued Shares or treasury shares. If, after the effective date of the Amended Plan, any Options terminate, expire or are canceled prior to the delivery of all of the Shares issuable thereunder, then the number of Shares counted against the number of Shares available under the Amended Plan in connection with the grant of such Option, to the extent of any such termination, expiration or cancellation, shall again be available for the granting of additional Options under the Amended Plan. If the exercise price of any Option granted under the Amended Plan is satisfied by tendering Shares (by either

actual delivery or by attestation), only the number of Shares issued net of the Shares tendered shall be deemed delivered for purposes of determining the maximum number of Shares available for delivery under the Amended Plan.

Section 6. Amended Plan Operation

a. Formula Plan. With respect to Non-Employee Directors, the Amended Plan is intended to meet the "formula" plan requirements of Rule 16b 3 (or any successor provision thereto), as interpreted, adopted under the Exchange Act and accordingly is intended to be self governing.

b. Administration. The Amended Plan shall be administered by the Board. The Board may, by resolution, delegate part or all of its administrative powers with respect to the Amended Plan. The Board shall have all of the powers vested in it by the terms of the Amended Plan, such powers to include the authority, within the limits prescribed herein, to establish the form of the agreement embodying grants of Options made under the Amended Plan. The Board shall, subject to the provisions of the Amended Plan, have the power to construe the Amended Plan, to determine all questions arising thereunder and to adopt and amend such rules and regulations for the administration of the Amended Plan as it may deem desirable, such administrative decisions of the Board to be final and conclusive. Except to the extent prohibited by applicable law, the Board may authorize any one or more of their number or the Secretary or any other officer of the Company to execute and deliver documents on behalf of the Board.

Section 7. Nonstatutory Stock Option Awards

a. Eligibility of Non-Employee Directors. Non-Employee Directors shall automatically be granted Options under the Amended Plan in the manner set forth in this Section 7 for no cash consideration. A Non-Employee Director may hold more than one Option under the Amended Plan in his or her capacity as a Non-Employee Director of the Company, but only on the terms and subject to the conditions set forth herein. On the first business day on which a Non-Employee is first elected or appointed as a Non-Employee during the existence of the Amended Plan, each newly elected or appointed Non-Employee Director shall be granted an Option to purchase five thousand shares (5,000) Shares under the Amended Plan. On the first business day of January of each calendar year beginning in January, 2004, each Non-Employee at such time shall be granted an Option to purchase five thousand shares (5,000) Shares under the Amended Plan.

b. Eligibility of Participants. The Board may designate from time to time the Participants to receive Options under this Amended Plan. The Board's designation of a Participant in any year will not require them

to designate such person to receive an Option in any other year. The Board may consider such factors as it deems pertinent in selecting a Participant and in determining the amount of Options. Subject to the terms of this Amended Plan, the Board has full power and authority to determine the number of Shares with respect to which an Option is granted to a Participant, and determine any terms and conditions of any Option granted to a Participant. The Committee's determinations need not be the same for each grant or for each Participant.

c. Grant. The price per Share of the Company's common stock which may be purchased upon exercise of an Option shall be one hundred percent (100%) of the Fair Market Value per Share on the date the Option is granted. Such exercise price shall be subject to adjustment as provided in Section 11 hereof. The term of each Option granted to a Non-Employee Director or Participant shall be for ten (10) years from the date of grant, unless terminated earlier pursuant to the provisions of Section 9 hereof.

d. Option Agreement. Each Option granted under the Amended Plan shall be evidenced by a written agreement in such form as the Board shall from time to time adopt. Each agreement shall be subject to, and incorporate, by reference or otherwise, the applicable terms of the Amended Plan.

e. Option Period. No Option shall be granted under the Amended Plan after the tenth anniversary of the effective date of the Amended Plan. However, the term of any Option theretofore granted may extend beyond such date. Options shall automatically be granted to Non-Employee Directors under the Amended Plan only for so long as the Amended Plan remains in effect and a sufficient number of Shares are available hereunder for the granting of such Options.

Section 8. Exercise of Option

An Option may be exercised, subject to limitations on its exercise and the provisions of Section 9, from time to time, only by (i) providing written notice of intent to exercise the Option with respect to a specified number of Shares; and (ii) payment in full to the Company of the exercise price at the time the Option is exercised (except that, in the case of an exercise under paragraph (iii) below, payment may be made as soon as practicable after the exercise). Payment of the exercise price may be made:

(i) in cash or by certified check,

(ii) by delivery to the Company of Shares which shall have been owned for at least six (6) months and have a Fair Market Value per Share on the date of surrender equal to the exercise price, or

(iii) by delivery (including by fax) to the Company or its designated agent of a properly executed exercise notice together with irrevocable instructions to a broker to sell or margin a sufficient portion of the Option Shares and promptly deliver to the Company the sale or margin loan proceeds required to pay the exercise price.

Section 9. Transferability of Options

The Options and rights under the Options are not assignable, alienable, saleable or transferable by a Non-Employee Director or Participant otherwise than by will or by the laws of descent and distribution, and may be exercised during the lifetime of the Non-Employee Director or Participant only by such individual or, if permissible under applicable law, by such individual's guardian or legal representative, except that a Non-Employee Director or Participant may, to the extent allowed by the Board and in a manner specified by the Board, designate in writing a beneficiary to exercise the Option after the Non-Employee Director or Participant's death.

Section 10. Other Awards

a. Other Stock-Based Awards. Other awards, valued in whole or in part by reference to, or otherwise based on, shares of Stock, may be granted either alone or in addition to or in conjunction with any awards

described in this Amended Plan for such consideration, if any, and in such amounts and having such terms and conditions as the Board may determine.

b. Other Benefits. The Board shall have the right to provide types of benefits under the Amended Plan in addition to those specifically listed, if the Board believe that such benefits would further the purposes for which the Amended Plan was established.

Section 11. Capital Adjustment Provisions

In the event that the Board shall determine that any dividend or other distribution (whether in the form of cash, Shares, other securities or other property), recapitalization, reclassification, stock split, reverse stock split, reorganization, merger, consolidation, split up, spin off, combination, repurchase or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event (individually referred to as "Event" and collectively referred to as "Events") affects the Shares such that an adjustment is determined by the Board to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Amended Plan, then the Board may, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares subject to the Amended Plan and which thereafter may be made the subject of Options under the Amended Plan; (ii) the number and type of Shares subject to outstanding Options; and (iii) the exercise price with respect to any Option (collectively referred to as "Adjustments"); provided, however, that Options subject to grant or previously granted to Non-Employee Directors or Participants under the Amended Plan at the time of any such Event shall be subject to only such Adjustments as shall be necessary to maintain the proportionate interest of such persons and preserve, without exceeding, the value of such Options.

Section 12. Amendment and Termination of the Amended Plan

The Amended Plan shall terminate on January 8, 2014, unless sooner terminated as herein provided. The Board may at any time amend, alter, suspend, discontinue or terminate the Amended Plan. Termination of the Amended Plan shall not affect the rights of Non-Employee Directors and Participants with respect to Options previously granted to them, and all unexpired Options shall continue in force and effect after termination of the Amended Plan, except as they may lapse or be terminated by their own terms and conditions. Any amendment to the Amended Plan shall become effective when adopted by the Board, unless specified otherwise. Rights and obligations under any Option granted before any amendment of this Amended Plan shall not be materially and adversely affected by amendment of the Amended Plan, except with the consent of the person who holds the Option, which consent may be obtained in any manner that the Board deems appropriate.

Section 13. General Provisions

a. Other Compensation. Nothing contained in the Amended Plan shall prevent the Company or any Affiliate from adopting or continuing in effect other or additional compensation arrangements for Non-Employee Directors and Participants, and such arrangements may be either generally applicable or applicable only in specific cases.

b. Securities Laws. Notwithstanding any other provision of the Amended Plan, the Company shall have no liability to deliver any Shares under the Amended Plan or make any other distribution of benefits under the Amended Plan unless such delivery or distribution would comply with all applicable laws (including, without limitation, the requirements of the Securities Act of 1933), and the applicable requirements of any securities exchange or similar entity.

c. Governing Law. The validity, construction, and effect of the Amended Plan and any rules and regulations relating to the Amended Plan shall be determined in accordance with the internal laws of the State of Florida and applicable federal law.

d. Miscellaneous. Headings are given to the Sections and subsections of the Amended Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Amended Plan or any provision hereof.

EXHIBIT 5

[GRAPHIC OMITTED]
FOLEY : LARDNER
ATTORNEYS AT LAW

FOLEY & LARDNER
100 North Tampa Street, Suite 2700
Tampa, Florida 33602-5810
P.O. Box 3391
Tampa, Florida 33601-3391
813.229.2300 TEL
813.221.4210 FAX
www.foleylardner.com

WRITER'S DIRECT LINE
813.225.4126
mtraber@foleylaw.com Email

CLIENT/MATTER NUMBER
038929/0101

February 25, 2004

XRG, Inc.
5301 Cypress Street, Suite 111
Tampa, Florida 33607

Re: Post Effective Amendment No. 1 to the Form S-8 Registration Statement Relating to the XRG, Inc. 2004 Non-Qualified Stock Option Plan

Ladies & Gentlemen:

We have acted as counsel for XRG, Inc., a Delaware corporation (the "Company"), in connection with the preparation of Post Effective Amendment No. 1 to the Form S-8 Registration Statement (the "Registration Statement") to be filed by the Company with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), relating to the filing of the Amended & Restated 2004 Non-Qualified Stock Option (the "Amended Plan"). This opinion letter is rendered pursuant to Item 8 of Form S-8 and Item 601(b)(3) of Regulation S-K.

We have examined and are familiar with the Certificate of Incorporation of the Company filed with the Secretary of State of the State of Delaware, Bylaws of the Company, proceedings of the Board of Directors of the Company in connection with the adoption of the Plan, the filing of the initial S-8 to this Post Effective Amendment, and such other records and documents of the Company, certificates of public officials and officers of the Company and such other documents as we have deemed appropriate as a basis for the opinions set forth in this opinion letter.

Based on the foregoing, it is our opinion that the Shares covered by the Registration Statement and to be issued pursuant to the Amended Plan, when issued in accordance with the terms and conditions of the Amended Plan, will be duly and validly issued, fully paid and nonassessable.

We have, with your permission, assumed the Delaware General Corporation Law is substantially the same as the Florida Business Corporation Act. Based on the foregoing, it is our opinion that the Shares of common stock covered by the Registration Statement and to be issued pursuant to the Amended Plan, when issued in accordance with the terms and conditions of the Amended Plan, will be legally and validly issued, fully paid and nonassessable

We are licensed to practice law in the State of Florida and express no opinion as to any laws other than those of the State of Florida and the federal laws of the United States of America.

This opinion letter is provided to you for your benefit and for the benefit of the Securities and Exchange Commission, in each case, solely with regard to the Registration Statement, may be relied upon by you and the Commission only in connection with the Registration Statement, and may not be relied upon by any other person or for any other purpose without our prior written consent. We hereby consent to the inclusion of this opinion as Exhibit 5 in the Registration Statement. In giving this consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules or regulations of the Commission promulgated thereunder.

FOLEY & LARDNER

By: /s/ Martin A. Traber

MARTIN A. TRABER

MAAT/mtv

EXHIBIT 23.1

CONSENT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Board of Directors
XRG, Inc.
Tampa, Florida

We hereby consent to the incorporation by reference in the foregoing Post Effective Amendment to the Registration Statement of XRG, Inc. on Form S-8 of our report dated June 7, 2003, which appears in XRG, Inc.'s Annual Report on Form 10-KSB for the fiscal year ended March 31, 2003, filed with the Securities and Exchange Commission on July 14, 2003.

/s/ Pender Newkirk & Company

Pender Newkirk & Company
Certified Public Accountants
Tampa, Florida
February 27, 2004

EXHIBIT 4.1

XRG, INC.
Amended & Restated 2004 NON-QUALIFIED Stock Option Plan

Section 1. Establishment

XRG, INC. (the "Company") hereby establishes a stock option plan for non-employee directors, consultants, and advisors, as described herein, which shall be known as the "XRG, Inc. Amended & Restated 2004 Non-Qualified Stock Option Plan" (the "Amended Plan"). It is intended that only nonstatutory stock options may be granted under the Amended Plan.

Section 2. Purpose

The purpose of the Amended Plan is to promote the long term growth and financial success of the Company. The Amended Plan is intended to secure for the Company and its shareholders the benefits of the long term incentives inherent in increased common stock ownership by individuals who are not employees of the Company or its Affiliates. It is intended that the Amended Plan will induce and encourage highly experienced and qualified individuals to be involved and assist the Company in promoting a greater identity of interest between the non-employee directors, consultants, and advisors and the shareholders of the Company.

Section 3. Definitions

The following terms shall have the respective meanings set forth below, unless the context otherwise requires:

a. "Affiliate" shall mean any corporation, partnership, joint venture, or other entity in which the Company holds an equity, profit, or voting interest of more than fifty percent (50%).

b. "Board" shall mean the Board of Directors of the Company.

c. "Code" shall mean the Internal Revenue Code of 1986, as amended.

d. "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

e. "Fair Market Value per Share" shall mean for any day the average of the high and low sales prices for a Share in the over the counter market, as reported by the Nasdaq Stock Market on the business day immediately preceding such day, or, if there were no trades of Shares on such business day, on the most recent preceding business day on which there were trades. If Shares are not listed or admitted to trading on the Nasdaq Stock Market when the determination of fair market value is to be made, Fair Market Value per Share shall be the mean between the highest and lowest reported sales prices of Shares on that date on the principal exchange on which the Shares are then listed. If the Shares are not listed on any national exchange, Fair Market Value per Share shall be the amount determined in good faith by the Board to be the fair market value of a Share at the relevant time.

f. "Non-Employee Director" shall mean a member of the Board who is not an employee of the Company or any Affiliate.

g. "Option" means the right to purchase shares at a stated price. "Options" will be "nonqualified stock options," which do not qualify for special tax treatment under Code Sections 421 or 422.

h. "Shares" shall mean shares of common stock of the Company, $.001 par value per share, and such other securities or property as may become subject to Options pursuant to an adjustment made under Section 11 of the Amended Plan.

i. "Participant" means a consultant or advisor who provides services to the Company or its Affiliates who the Board designates to receive an Option under this Amended Plan.

Section 4. Effective Date of the Amended Plan

The effective date of the Amended Plan is the same date as the originally adopted 2004 Non-Qualified Stock Option Plan by the Board, January 8, 2004, and is subject to the approval and ratification of the Plan by the shareholders of the Company, and any and all awards made under the Amended Plan prior to such approval shall be subject to such approval.

Section 5. Shares Available for Options

Subject to adjustment in accordance with the provisions of Section 11, the number of Shares which may be issued pursuant to the Amended Plan shall not exceed Three Million (3,000,000). Such Shares may be authorized and unissued Shares or treasury shares. If, after the effective date of the Amended Plan, any Options terminate, expire or are canceled prior to the delivery of all of the Shares issuable thereunder, then the number of Shares counted against the number of Shares available under the Amended Plan in connection with the grant of such Option, to the extent of any such termination, expiration or cancellation, shall again be available for the granting of additional Options under the Amended Plan. If the exercise price of any Option granted under the Amended Plan is satisfied by tendering Shares (by either

actual delivery or by attestation), only the number of Shares issued net of the Shares tendered shall be deemed delivered for purposes of determining the maximum number of Shares available for delivery under the Amended Plan.

Section 6. Amended Plan Operation

a. Formula Plan. With respect to Non-Employee Directors, the Amended Plan is intended to meet the "formula" plan requirements of Rule 16b 3 (or any successor provision thereto), as interpreted, adopted under the Exchange Act and accordingly is intended to be self governing.

b. Administration. The Amended Plan shall be administered by the Board. The Board may, by resolution, delegate part or all of its administrative powers with respect to the Amended Plan. The Board shall have all of the powers vested in it by the terms of the Amended Plan, such powers to include the authority, within the limits prescribed herein, to establish the form of the agreement embodying grants of Options made under the Amended Plan. The Board shall, subject to the provisions of the Amended Plan, have the power to construe the Amended Plan, to determine all questions arising thereunder and to adopt and amend such rules and regulations for the administration of the Amended Plan as it may deem desirable, such administrative decisions of the Board to be final and conclusive. Except to the extent prohibited by applicable law, the Board may authorize any one or more of their number or the Secretary or any other officer of the Company to execute and deliver documents on behalf of the Board.

Section 7. Nonstatutory Stock Option Awards

a. Eligibility of Non-Employee Directors. Non-Employee Directors shall automatically be granted Options under the Amended Plan in the manner set forth in this Section 7 for no cash consideration. A Non-Employee Director may hold more than one Option under the Amended Plan in his or her capacity as a Non-Employee Director of the Company, but only on the terms and subject to the conditions set forth herein. On the first business day on which a Non-Employee is first elected or appointed as a Non-Employee during the existence of the Amended Plan, each newly elected or appointed Non-Employee Director shall be granted an Option to purchase five thousand shares (5,000) Shares under the Amended Plan. On the first business day of January of each calendar year beginning in January, 2004, each Non-Employee at such time shall be granted an Option to purchase five thousand shares (5,000) Shares under the Amended Plan.

b. Eligibility of Participants. The Board may designate from time to time the Participants to receive Options under this Amended Plan. The Board's designation of a Participant in any year will not require them

to designate such person to receive an Option in any other year. The Board may consider such factors as it deems pertinent in selecting a Participant and in determining the amount of Options. Subject to the terms of this Amended Plan, the Board has full power and authority to determine the number of Shares with respect to which an Option is granted to a Participant, and determine any terms and conditions of any Option granted to a Participant. The Committee's determinations need not be the same for each grant or for each Participant.

c. Grant. The price per Share of the Company's common stock which may be purchased upon exercise of an Option shall be one hundred percent (100%) of the Fair Market Value per Share on the date the Option is granted. Such exercise price shall be subject to adjustment as provided in Section 11 hereof. The term of each Option granted to a Non-Employee Director or Participant shall be for ten (10) years from the date of grant, unless terminated earlier pursuant to the provisions of Section 9 hereof.

d. Option Agreement. Each Option granted under the Amended Plan shall be evidenced by a written agreement in such form as the Board shall from time to time adopt. Each agreement shall be subject to, and incorporate, by reference or otherwise, the applicable terms of the Amended Plan.

e. Option Period. No Option shall be granted under the Amended Plan after the tenth anniversary of the effective date of the Amended Plan. However, the term of any Option theretofore granted may extend beyond such date. Options shall automatically be granted to Non-Employee Directors under the Amended Plan only for so long as the Amended Plan remains in effect and a sufficient number of Shares are available hereunder for the granting of such Options.

Section 8. Exercise of Option

An Option may be exercised, subject to limitations on its exercise and the provisions of Section 9, from time to time, only by (i) providing written notice of intent to exercise the Option with respect to a specified number of Shares; and (ii) payment in full to the Company of the exercise price at the time the Option is exercised (except that, in the case of an exercise under paragraph (iii) below, payment may be made as soon as practicable after the exercise). Payment of the exercise price may be made:

(i) in cash or by certified check,

(ii) by delivery to the Company of Shares which shall have been owned for at least six (6) months and have a Fair Market Value per Share on the date of surrender equal to the exercise price, or

(iii) by delivery (including by fax) to the Company or its designated agent of a properly executed exercise notice together with irrevocable instructions to a broker to sell or margin a sufficient portion of the Option Shares and promptly deliver to the Company the sale or margin loan proceeds required to pay the exercise price.

Section 9. Transferability of Options

The Options and rights under the Options are not assignable, alienable, saleable or transferable by a Non-Employee Director or Participant otherwise than by will or by the laws of descent and distribution, and may be exercised during the lifetime of the Non-Employee Director or Participant only by such individual or, if permissible under applicable law, by such individual's guardian or legal representative, except that a Non-Employee Director or Participant may, to the extent allowed by the Board and in a manner specified by the Board, designate in writing a beneficiary to exercise the Option after the Non-Employee Director or Participant's death.

Section 10. Other Awards

a. Other Stock-Based Awards. Other awards, valued in whole or in part by reference to, or otherwise based on, shares of Stock, may be granted either alone or in addition to or in conjunction with any awards

described in this Amended Plan for such consideration, if any, and in such amounts and having such terms and conditions as the Board may determine.

b. Other Benefits. The Board shall have the right to provide types of benefits under the Amended Plan in addition to those specifically listed, if the Board believe that such benefits would further the purposes for which the Amended Plan was established.

Section 11. Capital Adjustment Provisions

In the event that the Board shall determine that any dividend or other distribution (whether in the form of cash, Shares, other securities or other property), recapitalization, reclassification, stock split, reverse stock split, reorganization, merger, consolidation, split up, spin off, combination, repurchase or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event (individually referred to as "Event" and collectively referred to as "Events") affects the Shares such that an adjustment is determined by the Board to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Amended Plan, then the Board may, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares subject to the Amended Plan and which thereafter may be made the subject of Options under the Amended Plan; (ii) the number and type of Shares subject to outstanding Options; and (iii) the exercise price with respect to any Option (collectively referred to as "Adjustments"); provided, however, that Options subject to grant or previously granted to Non-Employee Directors or Participants under the Amended Plan at the time of any such Event shall be subject to only such Adjustments as shall be necessary to maintain the proportionate interest of such persons and preserve, without exceeding, the value of such Options.

Section 12. Amendment and Termination of the Amended Plan

The Amended Plan shall terminate on January 8, 2014, unless sooner terminated as herein provided. The Board may at any time amend, alter, suspend, discontinue or terminate the Amended Plan. Termination of the Amended Plan shall not affect the rights of Non-Employee Directors and Participants with respect to Options previously granted to them, and all unexpired Options shall continue in force and effect after termination of the Amended Plan, except as they may lapse or be terminated by their own terms and conditions. Any amendment to the Amended Plan shall become effective when adopted by the Board, unless specified otherwise. Rights and obligations under any Option granted before any amendment of this Amended Plan shall not be materially and adversely affected by amendment of the Amended Plan, except with the consent of the person who holds the Option, which consent may be obtained in any manner that the Board deems appropriate.

Section 13. General Provisions

a. Other Compensation. Nothing contained in the Amended Plan shall prevent the Company or any Affiliate from adopting or continuing in effect other or additional compensation arrangements for Non-Employee Directors and Participants, and such arrangements may be either generally applicable or applicable only in specific cases.

b. Securities Laws. Notwithstanding any other provision of the Amended Plan, the Company shall have no liability to deliver any Shares under the Amended Plan or make any other distribution of benefits under the Amended Plan unless such delivery or distribution would comply with all applicable laws (including, without limitation, the requirements of the Securities Act of 1933), and the applicable requirements of any securities exchange or similar entity.

c. Governing Law. The validity, construction, and effect of the Amended Plan and any rules and regulations relating to the Amended Plan shall be determined in accordance with the internal laws of the State of Florida and applicable federal law.

d. Miscellaneous. Headings are given to the Sections and subsections of the Amended Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Amended Plan or any provision hereof.

Table of Contents

U. S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

AMENDMENT NO. 2
TO
FORM 10-QSB

☑ **Quarterly report under Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended September 30, 2004

☐ **Transition report under Section 13 or 15(d) of the Exchange Act**

For the transition period from _ to _

Commission File Number 0-49659

XRG, INC.

(Exact Name of Small Business Issuer as Specified in Its Charter)

DELAWARE	58-2583457
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

601 Cleveland Street, Suite 501 Clearwater, Florida 33755
(Address of Principal Executive Offices)

(727) 475-3060
(Issuer's Telephone Number)

Check whether the issuer: (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such a shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☐ No ☑

The number of shares outstanding of the Issuer's Common Stock, $.001 Par Value, as of October 31, 2004 was 273,663,378.

Transitional Small Business Disclosure Format:

Yes ☐ No ☑

Table of Contents

In this amendment No. 2 to Form 10-QSB the Company did not include any financial transactions for RSV, Inc. ("RSV"). Based upon the results of XRG's due diligence investigations and due to XRG's limited financial resources, the Company did not assume the liabilities and debts of RSV. Also, XRG never took title to the RSV assets. The Company recorded the investment in RSV as a deposit on investment instead of a merger and did not record any of RSV's financial activity for the period April 29, 2004 (agreement date) to September 30, 2004. The Company recorded the $600,000 value of the stock issued to RSV as a deposit on investment which is included in other assets on the Company's balance sheet at September 30, 2004. The financial statements to this amendment No. 2 also reflects the reversal of the fixed assets and related debt from the J. Bently Companies, Inc. transaction as the Company has been unable to obtain a clear title to the those assets. This amendment No. 2 also includes expanded disclosure regarding our lack of internal controls.

XRG, Inc. and Subsidiaries

Index

Table of Contents

XRG, Inc. and Subsidiaries
Consolidated Balance Sheet
September 30, 2004
(unaudited)

Assets	
Current assets:	
Accounts receivable, net of allowance of $29,000	$ 4,144,558
Other current assets	459,276
Total current assets	4,603,834
Fixed assets, net of accumulated depreciation	1,839,360
Otherassets	
Goodwill	3,694,031
Other assets	1,425,280
Total other assets	5,119,311
	$ 11,562,505
Liabilities and Stockholders' Equity	
Current liabilities:	
Current portion of long-term debt	$ 966,292
Current portion of long-term convertible debt; net of unamortized discount of $73,724	290,000
Current portion of capital lease obligations	7,756
Bank overdraft	536,480
Accounts payable	410,114
Accrued expenses	642,840
Accrued purchased transportation	31,972
Accrued payroll expenses	264,722
Factorer line of credit	3,430,628
Related party advances and payables	255,126
Total current liabilities	6,835,930
Long-term liabilities:	
Notes payable	817,639
Convertible notes payablee	100,000
Other long-term liabilitiese	55,923
Total long-term liabilities	973,562
Total liabilities	7,809,492
Stockholders' equity:	
Series A Preferred stock; $.001 par value; 5,000,000 shares authorized, issued and cancelled	—
Preferred stock; $.001 par value; 45,000,000 shares authorized	—
Common stock; $.001 par value; 500,000,000 shares authorized; 265,003,379 shares issued and 260,793,379 outstanding	265,003
Common stock payable	614,550
Additional paid-in capital	30,559,490
Subscription receivable	(5,000)
Accumulated deficite	(26,501,030)
Treasury stock, at cost, 4,210,000 shares	(1,180,000)
Total stockholders' equity	3,753,013
	$ 11,562,505

The accompanying notes are an integral part of the consolidated financial statements.

XRG, Inc. and Subsidiaries
Consolidated Statements of Operations
(Unaudited)

	Three months ended September 30,		Six months ended September 30,	
	2004	2003	2004	2003
Revenues	$ 10,105,147	$ 298,225	$ 19,626,455	$ 298,225
Cost of revenues	8,449,334	22,970	17,144,687	22,970
Gross profit	1,655,813	275,255	2,481,768	275,255
Selling, general and administrative expenses	3,568,641	1,063,135	7,070,453	1,225,625
Restructuring costs	13,378	—	13,378	—
	3,582,019	1,063,135	7,083,831	1,225,625
Loss from operations	(1,926,206)	(787,880)	(4,602,063)	(950,370)
Interest expense	(242,596)	(32,437)	(597,254)	(68,942)
Intrinsic value of convertible debt and debt discount for value of detachable warrants	(80,119)	(122,532)	(153,844)	(551,798)
	(322,715)	(154,969)	(751,098)	(620,740)
Net loss applicable to common shareholders	$ (2,248,921)	$ (942,849)e	$ (5,353,161)	$(1,571,110)e
Basic and diluted loss per common shareholders	$ (0.01)	$ (0.05)	$ (0.03)	$ (0.11)
Basic and diluted weighted average number of common shares outstanding	258,373,089	17,435,202	174,286,167	13,865,017

The accompanying notes are an integral part of the consolidated financial statements.

XRG, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(unaudited)

	Six months ended September 30,	
	2004	2003
Operating activities		
Net loss	$(5,353,161)	$(1,571,110)
Adjustments to reconcile net loss to net cash used by operating activities:		
Depreciation and amortization	321,909	6,811
Bad debt	8,000	—
Common stock, options and warrants issued for services and compensation	1,596,331	856,076
Stock issued in lieu of interest	158,000	4,955
Amortization of discount and intrinsic value of convertible notes	73,725	551,798
Amortization of deferred financing fees	20,442	—
Amortization of deferred stock compensation and consulting	163,689	—
(Increase) decrease, net of effect of acquisitions:		
Accounts receivable	(958,753)	—
Other assets	(223,288)	—
Increase (decrease), net of effect of acquisitions:		
Accounts payable	50,367	40,827
Accrued expenses and other liabilities	89,880	9,340
Total adjustments	1,300,302	1,469,807
Net cash used by operating activities	(4,052,859)	(101,303)
Investing activities		
Purchase of equipment	(12,923)	(1,305)
Acquisition of businesses	(2,000,000)	—
Deposit on purchase of transportation equipment	—	(50,000)
Net cash used by investing activities	(2,012,923)	(51,305)
Financing activities		
Bank overdrafts	485,149	—
Increase in advances to J. Bently Companies, Inc.	—	(355,758)
Factoring line of credit	625,811	—
Net borrowings (payments) on stockholder advances	(15,000)	7,500
Proceeds from common stock issued and to be issued and options exercised	5,425,865	403,918
Proceeds from issuance of notes payable, net	255,336	170,000
Principal payments on notes payable	(551,922)	(20,000)
Payment for treasury stock	(95,000)	—
Payments on capital lease	(64,457)	—
Net cash provided by financing activities	6,065,782	205,660
Net increase in cash	—	53,052
Cash at beginning of period	—	16,563
Cash at end of period	$ —	$ 69,615

The accompanying notes are an integral part of the consolidated financial statements.

XRG, Inc. and Subsidiaries
Consolidated Statements of Cash Flows (Unaudited) (Continued)

	Six Months Ended September 30,	
	2004	2003
Supplemental disclosures of cash flow information and non-cash investing and financing activities:		
Cash paid during the period for interest	$455,381	$36,188

During the quarter ended June 30, 2004, note holders converted $490,000 in Notes payable into 2,450,000 shares of common stock.

During the quarter ended June 30, 2004, the Company issued 25,000,000 shares of common stock in exchange for the cancellation of 5,000,000 shares of Series A Preferred Stock.

During the quarter ended June 30, 2004, the Company issued 60,000,000 shares of its common stock in conjunction with a cashless warrant exercise by a warrant holder valued at $60,000.

During the quarter ended June 30, 2004, the Company issued 11,600,000 shares of common stock in conjunction with several acquisitions of which 2,000,000 was for the RSV transaction which was accounted for as a deposit on investment (see Note 7 below for a detailed discussion of these acquisitions).

During the second quarter of 2004, the Company amended the agreement with Express Freight Systems, Inc.'s (EFS) prior shareholders which requires the EFS Prior shareholders to return 3,750,000 shares of common stock which was recorded as treasury stock at September 30, 2004.

During the six months ended September 30, 2004, the Company granted warrants to purchase approximately 22,460,831 shares of its common stock for offering costs fees. These warrants were valued at $5,205,003.

During the six months ended September 30, 2004, the Company issued 500,000 shares of common stock in exchange for consulting services valued at $135,000 which was recorded as deferred consulting expense. In the second quarter of 2004 the Company determined that no more services will be performed so it was all expensed during September 2004.

During the quarter ended June 30, 2004, the Company issued 111,154,333 shares of its common stock that was recorded as common stock payable at March 31, 2004.

During the six months ended September 30, 2004, the Company recorded 1,000,000 shares of common stock as issuable as a settlement with a prior employee. These shares were valued at $180,000 and recorded as an administrative expense.

During the second quarter of 2004, the Company agreed to issue 1,916,667 shares of its common stock to investors who purchased stock during the first quarter of 2004 to bring their purchase price to $0.10 per share.

Prior to March 31, 2004, an investor invested $200,000 which was classified as common stock payable at March 31, 2004. During the six month-period ended

September 30, 2004, per the investor's request, $100,000 of the $200,000 investment was reclassified to an advance to the Company.

During the six month-period ended September 30, 2003, the Company recorded a discount on convertible notes payable of $130,000 which related to the beneficial conversion feature of the notes payable and the warrants issued with these notes. The discount is being amortized over the life of the related notes.

During the six month-period ended September 30, 2003, the Company entered into agreements with note holders to convert $753,000 in notes payable into 1,506,000 shares of common stock. The holders of the notes have surrendered the outstanding notes solely for common stock of the Company. These shares were issued in September 2003. The Company recognized the beneficial conversion feature of these notes which totaled $337,200 for the period ended September 30, 2003.

During the six month-period ended September 30, 2003, 4,732,000 shares of the Company's common stock were issued in exchange for warrants. These warrants were exchanged for a like number of shares of common stock on a one for one basis for no additional consideration in connection with the conversion of the notes.

During the six month-period ended September 30, 2003, the Company issued 1,150,000 shares of common stock for deposits on transportation equipment purchased from J. Bently Companies, Inc.

During the six month-period ended September 30, 2003, the Company issued 200,000 shares for a deposit on the acquisition of R&R Express Intermodal, Inc.

The accompanying notes are an integral part of the consolidated financial statements.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

1. Consolidated Financial Statementso

In the opinion of management, all adjustments consisting only of normal recurring adjustments necessary for a fair statement of (a) the results of operations for the six months ended September 30, 2004 and 2003, (b) the financial position at September 30, 2004, and (c) cash flows for the three and six-month periods ended September 30, 2004 and 2003, have been made.

The unaudited condensed consolidated financial statements and notes are presented as permitted by Form 10-QSB. Accordingly, certain information and note disclosures normally included in consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been omitted. The accompanying consolidated financial statements and notes should be read in conjunction with the audited consolidated financial statements and notes of the Company for the fiscal year ended March 31, 2004. The results of operations for the six-month period ended September 30, 2004 are not necessarily indicative of those to be expected for the entire year.

The accompanying financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America, which contemplate continuation of the Company as a going concern. The Company incurred operating losses of approximately $5,353,000 for the six months ended September 30, 2004, has an accumulated deficit at September 30, 2004 of approximately $26,501,000, which consists of approximately $15,405,000 from unrelated dormant operations and $11,096,000 from current operations; and a tangible net worth of approximately $59,000 as of September 30, 2004. In addition, the Company has negative working capital of approximately $2,232,000 at September 30, 2004 and has used approximately $4,053,000 of cash from operations for the six months ended September 30, 2004. These factors raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments relating to the recoverability and classification of recorded assets or the amounts and classification of liabilities that might be necessary in the event the Company cannot continue in existence.

The Company has established and begun to implement the first phase of a profit improvement plan to achieve a more streamlined and efficient operation. As part of this plan, the Company is identifying savings opportunities associated mostly with redundancies and economies of scale. The Company is focusing these efforts on improvement in operating ratios and tractor utilization (average revenue per tractor per week.) The first stage of this plan included the restructuring of the Company's Express Freight Systems, Inc., acquisition on August 16, 2004. In addition, the Company restructured its asset purchase of Highbourne Corporation on October 4, 2004. These restructurings fix our operating costs associated with these companies through an agency arrangement under terminal agreements. The Company's profit improvement plan may decrease its operating losses in the future; however, there is no assurance that this plan will be effective in obtaining profitability for the Company.

Stock Based Employee Compensation

For the stock options issued to employees, we have elected to apply the intrinsic value based method of accounting prescribed by Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations. Under the intrinsic value based method, compensation cost is measured on the date of grant as the excess of the quoted market price of the underlying stock over the exercise price. Such compensation amounts are amortized over the respective vesting periods of the options.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

On July 1, 2004, five year options to purchase 400,000 shares of the Company's common stock option plan were granted to the Chief Executive Officer of the Company at an exercise price of $.207 per share. Such options vest immediately. Fair value was determined at the date of grant using the Black-Scholes option pricing model using an expected dividend yield of -0-; a risk free interest rate of 1.11%; expected stock volatility of 46.17% and an expected option life of two days.

The following table illustrates the effect on net loss and loss per share as if the fair value based method of accounting had been applied to stock-based employee compensation, as required by SFAS No. 123, "Accounting for Stock-Based Compensation" and SFAS 148 "Accounting for Stock-Based Compensation — transition and disclosure", an amendment of SFAS No. 123 for the three and six months ended September 30, 2004 and 2003:

	Three months ended September 30,		Six months ended September 30,	
	2004	2003	2004	2003
Net loss, as reported	$ (2,248,921)	$ (942,849)	$ (5,353,161)	$ (1,571,110)
Deduct: Fair value of stock-based employee compensation costs	(13,205)	—	(13,205)	—
Plus: Intrinsic value of compensation costs included in net losse	13,200	—	13,200	—
Pro forma net loss	$ (2,248,926)	$ (942,849)	$ (5,353,166)	$ (1,571,110)
Loss per share:				
Basic and Diluted — as reported	$ (0.01)	$ (0.05)	$ (0.039e	$ (0.11)
Basic and Diluted — pro forma	$ (0.01)	$ (0.05)	$ (0.03)e	$ (0.11)

The Company estimates the fair value of each stock option at the grant date by using the Black-Scholes option-pricing model.

2. Per Share Calculations

Per share data was computed by dividing net loss by the basic and diluted weighted average number of shares outstanding during the three and six months ended September 30, 2004 and 2003. Common stock equivalents in the three and six month periods ended September 30, 2004 and 2003 were anti-dilutive due to the net losses sustained by us during these periods, thus the diluted weighted average common shares outstanding in these periods are the same as the basic weighted average common shares outstanding. At September 30, 2004 and 2003, 30,519,164 and -0- potential common shares, respectively, are excluded from the determination of diluted net loss per share, as the effect of such shares is anti-dilutive.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

3. Fixed assets

As of September 30, 2004, the Company had the following fixed assets:

Trailers	$ 281,000 e
Tractors	1,556,500e
Machinery and equipment	8,000
Office equipment and software	221,909
	2,067,409
Accumulated depreciation	(228,049)
Total Fixed assets, net	$1,839,360

During the first quarter of 2004, the Company acquired fixed assets totaling $5,532,191 related to the acquisitions it made (See acquisition note 7 below). During the second quarter of 2004, the Company reduced fixed assets by $3,620,491 in accordance with the amended agreement entered into with Express Freight Systems, Inc. prior shareholders during the second quarter (See acquisition note 7 below).

Depreciation totaled approximately $321,900 and $6,800 for the six months ended September 30, 2004 and 2003, respectively.

The Company has recorded the RSV transaction as a deposit on investment and didn't record any of RSV's financial activity for the period April 29, 2004 (agreement date) to September 30, 2004. Based upon the results of XRG's due diligence investigations and due to XRG's limited financial resources, the Company did not assume the liabilities and debts of RSV. Also, XRG never took title to the RSV assets. Therefore, the Company didn't record $2,030,000 of fixed assets pertaining to the RSV transaction on its financial statements at September 30, 2004. See Note 7 below for a further discussion regarding the RSV transaction.

The Company has not been able to obtain a clear title to the assets from the J. Bently Companies, Inc. transaction; therefore, the Company does not have the fixed assets nor the related debt recorded on its books at September 30, 2004. The amount of fixed assets related to this transaction at September 30, 2004 is $1,369,800.

4. Capital lease obligations

As part of the EFS acquisition, the company financed the tractor and trailer assets acquired through a capital lease that expires in 2007. The acquired assets were recorded at fair value. The capital lease liability was recorded at the present value of the minimum lease payments. The fixed assets were amortized over its estimated productive life. Amortization of the asset held under the capital lease is included with depreciation expense. This lease required payments of $55,000 a month for 36 months, at which time the Company was required to purchase the equipment for $1,000,000. During the second quarter of 2004, the Company entered into an amendment to the agreement with the Express Freight Systems, Inc. prior shareholders which mutually terminated this capital lease. Therefore, during the second quarter of 2004, the Company eliminated this capital lease and the related fixed assets that were financed by the lease from its books in accordance with the amended agreement with the Express Freight Systems, Inc. prior shareholders (See acquisition note 7 below).

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

5. Notes Payablee

During the first quarter of 2004, certain note holders converted notes totaling $490,000 to common stock. The Company issued 2,450,000 shares of its common stock to these note holders for this conversion.

The following table outlines the notes payable balance for each entity at September 30, 2004:

XRG, Inc. — Notes payable; Interest ranging from 12.00% to 15.00%; Interest only payments payable quarterly; principal due at various dates through June 2005; $20,000 of notes are in default at September 30, 2005, notes are unsecured;	$ 300,294
XRG, Inc. — Convertible note payable; interest 10%, interest only payments payable annually; principal due on November 11, 2005, collateral is senior position in the assets of XRG, Inc. This note is convertible into the Company's common stock at a conversion price of $0.42 per share.	100,000
Carolina Truck Connection, Inc. ("CTC") — Notes payable; interest ranging from 6.48% to 8.53%; Monthly payments of approximately $6,000; due at various dates between September 2005 to December 2008 and a balloon payment of $226,000 due by November 10, 2004; Secured by equipment.	446,907
Highway Transport, Inc. — Notes payable; interest ranging from 6.25% to 14.95%; Monthly payments of approximately $42,000; due at various dates between 2004 to 2006; Secured by equipment.e	1,326,730
	$2,173,931

On September 10, 2004, the Company executed a promissory note with our major shareholder to refinance $225,810 of the CTC debt. Fifty (50%) of the proceeds of any new debt or equity raised subsequent to the funding of this note must be used to reduce the amount due on the note within three (3) days of receipt. The remaining principal was due by November 10, 2004; however, our major shareholder has agreed to verbally extend this principal payment until January 2005.

The Company has recorded the RSV transaction as a deposit on investment and didn't record any of RSV's financial activity for the period April 29, 2004 (agreement date) to September 30, 2004. The Company didn't assume the liabilities and debts of RSV based upon the results of its due diligence investigations and its limited financial resources. Therefore, the Company didn't record the RSV debt outstanding of $1,857,987 on its financial statements at September 30, 2004. See Note 7 below for a further discussion regarding the RSV transaction.

The Company has not been able to obtain a clear title to the assets from the J. Bently Companies, Inc. transaction, therefore the Company does not have the fixed assets nor the related debt recorded on its books at September 30, 2004. The amount of debt related to this transaction at September 30, 2004 is $579,912.

6.eOther Equity Transactionse

On June 15, 2004 the Company entered into an agreement with Barron Partners, LP (Investor) to have the number of shares underlying the warrants owned by Barron

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

reduced to 63,333,333 and the exercise price of the warrant shares reduced to $0.01. The repricing of these warrants only affected our equity accounts. Simultaneously Barron Partner, LP exercised all of its warrants in a cashless tender and acquired 60,000,000 shares of the Company's Common Stock through this exercise.

The Company also entered into a Registration Rights Agreement with the Investor. The Company is obligated to file a Registration Statement within ninety (90) days of the final acquisition closing, or on or about July 27, 2004 for the purpose of registering for resale the common shares and the shares underlying the Warrants issued to the Investor. The Registration Rights Agreement contains a liquidated damages provision if we fail to have the subject Registration Statement declared effective on or before December 26, 2004 and to maintain the effectiveness of said Registration Statement for two (2) years. The Investor is also granted incidental piggyback registration rights. Liquidating damages for non-filing of a Registration Statement, amount to approximately $195,000 as of October 15, 2004. The Company filed a Registration Statement on November 12, 2004 and its major shareholder has verbally agreed to waive these liquidating damages.

In connection with the Stock Purchase Agreement, the Company agreed to cause the appointment of at least three (3) independent directors and to appoint an audit committee and compensation committee consisting of a majority of outside members. If no such directors are appointed, the Company shall pay to the Investor, pro rata, as liquidated damages an amount equal to twenty four percent (24%) of the purchase price per annum, payable monthly. Liquidating damages, for lack of appointment of Independent Directors, amount to approximately $195,000 as of October 15, 2004. Provided that the Company complies with the independent director covenant, the Investor has agreed to allow up to fifteen percent (15%) of the voting rights for our shares to be voted by our Board of Directors for one (1) year. The Company appointed 3 directors on November 15, 2004 and its major shareholder has verbally agreed to waive these liquidating damages.

In April 2004, the Company collected the $3,250,000 that was recorded as a stock subscription receivable at March 31, 2004.

In 2004, the Company issued 111,154,333 shares of common stock which were recorded in common stock payable at March 31, 2004.

In 2004, the Company issued 25,000,000 shares of common stock in exchange for the cancellation of 5,000,000 shares of Series A Preferred Stock to three executives of the Company.

The Company has agreed not to issue any shares of Preferred Stock for a period of one year from June 2004.

In 2004, the Company raised $1,120,000 for 9,333,335 shares of Common Stock pursuant to a Stock Purchase Agreement from various accredited investors.

During the first quarter of 2004, the Company received $104,366 and issued 465,728 shares of its common stock related to the exercise of warrants.

In 2004, the Company issued 11,600,000 shares of common stock with a total value recorded at $2,703,850 in conjunction with several acquisitions.

In 2004, the Company issued 4,400,000 shares of common stock in exchange for services and compensation valued at $1,011,000 of which $135,000 was recorded as deferred consulting. In 2004, the remaining deferred consulting expense of $118,125 was recorded as settlement loss as the consultant was no longer providing services at September 30, 2004.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

In 2004, the Company issued 300,000 shares of its common stock valued at $66,000 for interest on notes payable and recorded a common stock payable for 500,000 shares of its common stock valued at $92,000 for interest on notes payable. In 2004, per the request of an investor, $100,000 of the $200,000 investment that was originally recorded as a common stock payable was reclassified to an advance to the Company. The Company issued 500,000 shares of common stock in 2004 for the remaining $100,000 investment.

In 2004, the Company raised an additional $1,450,000 ($1,252,488 net of cash offering costs) in exchange for 14,500,000 shares of Common Stock pursuant to a Stock Purchase Agreement from various investors in a private placement transaction. In addition, five-year warrants were issued representing the right to purchase 3,625,000 shares of Common Stock at $0.10 per share. At September 30, 2004, 12,500,000 of these shares were issued and 2,000,000 shares were recorded in the common stock payable account.

In 2004, the Company granted warrants to purchase approximately 22,460,831 shares of its common stock for offering costs fees. These warrants were valued at $5,205,003. In 2004, the Company issued warrants to purchase 933,333 of its shares of common stock at an exercise price of $0.10 per share. These warrants previously had an exercise price of $0.12 to $0.15 per share and were repriced to $.10 per share. The difference in the value of these warrants using the $0.10 price per share was immaterial.

Pursuant to the terms of the EFS Merger Agreement the former EFS shareholders were issued 7,500,000 shares of the Registrant's common stock. 3,750,000 shares of the Company's common stock will be forfeited and returned to the Company as part of the EFS amendment (See acquisition note 7). These 3,750,000 shares valued at $975,000 are recorded as treasury stock. In 2004, the Company also acquired 316,364 shares of stock for $95,000 which brings the total treasury stock to 4,210,000 at September 30, 2004.

In 2004, the Company reached a settlement with one of its employees. In accordance with this settlement, the Company recorded a common stock payable of $180,000 for 1,000,000 shares to be issued to this former employee. The $180,000 was recorded as an administrative expense for the voluntary termination of the employee's employment agreement.

In 2004, the Company granted 400,000 common stock options to an employee. The exercise price was lower than the market value of the therefore the Company recorded $13,200 value for these options based upon the difference between the exercise price and the market value of the stock. During the second quarter of 2004, these options were exercised and the Company received $85,902.

In 2004, the Company agreed to issue 1,916,667 shares of its common stock to investors who purchased stock during the first quarter of 2004 to bring their purchase price to $0.10 per share. At September 30, 2004, 1,866,667 of these shares were issued and 50,000 were recorded at a value of $50 in the common stock payable account. In addition, five-year warrants were issued to these investors representing the right to purchase 2,800,000 shares of Common Stock at $0.10 per share. Also, 1,800,000 warrants issued to investors during the first quarter of 2004 that had an exercise price of $0.15 per share were reissued at $0.10 per share. This repricing was part of the initial money raise as they were to get the same warrant exercise price as other equity raises.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

7.e Acquisitionse

The Company is focused on acquiring, consolidating, and operating short and long haul truckload carriers. The Company's acquisition strategy targets both asset and non-asset based truckload carriers in the contiguous 48 states. Based upon this criteria, the Company made the following acquisitions:

Express Freight Systems, Inc,

The Company acquired Express Freight Systems, Inc. on April 21, 2004. Pursuant to the terms of a Merger Agreement, Express Freight Systems, Inc. ("EFS"), a Tennessee corporation was the survivor in a merger with a subsidiary of ours. EFS is now a wholly-owned subsidiary of XRG. EFS is based in Chattanooga, Tennessee. EFS has an owner-operator based fleet with a pool of approximately 270 trailers which were leased to the Company from an entity owned by the prior shareholders of EFS pursuant to a Master Equipment Lease Agreement ("MELA").

This lease was recorded as a capital lease obligation of $2,371,397 at the acquisition date. The MELA required us to pay Express Leasing Systems, Inc. approximately $55,000 per month for a term of 36 months, at which time the Company was required to purchase the trailers for $1 million. The Company also leased the office building through an operating lease with monthly lease payments of $6,000 through April 30, 2010. The Company also leased a facility in California which is a month to month lease with monthly lease payments of $30,677.

Pursuant to the terms of the EFS Merger Agreement $2,000,000 from the Stock Purchase Agreement was paid to the shareholders of EFS. An additional $1,000,000 was recorded as a liability to the shareholders of EFS and in addition EFS shareholders were issued 7,500,000 shares of the Company's common stock as part of the merger and employment agreements. These shares were valued at $1,950,000 in total based upon the quoted trading price on the acquisition date. The Company also issued 350,000 shares for acquisition costs related to this acquisition. The 350,000 shares were valued at $91,000 in total based upon the quoted trading price on the acquisition date. The total purchase price for EFS was $5,041,000.

EFS had a factoring agreement whereby its accounts receivable are factored with full recourse for unpaid invoices in excess of 90 days old. This agreement provided for the payment of factoring fees.

EFS, as a wholly-owned subsidiary of ours entered into 6 new employment agreements with the former shareholders and key employees of EFS. The former major shareholder of EFS agreed to a 3 year employment agreement. All other individuals have 10 year employment agreements. Annual compensation ranged from $125,000 to $250,000 per annum. The agreements contained nondisclosure and restrictive covenant arrangements. If the agreements are terminated for any reason other than cause, the employees are due compensation for the remainder of the employment agreement's term.

The EFS Merger Agreement provided the Company with certain rights of indemnification in connection with the breach of a representation or warranty by EFS or its prior shareholders. The Company withheld $100,000 in a cash escrow agreement to satisfy unpaid taxes and other liabilities. The Company also issued a blanket corporate guaranty pursuant to which the Company guaranteed all obligations of EFS pursuant to the terms of the Merger Agreement, including but not limited to, the MELA capital lease, and lease for the EFS offices, which are owned by the wife of the major EFS shareholder and the employment agreements. The Company's blanket guaranty also contained cross default provisions.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

On August 16, 2004, the Company and the former EFS Shareholders mutually agreed to amend the original Merger Agreement and simultaneously executed a Terminal Services Agreement. Major elements of this amendment include:

oe The mutual termination of the Master Equipment Lease Agreement ("MELA").e

oe The mutual termination of the Facility Lease Agreement for the office building in Chattanooga, Tennessee from the prior shareholders of EFSe and a warehouse facility in California.e

oe Pursuant to the terms of the EFS Merger Agreement $2,000,000 from the Stock Purchase Agreement was paid to the former shareholders of EFSe that they will retain as purchase consideration. In addition, the former EFS shareholders were issued 7,500,000 shares of the Registrant'se common stock. 3,750,000 shares of our common stock was forfeited and returned to the Company as part of the amendment. The additional $1,000,000 payment to the former EFS shareholders was mutually terminated as part of this amendment. This reduced the purchase price frome $5,041,000 to $3,066,000.e

oe All six employment agreements were mutually terminated by the Company and the former EFS shareholders and employees.e

oe Former EFS shareholders personally assumed all overdraft bank liabilities and bank loans, as well as, all bank loans of Express Freight Systems,e Inc. In addition, former EFS shareholders assumed all trade payables and accruals prior to March 1, 2004. All bad debts and charge-backse attributable to receivables outstanding as of April 21, 2004 were assumed by the former EFS Shareholders.e

oe XRG, Inc. ("Carrier") and the former EFS shareholders ("Agent") executed a Terminal Agreement which entitles the former EFS shareholders ase Agent to receive a commission of 85% of revenues on shipments that are secured, processed and supervised under the direction of the Agent.e Under this agreement, Carrier is not responsible for any expenses incurred for the operation of the Agent's terminal. The term of the Terminale Agreement is ongoing with severe penalties if Agent terminates or violates the default provisions with damages of $2 million if occurring in thee first year, and $400,000 less each year thereafter. The former EFS shareholders are held personally, jointly and severally, liable for thesee damages upon termination or default.e

The Company included the results of EFS in its financial statements beginning April 21, 2004 (the closing date of the transaction). The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition and adjusted based upon the August 16, 2004 amendment. The Company is in the process of evaluating the fair value of the fixed assets purchased, thus the purchase price allocation has not been finalized and is subject to change.

Accounts receivable	$1,609,474
Other current assets	99,031
Other assets	55,171
Goodwill and other intangib	2,918,135
Total assets acquired	4,681,811

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

Accrued expenses and payables	(114,682)
Factorer line of credit	(1,501,129)
Total liabilities assumed	(1,615,811)
Total purchase price	$ 3,066,000

RSV, Inc.

The Company entered into a merger agreement with RSV, Inc. on April 29, 2004. RSV is a van/asset based carrier with approximately 42 tractors headquartered in Kings Point, Tennessee. Pursuant to the terms of the Merger Agreement, RSV, Inc. ("RSV"), the Company issued a total of 2,000,000 shares of its common stock to the two RSV shareholders. These shares were valued at $600,000 in total based upon the quoted trading price on the acquisition date. There was no cash paid at closing to the RSV shareholders. The Company was obligated to remove the majority RSV shareholder as a guarantor on approximately $2,000,000 of RSV debt within 45 days. In order to secure this obligation the RSV shareholders were to have placed their RSV shares it acquired pursuant to the Merger Agreement in escrow. The Company's failure to consummate a refinancing, payoff or satisfaction of the RSV debt within such timeframes entitled the RSV shareholder, subject to the terms and conditions of the stock escrow agreement, to a return of the RSV shares. The majority RSV shareholder had granted the Company an extension of time to remove the guarantees on the RSV debt.

The Company recorded the common stock it issued to RSV as a deposit on investment instead of a merger and did not record any of RSV's financial activity for the period April 29, 2004 (agreement date) to September 30, 2004. The Company did not assume the liabilities and debts of RSV based upon the results of its due diligence investigations and its limited financial resources. XRG never took title to the RSV assets. The Company recorded the $600,000 value of the stock issued to RSV as a deposit on investment. The following is a summary of the RSV amounts had they been recorded on the Company's books at September 30, 2004:

Fixed Assets: $2,030,000 and accumulated depreciation of $76,125
Debt: $1,857,987
Revenues: $2,228,183
Expenses: $2,011,319
Net Income: $216,864

Highway Transport, Inc.

Effective April 1, 2004 the Company acquired certain of the assets and assumed certain of the liabilities which comprises the business of Highway Transport, Inc. ("HTI"), an Alabama corporation in exchange for 350,000 shares of its common stock. These shares were valued at $98,000 in total based upon the quoted trading price on the acquisition date. The Company acquired approximately $1,355,000 of HTI's equipment and assumed approximately $1,690,000 of notes payable and other commercial obligations. The Company also entered into a commercial sublease agreement for the HTI facilities with one of the HTI shareholders. This sublease has a term through March 31, 2006 with monthly fixed annual rent of $1,750 per month. The Company also entered into 3 year employment agreements with the two HTI shareholders. One employment agreement has annual compensation of $125,000; the other employment agreement has annual compensation of $75,000. HTI primarily operates a flatbed operation.

The Company included the results of HTI in its financial statements beginning April 1, 2004. The following table summarizes the estimated fair values of the assets

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

acquired and liabilities assumed at the date of acquisition. The Company is in the process of evaluating the fair value of the fixed assets purchased, thus the purchase price allocation has not been finalized and is subject to change.

Other current assets	$ 38,910
Fixed assets	1,355,200
Goodwill and other intangibles	393,793 e
Total assets acquired	1,787,903
Accrued expenses and payables	(96,000)
Notes payable	(1,593,903)
Total liabilities assumed	(1,689,903)
Total purchase price	$ 98,000

Highbourne Corporation

Effective April 2, 2004 the Company closed an asset acquisition agreement with Highbourne Corporation ("HBC"), an Illinois corporation. The Company issued a total of 200,000 shares of common stock to the two stockholders of HBC. These shares were valued at $56,000 in total based upon the quoted trading price on the acquisition date. Inasmuch as this is a non-asset based carrier, the Company did not assume any long-term equipment or other liabilities in connection with this acquisition. The Company agreed to lease the current HBC facilities from one of the HBC shareholders for a 24 month term with $3,000 monthly payments. The Company entered into two year employment agreements with each of the HBC shareholders at rates of $32,000 and $85,000 per annum respectively. The Company has also agreed to pay the major HBC shareholder an annual commission equal to two percent of the gross revenue billed each year through the HBC operation in the form of our restricted common stock valued at market on the day of payment. The Company also agreed to a quarterly bonus program based upon quarterly operating results.

The Company included the results of HBC in its financial statements beginning April 1, 2004 (the closing date was April 2, 2004). The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition. The Company is in the process of evaluating the fair value of the fixed assets purchased, thus the purchase price allocation has not been finalized and is subject to change.

Goodwill and other intangibles	$ 56,000
Total assets acquired	56,000
eTotal liabilities assumede	—
Total purchase pricee	$ 56,000

Carolina Truck Connection, Inc.

On April 28, 2004 the Company closed an Asset Purchase Agreement with Carolina Truck Connection, Inc. ("CTC"), a North Carolina corporation. The Company issued 1,200,000 shares of its common stock to the two shareholders of CTC. These shares were valued at $372,000 in total based upon the quoted trading price on the acquisition date.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

The Company assumed approximately $489,000 of long-term debt relating to this Asset Purchase Agreement with CTC. The Company is obligated to remove the majority CTC shareholder as a guarantor on this debt within 45 days. This period can be extended for an additional 45 days if the Company is able to establish commercially reasonable best efforts in facilitating a pay-off, refinancing or satisfaction of this debt. This period has been verbally extended. In order to secure this obligation, the Company has granted the CTC shareholder a security interest in the acquired assets and equipment from CTC pursuant to the Asset Purchase Agreement. The Company's failure to consummate a refinancing, pay-off or satisfaction of the CTC debt within such timeframe entitles the CTC shareholder, subject to the terms and conditions of the Security Agreement, to a return of the CTC assets and equipment. Although the Company believes it will be able to refinance the subject debt, based upon current communications with lenders and financing sources, there is no assurance that such financing will occur within the agreed upon timeframes. The failure to consummate a refinancing, satisfaction or pay-off of such liabilities could result in a foreclosure upon the CTC equipment and assets pursuant to the terms of the related Security Agreement. The Company also entered into employment/consulting agreements with the CTC shareholders.

On September 10, 2004, we executed a promissory note with our major shareholder to refinance approximately $225,000 of the CTC debt. Fifty (50%) of the proceeds of any new debt or equity raised subsequent to the funding of this note must be used to reduce the amount due on the note within three (3) days of receipt. This Promissory note removes the majority CTC shareholder from the majority of the long-term debt and satisfies the security interest conditions of the Asset Purchase Agreement.

The Company included the results of CTC in its financial statements beginning May 1, 2004 (the closing date was April 28, 2004). The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition. The Company is in the process of evaluating the fair value of the fixed assets purchased, thus the purchase price allocation has not been finalized and is subject to change.

Fixed assets	$ 556,500
Goodwill and other intangibles	304,500
Total assets acquired	861,000
Notes payable	(489,000)
Total liabilities assumed	(489,000)
Total purchase price	$ 372,000

8. Unaudited Pro Forma Consolidated Financial information for Acquisitionse

The following unaudited pro forma consolidated financial information presents the combined results of operations of the Company as if each of the acquisitions had occurred on April 1, 2003. The unaudited pro forma consolidated financial information is not intended to represent or be indicative of the consolidated results of operations of the Company that would have been reported had the acquisition been completed as of the dates presented, and should not be taken as representative of the future consolidated results of operations of the Company. Summarized unaudited pro forma consolidated results were as follows:

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
Six Months Ended September 30, 2004 and 2003 (Unaudited)

	For the three months ended September 30,		For the six months ended September 30	
	2004	2003	2004	2003
Revenues	$10,105,147	$ 9,078,380	$20,442,010	$18,028,900
Net loss applicable to common shareholders	$ (2,248,921)	$(1,349,397)	$ (5,452,043)	$ (2,106,017)
Basic loss per share	$ (0.01)	$ (0.08)	$ (0.03)	$ (0.11)

9. Subsequent Events

On October 1, 2004, the Company executed a promissory note with our major shareholder for $166,275 for a down payment on 15 commercial tractors. Interest on this note is 6% per annum and included a loan origination fee of 7.5%. The entire principal, origination fee, and interest are due on December 1, 2004. Fifty (50%) of the proceeds of any new debt or equity raised subsequent to the funding of this note must be used to reduce the amount due on the note within three (3) days of receipt.

In October 2004, we raised $1,275,000 in exchange for 12,750,000 shares of Common Stock pursuant to a Stock Purchase Agreement from various investors. There were Finder's Fees associated with this financing consisting of $85,000 and Common Stock Purchase Warrants representing the right to purchase 6,375,000 shares of Common Stock at $0.10 per share callable at $0.25 for a five year term. These shares were issued to the Investors in a private placement transaction pursuant to Section 4(2) and Rule 506 of Regulation D under the Securities Act of 1933, as amended. All Investors have represented that they are "accredited investors" as that rule is defined under Rule 501(a) of Regulation D.

On October 4, 2004, the Company ("Carrier") mutually entered into a five year Terminal Agreement with the shareholders of Highbourne Corporation under AGB

Transportation Services, LLC ("Agent"). This Terminal Agreement entitles the Highbourne Corporation shareholders as Agent to receive a commission of 85% of revenues on shipments that are secured, processed and supervised under the direction of the Agent. Under this agreement, Carrier is not responsible for any expenses incurred for the operation of the Agent's terminal.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The statements contained in this Report on Amendment No. 1 to Form 10-QSB, that are not purely historical, are forward-looking information and statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These include statements regarding the Company's expectations, intentions, or strategies regarding future matters. All forward-looking statements included in this document are based on information available to the Company on the date hereof. It is important to note that the Company's actual results could differ materially from those projected in such forward-looking statements contained in this Form 10-QSB. The forward-looking statements contained here-in are based on current expectations that involve numerous risks and uncertainties. Assumptions relating to the foregoing involve judgments regarding, among other things, the Company's ability to secure financing or investment for capital expenditures, future economic and competitive market conditions, and future business decisions. All these matters are difficult or impossible to predict accurately and many of which may be beyond the control of the Company. Although the Company believes that the assumptions underlying its forward-looking statements are reasonable, any of the assumptions could be inaccurate and, therefore, there can be no assurance that the forward-looking statements included in this form 10-QSB will prove to be accurate.

In this amendment No. 2 to Form 10-QSB the Company did not include any financial transactions for RSV, Inc. ("RSV"). Based upon the results of XRG's due diligence investigations and due to XRG's limited financial resources, the Company did not assume the liabilities and debts of RSV. Also, XRG never took title to the RSV assets. The Company recorded the investment in RSV as a deposit on investment instead of a merger and did not record any of RSV's financial activity for the period April 29, 2004 (agreement date) to September 30, 2004. The Company recorded the $600,000 value of the stock issued to RSV as a deposit on investment which is included in other assets on the Company's balance sheet at September 30, 2004. The financial statements to this amendment No. 2 also reflects the reversal of the fixed assets and related debt from the J. Bently Companies, Inc. transaction as the Company has been unable to obtain a clear title to the those assets. This amendment No. 2 also includes expanded disclosure regarding our lack of internal controls.

Overview

We are focused on acquiring, consolidating, and operating short and long haul truckload carriers. Our acquisition strategy targets both asset and non-asset based truckload carriers in the contiguous 48 states. We seek to increase volume within existing geographies while managing both the mix and yield of business to achieve profitability. Our business is both labor intensive and capital intensive. Our main focus is to leverage technology and achieve better asset utilization to improve cost and productivity. Our expansion plans are dependent upon, the availability of, among other things, suitable acquisition candidates, adequate financing, qualified personnel, and our future operations and financial condition.

Recent Acquisitions

We currently operate six truckload carriers, of which, four of these carriers were acquired in April 2004. The following table summarizes our recent acquisitions:

Acquisition	Structure of Transaction	Cash @ Close	Common Shares Issued	Debt/Equipment Leases Assumed (Estimate)	Type of Equipment	Equipment
Express Freight Systems, Inc. *	Merger	$ 2,000,000	3,750,000	0*	Van/Non-asset based	106 o/o
Highway Transport, Inc.	Asset Purchase	0	350,000	1,594,000	Flatbed/Asset based	32 Tractors 12 o/o
Highbourne Corporation(2)	Asset Purchase	0	200,000	0	Van/Non-asset based	34 o/o
Carolina Truck Connection, Inc.	Assete Purchase	0	1,200,000	489,000	Van/Asset based	7 Tractors, 2 o/o
		$ 2,000,000	5,500,000	$ 2,083,000		

* On August 16, 2004, This Merger Agreement was amended which reduced the common shares issued * to 3,750,000 and eliminated Long-Term Debt and Equipment Leases Assumed to $-0-.

Based upon the results of XRG's due diligence investigations and due to XRG's limited financial resources, the Company did not assume the liabilities and debts of RSV. Also, XRG never took title to the RSV assets. The RSV transaction was recorded as a deposit on investment and no RSV financial activity for the period April 29, 2004 (agreement date) to September 30, 2004 was recorded on the Company's books, therefore the data for RSV is not included in this table.

MERGER WITH EXPRESS FREIGHT SYSTEMS, INC.

We acquired Express Freight Systems, Inc. on April 21, 2004. Pursuant to the terms of a Merger Agreement, Express Freight Systems, Inc. ("EFS"), a Tennessee corporation was the survivor in a merger with a subsidiary of ours. EFS is now a wholly-owned subsidiary of XRG. EFS is based in Chattanooga, Tennessee. EFS has an owner-operator based fleet with a pool of approximately 270 trailers which were leased to the Registrant from an entity owned by the prior shareholders of EFS pursuant to a Master Equipment Lease Agreement ("MELA"). The MELA required us to pay Express Leasing Systems, Inc. approximately $55,000 per month for a term of 36 months. This MELA contained a $1,000,000 buyout at lease end. We also leased the office building in Chattanooga, Tennessee from the prior shareholders of EFS and a warehouse facility in California.

Pursuant to the terms of the EFS Merger Agreement $2,000,000 from the Stock Purchase Agreement was paid to the shareholders of EFS. In addition EFS shareholders were issued 7,500,000 shares of the Registrant's common stock. EFS was entitled to receive an additional $1,000,000 upon XRG competing a successful offering.

EFS, as a wholly-owned subsidiary of ours entered into 6 new employment agreements with the former shareholders and key employees of EFS. The president of EFS agreed to a 3 year employment agreement. All other individuals had 10 year employment agreements. Annual compensation ranged from $125,000 to $250,000 per annum. The agreements contained nondisclosure and restrictive covenant arrangements. If the agreements are terminated for any reason other than cause, the employees are due compensation for the remainder of the employment agreement's term.

The EFS Merger Agreement provides us with certain rights of indemnification in connection with the breach of a representation or warranty by EFS or its shareholders. We have withheld $100,000 in a cash escrow agreement to satisfy unpaid taxes and other liabilities. $10,640 of these taxes and liabilities were paid from escrow during the six month period ended September 30, 2004. We have also issued a blanket corporate guaranty pursuant to which we guarantee all obligations of EFS

pursuant to the terms of the Merger Agreement, including but not limited to, the MELA capital lease and the lease for the EFS offices, which are owned by the wife of the major EFS shareholder and the employment agreements. Our blanket guaranty also contains cross default provisions.

On August 16, 2004, the Company and the former EFS Shareholders mutually agreed to amend the original Merger Agreement and simultaneously executed a Terminal Services Agreement. Major elements of this amendment include:

- The mutual termination of the Master Equipment Lease Agreement ("MELA"). The MELA required us to pay Express Leasing Systems, Inc. approximately $55,000 per month for a term of 36 months and contained a $1,000,000 buyout at lease end. This lease consisted of a pool of approximately 270 trailers from an entity owned by the prior shareholders of EFS. This termination provides a provision that all trailers under the MELA are made available to us for the movement of our freight.
- The mutual termination of the Facility Lease Agreement for the office building in Chattanooga, Tennessee from the prior shareholders of EFS and a warehouse facility in California.
- 3,750,000 shares of our common stock will be forfeited and returned to us as part of the amendment. The additional $1,000,000 payment to thee former EFS shareholders was mutually terminated as part of this amendment.
- All six employment agreements were mutually terminated by us and the former EFS shareholders and employees.
- Former EFS shareholders personally assumed all overdraft bank liabilities and bank loans, as well as, all bank loans of Express Freight Systems, Inc. In addition, former EFS shareholders assumed all trade payables and accruals prior to March 1, 2004. All bad debts and charge-backs attributable to receivables outstanding as of April 21, 2004 were assumed by the former EFS Shareholders.
- XRG, Inc. ("Carrier") and the former EFS shareholders ("Agent") executed a Terminal Agreement on August 16, 2004 which entitles the former EFS shareholders as Agent to receive a commission of 85% of revenues on shipments that are secured, processed and supervised under thee direction of the Agent. Under this agreement, Carrier is not responsible for any expenses incurred for the operation of the Agent's terminal. Thee term of the Terminal Agreement is ongoing with severe penalties if Agent terminates or violates the default provisions with damages of $2 million if occurring in the first year, and $400,000 less each year thereafter. The former EFS shareholders are held personally, jointly and severally, liable for these damages upon termination or default.

MERGER WITH RSV, INC.

The RSV, Inc. transaction closed on April 29, 2004. We issued a total of 2,000,000 shares of our common stock to the two RSV shareholders. There was no cash paid at closing to the RSV shareholders. We are obligated to remove the majority RSV shareholder as a guarantor on approximately $2,000,000 of RSV debt within 45 days of the closing. Our failure to consummate a refinancing, payoff or satisfaction of the RSV debt within such timeframes entitles the RSV shareholder, subject to the terms and conditions of the stock escrow agreement, to a return of the RSV shares. Based upon the results of our due diligence investigations and our limited financial resources we did not assume the liabilities and debts of RSV. Also XRG never took title to the RSV assets. We recorded the value of the common stock issued to RSV as a deposit on investment and no other financial activity of RSV was recorded on our

books. No financial transactions have been recorded for RSV for the six months ended September 30, 2004

ASSET ACQUISITION OF HIGHWAY TRANSPORT, INC.

Effective April 1, 2004, we acquired certain of the assets and assumed certain of the liabilities of Highway Transport, Inc. ("HTI"), an Alabama corporation. We issued the shareholders of HTI 350,000 shares of our common stock. We assumed approximately $1,689,000 of HTI's obligations relating to its equipment and other commercial obligations. We also entered into a commercial sublease agreement for the HTI facilities with one of the HTI shareholders. This sublease has a term through March 31, 2006 with monthly fixed annual rent of $1,750 per month. The Registrant also entered into 3 year employment agreements with the two HTI shareholders. One employment agreement has annual compensation of $125,000; the other employment agreement has annual compensation of $75,000. HTI primarily operates a flatbed operation.

ASSET ACQUISITION OF HIGHBOURNE CORPORATION

Effective April 2, 2004, we closed an asset acquisition agreement with Highbourne Corporation ("HBC"), an Illinois corporation. We issued a total of200,000 shares of common stock to the two stockholders of HBC. Inasmuch as this is a non-asset based carrier, we did not assume any long-term equipment or other liabilities in connection with this acquisition. We agreed to lease the current HBC facilities from one of the HBC shareholders for a 24 month term with $3,000 monthly payments. We entered into two year employment agreements with each of the HBC shareholders at rates of $32,000 and $85,000 per annum respectively. We have also agreed to pay the major HBC shareholder an annual commission equal to two percent of the gross revenue billed each year through the HBC operation in the form of our restricted common stock valued at market on the day of payment. We also agreed to a quarterly bonus program based upon quarterly operating results.

On October 4, 2004, the Company ("Carrier") mutually entered into a five year Terminal Agreement with the shareholders Highbourne Corporation under AGB Transportation Services, LLC ("Agent"). This Terminal Agreement entitles the Highbourne Corporation shareholders as Agent to receive a commission of 85% of revenues on shipments that are secured, processed and supervised under the direction of the Agent. Under this agreement, Carrier is not responsible for any expenses incurred for the operation of the Agent's terminal.

ASSET ACQUISITION OF CAROLINA TRUCK CONNECTION, INC.

On April 28, 2004 we closed an Asset Purchase Agreement with Carolina Truck Connection, Inc., a North Carolina corporation ("CTC"). We issued 1,200,000 shares of our common stock to the two shareholders of CTC. We also entered into employment/consulting agreements with the CTC shareholders. We assumed approximately $489,000 of long-term debt relating to this Asset Purchase Agreement with CTC. We are obligated to remove the majority CTC shareholder as a guarantor on this debt within 45 days. This period can be extended for an additional 45 days if we are able to establish commercially reasonable best efforts in facilitating a pay-off, refinancing or satisfaction of this debt. In order to secure this obligation, we have granted the CTC shareholder a security interest in the acquired assets and equipment from CTC pursuant to the Asset Purchase Agreement. The Registrant's failure to consummate a refinancing, pay-off or satisfaction of the CTC debt within such timeframe entitles the CTC shareholder, subject to the terms and conditions of the Security Agreement, to a return of the CTC assets and equipment. Although we believe we will be able to refinance the subject debt, based upon current communications with lenders and financing sources, there is no assurance that such financing will occur within the agreed upon timeframes. The failure to consummate a refinancing, satisfaction or pay-off of such liabilities could

result in a foreclosure upon the CTC equipment and assets pursuant to the terms of the related Security Agreement. The CTC shareholder has agreed to an extension of time to complete a refinancing. On September 10, 2004, we executed a promissory note with our major shareholder to refinance approximately $225,000 of this debt. Fifty (50%) of the proceeds of any new debt or equity raised subsequent to the funding of this note must be used to reduce the amount due on the note within three (3) days of receipt.

GENERAL

MANAGEMENT'S INTERIM OPERATING PLAN

We acquired the operations of five trucking companies and implemented one fleet arrangement with one trucking company between September 2003 and April 2004. Through acquisitions and internal growth we expanded from approximately $4.7 million in revenue in our fiscal year ended March 31, 2004 to approximately $37 million run rate in fiscal 2005. We have established and begun to implement the first phase of a profit improvement plan to achieve a more streamlined and efficient operation. As part of this plan, we will identify savings opportunities associated mostly with redundancies and economies of scale. We are focusing these efforts on improvement in operating ratios and tractor utilization (average revenue per tractor per week.) The first stage of this plan focused on the restructuring of our acquisition of Express Freight Systems, Inc., on August 16, 2004. In addition, the Company restructured its asset purchase of Highbourne Corporation on October 4, 2004. These restructurings fix our operating costs for these companies through an agency arrangement under terminal agreements. The Company's profit improvement plan may decrease its operating losses in the future; however, there is no assurance that this plan will be effective in obtaining profitability for the Company.

During 2005, we will focus on the second phase of the plan, which includes upgrading our tractor fleet, and continuing to focus on revenue enhancements and cost controls. The following table summarizes our current truckload carrier operations:

Company	Headquarters Location	Carrier Type	Owner/Operators or Owned Tractors	Trailers	Closing Date
J. Bently Companies, Inc.*e	Sweetwater, TN	Van	17 Owner Operators, 46 Fleet Contracted Tractors, 7 Company tractors	209	September 1, 2003*
R&R Express Intermodal, Inc.	Pittsburgh, PA	Intermodal	34 Owner Operators	—	January 1, 2004
Highbourne Corporation	Champaign, IL	Van	34 Owner Operators	46	April2, 2004
Highway Transport	Evergreen, AL	Flatbed	32 Tractors, 12 Owner Operators 1 Company tractor	47	April 1, 2004
Express Freight Systems	Chattanooga, TN	Van	106 Owner Operators	242	April 21, 2004
Carolina Truck Connection	Fletcher, NC	Van	7 Tractors, 2 Owner Operators, 7 Company Tractors	40	April 28, 2004

* Began operating under a Fleet Owner and Independent Contractor Agreement on this date.

The RSV transaction was recorded as a deposit on investment and no RSV financial activity for the period April 29, 2004 (agreement date) to September 30, 2004 was recorded on the Company's books, therefore the data for RSV is not included in this table.

Revenue

We generate substantially all of our revenue by transporting freight for our customers. Generally, we are paid by the mile or by the load for our services. The main factors that affect our revenue are the revenue per mile we receive from our customers, the percentage of miles for which we are compensated, and the number of miles we generate with our equipment. These factors relate, among other things, to the U.S. economy, inventory levels, the level of truck capacity in our markets, specific customer demand, and our average length of haul. We also derive revenue from fuel surcharges, loading and unloading activities, equipment detention, general and administrative services, and other accessorial services.

Revenue Equipment

We operate approximately 305 tractors at September 30, 2004, of which approximately 54 are company-owned equipment and 251 are provided by independent contractors (owner operators) or by a fleet agreement. Of our trailers, at September 30, 2004, 584 were financed under operating, capital leases and short-term rental arrangements.

Independent contractors (owner operators) provide a tractor and a driver and are responsible for all operating expenses in exchange for a fixed payment per mile. We do not have the capital outlay of purchasing the tractor. The payments to independent contractors and the financing of equipment under operating leases are recorded in cost of revenues. Expenses associated with owned equipment, such as interest and depreciation, are not incurred, and for independent contractor tractors, driver compensation, fuel, and other expenses are not incurred. The majority of our current fleet is owner operator based.

Critical Accounting Policies and Estimates

Our financial statements reflect the selection and application of accounting policies, which require management to make significant estimates and assumptions. We believe that the following are some of the more critical judgment areas in the application of our accounting policies that currently affect our financial condition and results of operations.

Preparation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions affecting the reported amounts of assets, liabilities, revenues, and expenses and related contingent liabilities. On an on-going basis, the Company evaluates its estimates, including those related to revenues, bad debts, income taxes, contingencies, and litigation. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

We record an allowance for doubtful accounts based on (1) specifically identified amounts that we believe to be uncollectible and (2) an additional allowance based on certain percentages of our aged receivables, which are determined based on historical experience and our assessment of the general financial conditions affecting our customer base to be uncollectible. At September 30, 2004, the allowance for doubtful accounts was $29,000 or approximatelye7% of total trade accounts receivable. If actual collections experience changes, revisions to our allowance may be required. After reasonable attempts to collect a receivable have failed, the receivable is written off against the allowance. In addition, we review the components of other receivables, consisting primarily of advances to drivers and agents, and write off specifically identified amounts that we believe to be uncollectible.

We state our property and equipment at acquisition cost and compute depreciation for book purposes by the straight-line method over estimated useful lives of the assets. In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," long- lived assets are reviewed for impairment whenever events or changes in circumstances indicate the carrying amount of the asset may not be recoverable. Recoverability of assets to be held and used is measured by comparison of the carrying amount of an asset to the future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, an impairment charge is recognized to the extent the carrying amount of the asset exceeds the fair value of the asset. These computations are complex and subjective.

RESULTS OF OPERATIONS

Three months ended September 30, 2004 compared to three months ended September 30, 2003

XRG generated $10,105,147 in revenues during the three month period ended September 30, 2004 as compared to $298,225 during the three month period ended September 30, 2003. Our revenues increased $9,806,922 or 3,288% from the three month period ended September 30, 2003 to the same period in 2004. This increase is the result of revenues attributable to four new truckload carrier operations that were completed in April 2004 and two existing truckload operations. We expect our revenues to significantly increase during our 2005 fiscal year as part of our acquisition plan.

Cost of revenues were $8,449,334 and $22,970 resulting in a gross margin of $1,655,813 and $275,255 during the three month period ended September 30, 2004 and 2003, respectively. Related expenses during the three month period ended September 30, 2004 were primarily costs associated with purchased transportation. The major components of purchased transportation costs during the period ended September 30, 2004 were owner-operator settlements of $5,078,226, and company driver payroll costs of $1,066,580. We expect our cost of revenues to significantly increase during our 2005 fiscal year as part of our acquisition plan.

For the three month period ended September 30, 2004, total selling, general and administrative expenses were $3,568,641 as compared to $1,063,135 for the same period of the previous year, an increase of $2,505,506 or 236%. This increase is primarily the result of shares and warrants issued for services and compensation valued at approximately $1,570,000, general and administrative costs associated with our new acquisitions including insurance costs of $601,867, payroll costs of $585,387, and agent commissions of $296,306 during the three month period ended September 30, 2004. The expense related to the common stock shares and warrants are expensed over the service period.

We recorded restructuring costs of $13,378 for the three month period ended September 30, 2004 as compared to $-0- for the same period of the previous year. The $13,378 of restructuring costs during the three month period ended September 30, 2004 was from a lease restructuring.

Interest expense for the three month period ended September 30, 2004 and 2003 was $242,596 and $32,437, respectively. This increase of $210,159 is primarily the result of interest on loans and bank service charges. In addition, we incurred factorer fees of $141,717 during the three month period ended September 30, 2004.

We recorded $80,119 and $122,532 related to the amortization of intrinsic value of convertible debt and debt discount for the value of detachable warrants during the three month period ended September 30, 2004 and 2003, respectively.

We had a net loss of $2,248,921 for the three month period ended September 30, 2004 as compared to a loss of $942,849 for the three month period ended September 30, 2003. This increase in our operating loss over that of the three month period ended September 30, 2003 is the result of an increase in consulting services rendered that were paid with our common stock, general and administrative costs associated with our new acquisitions, and travel and personnel costs associated with the integration of these acquisitions. In addition, we incurred higher interest expenses associated with factoring fees and bank charges.

The basic loss per share was $.01 for the three month period ended September 30, 2004 compared to a basic loss per share of $.05 for the three month period ended September 30, 2003. The basic weighted average shares outstanding for the three month period ended September 30, 2004 was 258,373,089 as compared to 17,435,202 for the three month period ended September 30, 2003.

Six months ended September 30, 2004 compared to six months ended September 30, 2003

XRG generated $19,626,455 in revenues during the six month period ended September 30, 2004 as compared to $298,225 during the six month period ended September 30, 2003. Our revenues increased $19,328,230 or 6481% from the six month period ended September 30, 2003 to the same period in 2004. This increase is the result of revenues attributable to four new truckload carrier operations that were completed in April 2004 and two existing truckload operations. We expect our revenues to significantly increase during our 2005 fiscal year as part of our acquisition plan.

Cost of revenues were $17,144,687 and $22,970 resulting in a gross margin of $2,481,768 and $275,255 during the six month period ended September 30, 2004 and 2003, respectively. Related expenses during the six month period ended September 30, 2004 were primarily costs associated with purchased transportation. The major components of purchased transportation costs during the period ended September 30, 2004 were owner-operator settlements of $9,838,956, equipment rental costs of $218,412 and company driver payroll costs of $2,025,170. We expect our cost of revenues to significantly increase during our 2005 fiscal year as part of our acquisition plan.

For the six month period ended September 30, 2004, total selling, general and administrative expenses were $7,070,453 as compared to $1,225,625 for the same period of the previous year, an increase of $5,844,828 or 477%. This increase is primarily the result of shares and warrants issued for services and compensation valued at approximately $1,570,000, general and administrative costs associated with our new acquisitions including insurance costs of $1,401,091, payroll costs of $1,593,258, and agent commissions of $544,562 during the six month period ended September 30, 2004. The expense related to the common stock shares and warrants are expensed over the service period.

We recorded restructuring costs of $13,378 for the six month period ended September 30, 2004 as compared to $-0- for the same period of the previous year. The $13,378 of restructuring costs during the six month period ended September 30, 2004 was from a lease restructuring.

Interest expense for the six month period ended September 30, 2004 and 2003 was $597,254 and $68,942, respectively. This increase of $528,312 is primarily the result of interest on loans and bank service charges. In addition, we incurred factorer fees of $251,489 during the six month period ended September 30, 2004. During the six month period ended September 30, 2004, approximately $500,000 of notes payable was converted into our common stock.

We recorded $153,844 and $551,798 related to the amortization of intrinsic value of convertible debt and debt discount for the value of detachable warrants during the six month period ended September 30, 2004 and 2003, respectively.

We had a net loss of $5,353,161 for the six month period ended September 30, 2004 as compared to a loss of $1,571,110 for the six month period ended September 30, 2003. This increase in our operating loss over that of the six month period ended September 30, 2003 is the result of an increase in consulting services rendered that were paid with our common stock, general and administrative costs associated with our new acquisitions, and travel and personnel costs associated with the integration of these acquisitions. In addition, we incurred higher interest expenses associated with factoring fees and bank charges.

The basic loss per share was $.03 for the six month period ended September 30, 2004 compared to a basic loss per share of $.11 for the six month period ended September 30, 2003. The basic weighted average shares outstanding for the six month period ended September 30, 2004 was 174,286,167 as compared to 13,865,017 for the six month period ended September 30, 2003.

LIQUIDITY AND CAPITAL RESOURCES

To date, we have funded our capital requirements and our business operations with funds provided by borrowings and equity investments.

We executed a Stock Purchase Agreement with Barron Partners, LP (the "Investor") on March 31, 2004. During April, under the terms of this Agreement, we issued the Investor 108,333,333 shares of its Common Stock for an aggregate purchase price of $3,250,000.

We issued the Investor two (2) warrants exercisable for shares of our Common Stock (the "A Warrant" and "B Warrant" — collectively the "Warrants"). The A Warrant granted the Investor the right to acquire up to 54,166,000 shares of our Common Stock at an exercise price of $.10 per share. The B Warrant granted the Investor the right to purchase up to 54,166,000 shares of our Common Stock at an exercise price of $.25 per share. Each of the Warrants contained a cashless exercise provision. Each of the Warrants was callable by us if the closing market price of the Common Stock exceeds $1.00 for the A Warrant and $2.00 for the B Warrant for twenty (20) consecutive trading days. Each of the Warrants contained proportionate ratcheting anti-dilution protection for future issuances of equity securities and for our failure to meet certain earnings per share projections.

On June 15, 2004 we entered into an agreement with Barron Partners, LP to have the number of shares underlying the warrants owned by Barron reduced to 63,333,333 and the exercise price of the warrant shares reduced to $0.01. Simultaneously the Reporting Person exercised all of the 63,333,333 warrants in a cashless tender and acquired 60,000,000 shares through this exercise.

There were Finder's Fees associated with this financing consisting of $325,000 and Common Stock Purchase Warrants representing the right to purchase 10,833,333 shares of Common Stock at $0.03 per share and Common Stock Purchase Warrants representing the right to purchase 6,000,000 shares of Common Stock at $0.01 per share both with a five year term.

We also entered into a Registration Rights Agreement with the Investor. We are obligated to file a Registration Statement within ninety (90) days of the final acquisition closing, or on or about July 27, 2004 for the purpose of registering for resale the common shares and the shares underlying the Warrants issued to the Investor. The Registration Rights Agreement contains a liquidated damages provision ifewe fail to have the subject Registration Statement declared effective on or before December 26, 2004 and to maintain the effectiveness of said Registration

Statement for two (2) years. The Investor is also granted incidental piggyback registration rights. Liquidating damages, for non-filing of a Registration Statement, amount to approximately $195,000 as of October 15, 2004. We filed a Registration Statement on November 12, 2004 and our major shareholder has verbally agreed to waive these liquidating damages.

In connection with the Stock Purchase Agreement, we agreed to cause the appointment of at least three (3) independent directors and to appoint an audit committee and compensation committee consisting of a majority of outside members. If no such directors are appointed, we shall pay to the Investor, pro rata, as liquidated damages an amount equal to twenty four percent (24%) of the purchase price per annum, payable monthly. Liquidating damages, for lack of appointment of Independent Directors, amount to approximately $195,000 as of October 15, 2004. Provided that we comply with the independent director covenant, the Investor has agreed to allow up to fifteen percent (15%) of the voting rights for our shares to be voted by our Board of Directors for one (1) year. We appointed 3 directors on November 15, 2004 and our major shareholder has verbally agreed to waive these liquidating damages.

The Investor also required that certain of our current insiders agree to cancel all of their shares of Series A Preferred Stock in exchange for 15,000,000 shares of Common Stock. We also agreed not to issue any shares of Preferred Stock for a period of one (1) year. No insiders may sell any of their securities prior to November 30, 2004. The Investor has also required us to eliminate the floating conversion feature for all outstanding securities. In June 2004, the exchange of Series A Preferred Stock for Common Stock was increased to 25,000,000 shares as a result of the exchange and cancellation of warrants for common stock of our major shareholder. The Common Stock related to this exchange was issued during the six month period ended September 30, 2004.

The Common Stock and the Warrants were issued to the Investor in a private placement transaction pursuant to Section 4(2) and Rule 506 of Regulation D under the Securities Act of 1933, as amended. The Investor has represented that it is an "accredited investor" as that rule is defined under Rule 501(a) of Regulation D. As a direct result of the transactions referred to above, Barron Partners, LP, became a "control person" of the Registrant as that term is defined in the Securities Act of 1933, as amended.

During the six month period ended September 30, 2004, we raised $2,620,000 in exchange for 26,200,002 shares of Common Stock pursuant to a Stock Purchase Agreement from various investors. There were Finder's Fees associated with this financing consisting of $262,000 and Common Stock Purchase Warrants representing the right to purchase 2,685,500 shares of Common Stock at $0.10 per share for a five year term. These shares were issued to the Investors in a private placement transaction pursuant to Section 4(2) and Rule 506 of Regulation D under the Securities Act of 1933, as amended. All Investors have represented that they are "accredited investors" as that rule is defined under Rule 501(a) of Regulation D.

During the six month period ended September 30, 2004, we used $4,052,859 in cash from operating activities as compared to $101,303 during the same period in 2003. Investing activities for the present six month period primarily consisted of acquisitions of truckload carriers of $2,000,000 and purchases of equipment of $12,923. Financing activities for six month period ended September 30, 2004 provided $6,065,782 primarily from proceeds from common stock issued and to be issued. In addition, a factoring line of credit provided $625,811. For the six month period ended September 30, 2004, cash increased $-0- as compared to an increase of $53,052 in the same period of the prior year.

Our financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America, which contemplate continuation of the Company as a going concern. The Company incurred operating

losses of approximately $5,353,000 for the six months ended September 30, 2004, has an accumulated deficit at September 30, 2004 of approximately $26,501,000, which consists of approximately $15,405,000 from unrelated dormant operations and $11,096,000 from current operations; and a tangible net worth of approximately $59,000 as of September 30, 2004. In addition, the Company has negative working capital of approximately $2,232,000 at September 30, 2004 and has used approximately $4,053,000 of cash from operations for the six months ended September 30, 2004. These factors raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments relating to the recoverability and classification of recorded assets or the amounts and classification of liabilities that might be necessary in the event the Company cannot continue in existence.

We anticipate raising capital in the next twelve months from the issuance of our common stock. We anticipate that capital raised from the issuance of common stock and future working capital provided by completed truck-load carrier acquisitions, will sustain our operations over the next twelve months. This estimate is a forward-looking statement that involves risks and uncertainties. The actual time period may differ materially from that indicated as a result of a number of factors so that we cannot assure that our cash resources will be sufficient for anticipated or un-anticipated working capital and capital expenditure requirements for this period.

Seasonality

In the transportation industry, results of operations frequently show a seasonal pattern. Our operating results in the first and fourth calendar quarters are normally lower due to reduced demand during the winter months. Harsh weather can also adversely affect our performance by reducing demand and our ability to transport freight and increasing operating expenses.

Inflation

Most of our expenses are affected by inflation, which generally results in increased operating costs. In response to fluctuations in the cost of petroleum products, particularly diesel fuel, we have implemented a fuel surcharge in our contractual agreements. The fuel surcharge is designed to offset the cost of fuel above a base price and increases as fuel prices escalate over the base. We believe that the net effect of inflation on our results of operations is minimal.

Item 3. Evaluation of Disclosure Controls and Procedures

(a) Evaluation of disclosure controls and procedures. As of the end of the period covered by this report, the Company carried out an evaluation,e under the supervision and with the participation of the Company's management, of the effectiveness of the design and operation of the Company's disclosure controls and procedures pursuant to Exchange Act Rule 13a-14. Based upon that evaluation, current management concluded that our disclosure controls and procedures for the six months ended September 30, 2004 were inadequate and that XRG continues toe experience material weaknesses in its disclosure controls and procedures. In an attempt to mitigate such disclosure controls and procedurese weaknesses we have entered into the Administrative Services Agreement with R&R Express, Inc. effective April, 20 2005. We have also restructured our business model from an asset based to a non-asset based carrier which should substantially reduce the accounting ande administrative controls and procedures requirements imposed upon us. We have also begun implementing one uniform accounting ande information systems software package – Load Z which we hope will substantially improve all our financial and information reporting systems.

(b) Changes in internal controls over financial reporting. In connection with the Sarbanes-Oxley Act, we are in the process of further reviewing and documenting our disclosure controls and procedures, including our internal controls and procedures

for financial reporting, and may from time to time make changes designed to enhance their effectiveness and to ensure that our systems evolve with our business. In connection with our ongoing evaluation of internal controls over financial reporting, certain internal control matters were noted that require corrective actions.

On February 1, 2005 we received a letter from the Division of Corporate Finance of the Securities and Exchange Commission regarding Item 4.01 of Form 8-K relating to a change in our auditors filed October 14, 2004 and on Internal Control Weaknesses and Management Reportable Conditions letter issued by our prior auditors.

Our former auditors, Pender Newkirk & Company, CPAs ("PNC") advised us of weaknesses in our internal accounting controls necessary for the preparation of financial statements during our fiscal year ended March 31, 2004. In the 2004 Reporting Package dated August 7, 2004 our former auditors identified certain reportable conditions that were considered material weaknesses in our internal controls subsequent to filing our form 10-KSB on July 14, 2004. Our former auditors reviewed our disclosures on internal controls in Item 8(a) 10-KSB prior to filing. However, we are disclosing the reasons why the disclosure controls and procedures were ineffective during our fiscal year ended March 31,

2004, and what measures we have taken to improve our internal controls and procedures during our fiscal year ending March 31, 2005.

Internal controls considered to be a material weakness in the 2004 Reporting Package are as follows:

1. During the audit, PNC encountered that detail schedules and other documentation supporting general ledger accounts did not always agree with the general ledger balances, causing numerous adjusting entries to the final general ledger. In addition, many account balances required extensive reconciliation and outside corroboration to finalize financial information.e

These issues caused significant delays in producing financial statements at the end of the accounting period and will continue to cause delays, as well as allow for possible irregularities, including fraud, to exist and continue without notice.

2. Due to the limited number of people working in XRG's offices, many critical duties were combined. During the audit, certain companies within the consolidated group had a single individual prepare and sign checks, reconcile bank accounts, perform payroll duties and maintain the general ledger.e

3. The Company did not verify that all legal requirements were met prior to issuing shares of stock in exchange for convertible debt. As a result of e this deficiency, the Company issued stock in error to certain convertible debt holders. PNC also discovered that some debt holders who were issued stock were subsequently paid cash for the same debt securities.e

4. The Company does not prepare a disclosure, a 10-KSB, nor a MD&A checklist to assist in preparing financial statements and the 10-KSB.e

5. During sales cut-off testing, PNC noted numerous sales for the year ended March 31, 2004 that were recorded subsequent to year-end.e

6. PNC identified inaccurate payroll tax returns filed for XRG, Inc. and XRG Logistics, Inc.e

We are continuing the process of identifying and implementing corrective actions identified to improve the design and effectiveness of our internal controls, including enhancement of systems and procedures. Significant additional resources

will be required to establish and maintain appropriate controls and procedures and to prepare the required financial and other information during this process.

Even after corrective actions have been implemented, the effectiveness of our controls and procedures may be limited by a variety of risks including:

- faulty human judgment and simple errors, omissions or mistakes;
- collusion of two or more people;
- inappropriate management override of procedures; and
- risk that enhanced controls and procedures may still not be adequate to assure timely and reliable financial information.

If we fail to have effective internal controls and procedures for financial reporting in place, we could be unable to provide timely and reliable financial information.

We are in the process of attempting to address and eliminate the material weaknesses in our internal controls and procedures as identified in the 2004 reporting package as follows:

1. In April, 2005 we entered into an Administrative Services Agreement with R&R and Richard Francis. We are consolidating our operations in Pittsburgh, Pennsylvania. We are relying upon the infrastructure, personnel and experience of R&R in improving our operations and controls over our agents. We understand that R&R will be required to institute new controls and procedures in order to remediate many deficiencies identified by PNC. Specifically, R&R will be required to institute controls and procedures regarding the maintenance of accurate accounts receivablee balances and the institution of controls for procedures regarding our accounts payable disbursement controls with our agents.e

2. We are in the process of eliminating our Clearwater, Florida offices. We currently have two accounting personnel working in this office. It is our goal to transfer all remaining functions to Pittsburgh, Pennsylvania during fiscal 2006.

3. We are searching for a new Chief Financial Officer to replace our former Chief Financial Officer. Currently, a substantial amount of our financial statement preparation and underlying schedules are prepared utilizing the services of an outside consultant. This consultant assisted us during the preparation of our 2003 and 2004 audits. However, we believe it is essential to have a fulltime and competent Chief Financial Officer on site if we are to adequately remediate the controls and procedures deficiencies identified by PNC.

During the year ended March 31, 2005 we utilized at one time or another three separate accounting and informational reporting software packages. Daily revenues and direct costs were recorded in Strategy-5. Journal entries were recorded in Load Z and part of our accounts payable were recorded in ACC Pac. It was generally agreed that Strategy-5 was difficult to use and that many users did not follow input protocol procedures which resulted in numerous phantom and duplicate transactions that required reversal or adjustment. Furthermore, these systems did not interface with each other and we were not able to generate accurate trial balances and general ledgers without substantial manual input and use of excel format spreadsheets. Subsequent to March 31, 2005, we made the decision to abandon ACC Pac and Strategy-5.

4. We have selected Load Z as our primary accounts payable, general ledger and informational reporting software package. As of the date of thise filing we have implemented Load Z in R&R Intermodal, Inc. We are in the process of installing Load Z out to our agents' terminals. We hope thate by utilizing one uniform information

reporting package it will eliminate many of the problems identified in the 2004 reporting package. However, there is no assurance that Load Z will solve our information and accounting reporting problems and deficiencies. We have a data processing manager who is the developer of the Load Z software. However, it is too early in the implementation or rollout of Load Z to determine whether it will be an effective solution to our accounting and information reporting system deficiencies and needs.

5. During the six months ending September 30, 2004, we did not timely reconcile our bank accounts. We are currently dedicating an accountingo clerk to make more timely reconciliations of all bank accounts on a monthly basis.o

In December 2004, we hired Jay Ostrow, to serve as our corporate controller. He has been instrumental in preparing our financial statements and notes thereto. Mr. Ostrow's biography is as follows:

Mr. Ostrow has been providing financial management and accounting services to businesses for nineteen years. From 2003 to 2004, Mr. Ostrow served as Chief Financial Officer and Controller of P.D.C. Innovative Industries, Inc, a publicly held hospitality and medical technology company located in Tampa, Florida. From 2002 to 2003, Mr. Ostrow served as the Director of Finance and Accounting for TVC Telecom, Inc., a publicly held telecommunications provider located in Miami, Florida. From 2000 to 2001, Mr. Ostrow served as the Chief Financial Officer of Stampede Worldwide, Inc., a publicly held technology company located in Tampa, Florida. Additionally, Mr. Ostrow has provided financial management, and accounting and consulting services on a contract basis for a variety of Tampa Bay businesses. Mr. Ostrow has six years of public accounting experience and is a graduate of The George Washington University with a B.B.A. degree in accounting.

Our Board of Directors requires all new contracts be approved by the Board. Board approval is required to issue new shares of our stock. This approval process requires proof that all legal requirements are met prior to issuing shares of stock.

In the future, we intend on using a 10-KSB and MD&A checklist as a guide in preparing our financial statements and notes.

During our first quarter ended June 30, 2004, we began using Spectrum HR, an employee leasing company, to facilitate our payroll processing for all employees for all divisions with the exception of our executive officers. Spectrum HR remits the payroll taxes and completes the payroll reports on our behalf. We plan on continuing this relationship with Spectrum HR, which should reduce problems with accurately filing our payroll tax returns.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, we may be involved in litigation relating to claims arising out of our ordinary course of business. We believe that there are no claims or actions pending or threatened against us, the ultimate disposition of which would have a materially adverse effect on us.

In May, 2003, a legal action was filed in Franklin County, Ohio, against XRG, Inc. (and against our president, based on a personal guaranty) by the landlord of our former office space in Pittsburgh, Pennsylvania. The landlord claimed approximately $63,000 in unpaid rent. In January 2004, the court granted our motion to dismiss the case for lack of proper jurisdiction in the State of Ohio. In February 2004,

the landlord filed a legal action in Allegheny County, Pennsylvania. We filed a Complaint in Allegheny County in Common Please court for breach of lease and filed a counterclaim for damages. In October 2004, we received a settlement offer from the landlord in the amount of $13,333.00 if paid on or before November 30, 2004. As of September 30, 2004, management has not made a decision on settling this case. We believe that we have meritorious defenses against the above claims and intend to vigorously contest them. We recorded reserves regarding these matters of $13,333.00 in our financial statements as of September 30, 2004.

Item 2. Change in Securities and Use of Proceeds.

We executed a Stock Purchase Agreement with Barron Partners, LP (the "Investor") on March 31, 2004. During April, under the terms of this Agreement, we issued the Investor 108,333,333 shares of its Common Stock for an aggregate purchase price of $3,250,000.

We issued the Investor two (2) warrants exercisable for shares of our Common Stock (the "A Warrant" and "B Warrant" — collectively the "Warrants"). The A Warrant granted the Investor the right to acquire up to 54,166,000 shares of our Common Stock at an exercise price of $.10 per share. The B Warrant granted the Investor the right to purchase up to 54,166,000 shares of our Common Stock at an exercise price of $.25 per share. Each of the Warrants contained a cashless exercise provision. Each of the Warrants was callable by us if the closing market price of the Common Stock exceeds $1.00 for the A Warrant and $2.00 for the B Warrant for twenty (20) consecutive trading days. Each of the Warrants contained proportionate ratcheting anti-dilution protection for future issuances of equity securities and for our failure to meet certain earnings per share projections.

On June 15, 2004 we entered into an agreement with Barron Partners, LP to have the number of shares underlying the warrants owned by Barron reduced to 63,333,333 and the exercise price of the warrant shares reduced to $0.01. Simultaneously the Reporting Person exercised all of the 63,333,333 warrants in a cashless tender and acquired 60,000,000 shares through this exercise.

There were Finder's Fees associated with this financing consisting of $325,000 and Common Stock Purchase Warrants representing the right to purchase 10,833,333 shares of Common Stock at $0.03 per share and Common Stock Purchase Warrants representing the right to purchase 6,000,000 shares of Common Stock at $0.01 per share both with a five year term.

We also entered into a Registration Rights Agreement with the Investor. We are obligated to file a Registration Statement within ninety (90) days of the final acquisition closing, or on or about July 27, 2004 for the purpose of registering for resale the common shares and the shares underlying the Warrants issued to the Investor. The Registration Rights Agreement contains a liquidated damages provision if we fail to have the subject Registration Statement declared effective on or before December 26, 2004 and to maintain the effectiveness of said Registration Statement for two (2) years. The Investor is also granted incidental piggyback registration rights. Liquidating damages, for non-filing of a Registration Statement, amount to approximately $195,000 as of October 15, 2004. We filed a Registration Statement on November 12, 2004 and our major shareholder has verbally agreed to waive these liquidating damages.

In connection with the Stock Purchase Agreement, we agreed to cause the appointment of at least three (3) independent directors and to appoint an audit committee and compensation committee consisting of a majority of outside members. If no such directors are appointed, we shall pay to the Investor, pro rata, as liquidated damages an amount equal to twenty four percent (24%) of the purchase price per annum, payable monthly. Liquidating damages, for lack of appointment of Independent Directors, amount to approximately $195,000 as of October 15, 2004. Provided that we comply with the independent director covenant, the Investor has agreed to allow up to fifteen percent (15%) of the voting rights for our shares to be voted by our Board of Directors for one (1) year. We appointed 3 directors on November 15, 2004 and our major shareholder has verbally agreed to waive these liquidating damages.

The Investor also required that certain of our current insiders agree to cancel all of their shares of Series A Preferred Stock in exchange for 15,000,000 shares of Common Stock. We also agreed not to issue any shares of Preferred Stock for a period of one (1) year. No insiders may sell any of their securities prior to November 30, 2004. The Investor has also required us to eliminate the floating conversion feature for all outstanding securities. In June 2004, the exchange of Series A Preferred Stock for Common Stock was increased to 25,000,000 shares as a result of the exchange and cancellation of warrants for common stock of our major shareholder. The Common Stock related to this exchange was issued during the quarter ended June 30, 2004.

The Common Stock and the Warrants were issued to the Investor in a private placement transaction pursuant to Section 4(2) and Rule 506 of Regulation D under the Securities Act of 1933, as amended. The Investor has represented that it is an "accredited investor" as that rule is defined under Rule 501(a) of Regulation D. As a direct result of the transactions referred to above, Barron Partners, LP, became a "control person" of the Registrant as that term is defined in the Securities Act of 1933, as amended.

During the six month period ended September 30, 2004, we raised $2,620,000 in exchange for 26,200,002 shares of Common Stock pursuant to a Stock Purchase Agreement from various investors. There were Finder's Fees associated with this financing consisting of $262,000 and Common Stock Purchase Warrants representing the right to purchase 2,685,500 shares of Common Stock at $0.10 per share for a five year term. These shares were issued to the Investors in a private placement transaction pursuant to Section 4(2) and Rule 506 of Regulation D under the Securities Act of 1933, as amended. All Investors have represented that they are "accredited investors" as that rule is defined under Rule 501 (a) of Regulation D.e

Item 3. Defaults Upon Senior Securities.

None

Item 5. Other Information

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibitse

Exhibit 31.1 Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 signed by Richard Francis and Jay Ostrow.e

Exhibit 32.1 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 signed by Richard Francis and Jay Ostrow.

(b) Reports on Form 8-K

During the six month period ended September 30, 2004, the Company filed with, or furnished to, the Securities and Exchange Commission (the "Commission") the following Current Reports on Form 8-K:

Current Report on Form 8-K (Items 1, 2, and 7) dated April 30, 2004 (filed with the Commission on April 29, 2004) reporting the acquisitions of Highway Transport, Inc., Highbourne Corporation, Express Freight Systems, Inc., Carolina Truck Connection, Inc. and RSV, Inc. In addition, the filing reported a Change of Control and the Barron Partners, LP equity investment.

Current Report on Form 8-K (Items 5 and 7) dated May 25, 2004 (filed with the Commission on May 27, 2004) reporting a PowerPoint presentation to various investors on that date.

Current Report on Form 8-K (Items 4.01 and 9.01) dated October 12, 2004 (filed with the Commission on October 14, 2004) reporting changes in Registrant's Certifying Accountant.

Current Report on Form 8-K (Item 5.02) dated November 15, 2004 (filed with the Commission on November 15, 2004) reporting the election of three board members.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1934, the Registrant had duly caused the report to be signed on its behalf by the undersigned thereunto duly authorized.

XRG, Inc.

Dated: December 16, 2005

/s/ Richard Francis
Richard Francis
President, CEO,CFO & Director

/s/ Jay Ostrow
Jay Ostrow
Principal Accounting Officer, Controller

Exhibit 31.1

CERTIFICATION PURSUANT TO
18 U.S.C. ss.1350
UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Richard Francis, certify that:

1. I have reviewed this Amendment No. 2 to Form 10-QSB of XRG, Inc.;e

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make thee statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by thise report;

3.eBased on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;e

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:e

(a) Other than disclosed in Item 3, we are in the process of designing such disclosure controls and procedures, or caused such disclosure controlse and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidatede subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;e

(b) Other than disclosed in Item 3, evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recente fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):e

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonablye likely to adversely affect the registrant's ability to record, process, summarize and report financial information; ande

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 16, 2005

/s/ Richard Francis
Richard Francis, Chief Executive Officer

I, Jay Ostrow, certify that:

1. I have reviewed this Amendment No. 2 to Form 10-QSB of XRG, Inc.;o

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make theo statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by thiso report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as definedo in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:o

(a) Other than disclosed in Item 3, we are in the process of designing such disclosure controls and procedures, or caused such disclosure controlso and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Other than disclosed in Item 3, evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; ando

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 16, 2005

/s/ Jay Ostrow
Jay Ostrow, Principal Accounting Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with Amendment No. 2 to the Quarterly Report on Form 10-QSB (the "Report") of XRG, Inc. (the "Company") for the quarter ended September 30, 2004, each of the undersigned Richard Francis, the Chief Executive Officer of the Company, and Jay Ostrow, the Principal Accounting Officer of the Company, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of the undersigneds' knowledge and belief:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: December 16, 2005

/s/ Richard Francis
Richard Francis
Chief Executive Officer

Dated: December 16, 2005

/s/ Jay Ostrow
Jay Ostrow
Principal Accounting Officer

Table of Contents

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 1
TO
FORM 10-KSB

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

For the fiscal year ended March 31, 2005

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the transition period from _ to _

Commission File Number 0-49659

XRG, INC.
(Name of Small Business Issuer in Its Cbarter)

Delaware (State or Other Jurisdiction of Incorporation or Organization)	58-2583457 (I.R.S. Employer Identification No.)
601 Cleveland Street, Suite 820 Clearwater, Florida (Address of principal executive offices)	33607 (Zip Code)

Registrant's telephone Number, including area code: (727) 475-3060

Securities registered pursuant to Section 12(b) of the Exchange Act: None

Cbeck whether the issuer is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act. ☐

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for tbe past 90 days.

☐ Yes ☑ Noe

Check if no disclosure of delinquent filers in response to Item 405 of Regulation S-B is contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy of information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB ☑

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of tbe Exchange Act. Yes ☐ No ☐

State issuer's revenues for its most recent fiscal year ended March 31, 2005 $39,571,970

Aggregate market value of the voting stock held by non-affiliates of the registrant at June 30, 2005 was $3,011,657.

The number of shares outstanding of the registrant's common stock was 15,036,027 as of June 30, 2005.

Transitional Small Business Disclosure Fonnat (check one):

Yesd☐ No ☑

Table of Contents

This amendment No. 1 to our Form 10-KSB includes the audit report of our prior independent certified public accountants which certifies the accompanying consolidated statements of operations, changes in stockholders' deficit, and cash flows of XRG, Inc. and Subsidiaries for the year ended March 31, 2004. We filed our original Form 10-KSB on July 14, 2005 without this audit report as they had not completed their review of our Form 10-KSB at that time. Our current auditors had completed their review and their report was included with the original Form 10-KSB that was filed on July 14, 2005. This amendment No. 1 also includes a paragraph on risk management, expanded disclosure on the purchase price of our acquisitions and lists the dates and number of warrants granted during the year.

FORM 10-KSB — Index

This Annual Report on Form 10-KSB and the documents incorporated herein by reference contain forward-looking statements that have been made pursuant to the provisions of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements are based on current expectations, estimates and projections about XRG, Inc.'s industry, management's beliefs, and assumptions made by management. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," variations of such words and similar expressions are intended to identify such forward-looking statements. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict; therefore, actual results and outcomes may differ materially from what is expressed or forecasted in any such forward-looking statements.

PART I

ITEM 1. BUSINESS

Overview

XRG, Inc.("XRG) was incorporated in November 2000 under the laws of the State of Delaware. XRG is a holding company that owns subsidiary interstate trucking companies. Currently, XRG operates through its wholly owned subsidiaries XRG G&A, Inc. Express Freight Systems, Inc. ("EFS"), XRG Logistics, Inc. ("XRG Logistics"), and R&R Express Intermodal, Inc. ("R&R"). These subsidiaries operate under authority granted by the United States Department of Transportation ("DOT") and various state agencies. For descriptive purposes herein, the registrant, XRG and its operating subsidiaries are collectively referred to as "XRG" or the "Company," unless context otherwise requires.

Our original business model was to operate primarily as an asset based carrier. During the last several months we have effectuated a restructuring of our business and operations and migrated to operating primarily as a non-asset based provider of transportation services. We effectuated this change in our business model through the restructuring of our previous acquisitions into an agency based business. This restructuring has resulted in us recognizing approximately $3,720,000 of goodwill impairment for the year ended March 31, 2005.

We primarily operate through independent agents, who then arrange with independent truckers to haul the freight to the desired destination. XRG's contractor network consists of five agents. Carolina Truck Connection ("CTC") located in Fletcher, North Carolina is our only remaining asset based carrier. Customer relationships are primarily managed by our agents who solicit freight business directly from shippers and also provide dispatch and other services to owner-operators. Independent agents, fleet owners, and owner-operators are compensated based upon a percentage of revenue they generate for XRG. We also subcontract ("broker") freight loads to other unaffiliated transportation companies when needed to provide additional capacity to our customers.

Barron Partners, LP ("Barron") has facilitated the restructuring of our operations by providing us approximately $3,972,084 ofoworking capital since September, 2004. In addition Mr. Kenneth A. Steel, Jr. advanced us $500,000. in January, 2005. While we believe that the restructuring from an asset based carrier to an agency based business will substantially reduce our negative working capital and losses generated from operations we will need additional capital to effectuate our long-term business strategy and achieve profitability. There is no assurance that Barron or any other funding source will provide such additional capital. In addition, even if XRG were to obtain additional capital the terms and conditions relating to such financing could be very dilutive to existing shareholders.

In April 2005, we entered into an Administrative Services Agreement with R&R Express, Inc. ("R&R") and Richard Francis, our new Chief Executive Officer. Pursuant to this Agreement, R&R is responsible for certain of the daily administrative, procedural and regulatory issues related to our operations.

Our principal executive offices are located at 601 Cleveland Street, Suite 820, Clearwater, Florida 33607 and our telephone number is (727) 475-3060. Our website address is www.xrginc.com. The information contained on, or accessible through our website is not part of this form 10-KSB.

Interim Turn Around Plan

The major components of our turn around plan consist of the following:

- Reduction of overhead by reducing personnel in our Clearwater, Florida office and eventually closing our Clearwater, Florida executive offices.
- Restructuring of our business model from an asset based carrier to a non-asset based carrier.
- We secured a new accounts receivable financing facility with Capco Financial Company. This financing bas improved our cash flow position because of the lower costs of funds and the elimination of factoring reserves.e
- Changes in our executive management team. We have entered into settlement agreements with Kevin Brennan and Don Huggins. We havee appointed Richard Francis as our new Chief Executive Officer. We are in litigation with our former Chief Financial Officer, Stephen Couture. Wee are actively searching for a new Chief Financial Officer in the Pittsburgh, Pennsylvania area.
- We entered into an Administrative Services Agreement with R&R Express, Inc. and Richard Francis. Our strategy is to rely upon thee infrastructure and expertise of R&R and Mr. Francis to more efficiently handle certain daily administrative, procedural and regulatory issuese relating to our operations.e
- Recruiting additional agents and owner operators in new markets and expanding our network in existing markets. We have entered into a newe employment agreement with Larry Berry who has substantial experience in the trucking and transportation industry to assist us in securing newe business.e
- We have deferred principal payments on certain of our debt service obligations until December 31, 2005 with Barron and Mr. Steel. However, wee have not been able to settle or defer payments relating to approximately $235,000 of promissory notes. The holders of $155,000 of outstanding notes instituted litigation in June, 2005 relating to the collection of such obligations.e
- We eliminated substantial liquidated damages in connection with the withdrawal of our previous registration statement. We are required to file a new registration statement by September 30, 2005 and have this registration statement declared effective by December 31, 2005 in order to avoide additional liquidated damages.e

Summary of Restructured Operations

During 2003 and 2004, we acquired and entered into contracts to acquire the business and equipment of seven (7) truckload carriers. The following table summarizes the initial transactions, all of which have been substantially restructured as described below:

Company	Headquarters Location	Carrier Type	Owner/Operators or Owned Tractors	Trailers	Original Closing Date
J. Bently Companies, Inc.e	Sweetwater, TN	Van	17 Owner Operators, 46 Fleet Contracted Tractors	209	9/1/03*
R&R Express Intermodal, Inc.	Pittsburgh, PA	Intermodal	34 Owner Operators	—	1/1/04
Highbourne Corporation	Champaign, IL	Van	34 Owner Operators	46	4/2/04
Highway Transport Services, Inc.	Evergreen, AL	Flatbed	32 Tractors, 12 Owner Operators	47	4/2/04
Express Freight Systems, Inc.	Chattanooga, TN	Van	106 Owner Operators	242	4/21/04
Carolina Truck Connection, Inc. (CTC)	Fletcher, NC	Van	7 Tractors, 2 Owner Operators	40	4/30/04
RSV, Inc.	Kingsport, TN	Van	42 Tractors	—	4/30/04

* Began operating under a Fleet Owner and Independent Contractor Agreement on this date.e

• J. Bently Companies

XRG has agreed in principal to restructure the May 2003 acquisition of certain transportation equipment and other assets used by J. Bently Companies, Inc. In connection with the May 2003 agreement, XRG's wholly owned subsidiary, XRG Logistics, Inc. ("Logistics"), entered into a fleet owner agreement with Joseph Stapleton, which requires XRG to pay Mr. Stapleton 67% of gross freight revenues as compensation for the movement of freight ("Original Fleet Owner Agreement"). In August 2003, Logistics entered into an independent contractor agreement, which required Logistics to pay a commission of two percent (2%) of gross revenue as additional compensation for assistance and services in connection with the Fleet Owner Agreement ("Original Override Agreement").

In order to resolve dispute between the parties, XRG, Mr. Stapleton and Mr. Shadden, as the successors in interest to J. Bently Companies, Inc. agreed to terminate the original purchase agreement, amendments thereto, employment agreements with Mr. Shadden and Mr. Stapleton, the Original Override Agreement and the Original Fleet Owner Agreement. In lieu thereof, XRG and Mr. Shadden have entered into a new Terminal Agreement on an 85/15 basis. This Terminal Agreement has a term of five (5) years. In addition, XRG has entered into a new trailer lease and fleet owner agreement with Mr. Stapleton, which requires the payment of seventy-six percent (76%) of linehaul revenue to Mr. Stapleton for utilization of his equipment, which is a credit against the 85% agent fee due Mr. Shadden pursuant to the Terminal Agreement.

XRG has also agreed to bring all trailer/equipment, capital leases and other financing arrangements with third party creditors current as of May 30, 2005. XRG has agreed to return all equipment previously transferred by Mr. Stapleton to XRG back to Mr. Stapleton. XRG has agreed to issue a total of 150,000 shares of its restricted common stock to Mr. Stapleton and Mr. Shadden, subject to certain vesting provisions provided the Terminal Agreement remains in effect through April 30, 2007. In addition, XRG has agreed to reimburse Mr. Stapleton and Mr. Shadden $45,000 each for previous deposits for insurance and to pay back Mr. Stapleton $52,000 for workers compensation insurance overcharges.

• Formal Settlement Agreement re: EFSo

Effective as of April 26, 2005, XRG finalized a Settlement Agreement with Express Leasing Systems, Inc. ("ELS"), Express Freight, Inc. ("EF") and the former shareholders and employees ("Holders") of Express Freight Systems, Inc. ("EFS"). This Settlement Agreement formalized the understandings of the parties in connection with the restructuring of the original merger with EFS in April 2004, and the subsequent restructuring of that merger into an agency arrangement, pursuant to a Terminal Agreement with an effective date of August 16, 2004 and related Bullet Point Addendum. The Settlement Agreement formalizes the understandings of the parties pursuant to the Bullet Point Addendum.

Material terms of the Settlement Agreement are summarized below:

- The mutual termination of the Master Equipment Lease Agreement ("MELA"). The MELA required us to pay Express Leasing Systems, Inc. approximately $55,000 per month for a term of 36 months and contained a $1,000,000 buyout at lease end. This lease consisted of a pool of approximately 270 trailers from an entity owned by the prior shareholders of EFS. This termination provides a provision that all trailers under the MELA are made available to us for the movement of our freight.
- The mutual termination of the Facility Lease Agreement for the office building in Chattanooga, Tennessee from the prior shareholders of EFS and a warehouse facility in California.
- Pursuant to the terms of the EFS Merger Agreement $2,000,000 from the Stock Purchase Agreement was paid to the former shareholders of EFS that they will retain as purchase consideration. In addition, the former EFS shareholders were issued 375,000 shares of the Registrant's common stock. 187,500 shares of our common stock will be forfeited and returned to us as part of the amendment. The additional $1,000,000 payment too the former EFS shareholders was mutually terminated as part of this amendment.
- EFS, as a wholly-owned subsidiary of ours entered into 6 new employment agreements with the former shareholders and key employees of EFS. These agreements were mutually terminated by us and the former EFS shareholders and employees.

- Former EFS shareholders personally assumed all overdraft bank liabilities and bank loans, as well as, all bank loans of Express Freight Systems, Inc. In addition, former EFS shareholders assumed all trade payables and accruals prior to March 1, 2004. All bad debts and charge-backs attributable to receivables outstanding as of April 21, 2004 were assumed by the former EFS Shareholders.

- We entered into a Terminal Agreement which entitles the former EFS shareholders as Agent to receive a commission of 85% of revenues on shipments that are secured, processed and supervised under our direction. Under this agreement, we are not responsible for any expenses incurred for the operation of the Agent's terminal.

XRG has the obligation to fulfill certain funding obligations pursuant to the Settlement Agreement on a timely basis, including but not limited to funding COMDATA, funding driver payroll, paying insurance, advance funding license/tag fees, and other items as set forth in the Settlement Agreement. The failure to make these fundings is considered a "Major Funding Default", pursuant to the Settlement Agreement. Upon the occurrence of a Second Funding Default, EF and the Holders have the right to terminate the Terminal Agreement and shall be released from any further liability or obligations to damage provisions of the Terminal Agreement.

Pursuant to the terms of the Settlement Agreement, XRG is entitled to a return of 187,500 shares issued in connection with the EFS merger. XRG has the risk of EF declaring a Major Funding Default because of its limited financial resources if it was unable to timely fulfill our funding obligations under the Settlement Agreement. Representatives of EF have alleged that XRG has already committed a Major Funding Default. XRG disputes this assertion. However, if two (2) Major Funding Defaults were deemed to have occurred, which would result in a potential termination of the Terminal Agreement, this would have a material adverse effect on the financial position of XRG.

- Restructuring of Highway Transport, Inc. Acquisition

In April 2004, XRG entered into an Asset Purchase Agreement for Highway Transport, Inc., an Alabama corporation ("HTI"), and its shareholders, Mr. Ed Brown and Mr. Milton Adams. Pursuant to this Agreement, XRG agreed to acquire certain transportation equipment and other assets use by HTI and to assume the debt and liabilities of HTI. In order to resolve disputes among the parties in connection with the prior Asset Purchase Agreement, XRG, HTI and its principals entered into a Termination Agreement and Terminal Agreement, effective as of May 30, 2005. Pursuant to the Termination Agreement XRG was released from certain obligations pursuant to the Asset Purchase Agreement including the Employment Agreements with Mr. Brown and Mr. Adams, the BELCO leases and other debts other than as set forth in the Termination Agreement and as described below.

Pursuant to the Termination Agreement, XRG repaid HTI $180,000, the proceeds were used to make debt service payments on obligations due United Bank and to satisfy other payables of HTI. XRG is also obligated to issue the principals of HTI 75,000 shares of its Common Stock.

The Termination Agreement requires XRG to pay HTI $6,000 per month for the first 41 months after the Termination Agreement, and $16,000 per month thereafter for 19 months ("Settlement Payments"). The understanding of the parties is that the Settlement Payments will be directed to United Bank to pay down the obligations of XRG and HTI to United Bank ("Settlement Payments"). It is the intent and desire of the parties to restructure the obligations due United Bank, such that XRG is the primary obligor on 4/7's and HTI and its principals are the obligors on the other 3/7's of the amounts due United Bank, which approximates $807,000 as of March 31, 2005. XRG is currently the primary obligor on these obligations to United Bank. There is no assurance that XRG will be successful in restructuring the United Bank obligations, which limits XRG's obligations to 4/7's of the amount due United Bank.

The Terminal Agreement with HTI has a term for five (5) years. HTI covenants to use XRG on an exclusive basis as its carrier. XRG agrees to pay HTI eighty-seven percent (87%) of revenues. XRG shall retain the remaining thirteen percent (13%) of HTI revenues. If HTI ceases operations, sell substantially all of its assets, terminates the Terminal Agreement, or defaults in performing its obligations under the Terminal Agreement, XRG will be relieved of its obligations to make any remaining Settlement Payments. If any of such events occur within six (6) months after the effective date of the Termination Agreement, all previous shares of XRG common stock issued to the principals of HTI shall be immediately canceled.

If XRG does not fund COMDATA immediately when due or make settlement of commissions on HTI invoices in presently available fund and fails to cure such default within a 24-hour period after receiving written notice, such shall

constitute a major funding default ("Major Funding Default"). During any rolling 30-day period, XRG shall permit two Major Funding Defaults, then HTI shall have the right to terminate the Terminal Agreement and be released of any further obligations to XRG.

•o Carolina Truck Connection, Inc. — Amendmento

Effective April 1, 2005, XRG entered into the Second Amendment to Asset Acquisition Agreement with Carolina Truck Connection, Inc., Larry Puckridge and Robert Luther. XRG has agreed to issue Mr. Puckridge and Mr. Luther an additional 350,000 shares as additional consideration in connection with the original Asset Acquisition Agreement. In addition, XRG agreed to issue Mr. Puckridge 25,000 shares in consideration for past consulting services. XRG has agreed to continue servicing the debt related to the CTC equipment and is entitled to take title to such equipment which is guaranteed by Mr. Puckridge at such time as Mr., Puckridge's guaranties are released and provided that after the annual anniversary date of this Agreement XRG shares have a market value of at least $1.60. CTC also has the right to convert the original Asset Acquisition Agreement into an Agency Agreement with the revenue split being 85% to CTC and 15% to XRG.

•o Termination of RSV Mergero

In April 2004, XRG through a wholly owned subsidiary, entered into an Agreement and Plan of Merger with RSV, Inc., a Tennessee corporation ("RSV"). XRG issued the shareholders of RSV 100,000 shares of its Common Stock (post split), and agreed to assume certain indebtedness and liabilities of RSV. XRG has determined not to assume the liabilities and debts of RSV based upon the results of its due diligence investigations and XRG's limited financial resources. Counsel to RSV has alleged damages in excess of $400,000 relating to XRG's failure to assume the debt of RSV and fulfill the conditions of the Merger Agreement.

Pursuant to the RSV Merger Agreement, the stock of RSV was to be held in escrow. However, it is XRG's understanding that RSV shares were never delivered to the escrow agent. However, XRG issued its shares to the RSV shareholders. In addition, XRG never took title to the RSV assets. Accordingly, XRG believes that the RSV shareholders have the right to retain their RSV shares and that the XRG shares issued to the RSV shareholders should be returned to XRG.

Based upon the above factors we have treated the RSV merger as void ab initio (as if it never happened). Accordingly, no financial transactions have been recorded for RSV on our financial statements for fiscal 2005, except for certain note payments made by XRG and RSV on RSV's behalf. We have restated our quarterly financial statements for June 2004, September 2004 and December 2004 to reflect the elimination of the RSV assets, liabilities and results of operations. Approximately $862,092 of costs associated with the RSV transaction and contingent liabilities for claims against us are included in our income statement as a settlement loss. In addition, we have written off approximately $2,030,000 of previously booked fixed assets relating to the RSV merger.

•o Termination of Highbourne Asset Acquisition Agreement/AGB Terminal Agreement — Related Litigationo

On April 8, 2005, Stephen Orenic, a principal of AGB Transportation Services, LLC, the successor in interest to Highbourne Corporation, notified XRG that AGB was terminating the Terminal Agreement dated October 4, 2004 between AGB and XRG Logistics, Inc. Mr. Orenic alleged that XRG failed to make timely payments of certain regular commissions and monthly productivity bonuses. XRG disagrees with the allegations made by Mr. Orenic and believes that his termination was improper.

On April 27, 2005, XRG filed a complaint against Highbourne Corporation, its successor in interest, AGB Transportation Services, LLC, and the principals of these entities, Stephen Orenic and Sherri Kenner, in the Circuit Court for the 13 th Judicial Circuit in and for Pinellas County, Florida, Case No. 05-3766. The complaint alleges that AGB, Orenic and Kenner breached the original Acquisition Agreement entered into between the parties in February 2004. In addition, the complaint alleges that Orenic and Kenner have violated the confidential and non-compete provisions of their employment agreements. XRG alleges that the actions of Orenic, Kenner and AGB in entering into a new agency agreement with a third party, American Trans-Freight, LLC, and the utilization by such parties of XRG's transportation equipment is improper. Furthermore, XRG alleges that such parties are improperly using its customer list, supplier list, shipper contracts and owner/operator contracts for their own benefit and for the benefit of a competitor of XRG.

XRG is seeking various remedies, including damages relating to breach of contract, replevin of assets, breach of fiduciary duty of Orenic and Kenner, including but not limited to the duties of loyalty and fair dealing, and also that Orenic and Kenner have breached the restrictive covenants and covenants not to compete set forth in their employment agreements.

This case is in its early stages. However, the operations of Highbourne will no longer be included in the XRG financial statements.

Administrative Services Agreement with R&R Express, Inc. and Richard Francis

Effective April 20, 2005 we entered into an Administrative Services Agreement with R&R Express, Inc. ("R&R") and Richard Francis. We appointed Mr. Francis as our Chief Executive Officer, replacing Kevin Brennan. Mr. Francis is also the President of R&R. Pursuant to the Administrative Services Agreement, R&R is responsible for certain of the daily administrative, procedural and regulatory issues relating to our operations. We have agreed to pay R&R an administrative services fee equal to 12% of line haul revenue (excluding pass throughs) for all agents. This fee is payable weekly.

In addition we agreed to issue each of R&R and Mr. Francis 150,000 shares of our common stock. We also agreed to pay Mr. Francis an annual salary of $150,000 per year from our G&A subsidiary as compensation for serving as our Chief Executive Officer and certain of our subsidiaries. The salary of Mr. Francis is considered a credit against the service fee payable to R&R. This Administration Services Agreement supersedes the previous agreements between Mr. Francis, KDR Transport, Inc. and R&R. See "Certain Transactions"

The Administrative Services Agreement has a five (5) year term, which is consistent with the term of our Terminal Agreements with our agents. The Administrative Services Agreement is cancelable by R&R prior to its date of expiration by providing us at least one (1) years' written notice. We may cancel the Administrative Services Agreement at any time with at least forty-five (45) days' prior written notice to R&R. R&R has agreed to a non-competition and non-solicitation of our customers, employees and agents during the term of the agreement and for a twenty-four (24) month period thereafter, excluding the business of R&R Intermodal, Inc.

Pursuant to the Administrative Services Agreement, XRG is the carrier of record and insurer of all freight subject to the Terminal Agreements. All invoicing, bills of lading and other documents evidencing liability, ownership or legal obligations shall be the responsibility of XRG. XRG has the right to establish all pricing policies under the Terminal Agreements. XRG has the risk of loss as it relates to the ultimate collection of accounts receivable and uninsured cargo losses. XRG is the primary obligor with customers pursuant to the Terminal Agreements.

Industry

According to the American Trucking Association ("ATA"), the trucking industry was estimated at approximately $610.1 billion in revenue in 2003 and accounted for approximately 86.9% of domestic spending on freight transportation. The trucking industry is highly competitive on the basis of service and price and is necessary in many industries operating in the United States. Customers generally chose truck transportation over other surface transportation modes due to the industry's higher levels of reliability, shipment integrity and speed.

The trucking industry includes both private fleets and "for-hire" carriers. Private fleets consist of trucks owned and operated by shippers that move their own goods and, according to the ATA, accounted for approximately $278.5 billion of revenue in 2003. For-hire carriers include both truckload and less-than truckload operations. We operate in the highly fragmented for-hire truckload segment of this market, which according to the ATA generated revenues of approximately $269.7 billion in 2003. Truckload carriers dedicate an entire trailer to one customer from origin to destination and can be further classified by the trailing equipment they use to haul a customer's freight, such as dry van, temperature-controlled, tank or flatbed.

Recent economic trends have led to a consolidation of the truckload industry. We believe that the truckload market will continue to experience further consolidation due to a number of economic factors that have forced many smaller carriers to exit the business, merge, or file for bankruptcy. These factors include rising insurance costs, scarcity of capital, volatility of fuel prices, increased prices for new Environmental Protection Agency compliant equipment, purchasing advantages available to larger carriers and customer demand for total service solutions that can only be

provided by large carriers. As a result, larger, better-capitalized companies, will have greater opportunities to gain market share and increase profit margins.

Current Business Strategy

Our new business strategy employs primarily a non-asset based operating structure. We believe that implementing this business strategy has several advantages over asset-based trucking companies that own significant tractor fleets and use an employee sales force:

- *Operating costs vary directly with revenue.* Agents and owner-operators are compensated based on a percentage of revenues. This benefit ofe this structure i s that short-term fluctuations in operating activity have less of an impact on our financials that they have on asset based truck transportation companies that assume all of the fixed cost. Therefore, our operating costs tend to be in direct proportion to revenues.
- *Minimize capital investments and fixed costs.* Our non-asset based structure allows us to limit our investment in tractors and trailers and allows us to grow our core business with less capital requirements.
- *Performance/commission based compensation.* Our agents and owner-operators are compensated based on performance that provides them with the incentive to seek new revenue opportunities. In addition, our owner operators seek to increase their equipment utilization as well as operating their equipment more safely, efficiently, and reliably because of this performance based compensation structure.

We intend on recruiting additional agents and owner operators in new markets and expanding our network in existing markets. Agents typically represent a small number of shippers in local markets and are attuned to the specific transportation requirements of these customers. In addition, agents are instrumental in recruiting owner-operators in these local markets so that we can provide capacity on short notice to shippers. We will require additional capital in order to expand our business and recruit additional agents. There is no assurance that we will be able to expand our business and achieve profitability under this business strategy.

Marketing and Customers

We provide transportation services to a wide variety of shippers, including a number of Fortune 1000 and multi-national companies across a wide variety of industries. No single customer has accounted for more that 10% of our operating revenues during our fiscal year ended March 31, 2005. We believe the diversity of our customers and their industries lessens the impact of business cycles affecting any one company or industry.

We, through our subsidiaries, conduct the majority of our business through a network of independent agents who are in regular contact with shippers at the local level. The agents have facilities and personnel to monitor and coordinate shipments and respond to shipper's requirements in a timely manner. Agents provide the primary interaction with our shippers.

Our agents primary function is to generate shipper business. However, agents typically provide terminal and dispatch services for our owner-operators and are an important source of recruiting new owner-operators. Our agents do not have the authority to execute or fulfill shipping contracts on their own, as all shipping contracts are between one of our operating subsidiaries and the shipper directly, and we generally assume the liability for freight loss or damages. Agents are paid a commission of our revenues from their trucking operations.

Competition

The trucking industry is highly competitive and includes thousands of trucking companies. It is estimated that the annual revenue of domestic truckload carriers amounts to approximately $400 billion per year. The Company has a small but growing share of the markets targeted by the Company. The Company competes primarily with other truckload carriers. Railroads, less-than-truckload carriers, and private carriers also provide competition, but to a much lesser degree. Competition for the freight transported by the Company is based primarily on service and efficiency and, to some degree, on freight rates alone.

Industry-wide truck capacity in the truckload sector is being limited due to a number of factors. There are continuing cost issues and concerns with the new EPA-compliant diesel engines and the new hours of service regulations. Trucking company failures in the last four years are continuing at a pace higher than the previous fifteen years. Some truckload carriers are having difficulty obtaining adequate trucking insurance coverage at a reasonable price. Equipment lenders have tightened their credit policies for truck financing. Many truckload carriers slowed their fleet growth in the last three years and some carriers have downsized their fleets to improve their operating margins and returns. Our competitive strength will be our ability to provide reliable service, while maintaining superior delivery on a just-in-time or scheduled lead-time basis.

We compete with, and expect to continue to compete with, numerous national, regional and local trucking companies, many of which have significantly larger operations, greater financial, marketing, human, and other resources than us. We anticipate that competition may increase in the future. There can be no assurance that we will successfully compete in any market in which we conduct or may conduct operations.

Regulation

The trucking industry is subject to regulatory and legislative changes that can have a materially adverse effect on operations. Historically, the Interstate Commerce Commission ("ICC") and various state agencies regulated truckload carriers' operating rights, accounting systems, rates and charges, safety, mergers and acquisitions, periodic financial reporting and other matters. In 1995, federal legislation was passed that preempted state regulation of prices, rates, and services of motor carriers and eliminated the ICC. Several ICC functions were transferred to the Department of Transportation ("DOT"), but a lack of regulations implementing such transfers currently prevents us from assessing the full impact of this action.

Each acquired truckload carrier is regulated by the United States Department of Transportation ("DOT") and by various state agencies. The DOT has broad powers, generally governing activities such as the regulation of, to a limited degree, motor carrier operations, rates, accounting systems, periodic financial reporting and insurance. Subject to federal and state regulatory authorities or regulation, we may transport most types of freight to and from any point in the United States over any route selected by us.

The trucking industry is subject to possible regulatory and legislative changes (such as increasingly stringent environmental and/or safety/security regulations or limits on vehicle weight and size) that may affect the economics of the industry by requiring changes in operating practices or by changing the demand for common or contract carrier services or the cost of providing truckload services.

Interstate motor carrier operations are subject to safety requirements prescribed by the DOT. All of our drivers will be required to have national commercial driver's licenses and will be subject to mandatory drug and alcohol testing. The DOT's national commercial driver's license and drug and alcohol testing requirements may adversely affect the availability of qualified drivers to XRG.

The Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation issued a final rule on April 24, 2003 that made several changes to the regulations which govern truck drivers' hours of service (HOS). For all non-local trucking companies, this was the most significant change to the hours-of-service rules in over 60 years. Previously, drivers were allowed to drive 10 hours after 8 hours off-duty. The new rules allow drivers to drive 11 hours after 10 hours off-duty. In addition to this, drivers may not drive after 14 consecutive hours on-duty, following 10 hours off-duty as opposed to 15 hours on-duty, following 8 hours off-duty. There have been no changes in the rules that limit a driver to a maximum of 70 hours in eight consecutive days. A new rule allows a driver who takes at least 34 consecutive hours off duty to restart his or her on-duty cycle for the 70 hour rule. A driver's 15 hour daily work cycle in the old system is considered cumulative, not consecutive, and does not take into account off-duty time during the 15 hour period. Under the new rules, a driver's 14 hour daily work cycle is considered consecutive, and off-duty time counts against the 14 hour period. Therefore, loading/unloading delays, shipments that require multiple stop deliveries, and other non-driving activities may limit drivers' available hours. On January 4, 2004, the new federal regulations that govern driver HOS became effective. The Company is unable to predict the ultimate impact of the new hours of service rules. These changes could have an adverse effect on the operations and profitability of the Company.

Motor carrier operations may also be subject to environmental laws and regulations, including laws and regulations dealing with underground fuel storage tanks, the transportation of hazardous materials and other

environmental matters. It will be our intention to transport a minimum amount of environmentally hazardous substances. If we should fail to comply with applicable regulations, we could be subject to substantial fines or penalties and to civil and criminal liability.

Our operations may involve certain inherent environmental risks. We may maintain bulk fuel storage and fuel islands at several of our acquired facilities. Our operations may involve the risks of fuel spillage or seepage, environmental damage, and hazardous waste disposal, among others.

Employees

As of June 30, 2005, we employed approximately 84 drivers, 12 mechanics and maintenance personnel, 53 general and administrative personnel supporting our trucking operations. We also contract with approximately 146 independent contractors (owner-operators) for services that provide both a tractor and a qualified driver or drivers. None of our employees are represented by a collective bargaining unit, and we consider relations with our employe es to be adequate. Our Administrative Services Agreement with R&R has allowed us to substantially reduce our corporate overhead by eliminating personnel in our Clearwater, Florida office. It is our intent to move all of our operations to Pittsburgh, Pennsylvania where R&R is located during fiscal 2006. We are also actively recruiting a new Chief Financial Officer in the Pittsburgh, Pennsylvania area. There is no assurance we will be successful in locating a new Chief Financial Officer.

Risks

Risks Related to Our Business

We operate in a highly competitive industry, and our business will suffer if we are unable to adequately address factors that may adversely affect our operations and profitability.

Numerous competitive factors could impair our ability to maintain our current operations. These factors include the following:

- We compete with many other transportation service providers of varying sizes, some of which have more equipment, a broader coverage network, a wider range of services and greater capital resources than we do or have other competitive advantages;
- Some of our competitors periodically reduce their prices to gain business, especially during times of reduced growth rates in the economy, which may limit our ability to maintain or increase prices or maintain significant growth in our business;
- Many customers reduce the number of carriers they use by selecting "core carriers" as approved transportation service providers, and in some instances we may not be selected;
- Many customers periodically accept bids from multiple carriers for their shipping needs, and this process may depress prices or result in the loss of some business to competitors;
- The trend towards consolidation in the ground transportation industry may create other larger carriers with greater financial resources than us and other competitive advantages relating to their size;
- Advances in technology require increased investments to remain competitive, and our customers may not be willing to accept higher prices too cover the cost of these investments; ando
- Competition from non-asset-based logistics and freight brokerage companies may adversely affect our customer relationships and prices.o

Losses from Operations; Accumulated Deficit; and Negative Net Worth and Going Concern.

Historically we have not generated sufficient revenues from operations to self-fund our capital and operating requirements. These factors raise substantial doubt concerning our ability to continue as a going concern. We expect that our working capital will come from fundings that will primarily include equity and debt placements.

Our financial statements have been prepared which contemplate continuation of the Company as a going concern. The Company incurred operating losses of approximately $14,237,000 for the year ended March 31, 2005, has an accumulated deficit at March 31, 2005 of approximately $35,385,000, which includes approximately $15,405,000 from unrelated dormant operations and $19,980,000 from current operations; and a negative tangible net worth of approximately $3,999,000 as of March 31, 2005. In addition, the Company has negative working capital of approximately $4,774,000 and has used approximately $7,516,000 of cash from operations for the year ended March 31, 2005. These factors raise substantial doubt about the Company's ability to continue as a going concern. Our financial statements do not include any adjustments relating to the recoverability and classification of recorded assets or the amounts and classification of liabilities that might be necessary in the event the Company cannot continue in existence.

If we are unable to successfully execute our growth strategy, our business and future results of operations may suffer.

Our growth strategy includes increasing the volume of freight moving through our existing network, selectively expanding the geographic reach of our service areas and broadening the scope of our service offerings. In connection with our growth strategy, we will be required to increase our driver recruiting and our sales and marketing efforts. Our growth strategy exposes us to a number of risks, including the following:

- Geographic expansion requires start-up costs, and often requires lower rates to generate initial business. In addition, geographic expansion mayo disrupt our freight patterns to and from and within the expanded area and may expose us to areas where we are less familiar with customer rates, operating issues and the competitive environment.o
- o Growth may strain our management, capital resources, information systems and customer service.o
- Hiring new employees may increase training costs and may result in temporary inefficiencies as the employees learn their jobs.o
- Expanding our service offerings may require us to enter into new markets and compete with additional competitors.

We cannot assure that we will overcome the risks associated with our growth. If we fail to overcome such risks, we may not realize additional revenue or profitability from our efforts, may incur additional expenses and therefore our financial position and results of operations could be materially and adversely affected.

Our information technology systems are subject to certain risks that we cannot control.

Our information systems, including our accounting systems, are dependent, to an extent, upon third-party software, global communications providers, telephone systems and other aspects of technology and Internet infrastructure that are susceptible to failure. Our information technology remains susceptible to outages, computer viruses, break-ins and similar disruptions that may inhibit our ability to provide services to our customers and the ability of our customers to access our systems. This may result in the loss of customers or a reduction in demand for our services. In addition, we are in the process of transitioning to a new third-party software platform and we cannot assure you that this transition will be successful and will not disrupt our operations. If disruption occurs, our profitability and results of operations may suffer.

We are exposed to potential risks from recent legislation requiring companies to evaluate their internal control over financial reporting.

We will be evaluating and documenting our internal control systems in order to allow management to report on, and our independent auditors to attest to, our internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act of 2002. In addition, we are in the process of converting our accounting and record-keeping software

to a new software system. Complying with Sarbanes-Oxley Section 404 will require significant effort in a compressed timeframe, as well as result in our incurring substantial costs to comply with Sarbanes-Oxley Section 404. There can be no assurances that the evaluation required by Sarbanes-Oxley Section 404 will not result in the identification of additional significant control deficiencies or that our auditors will be able to attest to the effectiveness of our internal control over financial reporting.

Our auditors inability to attest to the effectiveness of our internal controls over financial reporting may have a material adverse effect on the value of our securities due to our inability to file our fiscal 2006 Form 10K-SB in a timely manner. If our auditors identify significant control deficiencies we will attempt to eliminate such deficiencies. However, there is no assurance we will be able to eliminate such deficiencies on a timely and cost efficient basis. We currently have material deficiencies in our internal controls and procedures over financial reporting and operations. See Item 8A – Disclosure Controls and Procedures for additional information. There is no assurance that we will be able to remediate such deficiencies within the required regulatory and legal timeframes. In addition, we are currently recruiting for a new Chief Financial Officer to replace Mr. Couture. There is no assurance that we will locate an individual in the Pittsburgh, Pennsylvania area on a timely basis.

Difficulty in attracting drivers could affect our operating results.

Competition for drivers is intense within the trucking industry, and we periodically experience difficulties in attracting and retaining qualified drivers. Our operations may be affected by a shortage of qualified drivers in the future which could cause us to temporarily under-utilize our truck fleet, face difficulty in meeting shipper demands and increase our compensation levels for drivers. If we encounter difficulty in attracting or retaining qualified drivers, our ability to service our customers and increase our revenue could be adversely affected.

Our business is subject to general economic factors that are largely out of our control.

Economic conditions may adversely affect our customers' business levels, the amount of transportation services they need and their ability to pay for our services. Customers encountering adverse economic conditions represent a greater potential for loss, and we may be required to increase our reserve for bad-debt losses. Our results also may be negatively affected by increases in interest rates, which increase our borrowing costs and can negatively affect the level of economic activity by our customers and thus our freight volumes.

We may be adversely impacted by fluctuations in the price and availability of fuel.

Fuel is a significant operating expense. We do not hedge against the risk of fuel price increases. Any increase in fuel taxes or fuel prices or any change in federal or state regulations that results in such an increase, to the extent not offset by freight rate increases or fuel surcharges to customers, or any interruption in the supply of fuel, could have a material adverse effect on our operating results. Historically, we have been able to offset significant increases in fuel prices through fuel surcharges to our customers, but we cannot be certain that we will be able to do so in the future.

We operate in a highly regulated industry, and increased costs of compliance with, or liability for violation of, existing or future regulations could have a material adverse effect on our business.

We are regulated by the United States Department of Transportation, and by various state agencies. These regulatory authorities have broad powers, generally governing matters such as authority to engage in motor carrier operations, safety and fitness of transportation equipment and drivers, driver hours of service, and periodic financial reporting. In addition, the trucking industry is subject to regulatory and legislative changes from a variety of other governmental authorities, which address matters such as increasingly stringent environmental and occupational safety and health regulations or limits on vehicle weight and size, and ergonomics. Regulatory requirements, and changes from time-to-time in regulatory requirements, may affect our business or the economics of the industry by requiring changes in operating practices or by influencing the demand for, and the costs of providing services to, shippers.

We are subject to various environmental laws and regulations, and costs of compliance with, liabilities under, or violations of, existing or future environmental laws or regulations could adversely affect our business.

We are subject to various federal, state and local environmental laws and regulations regulating, among other things, the emission and discharge of hazardous materials into the environment or presence on or in our properties and

vehicles, fuel storage tanks, our transportation of certain materials, and the discharge or retention of storm water. Under specific environmental laws, we could also be held responsible for any costs relating to contamination at our past or present facilities and at third-party waste disposal sites. Environmental laws have become and are expected to become increasingly more stringent over time, and there can be no assurance that our costs of complying with current or future environmental laws or liabilities arising under such laws will not have a material adverse effect on our business, operations or financial condition.

The Environmental Protection Agency has issued regulations that require progressive reductions in exhaust emissions from diesel engines through 2007. Beginning in October 2002, new diesel engines were required to meet these new emission limits. Some of the regulations require subsequent reductions in the sulfur content of diesel fuel beginning in June 2006 and the introduction of emissions after-treatment devices on newly-manufactured engines and vehicles beginning with model year 2007. These regulations could result in higher prices for tractors and diesel engines and increased fuel and maintenance costs. These adverse effects combined with the uncertainty as to the reliability of the vehicles equipped with the newly-designed diesel engines and the residual values that will be realized from the disposition of these vehicles could increase our costs or otherwise adversely affect our business or operations.

Our results of operations may be affected by seasonal factors and harsh weather conditions.

Our operations are subject to seasonal trends common in the trucking industry. Our operating results in the first and fourth quarters are normally lower due to reduced demand during the winter months. Harsh weather can also adversely affect our performance by reducing demand and our ability to transport freight and increasing operating expenses.

Our business may be harmed by anti-terrorism measures.

In the aftermath of the September 11, 2001 terrorist attacks on the United States, federal, state and municipal authorities have implemented and are continuing to implement various security measures, including checkpoints and travel restrictions on large trucks. If new security measures disrupt or impede the timing of our deliveries, we may fail to meet the needs of our customers or may incur increased expenses to do so. We cannot assure you that these measures will not have a material adverse effect on our operating results.

Loss of Key Personnel.

The loss of the services of Mr. Richard Francis, our Chief Executive Officer, could have a material adverse effect on the Company. XRG does not maintain any key man life insurance on the life of Mr. Francis. In addition, there is no assurance we will be able to attract other competent and qualified employees on terms deemed acceptable to us to implement our expansion plans. We are actively recruiting for a new Chief Financial Officer in the Pittsburgh, Pennsylvania area. There is no assurance that we will be able to attract and retain this individual.

Risks Related to Our Common Stock

Our Common Stock price may be volatile, which could result in substantial losses for individual stockholders.

The market price for our Common Stock is likely to be highly volatile and subject to wide fluctuations in response to factors including the following, some of which are beyond our control, which means our market price could be depressed and could impair our ability to raise capital:

- actual or anticipated variations in our quarterly operating results;
- changes in financial estimates by securities analysts;
- conditions or trends in the trucking industry;
- changes in the economic performance and/or market valuations of other trucking companies;
- additions or departures of key personnel.

Our Certificate of Incorporation limits director liability thereby making it difficult to bring any action against them for breach of fiduciary duty.

As permitted by Delaware law, the Company's Certificate of Incorporation limits the liability of directors to the Company or its stockholders for monetary damages for breach of a director's fiduciary duty except for liability in certain instances. As a result of the Company's charter provision and Delaware law, stockholders may have limited rights to recover against directors for breach of fiduciary duty.

We may be unable to meet our future capital requirements.

We are substantially dependent on receipt of additional capital to effectively execute our business plan. If adequate funds are not available to us on favorable terms we will not be able to effectively carry out our business plan and respond to competitive pressures, which would affect our ability to continue as a going concern. We cannot be certain that additional financing will be available to us on favorable terms when required, or at all. If we raise additional funds through the issuance of equity, equity-related or debt securities, such securities may have rights, preferences or privileges senior to those of the rights of our Common Stock and our stockholders may experience additional dilution.

Penny stock regulations may impose certain restrictions on marketability of our stock.

The Securities and Exchange Commission (the "Commission") has adopted regulations which generally define a "penny stock" to be any equity security that has a market price (as defined) of less than $5.00 per share or an exercise price of less than $5.00 per share, subject to certain exceptions. As a result, our Common Stock is subject to rules that impose additional sales practice requirements on broker-dealers who sell such securities to persons other than established customers and accredited investors (generally those with assets in excess of $1,000,000 or annual income exceeding $200,000, or $300,000 together with their spouse). For transactions covered by these rules, the broker-dealer must make a special suitability determination for the purchase of such securities and have received the purchaser's written consent to the transaction prior to the purchase. Additionally, for any transaction involving a penny stock, unless exempt, the rules require the delivery, prior to the transaction, of a risk disclosure document mandated by the Commission relating to the penny stock market. The broker-dealer must also disclose the commission payable to both the broker-dealer and the registered representative, current quotations for the securities and, if the broker-dealer is the sole market maker, the broker-dealer must disclose this fact and the broker-dealer's presumed control over the market. Finally, monthly statements must be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks. Consequently, the "penny stock" rules may restrict the ability of broker-dealers to sell our securities.

We have never paid dividends on our Common Stock and do not expect to pay any in the foreseeable future. We are subject to restrictions on our ability to pay dividends.

A potential purchaser should not expect to receive a return on their investment in the form of dividends on our Common Stock. We have never paid cash dividends on our Common Stock and we do not expect to pay dividends in the foreseeable future.

Substantial sales of our Common Stock could cause our stock price to rapidly decline.

The market price of our Common Stock may fall rapidly and significantly due to sales of our Common Stock from other sources such as:

- The sale of shares of our Common Stock underlying the exercise of outstanding options and warrants.
- The sale of shares of our Common Stock, which are available for resale under Rule 144 or are otherwise freely tradable and which are not subjecte to lock-up restrictions.

Any sale of substantial amount of our Common Stock in the public market, or the perception that these sales might occur, whether as a result of the exercise of outstanding warrants or options or otherwise, could lower the market price of our Common Stock. Furthermore, substantial sales of our Common Stock by such parties in a relatively short period of time could have the effect of depressing the market price of our Common Stock and could impair our ability to raise capital through the sale of additional equity securities.

Our principal shareholder controls a large portion of our outstanding common stock.

Barron beneficially owns the majority of our outstanding shares of our common stock. Barron currently holds 8,591,667 shares of common stock. As long as Barron controls a large portion of our voting stock, it will be able to significantly influence the election of the entire Board of Directors and the outcome of all matters involving a shareholder vote. Barron's interests may differ from other shareholders. In addition, we are obligated to repay Barron $3,622,804 of promissory notes which mature on December 31, 2005. Barron has a security interest in all of our assets.

Our failure to register shares in the near future will materially affect the interest of all shareholders.

In February, 2005 we withdrew a registration statement filed under cover of Form SB-2 on behalf of certain selling shareholders. Our decision to withdraw this registration statement was predicated upon the restructuring of our operations and the need to raise additional capital. In connection with our restructuring we have entered into a waiver and extension of liquidated damages rights with all of the holders, who are entitled to liquidated damages in connection with the failure to register our securities on behalf of such selling shareholders. We are required to file a new registration statement on or before September 30, 2005 and to have such registration statement declared effective on December 31, 2005. If the new registration statement is not filed and declared effective by such dates, then the holders are entitled to the liquidated damages or penalties for failure to have such registration statement filed and declared effective, with such liquidated damages rights commencing as of September 30, 2005 or December 31, 2005 as applicable. There is no assurance that we will be able to timely prepare, file and have declared effective a new selling shareholder registration statement. Liquidated damages due Barron are approximately $292,500 per quarter. Liquidated damages due the other investors are approximately are approximately $20,000 per month. Our failure to timely file and have declared effective a selling shareholder registration statement will have a material adverse affect on our operations due to the amount of liquidated damages that we will incur for failure to fulfill our registration rights obligations with these investors.

Our inability to refinance or payoff a significant amount of debt by December 31, 2005 will adversely affect the interests of our shareholders

We are obligated to repay Barron $3,622,084 plus accrued interest on December 31, 2005. We are also obligated to repay Kenneth A. Steel, Jr. $500,000 plus accrued interest on December 31, 2005. We are in litigation with various noteholders in connection with approximately $155,000 of unpaid notes. $80,000 of other promissory notes are past the maturity dates of the notes. Our cash flow from operations will not be sufficient to generate enough cash to pay off all of these obligations by December 31, 2005. If we are unable to renegotiate, extend or refinance these obligations, then such parties could obtain judgments against us or force us into bankruptcy. In such event shareholders would in all likelihood lose their entire investment. We may be required to issue equity securities in order to renegotiate or satisfy such obligations. The issuance of additional equity securities would be extremely dilutive to existing shareholders.

ITEM 2. DESCRIPTION OF PROPERTY

Our principal executive offices are located at 601 Cleveland Street, Suite 820, Clearwater, Florida 33755. We are currently in default of our lease obligations in our Clearwater, Florida office. We intend to close this office during fiscal 2006. We are delinquent on approximately three (3) months of lease payments at $3,027 per month. We are currently negotiating with the landlord, Wilder Corporation, to settle our lease situation in Clearwater, Florida. This lease expires in July, 2006.

Our general and administrative offices are located at 3 Crafton Square, Pittsburgh, Pennsylvania 15205. These are the business offices of R&R. We make no lease payments to R&R in connection with the Administrative Services Agreement.

On April 26, 2004 we entered into a Commercial Sublease Agreement with Carolina Truck Connection, Inc., in Fletcher, North Carolina. This lease is for facilities consisting of a truck yard, trailer storage yard and administrative facilities and has fixed lease payments of $1,500 per month. This lease expires in April, 2006.

In connection with the restructuring of our operations into a non-asset based agency relationship our previous obligations relating to Bently and Highway were released. We did not close the RSV merger and accordingly are not making payments on a commercial lease agreement entered into with Richard S. Venable requiring lease payments of $33,000 per month which expired on May 31, 2005. In addition, we are involved in litigation in connection with the

Highbourne matter and accordingly are not making lease payments for the Highbourne facilities which required fixed lease payments of $3,000 per month and expires on March 31, 2006.

ITEM 3. LEGAL PROCEEDINGS

The following is a summary of current pending legal proceedings and claims. From time to time, we may be involved in other litigation relating to our business. There is no assurance that we may not be involved in future litigation which will have a material adverse affect upon us due to the costs associated with defending such matters or an unfavorable outcome in such proceedings. Our recent restructuring and limited financial resources increases the risk that we will be involved in future litigation.

• Highbourne Litigatione

On April 8, 2005, Stephen Orenic, a principal of AGB Transportation Services, LLC, the successor in interest to Highbourne Corporation, notified XRG that AGB was terminating the Terminal Agreement dated October 4, 2004 between AGB and XRG Logistics, Inc. Mr. Orenic alleged that XRG failed to make timely payments of certain regular commissions and monthly productivity bonuses. XRG disagrees with the allegations made by Mr. Orenic and believes that the termination was improper.

On April 27, 2005, XRG filed a complaint against Highbourne Corporation, its successor in interest, AGB Transportation Services, LLC, and the principals of these entities, Stephen Orenic and Sherri Kenner, in the Circuit Court for the 13th Judicial Circuit in and for Pinellas County, Florida, Case No. 05-3766. The complaint alleges that AGB, Orenic and Kenner breached the original Acquisition Agreement entered into between the parties in February 2004. In addition, the complaint alleges that Orenic and Kenner have violated the confidential and non-compete provisions of their employment agreements. XRG alleges that the actions of Orenic, Kenner and AGB in entering into a new agency agreement with a third party, American Trans-Freight, LLC, and the utilization by such parties of XRG's transportation equipment is improper. Furthermore, XRG alleges that such parties are improperly using its customer list, supplier list, shipper contracts and owner/operator contracts for their own benefit and for the benefit of a competitor or XRG.

XRG is seeking various remedies, including damages relating to breach of contract, replevin of assets, breach of fiduciary duty of Orenic and Kenner, including but not limited to the duties of loyalty and fair dealing, and also that Orenic and Kenner have breached the restrictive covenants and covenants not to compete set forth in their employment agreements.

This case is in its early stages. However, the operations of Highbourne will no longer be included in the XRG financial statements.

• Couture Litigatione

On May 4, 2005, XRG was served with a complaint filed by Stephen R. Couture in the Pinellas County, Florida, Circuit Court, Case No. 05-3084CI-11, alleging that XRG was in breach of his employment agreement. Mr. Couture alleges that XRG unilaterally and arbitrarily reduced the compensation due Mr. Couture to an amount less than the amount provided for in his agreement. In addition, Mr. Couture alleged that XRG unilaterally did away with car reimbursement and car insurance benefits provided in the Employment Agreement. In addition, he alleged that XRG has failed to pay his unused vacation.

Mr. Couture's employment agreement has a very narrow definition of termination for cause limited to conviction of a felony, conviction of misappropriation of assets or otherwise defrauding XRG. In addition, the resignation of Donald Huggins as a director potentially triggers a "change of control" provision under his agreement entitling him to 299% of base annual compensation as a severance payment.

XRG has requested that outside counsel review the activities of Mr. Couture to determine whether there is a basis to institute counterclaims and affirmative defenses against Mr. Couture. XRG also maintains Mr. Couture voluntarily agreed to the compensation reduction in light of XRG's current financial position and limited working capital.

If Mr. Couture were to prevail in this action, XRG could potentially be liable to Mr. Couture for approximately four (4) years of additional compensation at a base salary of One Hundred Twenty-Five Thousand Dollars ($125,000) per year plus attorney fees. This case is in its early stages and it is too early to predict the outcome or settlement of this matter. However, XRG intends to vigorously defend this action.

Mr. Couture has refused to voluntarily resign as director of XRG, notwithstanding the institution of this lawsuit. Accordingly, XRG anticipates that Barron will seek to remove Mr. Couture as a director in the near future. In addition, XRG has been advised that certain of its shareholders intend to file suit against Mr. Couture.

•eNoteholder Litigatione

eWe are a defendant in a lawsuit filed in the Circuit Court of the Sixth Judicial Circuit in Pinellas County, Florida by five individuals who are the holders of our 15% senior convertible notes and warrants. We are in default in the payment obligations under these notes. We were obligated to repay such notes in the event of subsequent financings. We do not make payment on such notes. These notes have matured. Our exposure in this case is approximately $155,000 of principal amount of unpaid notes, accrued and unpaid interest plus attorneys' fees.e

We have submitted a settlement offer to the plaintiffs' counsel in connection with this matter. Pursuant to the settlement offer, XRG would become current in interest payments and extend the maturity date of these notes until December 31, 2005. Barron would agree to subordinate its right of repayment on its notes to the subject notes in this proceeding. There is no assurance that we will be able to settle this matter or raise affirmative defenses.e

•eFormer Employee Claims

Andrew Davis, a former employee has filed a charge of discrimination with the EEOC as well as a complaint with the Department of Labor alleging he was terminated in violation of Sarbanes-Oxley. Both are in the initial stages and we are in the process of responding to both federal agencies. We believe the claims by Mr. Davis are without merit and that they are retaliatory in nature in connection with his termination as part of our cost cutting. The day after Mr. Davis was terminated our data processing systems were substantially damaged and Mr. Davis received a trespass warning from the Clearwater Police Department. We intend to vigorously defend this matter and to institute counterclaims against Mr. Davis for damages we have incurred.

•eRSV Claimse

In April 2004, XRG through a wholly owned subsidiary, entered into an Agreement and Plan of Merger with RSV, Inc., a Tennessee corporation ("RSV"). XRG issued the shareholders of RSV 100,000 shares of its Common Stock (post split), and agreed to assume certain indebtedness and liabilities of RSV. XRG has determined not to assume the liabilities and debts of RSV due to the results of its due diligence investigations and XRG's limited financial resources. Counsel to RSV has alleged damages in excess of $400,000 relating to XRG's failure to assume the debt of RSV and fulfill the conditions of the Merger Agreement.

Pursuant to the RSV Merger Agreement, the stock of RSV was to be held in escrow. However, it is XRG's understanding that RSV shares were never delivered to the escrow agent. In addition, XRG never took title to the RSV assets. However, XRG issued its shares to the RSV shareholders. XRG never took title to the RSV assets. Accordingly, XRG believes that the RSV shareholders have the right to a return of their RSV shares and that the XRG shares issued to the RSV shareholders should be returned XRG.

Based upon the above factors, we have treated the RSV merger as void ab initio (as if it never happened). No financial transactions have been booked for RSV, except for certain note payments made by XRG on RSV's behalf. We have recorded an accrual for the damages claimed by RSV as of March 31, 2005.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

On July 30, 2004 we received the written consents in lieu of meeting of stockholders from the holders of shares representing in excess of 51% of the total issued and outstanding shares of voting stock approving a certificate of amendment to our certificate of incorporation which increases the number of shares of Common Stock that we have the authority to issue from 15,000,000 to 25,000,000 shares.

Effective January 3, 2005 pursuant to action by written consent of the holders of a majority of our voting securities, we effectuated a reverse 1 for 20 split of all issued and outstanding common shares. All stock amounts and related prices have been adjusted to reflect this 1 —20 reverse stock split.

Each of the above actions was approved by Barron Partners, LP, our majority stockholder which represented in excess of 51% of our outstanding Common Stock. No other votes were required or necessary to adopt these amendments.

PART II

ITEM 5. MARKET PRICE OF AND DIVIDENDS ON THE REGISTRANT'S COMMON EQUITY AND OTHER SHAREHOLDER MATTERS

Market Value

Our Common Stock is traded on the OTCBB under the symbol "XRGI". Our Common Stock commenced trading on March 20, 2003. The following table sets forth, the high and low bid prices of the Common Stock for the periods shown as reported by the National Quotation Bureau. The bid prices quoted on the OTCBB reflect inter-dealer prices without retail mark-up, mark-down or commission and may not represent actual transactions.

	High Bid*	Low Bid*
Fiscal Year EndedMarch 31, 2003		
Fourth Quarter (January 1, 2003 to March 31, 2003)	$ 8.00	$ 5.00
Fiscal Year Ending March 31, 2004		
First Quarter (April 1, 2003 to June 30, 2003)	25.00	5.00
Second Quarter (July 1, 2003 to September 30, 2003)	28.00	11.20
Third Quarter (October 1, 2003 to December 31, 2003)	17.00	6.60
Fourth Quarter (January 1, 2004 to March 31, 2004)	8.20	3.80
Fiscal Year Ending March 31, 2005		
First Quarter (April 1, 2004 to June 30, 2004)	8.00	3.80
Second Quarter (July 1, 2004 to September 30, 2004)	5.20	2.00
Third Quarter (October 1, 2004 to December 31, 2004)	3.80	2.18
Fourth Quarter (January 1, 2005 to March 31, 2005)	3.00	.85

*e Restated for a 20:1 reverse split on January 3, 2005.

As of June 30, 2005, our closing bid price was $0.65 per share. As of June 30, 2005, there were approximately 1,700 shareholders of our outstanding Common Stock.

Description of Securities

Common Stock

As of June 30, 2005, there were according to our transfer agent 15,036,027 shares of Common Stock, par value of $.001 per share outstanding, held of record by approximately 1,650 stockholders. In connection with our recent restructuring we are obligated to issue up to approximately 673,820 additional common shares to various parties which

have not been recorded on our transfer agent's records. We are also entitled to cancel 414,542 common shares as part of such restructuring resulting in a net of approximately 259,278 additional common shares which we were obligated to issue as of June 30, 2005. Accordingly, the adjusted number of common shares which were outstanding, and for which parties had a right to receive, as of June 30, 2005 is approximately 15,295,305 shares of our Common Stock.

The holders of Common Stock are entitled to one vote per share for the selection of directors and all other purposes and do not have cumulative voting rights. The holders of Common Stock are entitled to receive dividends when, as, and if declared by the Board of Directors, and in the event of liquidation to receive pro-rata, all assets remaining after payment of debts and expenses. Holders of the Common Stock do not have any pre-emptive or other rights to subscribe for or purchase additional shares of capital stock, no conversion rights, redemption, or sinking-fund provisions. In the event of dissolution, whether voluntary or involuntary, each share of the Common Stock is entitled to share ratably in the assets available for distribution to holders of the equity securities after satisfaction of all liabilities. All the outstanding shares of Common Stock are fully paid and non-assessable.

Preferred Stock

In connection with the amendment to our certificate of corporation which increased an authorized number of common shares from 15,000,000 to 25,000,000 we eliminated our authority to issue any additional shares of Preferred Stock.

Certain Provisions of the Certificate of Incorporation and Bylaws

Our Certificate of Incorporation provides that no directors shall be personally liable to XRG or our stockholders for monetary damages for breach of fiduciary duty as a director except as limited by Delaware law. Our Bylaws provide that we shall indemnify to the full extent authorized by law each of our directors and officers against expenses incurred in connection with any proceeding arising by reason of the fact that such person is or was an agent of the corporation.

Insofar as indemnification for liabilities may be invoked to disclaim liability for damages arising under the Securities Act of 1933, as amended, or the Securities Act of 1934, (collectively, the "Acts") as amended, it is the position of the Securities and Exchange Commission that such indemnification is against public policy as expressed in the Acts and are therefore, unenforceable.

Dividends

We do not anticipate the payment of cash dividends in the foreseeable future. Payment of cash dividends is within the discretion of our Board of Directors and will depend upon, among other factors, earnings, capital requirement and the provisions of Delaware law. There are no restrictions other than set forth herein that are applicable to the ability of us to pay dividends on our common stock. Future issuance and or sales of substantial amounts of common stock could adversely affect prevailing market prices in our common stock.

Transfer Agent

Our transfer agent is Florida Atlantic Stock Transfer, Inc., 7130 Nob Hill Road, Tamarac, Florida 33321.

Registration Rights Issues

In February, 2005 we withdrew a registration statement filed under cover of Form SB-2 on behalf of certain selling shareholders relating to the registration of 14,758,208 shares of our Common Stock (including 2,293,042 shares underlying common stock purchase warrants and convertible debentures). Our decision to withdraw this registration statement was predicated upon the restructuring of our operations and the need to raise additional capital.

In connection with our restructuring we have entered into a waiver and extension of liquidated damages rights with all of the holders, who are entitled to liquidated damages in connection with the failure to register our securities on behalf of such selling shareholders. We are required to file a new registration statement on or before September 30, 2005 and to have such registration statement declared effective on December 31, 2005. If the new registration statement is not filed and declared effective by such dates, then the holders are entitled to the liquidated damages or penalties for failure to have such registration statement filed and declared effective, with such liquidated damages rights commencing as of

September 30, 2005 or December 31, 2005 as applicable. There is no assurance that we will be able to timely prepare, file and have declared effective a new selling shareholder registration statement. Liquidated damages due Barron are approximately $292,500 per quarter. Liquidated damages due the other investors are approximately are approximately $20,000 per month. Our failure to timely file and have declared effective a selling shareholder registration statement will have a material adverse affect on our operations due to the amount ofdiquidated damages that we will incur for failure to fulfill our registration rights obligations with these investors.

Common Stock Purchase Warrants

In connection with past capital raising we have outstanding approximately 2,198,184 common stock purchase warrants with exercise prices ranging from $.20 to $8.00. The vast majority of these warrants have a $2.00 exercise price. We are required to register the shares underlying these outstanding common stock purchase warrants. Our failure to register the shares underlying these warrants will result in liquidated damages as described above. The holders of these warrants have cashless exercise provisions and most favored nations status anti-dilution protection.

In June, 2005 we issued an additional 5,500,000 common stock purchase warrants to Barron at an exercise price of $2. The warrants issued to Barron have registration rights, most favored nations anti-dilution protection, cashless exercise rights and liquidated damages rights as described above.

In June, 2005 we issued Mr. Kenneth A. Steel, Jr. warrants to acquire up to an additional 1,000,000 of our common stock at an exercise price of $2 per share, subject to anti-dilution adjustment. This warrant is substantially the same form of warrant as issued to prior investors with favored nations and anti-dilution rights, registration rights and liquidation damages provisions.

In connection with securing the Capco accounts receivable financing line we issued Capco warrants to acquire 63,820 shares of our Common Stock at an exercise price of $2.35. These warrants expire March 21, 2010. We also issued Oberon Securities, as the finder, warrants to acquire 55,000 shares of our Common Stock at a $2.16 exercise price. These warrants have a three (3) year term.

Penny Stock Considerations

Penny Stock Regulation Broker-dealer practices in connection with transactions in "Penny Stocks" are regulated by certain penny stock rules adopted by the Securities and Exchange Commission. Penny stocks generally are equity securities with a price of less than $5.00 (other than securities registered on certain national securities exchanges or quoted on the NASDAQ system). The penny stock rules require a broker-dealer, prior to a transaction in a penny stock not otherwise exempt from the rules, to deliver a standardized risk disclosure document that provides information about penny stocks and the risk associated with the penny stock market. The broker-dealer must also provide the customer with current bid and offer quotations for the penny stock, the compensation of the broker-dealer and its salesperson in the transaction, and monthly account statements showing the market value of each penny stock held in the customer's account. In addition, the penny stock rules generally require that prior to a transaction in a penny stock, the broker-dealer must make a written determination that the penny stock is a suitable investment for the purchaser and receive the purchaser's written agreement to the transaction. These disclosure requirements may have the effect of reducing the level of trading activity in the secondary market for a stock that becomes subject to the penny stock rules.

XRG's securities will likely have a trading price of less than $5.00 per share and will not be traded on any exchanges, therefore we will be subject to Penny Stock Rules. As a result of the aforesaid rules regulating penny stocks, the market liquidity for our securities could be severely adversely affected by limiting the ability of broker-dealers to sell our securities and the ability of shareholders sell their securities in the secondary market.

Shares Eligible for Future Sale

As of June 30, 2005 we had approximately 699,370 common shares that were freely tradable without restriction or further registration under the Securities Act of 1933, unless such shares are purchased by "affiliates" as that term is defined in Rule 144 under the Securities Act of 1933. Shares that cannot be traded without restriction are referred to as "restricted securities" as that term is defined in Rule 144 under the Securities Act of 1933. Restricted securities may be sold in the public market only if registered of if they qualify for an exemption from registration under Rule 144 of the Securities Act of 1933.

In general, under Rule 144 as currently in effect, a person (or group of person whose shares are aggregated), including affiliates of the Company, who have beneficially owned shares of our Common Stock for at least one year would be entitled to sell within any three-month period, an amount of restricted securities that does not exceed the greater of:

- 1% of the number of shares of Common Stock then outstanding (approximately 150,360 shares as of June 30, 2005); or
- the average weekly trading volume in the Common Stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Sales under Rule 144 are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

Under Rule 144(k), a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale, and who has beneficially owned the shares proposed to be sold for at least two years, including the holding period of any prior owner other than an affiliate, is entitled to sell such shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144.

No prediction can be made as to the effect, if any that market sales of XRG's Common Stock, or the availability of the Common Stock for sale, will have on the market price of the Common Stock prevailing from time to time. Nevertheless, sales of a significant number of shares of our Common Stock in the public market, or the perception that such sales could occur, could adversely affect the market price of the Common Stock and impair our future ability to raise capital through an offering of equity securities. See "Risk Factors — Future Sales of our Common Stock may depress our stock price."

In addition, we are required to file a registration statement on or before September 30, 2005 relating to the registration of all of the shares that were covered under cover of our Form SB-2 that was withdrawn in February, 2005. See "Registration Rights Issues" above. The registration of these shares plus such other additional shares as we may be required to include in such registration statement, will result in a substantial number of our shares being eligible for future sale without Rule 144 restrictions, assuming the subject registration statement is declared effective. Sales of shares pursuant to any future registration statement could adversely affect the market price of our Common Stock.

ITEM 6. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

IMPORTANT NOTE ABOUT FORWARD-LOOKING STATEMENTS

The following discussion and analysis should be read in conjunction with our audited financial statements as of March 31, 2005 and the notes thereto, all of which financial statements are included elsewhere in this form 10-KSB. In addition to historical information, the following discussion and other parts of this Form 10-KSB contain forward-looking information that involves risks and uncertainties. Our actual results could differ materially from those anticipated by such forward-looking information due to factors discussed under "Business" and elsewhere in this Form 10-KSB.

The statements that are not historical constitute "forward-looking statements". Said forward-looking statements involve risks and uncertainties that may cause the actual results, performance or achievements of the Company and its subsidiaries to be materially different from any future results, performance or achievements, express or implied by such forward-looking statements. These forward-looking statements are identified by their use of such terms and phrases as "expects", "intends", "goals", "estimates", "projects", "plans", "anticipates", "should", "future", "believes", and "scheduled".

The variables which may cause differences include, but are not limited to, the following: general economic and business conditions; competition; success of operating initiatives; operating costs; advertising and promotional efforts; the existence or absence of adverse publicity; changes in business strategy or development plans; the ability to retain management; availability, terms and deployment of capital; business abilities and judgment of personnel; availability of qualified personnel; labor and employment benefit costs; availability and costs of raw materials and supplies; and changes in, or failure to comply with various government regulations. Although the Company believes that the assumptions

underlying the forward-looking statements contained herein are reasonable, any of the assumptions could be inaccurate, and therefore, there can be no assurance that the forward-looking statements included in this Form 10-KSB will prove to be accurate.

In light of the significant uncertainties inherent in the forward-looking statements included herein the inclusion of such information should not be regarded as a representation by the Company or any person that the objectives and expectations of the Company will be achieved.

GENERAL

Losses from Operations; Accumulated Deficit; Negative Net worth and Going Concern.

Historically we have not generated sufficient revenues from operations to self-fund our capital and operating requirements. These factors raise substantial doubt concerning our ability to continue as a going concern. We expect that our working capital will come from fundings that will primarily include equity and debt placements.

Our financial statements have been prepared which contemplate continuation of the Company as a going concern. The Company incurred operating losses of approximately $14,237,000 for the year ended March 31, 2005, has an accumulated deficit at March 31, 2005 of approximately $35,385,000, which includes approximately $15,405,000 from unrelated dormant operations and $19,980,000 from current operations; and a negative tangible net worth of approximately $3,999,000 as of March 31, 2005. In addition, the Company has negative working capital of approximately $4,774,000 and has used approximately $7,516,000 of cash from operations for the year ended March 31, 2005. These factors raise substantial doubt about the Company's ability to continue as a going concern. Our financial statements do not include any adjustments relating to the recoverability and classification of recorded assets or the amounts and classification of liabilities that might be necessary in the event the Company cannot continue in existence.

Risk Management

The Company maintains general liability, auto liability, cargo, physical damage, contents and workers' compensation insurance for its company drivers. The Company maintains cargo insurance for its owner operators The Company does not self-insure, therefore it does not accrue for any claims incurred but not reported. The Company could incur claims in excess of the policy limits or incur claims not covered by the insurance policy.

Critical Accounting Policies and Estimates

Our financial statements reflect the selection and application of accounting policies, which require management to make significant estimates and assumptions. We believe that the following are some of the more critical judgment areas in the application of our accounting policies that currently affect our financial condition and results of operations.

Preparation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions affecting the reported amounts of assets, liabilities, revenues, and expenses and related contingent liabilities. On an on-going basis, the Company evaluates its estimates, including those related to revenues, bad debts, income taxes, contingencies, and litigation. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

We record an allowance for doubtful accounts based on (1) specifically identified amounts that we believe to be uncollectible and (2) an additional allowance based on certain percentages of our aged receivables, which are determined based on historical experience and our assessment of the general financial conditions affecting our customer base to be uncollectible. At March 31, 2005, the allowance for doubtful accounts was $300,000 or approximately 5.6% of total trade accounts receivable. If actual collections experience changes, revisions to our allowance may be required. After reasonable attempts to collect a receivable have failed, the receivable is written off against the allowance. In addition, we review the components of other receivables, consisting primarily of advances to drivers and agents, and write off specifically identified amounts that we believe to be uncollectible.

In accordance with EITF 99-19, we record revenue on a gross basis because we are the primary obligors, the carrier of record and insurer of all freight, establish pricing, prepare all invoicing and have the risk of loss as it relates to the ultimate collection of accounts receivable and uninsured cargo losses. We recognize operating revenues (including fuel surcharge revenues) and related direct costs when the shipment is delivered. For shipments where a third-party provider is utilized under an agency arrangement to provide some or all of the service and the Company is the primary obligor in regards to the delivery of the shipment, establishing customer pricing, and has credit risk on the shipments, the Company records both revenues for the dollar value of services billed by the Company to the customer and purchased transportation expense for the costs of transportation paid by the Company to the agent upon delivery of the shipment. Accordingly, revenue and the related direct freight expenses of our business and our agency arrangements are recognized on a gross basis upon completion of freight delivery. Fuel surcharges billed to customers for freight hauled by our agency arrangements are excluded from revenue and paid in entirety to the Agents.

For the stock options issued to employees, we have elected to apply the intrinsic value based method of accounting prescribed by Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations. Under the intrinsic value based method, compensation cost is measured on the date of grant as the excess of the quoted market price of the underlying stock over the exercise price. Such compensation amounts are amortized over the respective vesting periods of the options.

Deferred income tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the consolidated financial statements carrying amounts of existing assets and liabilities and their respective income tax basis (principally Fixed Assets). Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of deferred tax assets and liabilities of change in tax rates is recognized as income or expense in the period that included the enactment date.

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net undiscounted cash flows expected to be generated by the asset. Our judgment concerning future cash flows is an important part of this determination. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of

the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less the costs to sell.

In accordance with SFAS No. 142, we do not amortize goodwill but instead we evaluate it annually for impairment and will evaluate it between annual tests if an event occurs or circumstances change which indicate that the carrying value of a reporting unit's goodwill might be impaired. We complete our annual impairment tests in the fourth quarter of each year and generally recognize an impairment loss when the carrying value of a reporting unit's goodwill exceeds the unit's estimated fair value. The fair value of goodwill is derived by using a discounted cash flow analysis. This analysis involves estimates and assumptions by management regarding future estimated cash flows for the reporting units. We believe that the estimates and assumptions are reasonable, and that they are consistent with the assumptions, which the reporting units use for internal planning purposes. However, significant judgment is involved in estimating these factors and they include inherent uncertainties. If we had usedo other estimates and assumptions, the analysis could have resulted in different conclusions regarding the amount of goodwill impairment, if any.o Furthermore, additional future impairment losses could result if actual results differ from those estimates. During the fiscal year 2005, we evaluated the goodwill of each of our reporting units and recorded a goodwill impairment charge of $3,720,000. We determined the goodwill of $2,918,000 foro Express Freight Systems, Inc. and $746,000 for Highway Transport Services, Inc. was impaired as these transactions were restructured to non-asseto based agency relationships. Also, the $56,000 of goodwill for Highbourne Corporation was determined to be impaired as our relationship with them was terminated and they are no longer affiliated with or are an agent of XRG.

RESULTS OF OPERATIONS

Year ended March 31, 2005 compared to the year ended March 31, 2004

XRG generated $39,353,428 in revenues during the fiscal year ended March 31, 2005 as compared to $4,682,277 during the fiscal year ended March 31, 2004. Our revenues increased $34,671,151 or 740.1% from fiscal year 2004 to 2005. This increase is the result of revenues attributable to the four truckload carrier operations we acquired in April 2004. The acquisitions in fiscal 2005 provided revenues as follows: Express Freight Systems, Inc. in the amount of $12,987,410, Highway Transport Services, Inc. in the amount of $3,780,523, Carolina Truck Connection, Inc. in the amount of $4,094,354, and Highbourne Corporation in the amount of $4,407,322.

Related expenses were $33,315,008 and $3,283,415 resulting in a gross margin of $6,256,962 and $1,398,862 during the years ended March 31, 2005 and 2004, respectively. Related expenses during the year ended March 31, 2005 were primarily costs associated with purchased transportation. The primary components of purchased transportation during the year ended March 31, 2005 were owner-operator settlements of $19,403,705, company driver payroll of $3,979,761 and fuel costs of $3,011,606.

For the year ended March 31, 2005, total selling, general and administrative expenses were $13,221,960 as compared to $3,838,338 for the previous year, an increase of $9,383,622. This increase is attributable to the additional costs to integrate and operate the four truckload carrier operations we acquired in April 2004 and the two existing truckload carrier operations acquired during the fiscal year ended March 31, 2004. The primary components ofselling, general and administrative expenses during the year ended March 31, 2005 were payroll costs of $3,631,633, commissions of $2,820,202, and insurance costs of $1,713,279

We recorded bad debt expense of $246,289 for the fiscal year ended March 31, 2005 and $1,049,642 for the fiscal year ended March 31, 2004 resulting in a decrease $803,353 as a product of better receivables management and reduction of customer credit risks.

During the fiscal year ended March 31, 2005 we recorded $3,719,688 of goodwill impairment and $1,665,313 of settlement loss. There was no goodwill impairment or settlement loss during the fiscal year ended March 31, 2004. These costs were attributable to changes made from restructuring transactions of the acquired truckload carrier operations.

Interest expense for the year ended March 31, 2005 and 2004 was $1,083,553 and $183,836, respectively. This increase of $899,717 is associated with an increase in the average notes payable outstanding each month during fiscal year ended 2005 compared to 2004 as a result of the debt associated with our truckload carrier acquisitions and the financing of additional transportation equipment.

We recorded $338,486 and $777,259 related to the amortization of intrinsic value of convertible debt and debt discount for the value of detachable warrants during the fiscal years ending March 31, 2005 and 2004, respectively.

We had a net loss of $14,236,869 for the year ended March 31, 2005 as compared to a loss of $4,450,213 for the year ended March 31, 2004 an increase of $9,786,656. This increase in our operating loss over that of the year ended March 31, 2004 is the result of recording goodwill impairment of $3,719,688, settlement loss of $2,359,111, additional interest expense of $899,717, and the costs to integrate the truckload carrier operations we acquired in April 2004.

The basic loss per share was $1.25 for the year ended March 31, 2005 compared to a basic loss per share of $4.92 for the year ended March 31, 2004. The basic weighted average shares outstanding for the year ended March 31, 2005 was 11,385,176 as compared to 905,176 for the year ended March 31, 2004.

During the fiscal year ended March 31, 2005, we used $7,515,861 in cash from operating activities as compared to $1,166,421 from operating activities during the year ended March 31, 2004. Investing activities for the year ended March 31, 2005 primarily consisted of acquisitions of truckload carriers of $2,038,000 and purchases of equipment of $566,027. Financing activities for the year ended March 31, 2005 provided $10,119,888, which primarily consisted of $6,752,453 from proceeds from common stock issued, $3,260,560 from issuance of notes payable, and $1,249,722 from a line of credit.

Our financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America, which contemplate our continuation as a going concern. We incurred operating losses of approximately $14,237,000 for the year ended March 31, 2005, have an accumulated deficit at March 31, 2005 of approximately $35,385,000 which includes approximately $15,405,000 from unrelated dormant operations and $19,980,000 from current operations, and a negative tangible net worth of approximately $3,999,000 as of March 31, 2005. In addition, the Company has negative working capital of approximately $4,774,000 and has used approximately $7,516,000 of cash from operations for the year ended March 31, 2005. These factors raise substantial doubt about our ability to continue as a going concern. Our financial statements do not include any adjustments relating to the recoverability and classification of recorded assets or the amounts and classification of liabilities that might be necessary in the event we cannot continue in existence.

In order for us to achieve profitability we will require substantial additional revenues. Our Administrative Services Agreement with R&R requires us to pay, on average, approximately a 12% fee. Under our Agency Agreements we generally net approximately 15% of revenues after payment of related terminal operating and transportation expenses (i.e., fuel and driver payroll). Accordingly, we are left with approximately 3% of revenues as profit margin. We are required to pay certain overhead costs, such as accounting, legal and home office payroll from the remaining 3%. Currently, we do not generate enough revenues that will result in profits. There is no assurance that we will be able to attract additional agency relationships to substantially increase our revenue in the near future.

Year ended March 31, 2004 compared to the year ended March 31, 2003

XRG generated $4,682,277 in revenues during the fiscal year ended March 31, 2004 as compared to $686,030 during the fiscal year ended March 31, 2003. Our revenues increased $3,996,247 or 582% from fiscal year 2003 to 2004. This increase is the result of revenues attributable to the truckload carrier operations of our XRG Logistics, Inc. subsidiary pursuant to a Fleet Owner Agreement with J. Bently Companies, Inc that provided of revenue $2,576,215 during the current fiscal year. Our R&R Express Intermodal, Inc. subsidiary which the acquisition closed on January 1, 2004 provided $1,366,932 during the

current fiscal year. We expect our revenues to significantly increase during the 2005 fiscal year due to our acquisition strategy. We completed five truckload carrier acquisitions in April 2004.

Related expenses were $3,283,415 and $789,924 resulting in a gross margin of $1,398,862 and ($103,894) during the years ended March 31, 2004 and 2003, respectively. Related expenses during the year ended March 31, 2004 were primarily costs associated with purchased transportation. The components of purchased transportation during the year ended March 31, 2004 were owner-operator settlements of $1,284,918, equipment rental costs of $691,892, fuel costs of $549,000, and company driver payroll of $442,852. Related expense during our fiscal year ended March 31, 2003 were costs associated with administrative services we provided to one customer. We expect our related expenses to significantly increase during the 2005 fiscal year due to our acquisition strategy.

For the year ended March 31, 2004, total selling, general and administrative expenses were $3,838,338 as compared to $584,661 for the previous year, an increase of $3,253,677 or 557%. This increase is primarily the result of shares issued for services valued at approximately $1,526,519 during the year ended March 31, 2004.

We recorded bad debt expense of $1,049,642 for the fiscal year ended March 31, 2004. On April 12, 2004, we entered into a Purchase Agreement Addendum with J. Bently Companies, Inc. that deleted the original

registration rights and the true up provisions. We issued an additional 40,000 shares and forgave $994,794 in advances to J. Bently Companies, Inc. in consideration for the terms of this Addendum.

Interest expense for the year ended March 31, 2004 and 2003 was $183,836 and $105,464, respectively. This increase of $78,372 is associated with an increase in the average notes payable outstanding each month during fiscal year ending 2004 compared to the same period during 2003. During April of 2004, approximately $500,000 of notes payable were converted into common stock which will reduce the interest expense in the next quarter.

We recorded $777,259 and $35,809 related to the amortization of intrinsic value of convertible debt and debt discount for the value of detachable warrants during the fiscal years ending March 31, 2004 and 2003, respectively.

We had a net loss of $4,450,213 for the year ended March 31, 2004 as compared to a loss of $829,828 for the year ended March 31, 2003. This increase in our operating loss over that of the year ended March 31, 2003 is the result of an increase in consulting services paid with our common stock, travel, and office costs, personnel costs associated with the implementation of our information systems as well as higher interest expenses associated with our long-term debt.

The basic loss per share was $4.92 for the year ended March 31, 2004 compared to a basic loss per share of $1.80 for the year ended March 31, 2003. The basic weighted average shares outstanding for the year ended March 31, 2004 was 905,176 as compared to 465,615 for the year ended March 31, 2003.

Liquidity and Capital Resources

To date, we have funded our capital requirements and our business operations with funds provided by borrowings and equity investments which are summarized as follows:

• Initial Barron Fundinge

We entered into a Stock Purchase Agreement with Barron on March 31, 2004. During April, under the terms of this Agreement, we issued Barron 5,416,667 shares of our Common Stock for an aggregate purchase price of $3,250,000. These proceeds were primarily used to fund our initial acquisitions and related working capital. In June, 2004 we issued 3,000,000 additional shares of our Common Stock to Barron in connection with a cashless exercise of common stock purchase warrants issued to Barron in connection with this financing.

There were finder's fees associated with this financing consisting of $325,000 and common stock purchase warrants representing the right to purchase 541,667 shares of Common Stock at $0.60 per share and common stock purchase warrants representing the right to purchase 300,000 shares of Common Stock at $0.20 per share both with a five year term.

We entered into various other covenants with Barron in connection with this financing, including but not limited to, registration rights and appointment of outside directors. Barron has agreed to waive liquidated damages for failure to register its shares through September 30, 2005. We are required to have a registration declared effective on behalf of Barron by December 31, 2005. Our failure to have this registration statement filed or declared effective on a timely basis will result in us accruing approximately $292,500 per quarter of liquidated damages due Barron.

Also, in connection with this financing our previous insiders canceled all of their Series A Preferred Stock in exchange for 1,250,000 shares of our Common Stock.

The Common Stock and the Warrants were issued to Barron in a private placement transaction pursuant to Section 4(2) and Rule 506 of Regulation D under the Securities Act of 1933, as amended. Barron represented that it is an "accredited investor" as that rule is defined under Rule 501(a) of Regulation D. As a direct result of the transactions referred to above, Barron became a "control person" as that term is defined in the Securities Act of 1933, as amended.

•eOther Equity Financings During Fiscal 2005e

During the fiscal year ended March 31, 2005, we raised $3,870,000 in exchange for 1,935,000 shares of Common Stock from various investors. There were finder's fees associated with these financings consisting of $317,000 and Common Stock Purchase Warrants representing the right to purchase 192,530 shares of Common Stock at $2.00 to

$8.00 per share for a five-year term. These shares were issued in private placement transactions pursuant to Section 4(2) and Rule 506 of Regulation D under the Securities Act of 1933, as amended. All Investors represented they were "accredited investors." In February, 2005 we withdrew a registration statement filed under cover Form SB-2 on behalf of these investors. In connection with our restructuring we have entered into a waiver and extension of liquidated damages rights with these investors. We are required to file a new registration statement on or before September 30, 2005, and to have such registration statement declared effective on or before December 31, 2005. If the new registration statement is not filed and declared effective by such dates, then these investors are entitled to liquidated damages of approximately $20,000 per month.

• **Interim Financing Arrangements with Barrono**

In order to satisfy our interim working capital requirements, we have borrowed funds from Barron, our largest shareholder. The following table sets forth a summary of the date, amount, interest rate, collateral and extended maturity date relating to such borrowings:

Date	Amount	Interest Rate	Collateral	Current Maturity Date	Extended Maturity Date
9/10/04	$ 225,809.86	6 %	20 Trailers	3/31/05	12/31/05
10/1/04	166,275.00	6 %	15 Tractors	3/31/05	12/31/05
2/23/05	1,180,000.00	10 %	All Assets	4/23/05	12/31/05
3/3/05	800,000.00	10 %	All Assets	5/1/05	12/31/05
6/2/05	1,250,000.00	10 %	All Assets	12/31/05	N/A

On May 20, 2005, we entered into a Promissory Notes Modification Agreement with Barron, extending the due date of all of the above Notes, until December 31, 2005. In connection with this arrangement, Barron agreed to subordinate its right of payment and interest on such Notes and other future indebtedness to Kenneth A. Steel, Jr., who is the holder of a $500,000 Promissory Note of XRG. We are obligated to use at least seventy percent (70%) of the proceeds from any debt on equity financings to repay these notes.

The June 2005 funding we received from Barron consisted of $1,600,000 of Units. A $100,000 Unit consisted of (i) a $78,125 Promissory Note, and (ii) $21,875 allocated to acquire 10,937.5 shares of our common stock at $2.00 per share and the right to acquire 343,750 Common Stock Purchase Warrants with an exercise price of $2.00. Accordingly, in June 2005, Barron invested $350,000 to acquire 175,000 shares of our common stock and is the holder of a $1,250,000 Promissory Note. In addition, Barron has the right to acquire 5,500,000 shares of our Common Stock pursuant to the Common Stock Purchase Warrant with an issue date of June 2, 2005, at an exercise price of $2.00.

The shares and warrants issued to Barron have registration rights, most favored nation's anti-dilution protection, cashless exercise provisions, and registration rights with liquidated damages.

• **Restructured Arrangements with Kenneth A. Steel, Jr.**

On January 5, 2005 Mr. Steel, an existing shareholder advanced us $500,000 pursuant to a promissory note that was originally repayable on February 5, 2005. We did not pay this note as due and obtained an original extension through March 31, 2005. As part of our recent restructuring we have entered into a new restated promissory note with Ken Steel for $500,000, which is payable on December 31, 2005 and bears interest at 17%. Default interest is 24% XRG has agreed to grant Mr. Steel a lien and security interest in its assets. Barron has agreed to subordinate repayment of principal and interest on all Barron notes to the repayment of Mr. Steel's note. XRG paid Mr. Steel approximately $72,900 to satisfy past defaults and as forbearance consideration. Interest is payable monthly. We have agreed to issue Mr. Steel warrants to acquire up to 1,000,000 shares of its Common Stock at an exercise price of $2.00 per share, subject to anti-dilution adjustment. This warrant is substantially the same form of warrant as issued to other investors with favored nations and anti-dilution rights. Such rights were also granted to other affiliates of Mr. Steel.

• Capco Accounts Receivable Financing Line

On February 24, 2005 we finalized a closing and funding of a Contract of Sale/Security Agreement with Capco Financial Company. The purpose of this financing arrangement was to replace our existing factoring arrangements. Pursuant to this agreement, we have the right to advance against 80% of our eligible accounts receivable. We are subject to lock-box arrangements and funds from the collection of our receivables will be deposited in a lockbox account and advanced to us based upon availability. The interest rate is equal to a daily fee equal to the Greater Bay Bank, N.A. prime rate plus 7% divided by 365 (equivalent to a monthly discount fee of Greater Bay Bank, N.A. prime rate plus 7% divided by 12). Based upon current market rates this effective interest rate is substantially less than the effective cost of funds paid to our current factorers. The Capco financing should improve our cash flow position because of the anticipated lower cost of funds and the elimination of the factoring reserves. We have granted Capco a security interest in all of our assets.

Seasonality

In the transportation industry, results of operations frequently show a seasonal pattern. Our operating results in the first and fourth quarters are normally lower due to reduced demand during the winter months. Harsh weather can also adversely affect our performance by reducing demand and our ability to transport freight and increasing operating expenses.

Inflation

Most of our expenses are affected by inflation, which generally results in increased operating costs. In response to fluctuations in the cost of petroleum products, particularly diesel fuel, we have implemented a fuel surcharge in our contractual agreements. The fuel surcharge is designed to offset the cost of fuel above a base price and increases as fuel prices escalate over the base. We believe that the net effect of inflation on our results of operations is minimal.

ITEM 7. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The information required by this item is presented at page F-1 of this Report, following Part III hereof.

ITEM 8. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

On October 12, 2004, we terminated our relationship with Pender, Newkirk & Company, CPAs ("PNC") as our independent certified public accountants and on the same date engaged Mahoney Cohen & Company, CPA, P.C. as our independent certified public accountants for the fiscal year ending March 31, 2005.

(a)ePrevious independent accountants:

(i) On October 12, 2004, we dismissed Pender, Newkirk & Company, CPAs ("PNC") as our independent accountants.e

(ii) The reports of PNC on the financial statements for the past two fiscal years did not contain an adverse opinion or a disclaimer of opinion ande were not qualified or modified as to uncertainty, audit scope or accounting principles. However, PNC's report for the year ended March 31, 2003 included an explanatory paragraph noting the Company's limited liquid resources, recurring losses from operations and our need to raise additional capital, all of which raised substantial doubt about our ability to continue as a going concern.e

(iii) The Audit Committee made the decision to change independent accountants that consisted of the entire Board of Directors.e

(iv) In connection with its audits for the two most recent fiscal years and through October 12, 2004, there have been no disagreements with PNC one any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of PNC,

would have caused them to make reference to such disagreements in their report on the financial statements for such years.

(v) During the two most recent fiscal years and through October 12, 2004, PNC did not advise us of any of the events described in Item 304(a)(1)(B)o of Regulation S-B except as follows:o

In August 2004, PNC advised us of material weaknesses in our internal accounting controls necessary for the preparation of financial statements. Specifically, PNC indicated that our limited staff involved in the closing process caused many critical accounting duties to be combined. This issue caused delays in the closing process, difficulties segregating duties, inefficiencies in locating documents, and expanded audit testing. In addition, PNC indicated the need for implementing accounting policies and procedures to improve the financial statement close process.

(vi)oWe requested that PNC furnish a letter addressed to the Securities and Exchange Commission stating whether it agrees with the above statements, and if not, stating the respects in which they do not agree.

(b) On October 12, 2004, we engaged the firm of Mahoney Cohen & Company, CPA, P.C. as independent certified public accountants for the fiscal year ending March 31, 2005. We had not previously consulted with Mahoney Cohen & Company, CPA, P.C. on items which (i) concerned the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on our financial statements, or (ii) concerning any subject matter of a disagreement or reportable event with PNC.

ITEM 8a. DISCLOSURE CONTROLS AND PROCEDURES

(a) *Evaluation of disclosure controls and procedures.* As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, of the effectiveness of the design and operation of the Company's disclosure controls and procedures pursuant to Exchange Act Rule 13a-14. Based upon that evaluation,current managemento concluded that our disclosure controls and procedures for fiscal 2005 were inadequate and that XRG continues to experience material weaknesseso in its disclosure controls and procedures. In an attempt to mitigate such disclosure controls and procedures weaknesses we have entered into theo Administrative Services Agreement with R&R. We have also restructured our business model from an asset based to a non-asset based carriero which should substantially reduce the accounting and administrative controls and procedures requirements imposed upon us. We have also begun implementing one uniform accounting and information systems software package – Load Z which we hope will substantially improve all ouro financial and information reporting systems.o

We are only in the initial phases of a establishing compliance with Section 404 of Sarbanes-Oxley. There is no assurance that we will be able to timely comply with the Section 404 Sarbanes-Oxley controls and procedure requirements in connection with the audit of our fiscal 2007 financial statements.

(b) *Changes in internal controls over financial reporting.* In connection with the new rules, we are in the process of further reviewing and documenting our disclosure controls and procedures, including our internal controls and procedures for financial reporting, and may from time to time make changes designed to enhance their effectiveness and to ensure that our systems evolve with our business. In connection with our ongoing evaluation of internal controls over financial reporting, certain internal control matters were noted that require corrective actions.

On February 1, 2005 we received a letter from the Division of Corporate Finance of the Securities and Exchange Commission regarding Item 4.01 of Form 8-K relating to a change in our auditors filed October 14, 2004 and on Internal Control Weaknesses and Management Reportable Conditions letter issued by our prior auditors.

Our former auditors, Pender Newkirk & Company, CPAs ("PNC") advised us of weaknesses in our internal accounting controls necessary for the preparation of financial statements during our fiscal year ended March 31, 2004. In the 2004 Reporting Package dated August 7, 2004 our former auditors identified certain reportable conditions that were considered material weaknesses in our internal controls subsequent to filing our form 10-KSB on July 14, 2004. Our former auditors reviewed our disclosures on internal controls in Item 8(a) 10-KSB prior to filing. However, we are disclosing the reasons why the disclosure controls and procedures were ineffective during our fiscal year ended March 31,

2004, and what measures we have taken to improve our internal controls and procedures during our fiscal year ending March 31, 2005.

Internal controls considered to be a material weakness in the 2004 Reporting Package are as follows:

1. During the audit, PNC encountered that detail schedules and other documentation supporting general ledger accounts did not always agree withe the general ledger balances, causing numerous adjusting entries to the final general ledger. In addition, many account balances required extensivee reconciliation and outside corroboration to finalize financial information.e

These issues caused significant delays in producing financial statements at the end of the accounting period and will continue to cause delays, as well as allow for possible irregularities, including fraud, to exist and continue without notice.

2. Due to the limited number of people working in XRG's offices, many critical duties were combined. During the audit, certain companies withine the consolidated group had a single individual prepare and sign checks, reconcile bank accounts, perform payroll duties and maintain the generale ledger.e

3. The Company did not verify that all legal requirements were met prior to issuing shares of stock in exchange for convertible debt. As a result ofe this deficiency, the Company issued stock in error to certain convertible debt holders. PNC also discovered that some debt holders who weree issued stock were subsequently paid cash for the same debt securities.e

4. The Company does not prepare a disclosure, a 10-KSB, nor a MD&A checklist to assist in preparing financial statements and the 10-KSB.e

5. During sales cut-off testing, PNC noted numerous sales for the year ended March 31, 2004 that were recorded subsequent to year-end.e

6. PNC identified inaccurate payroll tax returns filed for XRG, Inc. and XRG Logistics, Inc.e

We are continuing the process of identifying and implementing corrective actions identified to improve the design and effectiveness of our internal controls, including enhancement of systems and procedures. Significant additional resources will be required to establish and maintain appropriate controls and procedures and to prepare the required financial and other information during this process.

Even after corrective actions have been implemented, the effectiveness of our controls and procedures may be limited by a variety of risks including:

- faulty human judgment and simple errors, omissions or mistakes;
- collusion of two or more people;
- inappropriate management override of procedures; and
- risk that enhanced controls and procedures may still not be adequate to assure timely and reliable financial information.

If we fail to have effective internal controls and procedures for financial reporting in place, we could be unable to provide timely and reliable financial information.

We did not take measures during our fiscal year end March 31, 2005 to remediate the internal control weakness identified in the 2004 reporting package. However, we are in the process of attempting to address and eliminate the material weaknesses in our internal controls and procedures as identified in the 2004 reporting package as follows:

1. In April, 2005 we entered into an Administrative Services Agreement with R&R and Richard Francis. We are consolidating our operations ine Pittsburgh, Pennsylvania. We are relying upon the infrastructure, personnel and experience of R&R in improving our operations and controls overe our agents. We understand that R&R will be required to institute new controls and procedures in order to remediate many deficiencies identifiede by PNC. Specifically, R&R will bee

required to institute controls and procedures regarding the maintenance of accurate accounts receivable balances and the institution of controls for procedures regarding our accounts payable disbursement controls with our agents.

2. We are in the process of eliminating our Clearwater, Florida offices. We currently have two accounting personnel working in this office. It is our goal to transfer all remaining functions to Pittsburgh, Pennsylvania during fiscal 2006.

3. We are searching for a new Chief Financial Officer to replace Mr. Couture. Currently, a substantial amount of our financial statement preparation and underlying schedules are prepared utilizing the services of an outside consultant. This consultant assisted us during the preparation of our 2003 and 2004 audits. However, we believe it is essential to have a fulltime and competent Chief Financial Officer on site if we are to adequately remediate the controls and procedures deficiencies identified by PNC.

During fiscal 2005 we utilized at one time or another three separate accounting and informational reporting software packages. Daily revenues and direct costs were recorded in Strategy-5. Journal entries were recorded in Load Z and part of our accounts payable were recorded in ACC Pac. It was generally agreed that Strategy-5 was difficult to use and that many users did not follow input protocol procedures which resulted in numerous phantom and duplicate transactions that required reversal or adjustment. Furthermore, these systems did not interface with each other and we were not able to generate accurate trial balances and general ledgers without substantial manual input and use of excel format spreadsheets. Subsequent to March 31, 2005, we made the decision to abandon ACC Pac and Strategy-5.

4. We have selected Load Z as our primary accounts payable, general ledger and informational reporting software package. As of the date of this filing we have implemented Load Z in R&R Intermodal, Inc. We are in the process of installing Load Z out to our agents' terminals. We hope that by utilizing one uniform information reporting package it will eliminate many of the problems identified in the 2004 reporting package. However, there is no assurance that Load Z will solve our information and accounting reporting problems and deficiencies. We have a data processing manager who is the developer of the Load Z software. However, it is too early in the implementation or rollout of Load Z to determine whether it will be an effective solution to our accounting and information reporting system deficiencies and needs.

5. During fiscal year end March 31, 2005 we did not timely reconcile our bank accounts. We are currently dedicating an accounting clerk to make more timely reconciliations of all bank accounts on a monthly basis.

In December 2004, we hired Jay Ostrow, to serve as our corporate controller. He has been instrumental in preparing our financial statements and notes thereto. Mr. Ostrow's biography is as follows:

Mr. Ostrow has been providing financial management and accounting services to businesses for nineteen years. From 2003 to 2004, Mr. Ostrow served as Chief Financial Officer and Controller of P.D.C. Innovative Industries, Inc, a publicly held hospitality and medical technology company located in Tampa, Florida. From 2002 to 2003, Mr. Ostrow served as the Director of Finance and Accounting for TVC Telecom, Inc., a publicly held telecommunications provider located in Miami, Florida. From 2000 to 2001, Mr. Ostrow served as the Chief Financial Officer of Stampede Worldwide, Inc., a publicly held technology company located in Tampa, Florida. Additionally, Mr. Ostrow has provided financial management, and accounting and consulting services on a contract basis for a variety of Tampa Bay businesses. Mr. Ostrow has six years of public accounting experience and is a graduate of The George Washington University with a B.B.A. degree in accounting.

Our Board of Directors requires all new contracts be approved by the Board. Board approval is required to issue new shares of our stock. This approval process requires proof that all legal requirements are met prior to issuing shares of stock.

In the future, we intend on using a 10-KSB and MD&A checklist as a guide in preparing our financial statements and notes.

During our first quarter ended June 30, 2004, we began using Spectrum HR, an employee leasing company, to facilitate our payroll processing for all employees for all divisions with the exception of our executive officers. Spectrum HR remits the payroll taxes and completes the payroll reports on our behalf. We plan on continuing this relationship with Spectrum HR, which should reduce problems with accurately filing our payroll tax returns.

PART III

ITEM 9. DIRECTORS AND EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS

Directors and Executive Officers of the Company

The following table sets forth certain information with respect to each person who is a director or an executive officer as of June 30, 2005.

NAME	AGE	POSITION
Richard Francis	49	President, Chief Executive Officer, Chief Financial Officer, Director
Stephen R. Couture	35	Director
Terence Leong	38	Director
Michael T. Cronin	49	Director

Executive officers are elected by the Board of Directors and serve until their successors are duly elected and qualify, subject to earlier removal by the Board of Directors. Directors are elected at the annual meeting of shareholders to serve for their term and until their respective successors are duly elected and qualify, or until their earlier resignation, removal from office, or death. The remaining directors may fill any vacancy in the Board of Directors for an unexpired term. See "Board of Directors" for a discussion of the Directors' terms.

Business Experience of Current Executive Officers and Directors

Mr. Richard Francis, President, Chief Executive Officer and Chief Financial Officer. Mr. Francis became our Chief Executive Officer in April, 2005 replacing Kevin Brennan. Mr. Francis was previously the President of XRG, G&A, Inc. and R&R Express Intermodal, Inc., both XRG wholly-owned subsidiaries. Mr. Francis has over 25 years experience in the truckload carrier industry. Mr. Francis also serves as President of KDR Transport, Inc. and R&R Express, Inc. Mr. Francis holds a degree in business logistics from Penn State University.

Mr. Stephen R. Couture, Director. Mr. Couture is a principal in Couture & Company, Inc., a corporate financial consulting firm founded in 1980. He has consulted for numerous public and private companies primarily in the Tampa Bay, Florida region since 1993. Mr. Couture has been involved with structuring financings, assisting with mergers and acquisitions, private and public placements, and development of company business plans. Mr. Couture earned a Masters in Business Administration, emphasis in finance and accounting, from the University of Tampa and a Bachelor of Science degree in management systems, from Rensselaer Polytechnic Institute. Mr. Couture is no longer our Chief Financial Officer. We do not anticipate that Mr. Couture will be reelected to our Board of Directors.

Mr. Terence Leong became a Director on May 20, 2005. Since 1996, Mr. Leong has been the owner of Walker Street Associates, a management consulting firm. Mr. Leong has assisted Barron in other financings and restructuring arrangements. He is currently a Director of Enteche Environmental Technologies, Inc. ("EEVT"), another Barron portfolio company.e

Mr. Michael Cronin became a Director in November 2004. Mr. Cronin has been a practicing attorney with the law firm of Johnson, Pope, Bokor,e Ruppel & Burns, LLP, in Clearwater, Florida since 1983. Mr. Cronin concentrates his practice in securities and corporate law. Mr. Cronin is ae founding Director of Patriot Bank. In 1977 Mr. Cronin graduated from the University of Florida with a degree in accounting. He received his Jurise Doctor from the University of Georgia in 1983. Mr. Cronin is a founding Director and Chairman of the Audit Committee of Patriot Bank, a statee chartered community bank located in Pasco County, Florida.e

Changes in our Board of Directors and Principal Executive Officers in Connection with our Restructuring

On February 16, 2005, Gary Allen resigned as a director. On February 23, 2005, Brad Ball resigned as a director. We were not able to reach an agreement with Mr. Ball as to an acceptable level of board compensation for his services. We have agreed in principal to issue Mr. Ball options to acquire 1,200, shares of our common stock at an exercise price of $2.00. Mr. Allen resigned to procure other business interests. On November 30, 2004, we accepted the resignation of Mr. Neil Treitman as our Chief Operating Officer.

Mr. Cronin became a Director in November 2004. Mr. Francis was appointed as our Chief Executive Officer in April, 2005 in connection with the Administrative Services Agreement with R&R. On May 20, 2005 Mr. Francis and Mr. Leong were appointed to our Board of Directors to fill vacancies created by the resignations of Mr. Huggins and Mr. Brennan, as described below.

Effective May 20, 2005 a Mutual General Release was entered into between XRG, Barron and Donald Huggins. Mr. Huggins agreed that upon execution of this Release by all parties, he shall resign as a Director of XRG. Mr. Huggins agreed to release XRG and Barron from all claims, including but not limited to, obligations of XRG to Mr. Huggins pursuant to his Consulting Agreement dated March 1, 2004 and the Amendment thereto dated February 10, 2005. Mr. Huggins was released of all claims by XRG or Barron except claims grounded upon fraud, malfeasance, misappropriation of assets or theft. In addition, Mr. Huggins agreed to reduce his stock ownership in the Company by twenty-five percent (25%) so that his net holdings is approximately five hundred fifty two thousand five hundred (552,500) shares. Mr. Huggins was released of all claims by XRG or Barron except claims grounded upon fraud, malfeasance, misappropriation of assets or theft.

XRG also entered into a similar agreement with its former Chief Executive Officer, Mr. Kevin Brennan. The Company agreed to pay Mr. Brennan Thirteen Thousand Four Hundred Twenty-Five and 90/100 Dollars ($13,425.90) and Mr. Brennan agreed to reduce his stock ownership in the Company from five hundred twenty-nine thousand one hundred sixty-seven (529,167) shares to three hundred sixty-nine eight hundred seventy (369,870) shares. In addition, Mr. Brennan released XRG from all obligations under his Employment Agreement originally dated March 1, 2004 as amended on February 10, 2005. XRG and Barron agreed to release Mr. Brennan from any claims or causes of action excepting only those which are grounded or based upon fraud, malfeasance, misappropriation of assets or theft.

Board of Directors

Our Bylaws fix the size of the Board of Directors at no fewer than one and no more than seven members, to be elected annually by a plurality of the votes cast by the holders of Common Stock, and to serve until the next annual meeting of stockholders and until their successors have been elected or until their earlier resignation or removal. Currently, there are four (4) directors. We do not anticipate that Mr. Couture will be reelected to our Board of Directors. Our Board of Directors met in person approximately seven times during fiscal year ended 2005 and each of our Directors attended these meetings. In addition, our Board of Directors acted on numerous occasions pursuant to unanimous written consent of all Directors. We currently do not compensate any of our Directors for serving on the Board. We intend to adopt compensation packages for our Board members during fiscal 2006.

The Committees

The Board of Directors has not established a Compensation or Audit Committee and the usual functions of such committees are performed by the entire Board of Directors. Mr. Cronin currently serves as Chairman of the Audit Committee and is deemed our financial expert. He is not considered independent. We do not have a standing nominating committee for the Board.

Executive Officers

Officers are appointed to serve at the discretion of the Board of Directors. None of the executive officers or directors of our company have a family relationship with any other executive officer or director of our company.

Code of Ethics

In connection with the filing of this Form 10K-SB we have adopted a "Senior Financial Officers - Code of Ethics" that applies to all XRG employees and Board of Directors, including our principal executive officer and principal financial officer, or persons performing similar functions. A copy of our Code of Ethics is attached as an exhibit to this annual report on Form 10-KSB. We intend to post the Code of Ethics and related amendments or waivers, if any, on our website at www.xrginc.com. Information contained on our website is not a part of this report. Copies of our Code of Business Conduct and Ethics will be provided free of charge upon written request to Mr. Richard Francis, 3 Crafton Square, Pittsburgh, Pennsylvania 15205.

ITEM 10. EXECUTIVE COMPENSATION

Executive Compensation

The following table shows the compensation paid by us for the year ended March 31, 2005, 2004 and 2003, to or for the account of our officers.

SUMMARY COMPENSATION TABLE

The following table shows the compensation paid or accrued by us for the fiscal years ended March 31, 2005, 2004 and 2003 to or for the account of our officers (including officers of our significant subsidiaries) that exceeded $100,000.

		Annual Compensation			Long-Term Compensation Awards			
Name & Principal Position	Year	Salary ($)	Bonus ($)	Other Annual Compensation[10] ($)	Restricted Stock Award(s) [9] ($)	Options/ SARs (#)	LTIP Payouts ($)	All Other Compensation ($)
Kevin Brennan Former President and CEO	2005	$231,917	—	$16,500	$ —	20,000 (1)	—	—
	2004	$140,000	—	—	48,750	—	—	—
	2003	$103,000	—	—	—	—	—	—
Donald G. Huggins, Jr. Former Chairman (2)	2005	$146,250	—	$11,000	$539,750	—	—	—
	2004	$ 76,500	—	—	$ 48,750	—	—	—
	2003	$ 82,000	—	—	—	—	—	—
Stephen R. Couture Former Vice President, Finance, Former CFO (3)	2005	$126,057	—	$11,000	$ 47,250	—	—	—
	2004	$ 57,500	—	—	$ 48,750	—	—	—
	2003	$ 80,546	—	—	—	—	—	—
Neil Treitman Former Chief Operations Officer (4)	2005	$136,594	—	$ 2,400	$235,000 (2)	—	—	—
	2004	$140,000	—	—	$ 48,750		—	—
	2003	$ 42,000	—	—	—	22,500 (4)	—	—
Richard Francis (5) Current CEO and President of XRG G&A, Inc. and President of R&R Express Intermodal, Inc. (3)	2005	$101,883	—	—	$ 32,000	—	—	—
Larry M. Berry Vice President of Business Development XRG Logistics, Inc. (6)	2005	$150,000	—	—	—	—	—	—
Eddie R. Brown CEO of XRG Logistics, Inc. (7)	2005	$125,000	—	$ 9,000	—	—	—	—
Stanley Shadden President of XRG Logistics, Inc. (8)	2005	$ 95,000	—	$ 6,000	—	—	—	—

(1) Mr. Brennan recognized $13,200 of value in connection with the exercise of these options.

(2) The salary amounts represent payments to Private Capital Group, Inc., a corporation owned by Mr. Huggins' wife. The Restricted Stock Awards value represents the value of 100,000 shares issued to Private Capital Group, Inc. for consulting services with a value per share of $4.40 and an imputed compensation value of $99,750 in connection with the issuance of 95,000 shares of our Common Stock at a value of $1.00 per share to satisfy accrued compensation which was less than the fair market value of such shares as of that date.

(3) The Restricted Stock Awards represents the difference in fair market value of 45,000 shares of our Common Stock which were used to satisfy $45,000 of accrued and unpaid compensation based upon such shares being issued at $1.00 per share, which was less than the fair market value of such shares as of that date.

(4) The Restricted Stock Awards value attributable to Mr. Treitman represents the issuance of 50,000 shares of our Common Stock to settle $180,000 of compensation obligations in connection with the termination of his Employment Agreement. In addition, Mr. Treitman was issued 12,500 shares of our Common Stock which had a fair market value of $55,000 as of the date of issuance of such shares as a bonus. The 50,000 shares were issued to Charter Development Services International, LLC, an affiliate of Mr. Treitman. The 22,500 options granted during 2003, were deemed to be immaterial based on our calculation using the Black Scholes Option Pricing Model.

(5) During fiscal 2005 Mr. Francis was paid this amount pursuant to a Consulting Agreement with KDR Transport, Inc. which entitled him to .5% of billed revenues. See "Certain Transactions". We issued 5,000 shares to KDR Transport, Inc., an affiliate of Mr. Francis which has shares had a fair market value of $32,000.

(6) Mr. Berry was paid this amount pursuant to an Employment Agreement dated November 1, 2003 which was superseded by an Employment Agreement dated April 22, 2005. See "New Employment Agreements and Other Arrangements" below.

(7) Mr. Brown was paid this amount pursuant to an Employment Agreement dated April 1, 2004 entered into in connection with the original Asset Acquisition Agreement between Highway Transport, Inc. and XRG. XRG's obligations under this Employment Agreement were terminated in connection with the restructuring of the Highway Transport, Inc. acquisition effective as of May 30, 2005. See Item 1 Business — Restructuring of Highway Transport, Inc. Acquisition

(8) These amounts were paid pursuant to an Employment originally dated September 1, 2003 with Mr. Shadden. This Employment Agreement was terminated pursuant to the restructuring of our relationship with J. Bently Companies. See Item 1 Business - Summary of Restructuredo Operations — J. Bently Companies.

(9) Excludes stock issued as founders, in connection with capital raising transactions, in connection with acquisitions and in exchange for preferred shares. See "Certain Transactions"

(10) Represents car allowances.o

Option/SAR Grants in Last Fiscal Year

Name of Individual	Number of Securities Underlying Options/SARs Granted (1)	Percent of Total Options/SARs Granted to Employees/ Directors In Fiscal Year	Exercise or Base Price	Fair Market Value At date of Grant	Expiration Date
Kevin Brennan	20,000	100 %	$4.14	$4.14	N/A

(1)o Mr. Brennan exercised these options during 2005.

Options/SARs Grants During Last Fiscal Year

During the fiscal year ended March 31, 2005, no executive officer or director was granted options to purchase shares of common stock.

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Value

Name of Individual	Shares Acquired on Exercise (#)	Value Realized (1)	Number of Securities Underlying Unexercised Options/SARs at Fiscal Year End (#) Exercisable/Unexercisable	Value of Unexercised In-The-Money Options/SARs at Fiscal Year End($) Exercisable/Unexercisable
Kevin Brennan	20,000	13,200	-0-	-0-

(1) Value Realized represents the market value of the underlying securities on the exercise date minus the exercise price of such options.

Previous Employment and Other Agreements

In July 2003, we entered into an employment agreement with Neil Treitman, our former Chief Operating Officer. This agreement had a term of three (3) years, and commenced on July 1, 2003. Under this agreement, Mr. Treitman was entitled to an annual base salary of not less than $120,000. He was entitled to an automobile allowance of $600 per month during the term of his agreement. On November 30, 2004, we accepted the resignation of o Mr. Neil Treitman as the Chief Operating Officer. We issued 12,500 common shares to Mr. Treitman as a bonus in the first quarter of fiscal 2005.

In connection with the resignation of Mr. Treitman, we issued an affiliate of his Charter Development Services International, LLC 50,000 shares of our Common Stock.

In March 2004, we entered into an employment agreement with Kevin Brennan, our former Chief Executive Officer. This agreement had a term of five (5) years, and commenced on March 1, 2004. Under this agreement, Mr. Brennan was entitled to an annual base salary of $185,000. Mr. Brennan was entitled to reimbursement for ordinary, necessary and reasonable business expenses in connection with his services. He participated in any retirement, medical, dental, welfare and stock options plans, life and disability insurance coverages and other benefits afforded our employees. He was entitled to an automobile allowance of $1,500 per month during the term of his agreement. On February 16, 2005 Mr. Brennan agreed to amend his employment agreement to reduce his then current annual salary from $225,000 to $146,250 per annum which equaled 65% of his then current salary. Mr. Brennan also agreed to waive any rights to any past or future bonus payments. He also agreed to reduce his severance payment to twelve (12) months in the event of termination without cause.

On May 20, 2005 Mr. Brennan, Barron and XRG entered into a mutual general release, including all obligations under his employment agreement originally dated March 1, 2004, as amended on February 10, 2005. In connection with this release we paid Mr. Brennan $13,425.90 and Mr. Brennan agreed to reduce his stock ownership in the Company from 529,167 shares to 369,870 shares. Mutual releases were entered into excluding only claims or causes of action which are grounded or based upon fraud, malfeasance, misappropriation of assets or theft.

In March 2004, we entered into an employment agreement with Stephen Couture, our former Chief Financial Officer. This agreement has a term of five (5) years, and commences on March 1, 2004. Under this agreement, Mr. Couture was entitled to an annual base salary of $125,000 with 15% a year increases. Mr. Couture was entitled to minimum cumulative quarter-end or annual cash bonuses payable at each quarter-end period, or annually, at his option. No such bonuses have been accrued to-date. Mr. Couture was entitled to reimbursement for ordinary, necessary and reasonable business expenses in connection with his services. He was allowed to participate in any retirement, medical, dental, welfare and stock options plans, life and disability insurance coverages and other benefits afforded our employees. He was entitled to an automobile allowance of $1,000 per month during the term of his agreement. Mr. Couture was not willing to enter into any formal amendment of his employment agreement similar to the amendments for Mr. Huggins and Mr. Brennan. On May 4, 2005 Mr. Couture instituted a lawsuit against the Company alleging that the Company has breached the provisions of his employment agreement. Mr. Couture is no longer serving as our Chief Financial Officer. Mr. Couture alleges that his termination is without cause and accordingly is entitled to severance payment under his employment agreement. XRG intends to vigorously defend this action. See "Item 3 — Legal Proceedings"

In March 2004, we entered into a consulting agreement with Donald G. Huggins, Jr., our former Chairman of the Board. This agreement had a term of five (5) years, and commenced on March 1, 2004. Under this agreement, Mr. Huggins was entitled to a annual consulting fees of $150,000. Mr. Huggins was entitled to reimbursement for ordinary, necessary and reasonable business expenses in connection with his services. He is entitled to an automobile allowance of $1,000 per month during the term of his agreement. On February 16, 2005 Mr. Huggins agreed to reduce his base compensation under the consulting agreement to $90,000 per year which equals 60% of his prior consulting fees. Mr. Huggins agreed to waive anyo rights to bonus compensation under his agreement. He also agreed that in the event his consulting agreement was terminated without cause he would be entitled to a twelve (12) month severance payment. On May 20, 2005 XRG, Mr. Huggins and Barron entered into a mutual general release whereby XRG was released from obligations under Mr. Huggins' consulting agreement original dated March 1, 2004, and the amendment thereto dated February 10, 2005. In addition, Mr. Huggins agreed to reduce his stock holdings in the Company to 552,500 shares.

New Employment Agreements and Other Arrangements

Effective April 20, 2005 we entered into an Administrative Services Agreement with Mr. Richard S. Francis and R&R Express, Inc. Mr. Francis iso entitled to annual base compensation of $150,000 per year during the term of the Administrative Services Agreement. R&R is entitled to ano administrative services fee equal to 12% of linehaul revenue (excluding past dues) for all agents. Mr. Francis is also entitled to 150,000 shares ofo Common Stock. R&R is also entitled to 150,000 shares of Common Stock. Mr. Francis is the President of R&R. See "Business — Description ofo Administrative Services Agreement" and "Certain Transactions"

We are party to a Consulting Agreement with Walker Street Associates, an entity owned by Mr. Leong. We agreed to pay Mr. Leong an hourlyo rate of $100. In addition, we agreed that Mr. Leong would be entitled to additional

equity-based compensation at a future date based upon his ability to improve our financial performance and operations. We also agreed that on an interim basis Mr. Leong will be primarily responsible for controlling our disbursements.

On April 22, 2005, we finalized an Employment Agreement between Larry M. Berry and XRG G&A, Inc. Mr. Berry is employed as an Acquisition Specialist and reports directly to our Chief Executive Officer and assists in entering into agency agreements, terminal agreements, asset based acquisitions and other similar agreements with trucking companies. Mr. Berry is entitled to a weekly draw of $3,000. In addition, he is entitled to compensation in an amount equal to one-half (1/2) of one percent (1%) of all invoice line haul revenues attributable to agency, transfer and acquisition agreements entered into with truckload candidates directed to XRG by Mr. Berry. As of the date of this Agreement, Mr. Berry is entitled to be paid such compensation with respect to invoice line haul revenues of EFS Corp., Highbourne Corporation, Carolina Truck Connection, Inc., and Highway Transport, Inc. XRG has agreed to issue Mr. Berry options to acquire 100,000 shares of its common stock at a nominal exercise price of $.01. XRG also agreed to issue Mr. Berry shares of its common stock valued at $1.00 per share as compensation for all prior amounts owed to Mr. Berry for past compensation which equates to approximately 73,820 common shares. The payments due Mr. Berry are made by R&R and are considered a credit against the fees payable to R&R pursuant to the Administrative Services Agreement.

On December 28, 2004 we entered into an Employment Agreement with Jay E. Ostrow through our XRG G&A subsidiary. Mr. Ostrow has been acting as our controller. This agreement has a term of two (2) years with a based salary of $85,000 per year. Mr. Ostrow was issued 5,000 shares in connection with this agreement. Mr. Ostrow is entitled to employee benefits offered to all of our employees. In the event this agreement is terminated for any reason other than cause, Mr. Ostrow is entitled to a six (6) month lump sum severance payment within thirty (30) days of termination.

On January 1, 2004 we entered into an Employment Agreement with Gary Walborn as our data processing manager. This agreement entitled Mr. Walborn to based compensation of $80,000 per year. This agreement has a two (2) year term. Mr. Walborn was entitled to 5,000 shares of common stock in connection with entering into this agreement. Mr. Walborn is entitled to the standard employee benefits. He performs his duties from his personal residence in Ohio. Mr.Walborn is the developer of the Load Z software.

In May, 2004 we entered into an Agreement with Herman Rios who was the senior project manager of XRG G&A. Mr. Rios was originally entitled to base compensation of $80,000. On March 21, 2005 we entered into a Consulting Agreement with Mr. Rios entitling him to 11,000 shares of our common stock. This Consulting Agreement superseded his prior Employment Agreement.

The following table sets forth information with respect to our common stock that may be issued upon the exercise of outstanding options, warrants, and rights to purchase shares of our common stock as of March 31, 2005.

Plan Category(1)	(a) Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants, and Rights	(b) Weighted Average Exercise Price of Outstanding Options, Warrants, and Rights	(c) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
Equity Compensation Plans Approved by Stockholders	-0-	N/A	N/A
Equity Compensation Plans Not Approved by Stockholders	5,000	$ .20	(2)
Total	5,000		

(1) Exclude warrants issued to investors in connection with capital raising transactions not approved by our stockholders.

(2) See the discussion under "Employee Equity Incentive Plans" immediately below.

Employee Equity Incentive Plans

In fiscal year ended March 31, 2004, the Board of Directors of the Registrant approved a non-qualified stock option plan. However, this plan was never formally approved or adopted by the current shareholders of the Company. Accordingly, we intend to adopt a equity incentive plan in fiscal 2006. We anticipate that approximately 10% of our outstanding equity securities will be reserved for the operators of our terminals pursuant to a management equity incentive plan and that equity securities will be issued to the operators and employees of our terminals based upon performance goals and criteria to be defined. In addition, we anticipate that up to 10% of our outstanding equity securities, on a fully diluted basis, will be reserved for issuance to Mr. Francis, Mr. Leong and Mr. Cronin for facilitating the restructuring of our operations. We anticipate that any such plans will be approved by a majority of our shareholders.

ITEM 11. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENTo

The following table sets forth certain information as of June 30, 2005, regarding current beneficial ownership of our Common Stock by (i) each person known by us to own more than 5% of the outstanding shares of our Voting Securities, (ii) each of our executive officers and directors, ando (iii) all of our executive officers and directors as a group. Except as noted, each person has sole voting and sole investment or dispositive powero with respect to the shares shown.o

	Common Stock	
Name and Address of Beneficial Owner (1)	Number	Percent of All Voting Securities (2)
Donald G. Huggins, Jr. (3)(4)	552,500	3.7 %
Kevin P. Brennan (3)	396,875	2.6 %
Stephen R. Couture	530,416	3.5 %
Neil Treitman (3)(5)	-0-	—
Barron Partners, LP(6)	14,091,667	93.7 %
Richard Francis (7)	164,275	1.1 %
Michael T. Cronin(8)	42,500	.3 %
Terence Leong	-0-	—
Kenneth A. Steel, Jr. (9)	1,262,500	8.3 %
All current executive officers and directors as a group (4 persons)	729,166	4.9 %

(1)o Except as otherwise indicated, the address of each beneficial owner is c/o XRG, Inc., 601 Cleveland Street, Suite 820, Clearwater, Floridao 33755.o

(2) Calculated on the basis of approximately 15,036,027 shares of common stock issued and outstanding as of June 30, 2005 except that shares of common stock underlying options and warrants exercisable within 60 days of the date hereof are deemed to be outstanding for purposes of calculating the beneficial ownership of securities of the holder of such options or warrants.

(3) Messrs. Huggins, Brennan and Treitman are no longer directors but are included in the table as they held positions as officers and directors during fiscal 2005.

(4)o These shares are held in the name of Margaret J. Huggins, Mr. Huggins wife and Private Capital Group, Inc., a corporation which is wholly owned by Margaret J. Huggins. Mr. Huggins disclaims beneficial ownership of these shares.

(5) XRG believes that Mr. Treitman has sold or has pending Rule 144 sale requests for all of his Common Stock. Accordingly, the above table reflects Mr. Treitman as owning -0- shares.o

(6) Represents (i) 5,416,667 shares acquired for $3,250,000 in March, 2004; (ii) 3,000,000 shares acquired in exchange for warrants in a cashless tender on June 15, 2004; (iii) 175,000 shares acquired for $350,000 in June, 2005; and (iv) warrants to acquire 5,500,000 shares of our Common Stock at a $2.00 exercise price issued in June 2005.o

(7) Excludes 150,000 shares issuable to R&R Express. Inc. and includes 13,750 owned by KDR Transport, Inc.

(8) Includes options to acquire 5,000 shares exercisable at $.20 issued in March, 2003.

(9) Represents (i) 175,000 shares held by Mr. Steel and his affiliates; (ii) warrants to acquire 87,500 shares at a $2.00 exercise price issued to Mr. Steel and his affiliates; and (iii) a Common Stock purchase warrant for 1,000,000 shares exercisable at $2.00 issued to Mr. Steel ino consideration for restructuring his $500,000 promissory note.

ITEM 12: CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Effective April 20, 2005 we entered into an Administrative Services Agreement with R&R Express, Inc. ("R&R") and Richard Francis. We appointed Mr. Francis as our Chief Executive Officer, replacing Kevin Brennan. Mr. Francis is also the President of R&R. Pursuant to the Administrative Services Agreement, R&R is responsible for certain of the daily administrative, procedural and regulatory issues relating to our operations. We have agreed to pay R&R an administrative services fee equal to 12% of line haul revenue (excluding pass throughs) for all agent, this fee is payable weekly. In addition we agreed to issue each of R&R and Mr. Francis 150,000 shares of our common stock. We also agreed to pay Mr. Francis an annual salary of $150,000 per year from our XRG G & A subsidiary as compensation for serving as our Chief Executive Officer and certain of our subsidiaries. The salary of Mr. Francis is considered a credit against the service fee payable to R&R. This Administrative Services Agreement replaces and supersedes any previous agreements and understandings between R&R, KDR Transport, Inc., Mr. Francis and XRG, including but not limited to, a Consulting Agreement dated July 7, 2004 between KDR Transport, Inc. and XRG, an Employment Agreement dated July 1, 2004 between R&R Express Intermodal, Inc. and Mr. Francis and an Employment Agreement dated July 1, 2004 by and between XRG G&A, Inc. and Mr. Francis.

The Administrative Services Agreement has a five (5) year term, which is consistent with the term of our Terminal Agreements with our agents. The Administrative Services Agreement is cancelable by R&R prior to its date of expiration by providing us at least one (1) years' written notice. We may cancel the Administrative Services Agreement at any time with at least forty-five (45) days' prior written notice to R&R. R&R has agreed to a non-competition and non-solicitation of our customers, employees and agents during the term of the agreement and for a twenty-four (24) month period thereafter, excluding the business of R&R.

We are party to a Consulting Agreement with Terence Leong which requires us to pay Mr. Leong $100 an hour. To date we have paid Mr. Leong $88,150 in fees and $6,646 in expense reimbursements. We owe Mr. Leong $32,271 as of June 30, 2005.

Barron is our largest stockholder and is in a position to control the affairs of the Company, including the election of Directors. Barron is also the holder of approximately $3,622,084 of promissory notes which are secured by all of our assets and payable on December 31, 2005. See "Liquidity and Capital Resources — Description of Barron Interim Financing Arrangements"

In May 2005 we entered into mutual general releases with Donald Huggins, Kevin Brennan and Barron. These individuals were former officers and directors. These individuals resigned in connection with the execution of the releases. We paid Mr. Brennan $13,325.90 in connection with his release. Each of these individuals agreed to reduce their respective stockholdings in the Company by approximately 25% each in connection with the execution of the releases. See Item 10 - Executive Compensation.

We anticipate issuing approximately 10% of our fully diluted equity securities equally between Mr. Francis, Mr. Leong and Mr. Cronin in connection with their efforts in facilitating the restructuring of our operations.

XRG authorized the issuance of options to acquire 150,000 shares of its Common Stock to Mr. Cronin with an exercise price of $.01 as of March 30, 2005. However, Mr. Cronin declined such options because Mr. Couture alleged that none of the other agreements and contracts presented at that meeting were approved since they were not in final version. Mr. Cronin felt it was improper and inconsistent for Mr. Couture to take the position that the options for Mr. Cronin were approved at this meeting when he took the position that none of the other matters presented at this meeting were approved. In lieu of accepting such options Mr. Cronin anticipates being issued equity securities of the Company as described above in consideration for his assistance in restructuring our operations.

Michael T. Cronin, Esq., who is a partner in the law firm which serves as our corporate and securities counsel owns 37,500 shares of our common stock. These shares were issued for legal services rendered. In addition, Mr. Cronin was issued in March, 2003 an option to acquire 5,000 shares at a $.20 exercise price. During fiscal year ended March 31, 2005 we paid this firm approximately $148,000 for legal fees and expenses.

In connection with securing the Capco accounts receivable financing arrangements we agreed to issue Capco warrants to acquire 63,820 shares of our Common Stock with an exercise price of $2.35. These warrants expire March 21, 2010.

Oberon Securities acted as the finder in connection with the Capco financing. We have paid Oberon a capital facility fee of $120,000. We are obligated to pay additional Oberon of $30,000 at the time the balance owned under the facility exceeds $4,000,000 and $30,000 for each $1,000,000 additional increment in financings. In addition, we are obligated to issue Oberon warrants to acquire 55,550 shares of our Common Stock at a $2.16 exercise price. These warrants have a three (3) year term.

On October 14, 2004 we entered into a Consulting Agreement with James Jensen. We issued Mr. Jensen 250,000 shares of our common stock. Mr. Jensen was entitled to purchase these shares at $2.00 per share. Mr. Jensen tendered $125,000. We reflect the remaining $375,000 as a subscription receivable from Mr. Jensen. We are in the process of renegotiating this Consulting Agreement inasmuch as Mr. Jensen has not tendered the remaining payments.

A former consultant who assisted XRG in investor relations claims that he is owed $4,500 per month for nine (9) months of services or approximately $40,500, for services rendered during 2003 and 2004. We have not paid this consultant and are currently in discussions with this consultant regarding the settlement of this matter through the issuance of either our shares and options. There is no assurance that this matter will be resolved.

On March 21, 2005 we entered into a consulting agreement with Michael Conroy to assist in financial statement preparation, SEC financial reporting and the design, development implementation of accounting systems. This agreement was mutually terminated in May, 2005. We owe Mr. Conroy approximately $8,900 under this agreement. This agreement also entitled Mr. Conroy to receive options to acquire up to 150,000 shares of our Common Stock, subject to the Company reaching certain benchmarks. We do not believe Mr. Conroy is entitled to any options because the agreement was terminated prior to the Company achieving any of such benchmarks. However, we may issue Mr. Conroy options or other securities in order to satisfy our other monetary obligations under this consulting agreement.

Neil Treitman, our former Chief Executive Officer resigned on November 30, 2004. In connection with his resignation we issued Mr. Treitman and his affiliate 100,000 shares of our Common Stock. We also issued Mr. Treitman 12,500 shares as a bonus.

In April 2004, Donald Huggins, Kevin Brennan and Stephen Couture agreed to cancel all of their previously issued shares of Series A Preferred Stock in exchange for 1,250,000 shares of our Common Stock. This exchange was taken in connection with the financing provided by Barron and our issuance of 3,000,000 shares of our Common Stock to Barron in connection with the cashless exercise of Barron's common stock purchase warrants. These shares were issued equally between Mr. Huggins, Mr. Brennan and Mr. Couture.

During the fourth quarter of our fiscal year we issued Mr. Huggins 95,000 shares of our Common Stock to satisfy $95,000 of accrued and unpaid compensation and Mr. Couture 45,000 shares of our Common Stock to satisfy $45,000 of accrued and unpaid compensation.

We issued Private Capital Group, Inc., a corporation controlled by the wife of Don Huggins, 100,000 shares of our Common Stock in our first quarter for consulting services.

We relied upon Section 4(2) for the issuance of the above securities.

We believe that all of the transactions with our officers and directors were fair and in the best interests of XRG, such transactions may not necessarily have been on the same terms as if negotiated from unaffiliated third parties. However, management believes that these terms are no less favorable than those that would have been available from unaffiliated third parties. Although no other transactions are contemplated, it is XRG's policy that all future transactions with our officers, directors or affiliates would be approved by members of our board of directors not having an interest in the transaction, and will be on terms no less favorable than could be obtained from unaffiliated third parties.

Table of Contents

XRG, Inc. and Subsidiaries

Consolidated Financial Statements

Years Ended March 31, 2005 and 2004

Contents

Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders
XRG, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheet of XRG, Inc. and Subsidiaries as of March 31, 2005 and the related consolidated statements of operations, changes in stockholders' deficit and cash flows for the year then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of XRG, Inc. and Subsidiaries at March 31, 2005 and the consolidated results of their operations and their cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that XRG, Inc. and Subsidiaries will continue as a going concern. As more fully described in Note 1, at March 31, 2005, the Company has a deficiency in working capital of approximately $4,774,000, a loss from continuing operations of approximately $14,237,000, cash used in operating activities of approximately $7,516,000 and a deficiency in assets of approximately $3,324,000. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

Mahoney Cohen &
Company, CPA, P.C.

New York, New York
June 30, 2005

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders
XRG, Inc. and Subsidiaries
Clearwater, Florida

We have audited the accompanying consolidated statements of operations, changes in stockholders' deficit, and cash flows of XRG, Inc. and Subsidiaries for the year ended March 31, 2004. These consolidated financial statements are the responsibility of the management of XRG, Inc. and Subsidiaries. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required at this time, to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated results of operations and cash flows of XRG, Inc. and Subsidiaries for the year ended March 31, 2004 in conformity with accounting principles generally accepted in the United States of America.

Pender Newkirk & Company
Certified Public Accountants
Tampa, Florida
June 23, 2004

XRG, Inc. and Subsidiaries

Consolidated Balance Sheet
March 31, 2005

Assets	
Current assets:	
Accounts receivable, net of allowance of $300,000	$ 5,047,282
Prepaid expenses	590,939
Total current assets	5,638,221
Fixed assets, net of accumulated depreciation	1,621,497
Other assets	
Goodwill	675,358
Other assets	2,946
Total other assets	678,304
	$ 7,938,022
Liabilities and Stockholders' Deficit	
Current liabilities:	
Bank Overdraft	$ 460,405
Current portion of long-term debt	3,809,816
Current portion of capital lease obligations	5,406
Accounts payable	491,732
Settlement payable	430,750
Accrued expenses	494,005
Line of credit	4,054,539
Accrued purchased transportation	665,691
Total current liabilities	10,412,344
Long-term liabilities:	
Long-term debt	849,379
Total liabilities	11,261,723
Commitments and contingencies	—
Stockholders' deficit:	
Series A Preferred stock; $.001 par value; 5,000,000 shares authorized, issued and cancelled	—
Preferred stock; $.001 par value; 45,000,000 shares authorized	—
Common stock; $.001 par value; 25,000,000 shares authorized; 14,521,971 shares issued and 14,316,471 outstanding	14,523
Additional paid-in capital	33,511,514
Subscription receivable	(380,000)
Accumulated deficit for unrelated dormant operations	(15,405,274)
Accumulated deficit	(19,979,464)
Treasury stock, at cost, 205,500 shares	(1,085,000)
Total stockholders' deficit	(3,323,701)
	$ 7,938,022

The accompanying notes are an integral part of the consolidated financial statements.

XRG, Inc. and Subsidiaries

Consolidated Statements of Operations
For the Years Ended March 31, 2005 and 2004

	2005	2004
Revenues	$ 39,353,428	$ 4,682,277
Cost of revenues	33,315,008	3,288,415e
Gross profit	6,038,420	1,398,862e
Expenses		
Selling, general and administrative expenses	13,221,960	3,838,338
Bad debt expense	246,289	1,049,642
Impairment of goodwill	3,719,688	—
Settlement loss	1,665,313	—
	18,853,250	4,887,980
Loss from operations	(12,814,830)	(3,489,118)
Interest expense	(1,083,553)	(183,836)
Intrinsic value of convertible debt and debt discount for value of detachable warrants	(338,486)	(777,259)
	(1,422,039)	(961,095)
Net loss	$(14,236,869)e	$(4,450,213)
Basic and diluted loss per share	$ (1.25)	$ (4.92)
Basic and diluted weighted average number of common shares outstanding	11,385,176	905,176

The accompanying notes are an integral part of the consolidated financial statements.

XRG, Inc. and Subsidiaries

Consolidated Statements of Changes in Stockholders' Deficit
For the years ended March 31, 2004 and 2005

	Common Stock			Common
	Number of Shares	Amount	Treasury Stock	Stock Payable
Balance, April 1, 2003	532,489	$ 533	$ —	$ 57,649
Preferred stock issued, September 30, 2003				
e Stock subscription e				3,250,000
Stock issued for intereste	12,179	12		(57,649)
Stock issued for warrant exchange	236,600	237		
Stock issued for warrants exercised	11,714	12		
Stock issued for options exercised	27,500	28		
Stock issued for cash	92,250	92		
Stock to be issued for cash				230,000
Stock issued for note conversion	69,300	69		
Stock issued for deposit on transportation equipment	57,500	57		304,000
Stock issued for acquisition	10,000	10		19,000
Stock issued for services and software	227,135	227		
Stock to be issued for services				455,000
Stock to be issued to certain shareholders				321
Value of warrants issued for services				
Value of warrants issued for deferred financing fee				
Beneficial conversion feature of convertible debt				
Discount on debt for value of warrants issued to debt holders				
Treasury stock acquired			(110,000)	
Amortization of deferred consulting and compensation				
Net loss for period				
Balance at March 31, 2004	1,276,667	1,277	(110,000)	4,258,321
Rounding of shares for 20 for 1 reverse stock split	(746)			
Preferred stock converted to common stock, June 29, 2004	1,250,000	1,250		
Stock issued for interest	45,135	45e		
Stock issued that was issuable	5,560,217	5,560		(4,123,321)
Stock issued for cashless warrant exercise	3,002,792	3,003e		
Stock issued for warrants exercised	23,286	23		
Stock issued for options exercised	20,000	20		
Stock issued for cash	2,172,000	2,172		—
Offering costs				
Stock issued for note conversions	135,000	135		
Stock issued for acquisitions	475,000	475	(975,000)	
Stock issued for services and compensation	417,620	418		(135,000)
Stock issued for settlements of compensation	50,000	50		
Stock issued for RSV recorded as settlement expense	100,000	100		
Value of options issued for services				
Value of warrants issued for deferred financing fee				
Value of warrants issued for stock offering costs				
Discount on debt for value of warrants issued to debt holders				
Treasury stock acquired	(5,000)	(5)		
Deferred stock consulting expensed to settlement costs				
Amortization of deferred consulting and compensation				
Net loss for period				
Balance, March 31, 2005	14,521,971	14,523	(1,085,000)	—

(continued)

(continued)

	Stock Subscription Receivable	Preferred Stock Number of Shares	Preferred Stock Amount	Additional Paid-in Capital
Balance, April 1, 2003	$ —	—	$ —	$15,662,765
Preferred stock issued, September 30, 2003	(5,000)	5,000,000	5,000	
Stock subscription				
Stock issue for interest				57,637
Stock issued for warrant exchange				(237)
Stock issued for warrants exercised				44,988
Stock issued for options exercised				522
Stock issued for cash				461,158
Stock to be issued for cash				
Stock issued for note conversion				692,931
Stock issued for deposit on transportation equipment				436,943
Stock issued for acquisition				137,990
Stock issued for services and software				1,646,176
Stock to be issued for services				
Stock to be issued to certain shareholders				(321)
Value of warrants issued for services				111,743
Value of warrants issued for deferred financing fee				35,900
Beneficial conversion feature of convertible debt				507,780
Discount on debt for value of warrants issued to debt holders				283,404
Treasury stock acquired				
Amortization of deferred consulting and compensation				
Balance at March 31, 2004	(5,000)	5,000,000	5,000	20,079,379
Rounding of shares for 20 for 1 reverse stock split				
Preferred stock converted to common stock, June 29, 2004		(5,000,000)	(5,000)	3,750
Stock issued for interest				168,226
Stock issued that was issuable				4,017,761
Stock issued for cashless warrant exercise				(3,003)
Stock issued for warrants exercised				104,343
Stock issued for options exercised				85,882
Stock issued for cash	(375,000)			4,341,828
Offering costs				(6,111,583)
Stock issued for note conversions				514,865
Stock issued for acquisitions				2,528,526
Stock issued for services and compensation				1,458,918
Stock issued for settlements of compensation				179,950
Stock issued for RSV recorded as settlement expense				599,900
Value of options issued for services				13,200
Value of warrants issued for deferred financing fee				63,881
Value of warrants issued for stock offering costs				5,454,768
Discount on debt for value of warrants issued to debt holders				110,918
Treasury stock acquired				(99,995)
Deferred stock consulting expensed to settlement costs				
Amortization of deferred consulting and compensation				
Net loss for period				
Balance, March 31, 2005	(380,000)	—	—	33,511,514

(continued)

(continued)

	Accumulated Deficit for Unrelated Dormant Operations	Accumulated Deficit	Deferred Stock Consulting and Compensation	Total
Balance, April 1, 2003	$(15,405,274)	$ (1,292,382)	$ —	$ (976,709)
Preferred stock issued, September 30, 2003				—
Stock issued for interest				e3,250,000e
Stock issued for warrant exchange				—
Stock issued for warrants exercised				45,000
Stock issued for options exercised				550
Stock issued for cash				461,250e
Stock to be issued for cash				230,000
Stock issued for note conversion				693,000
Stock issued for deposit on transportation equipment				741,000
Stock issued for acquisition				157,000
Stock issued for services and software			(297,500)	1,348,903
Stock to be issued for services			(320,000)	135,000
Stock to be issued to certain shareholders				—
Value of warrants issued for servicese				111,743
Value of warrants issued for deferred financing fee				35,900
Beneficial conversion feature of convertible debt				507,780
Discount on debt for value of warrants issued to debt holders				283,404
Treasury stock acquired				(110,000)
Amortization of deferred consulting and compensation			75,013	75,013
Net loss for period		(4,450,213)		(4,450,213)e
Balance at March 31, 2004	(15,405,274)	(5,742,595)	(542,487)	2,538,621e
Rounding of shares for 20 for 1 reverse stock split				—
Preferred stock converted to common stock, June 29, 2004				—
Stock issued for interest				168,271
Stock issued that was issuable				(100,000)
Stock issued for cashless warrant exercise				—
Stock issued for warrants exercised				104,366
Stock issued for options exercised				85,902
Stock issued for cash				3,969,000
Offering costs				(6,111,583)
Stock issued for note conversions				515,000
Stock issued for acquisitions				1,554,001
Stock issued for services and compensation			(135,000)	1,189,336
Stock issued for settlements of compensation				180,000
Stock issued for RSV recorded as settlement expense				600,000
Value of options issued for services				13,200
Value of warrants issued for deferred financing fee				63,881
Value of warrants issued for stock offering costs				5,454,768
Discount on debt for value of warrants issued to debt holders				110,918
Treasury stock acquired				(100,000)
Deferred stock consulting expensed to settlement costs			513,798	513,798
Amortization of deferred consulting and compensation			163,689	163,689
Net loss for period		(14,236,869)		(14,236,869)
Balance, March 31, 2005	(15,405,274)	(19,979,464)	—	(3,323,701)

The accompanying notes are an integral part of the consolidated financial statements.

XRG, Inc. and Subsidiaries

Consolidated Statements of Cash Flows
For the Years ended March 31, 2005 and 2004

	2005	2004
Operating activities		
Net loss	$(14,236,869)	$(4,450,213)
Adjustments to reconcile net loss to net cash used by operating activities:		
Depreciation and amortization	544,268	17,915
Bad debt	246,289	1,049,642
Common stock, options and warrants issued for services and compensation	1,795,834	1,557,646
Stock issued in lieu of interest	213,021	—
Impairment of goodwill	3,719,688	—
Amortization of discount and intrinsic value of convertible notes	338,486	777,259
Amortization of deferred financing fees	97,898	8,475
Amortization of deferred stock compensation and consulting	168,689	75,013
Settlement loss	1,404,333	—
(Increase) decrease, net of effect of acquisitions:		
Accounts receivable	(2,099,766)	(1,193,213)
Other assets	(128,922)	(49,248)
Increase (decrease), net of effect of acquisitions:		
Accounts payable	(295,633)	519,962
Related party payables		175,000
Accrued expenses and other liabilities	721,823	345,341
Total adjustments	6,721,008	3,283,792
Net cash used by operating activities	(7,515,861)	(1,166,421)
Investing activities		
Purchase of equipment	(566,027)	(29,055)
Acquisition for business, net of cash acquired in acquisition	(2,038,000)	—
Deposit on purchase of transportation equipment	—	(50,000)
Net cash used by investing activities	(2,604,027)	(79,055)
Financing activities		
Bank overdraft	405,031	114,155
Increase in advances to J. Bently Companies, Inc.	—	(994,794)
Factoring line of credit	1,249,722	935,652
Net borrowings (payments) on related party advances	(130,126)	63,500
Proceeds from common stock issued and to be issued and options exercised	6,752,453	736,800
Proceeds from issuance of notes payable	3,260,560	565,000
Loan costs	(210,000)	(33,900)
Principal payments on notes payable	(1,040,945)	(47,500)
Payments for treasury stock	(100,000)	(110,000)
Payments on capital lease	(66,807)	—
Net cash provided by financing activities	10,119,888	1,228,913
Net increase in cash	—	(16,563)
Cash at beginning of period	—	16,563
Cash at end of period	$ —	$

(continued)

XRG, Inc. and Subsidiaries

Consolidated Statements of Cash Flows
(continued)

	Years Ended March 31, 2005	2004
Supplemental disclosures of cash flow information and noncash investing and financing activities:		
Cash paid during the year for interest	$730,409	$ 91,645

During the years ended March 31, 2005 and 2004, the Company recorded a discount on convertible notes payable of $110,918 and $791,184, respectively, which related to the beneficial conversion feature of the notes payable and the warrants issued with these notes. The discount is being amortized over the life of the related notes.

During the year ended March 31, 2005, certain note holders converted notes payable totaling $515,000 into 135,000 share of common stock. During the year ended March 31, 2004, certain note holders converted notes payable totaling $693,000 into 69,300 shares of common stock. The holders of the notes have surrendered the outstanding notes solely for common stock of the Company.

During the year ended March 31, 2005, 3,002,792 shares of the Company's common stock were issued in exchange for warrants in a cashless exercise of the warrants. During the year ended March 31, 2004, 236,600 shares of the Company's common stock were issued in exchange for warrants. These warrants were exchanged for a like number of shares of common stock on a one for one basis for no additional consideration.

During the fiscal year ended 2005, the Company granted warrants to purchase 3,956,668 of its Common Stock to private placement investors in conjunction with the private placements.

During the year ended March 31, 2004, the Company issued 57,500 shares of common stock recorded at $1,150,000 for deposits on transportation equipment purchased from J. Bently Companies, Inc. During April 2004, the Company modified the agreement with J. Bently Companies, Inc. to issue 40,000 shares of additional common stock and eliminate the true up provision in the agreement. Therefore the deposit on the transportation equipment was repriced based upon the terms of this revised agreement and the common stock shares were recorded at $437,000 which is a reduction of $713,000.

During the year ended March 31, 2004, the Company issued 10,000 shares valued at $200,000 for a deposit on the acquisition of R&R Express Intermodal, Inc. In December 2003, the Company modified the Stock Purchase Agreement with R&R Express Intermodal, Inc. to purchase 5,000 of these shares for $100,000 which is reflected as treasury stock at cost. During April 2004, the Company modified the Stock Purchase Agreement with R&R Express Intermodal, Inc. to issue 2,500 shares of additional common stock and eliminate the true up provision in the agreement. Therefore the purchase price of R&R Express Intermodal, Inc was repriced based upon the terms of this revised agreement and the 5,000 shares of common stock were recorded at $138,000 which is a reduction of $62,000.

During the year ended March 31, 2005, the Company issued 580,000 shares of common stock in conjunction with several acquisitions. The estimated fair value of assets acquired was $7,609,371 and the fair value of liabilities assumed was $3,662,878. (see Note 13 below for a detailed discussion of these acquisitions). In August 2004, the Company amended the agreement with Express Freight Systems, Inc.'s EFS) prior shareholders which requires the EFS prior shareholders to return 187,500 shares of common stock which was recorded as treasury stock at March 31, 2005. During the fourth quarter of 2005, the Company recorded 315,000 shares of its common stock as settlement payable for an adjustment to the purchase price of one of the acquisitions. These shares were valued at $346,500. Subsequent to March 31, 2005, the RSV agreement was void ab initio (treated as if it never happened). These 100,000 shares should be returned to the Company.

During the year ended March 31, 2004, the Company purchased software related to the trucking industry by issuing 5,000 shares of common stock valued at $38,000.

During the year ended March 31, 2004, the Company financed the purchase of computer equipment in the amount of $8,461.

(continued)

XRG, Inc. and Subsidiaries

Consolidated Statements of Cash Flows
(continued)

During the year ended March 31, 2005, the Company granted warrants to purchase approximately 1,181,297 shares of its common stock to placement agents of its private placements. These warrants were valued at $5,454,768 and were recorded as offering costs. Also during the fiscal year 2005, the Company granted warrants to purchase 65,220 shares of its common stock to obtain a working capital line of credit which is secured by its receivables. These warrants were valued at $63,881 and were recorded as deferred financing fees and will be amortized over the term of the related line of credit. During the year ended March 31, 2004, the Company granted warrants to purchase approximately 6,667 shares of its common stock to the placement agent of the private placement. These warrants were valued at $35,900 and were recorded as deferred financing fees and will be amortized over the term of the related notes payable.

During the year ended March 31, 2004, the Company recorded a stock payable for 16,050 shares of common stock as additional shares to certain existing shareholders. These shares were issued during the fiscal year of 2005.

The Company executed a Stock Purchase Agreement with Barron Partners, LP (the "Investor") on March 31, 2004. During April, under the terms of this Agreement, the Company issued the Investor 5,416,667 shares of its Common Stock for an aggregate purchase price $3,250,000. At March 31, 2004, the $3,250,000 is recorded as Common Stock Payable and as a Stock subscription receivable which was received into escrow on April 1 2004 and distributed to XRG on April 2, 2004 through April 30, 2004.

During the year ended March 31, 2005, the Company issued 25,000 shares of its common stock in exchange for consulting services valued at $135,000 which was recorded as deferred compensation and was expensed during the fiscal year of 2005 when it was determined no more services would be provided. During the year ended March 31, 2004, the Company issued 86,250 shares of common stock in exchange for consulting services valued at $617,500, of which $542,487 was recorded as deferred compensation at March 31, 2004 and was expensed during the fiscal year of 2005 when the services were provided.

During the year ended March 31, 2005, the Company issued 1,250,000 shares of common stock in exchange for the cancellation of 5,000,000 shares of Series A Preferred Stock to three executives.

Prior to March 31, 2004, an investor invested $200,000 which was classified as common stock payable at March 31, 2004. During the six month period ended September 30, 2004, per the investor's request, $100,000 of the $200,000 investment was reclassified to an advance to the Company.

During the fiscal year of 2005, the Company issued 5,560,217 shares of its common stock that was recorded as common stock payable at March 31, 2004.

During the second quarter of 2004, the Company agreed to issue 93,333 shares of its common stock to investors who purchased stock during the first quarter of 2004 to bring their purchase price to $0.10 per share.

During the fiscal year of 2005, the Company issued 140,000 shares of its common stock to two executives for payment of $140,000 of accrued compensation and $147,000 of compensation.

During the fiscal year of 2005, the Company authorized a 20 for 1 reverse split.

The accompanying notes are an integral part of the consolidated financial statements.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

1. Background Information/Going Concerno

XRG, Inc. (the "Company") was incorporated in the state of Delaware in November 2000. The Company acquires and operates both asset and non-asset based truck-load carriers, and markets sophisticated logistical expertise to freight shippers in the contiguous 48 states. Originally the Company's business model was to operate primarily as an asset based carrier. During the last several months, the Company has effectuated a restructuring of its business and operations and migrated to operating primarily as a non-asset based provider of transportation services. The corporate headquarters are located in Tampa, Florida. Prior to the quarter ended September 30, 2003, the Company devoted substantially all of its efforts to establishing its freight transportation business and, therefore, was in the development stage since 1999. During the quarter ended September 30, 2003, the Company's planned principal operations commenced and significant revenues were realized which allowed the Company to emerge from its development stage status.

XRG International, Inc, a non-reporting, non-trading public company, was originally incorporated in the state of New Jersey in December 1976. This company operated several unrelated business ventures until its operations became dormant. During 1999 a change in control of the XRG International Inc. took place, and on May 1, 1999, XRG International, Inc. was reactivated to develop plans to pursue consolidation opportunities within several industries including the freight transportation industry. On December 28, 2001, XRG, Inc. merged with XRG International, Inc. and the Company changed its name to XRG, Inc. The merger has been accounted for at historical cost since both entities were under common control.

The financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The Company incurred operating losses of approximately $14,237,000 for the year ended March 31, 2005, has an accumulated deficit at March 31, 2005 of approximately $35,385,000, which consists of approximately $15,405,000 from unrelated dormant operations and $19,980,000 from current operations; and a negative tangible net worth of approximately $3,999,000 at March 31, 2005. In addition, the Company has negative working capital of approximately $4,774,000 at March 31, 2005 and has used approximately $7,516,000 of cash from operations for the year ended March 31, 2005. These factors raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments relating to the recoverability and classification of recorded assets or the amounts and classification of liabilities that might be necessary in the event the Company cannot continue in existence.

The Company has established a profit improvement plan to achieve a more streamlined and efficient operation. As part of this plan, the Company is identifying savings opportunities associated mostly with redundancies and economies of scale. The Company is focusing these efforts on improvement in operating ratios and tractor utilization (average revenue per tractor per week.) The first stage of this plan included the restructuring of the Company's Express Freight Systems, Inc., acquisition on August 16, 2004 from an asset-based provider to a non-asset based agency transaction. In addition, the Company restructured its asset purchase of Carolina Truck Company ("CTC")) during April 2005 to permit CTC to restructure to a non-asset based agency transaction and during June 2005 restructured the Highway Transport, Inc. transaction to a non-asset based agency arrangement. These restructurings fix the company's operating costs associated with the EFS and Highway companies through an agency arrangement under terminal agreements and permits CTC to elect to do an agency agreement if CTC prefers. The Company's profit improvement plan may decrease its operating losses in the future; however, there is no assurance that this plan will be effective in obtaining profitability for the Company. Failure to accomplish these plans could have an adverse impact on the Company's liquidity, financial position and future operations.

2. Significant Accounting Policies

The significant accounting policies followed are:o

Principles of Consolidation

The consolidated financial statements include the accounts of XRG, Inc. and its wholly-owned subsidiaries, XRG G&A, Inc, XRG Logistics and R&R Express Intermodal, Inc. All significant intercompany accounts and transactions have been eliminated.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Concentration of Credit Risks

Financial instruments, which potentially subject the Company to concentrations of credit risk, are cash and accounts receivable.

The Company sells services and extends credit based on an evaluation of the customer's financial condition and ability to pay the Company in accordance with the payment terms without requiring collateral. The Company provides for estimated losses on accounts receivable considering a number of factors, including the overall aging of accounts receivables, customers payment history and the customer's current ability to pay its obligations. Exposure to losses on receivables is principally dependent on each customer's financial condition. The Company monitors its exposure for credit losses and maintains allowances for anticipated losses. Based upon management's review of accounts receivable the allowance for doubtful accounts of approximately $134,000 is considered adequate. The Company does not accrue interest on past due receivables.

Concentration of credit risk with respect to trade receivables is limited due to the Company's large number of customers and wide range of industries and locations served. One customer comprised 15.7% of the Company's accounts receivable balance at March 31, 2005. Two customers individually comprised more than 10% of the Company's accounts receivable balance at March 31, 2004. One customer's balance represented 13.3% and the other 15.2%.

No customer represented more than ten percent of the Company's revenues for the year ending March 31, 2005. One customer represented 10.3% of the Company's total revenue at March 31, 2004

Cash is maintained with multiple financial institutions in the United States. Deposits with a bank may exceed the amounts of insurance provided on such deposits. Generally, the deposits may be redeemed on demand and, therefore, bear minimal risk.

Cash and Cash Equivalents

The Company considers all highly liquid debt instruments and other short-term investments with an initial maturity date of three months or less from the purchase date to be cash equivalents. The cash is maintained with major financial institutions in the United States. Deposits with these banks may exceed the amount of FDIC insurance provided on such deposits. Generally, these deposits may be redeemed upon demand and, therefore, bear minimal risk.

Revenue Recognition

In accordance with the Emerging Issues Task Force 99-19, the Company records revenue (including fuel surcharge revenues) on a gross basis because the Company is the primary obligor, the carrier of record and insurer of all freight, establishes pricing, prepares all invoicing and has the risk of loss as it relates to the ultimate collection of accounts receivable and uninsured cargo losses. For shipments where a third-party provider is utilized under an agency arrangement to provide some or all of the service, the company records a purchased transportation expense for the costs of transportation paid by the Company to the agent upon delivery of the shipment. Accordingly, revenue and the related direct freight expenses of the Company's business and its agency arrangements are recognized on a gross basis upon completion of freight delivery and no additional services are required by the Company. Fuel surcharges billed to customers for freight hauled by the Company's agency arrangements are excluded from revenue and paid in entirety to the Agents.

Estimated Fair Value of Financial Instruments

The Company's financial instruments include cash, receivables, and debt. Management believes the estimated fair value of these financial instruments at March 31, 2005 approximate their carrying value as reflected in the consolidated balance sheets due to the short-term nature of these instruments. It is not practicable for the Company to estimate the fair value of its long-term convertible notes payable as there are not currently any quoted market prices available.

Fixed Assets

Fixed assets are recorded at the lower of cost or fair value. Depreciation is calculated by the straight-line method over the estimated useful lives of the assets, generally three to seven years. Additions to and major improvements of equipment are capitalized. Maintenance and repairs are charged to expense as incurred. As equipment is sold or retired, the applicable cost and accumulated depreciation

are eliminated from the accounts and any gain or loss is recorded. Estimated useful lives are periodically reviewed and, where appropriate, changes are made prospectively.

Long Lived Assets

Management periodically reviews the Company's long-lived assets for indications of impairment whenever circumstances and situations change such that there is an indication that the carrying amounts may not be recoverable. If the non-discounted future cash flows of the long-lived assets are less than their carrying amount, their carrying amounts are reduced to fair value and an impairment loss is recognized. Management does not believe there is any impairment of long lived assets at March 31, 2005.

Goodwill

Goodwill consists of the excess of cost over the fair value of net assets acquired in business combinations.

The Company follows the provision of Statement of Financial Accounting Standards ("SFAS") No. 142, Goodwill and Other Intangible Assets. SFAS No. 142 requires an annual impairment test for goodwill and intangible assets with indefinite lives. Under the provisions of SFAS No. 142, the first step of the impairment test requires that the Company determine the fair value of each reporting unit, and compare the fair value to the reporting unit's carrying amount. To the extent a reporting unit's carrying amount exceed its fair value, an indication exists that the reporting unit's goodwill may be impaired and the Company must perform a second more detailed impairment assessment. The second impairment assessment involves allocating the reporting unit's fair value to all of its recognized and unrecognized assets and liabilities in order to determine the implied fair value of the reporting unit's goodwill as of the assessment date. The implied fair value of the reporting unit's goodwill is then compared to the carrying amount of goodwill to quantify an impairment charge as of the assessment date. During the year ended March 31, 2005, the Company recorded $3,720,000 of goodwill impairment (see Note 4).

Income Taxes

Deferred income tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the consolidated financial statements carrying amounts of existing assets and liabilities and their respective income tax basis, principally fixed assets. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized as income or expense in the period that included the enactment date.

Valuation allowances have been established against the Company's deferred tax assets due to uncertainties in the Company's ability to generate sufficient taxable income in future periods to make realization of such assets more likely than not. The Company has not recognized an income tax benefit for its operating losses generated during 2005 and 2004 based on uncertainties concerning the Company's ability to generate taxable income in future periods. There was no income tax receivable at March 31, 2005 and 2004. In future periods, tax benefits and related deferred tax assets will be recognized when management considers realization of such amounts to be more likely than not.

Stock-Based Transactions

The Company issues stock in lieu of cash for certain transactions. Generally, the fair value of the stock, based upon the quoted fair market value is used to value the transactions.

For the stock options issued to employees, the Company has elected to apply the intrinsic value based method of accounting prescribed by Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations. Under the intrinsic value based method, compensation cost is measured on the date of grant as the excess of the quoted market price of the underlying stock over the exercise price. Such compensation amounts are amortized over the respective vesting periods of the options.

The following table illustrates the effect on net loss and loss per share as if the fair value based method of accounting had been applied to stock-based employee compensation, as required by SFAS No. 123, "Accounting for Stock-Based Compensation" and SFAS 148 "Accounting for Stock-Based

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

Compensation – transition and disclosure", an amendment of SFAS No. 123 for years ended March 31, 2005 and 2004:

	2005	2004
Net loss. as reported	$(13,852,073)	$(4,450,213)
Deduct: Total stock-based employee compensation expense determined under fair value based methods for all awards, net of related tax effects	(13,205)	—
Plus: Intrinsic value of compensation Costs included in net loss	13,200	—
Pro forma net loss	$(13,852,078)	$(4,450,213)
Net loss per common share		
Basic and diluted loss, as reported	$ (1.22)	$ (4.92)
Basic and diluted (loss), proforma	$ (1.22)	$ (4.92)

Loss Per Share

Basic net loss per share is computed by dividing the net loss by the weighted average number of common shares outstanding during the period. Diluted net loss per share is computed by dividing the net loss for the period by the weighted average number of common and common equivalent shares outstanding during the period. Common equivalent shares outstanding as of March 31, 2005 and 2004, which consist of employee stock options, warrants and convertible debentures, have been excluded from the diluted net loss per common share calculations because they are anti-dilutive. Accordingly, basic and diluted net loss per share is identical for the years ended March 31, 2005 and 2004. The following table summarizes the Company's common stock equivalents outstanding at March 31, 2005 which may dilute future earning per share.

Warrants and optionse	2,198,185
Convertible debte	1,290,476
Total	3,488,661

During the year ended March 31, 2005, the Company's common stock shares had a reverse split of 20 shares to one. This reverse stock split is reflected in all net loss per share calculations.

Beneficial Feature of Convertible Debt and Warrants Issued in Conjunction with Debt

The Company records the intrinsic value of the beneficial feature of convertible debentures as additional paid in capital and amortizes the interest over the life of the debentures. The Company records the warrants issued in conjunction with a debt issuance as a discount to debt and amortizes the interest over the life of the debentures.

Recently Issued Pronouncements statements

In December 2004, the FASB issued SFAS No. 123 (revised 2004) ("SFAS 123(R)"), "Share-Based Payment." This statement replaces SFAS Statement No. 123 "Accounting for Stock-Based Compensation," and supersedes APB Opinion No. 25, "Accounting for Stock Issued to Employees." SFAS 123(R) will require the fair value of all stock option awards issued to employees to be recorded as an expense over the related vesting period. The statement also requires the recognition of compensation expense for the fair value of any unvested stock option awards outstanding at the date of adoption. The adoption of FASB 123R will impact the Company by requiring it to use the fair-value based method of accounting for future and unvested employee stock transactions rather than the intrinsic method it currently uses. The Company will adopt this SFAS as of April 1, 2006. The Company does not expect the adoption of this SFAS to have a material impact relating to outstanding options since there are no awards currently outstanding under the existing incentive stock option.

Reclassifications

Certain amounts in the 2004 consolidated financial statements have been reclassified to conform with the 2005 presentation.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

3. Fixed assetse

As of March 31, 2005, the Company had the following fixed assets:e

Office equipment & software	$ 143,696
Tractors and trailers	1,849,750
Furniture & fixtures	78,213
	2,071,659
Accumulated depreciation	(450,162)
Total fixed assets, net	$1,621,497

Depreciation totaled $544,268 and $17,915 for the years ended March 31, 2005 and 2004, respectively.

Included in net fixed assets are $942,200 of fixed assets that revert back to prior owners of such assets based on the restructuring of certain current year acquisitions (see Note 16). The fair value of such assets approximates the net book value at March 31, 2005.

During fiscal 2005, the Company acquired fixed assets totaling $5,100,850 related to the acquisitions it made (See acquisition Note 13 below) and reduced fixed assets by $3,618,599 in accordance with the amended agreement entered into with Express Freight Systems, Inc. prior shareholders during the second quarter which changed the asset-based transaction to a non-asset based agency agreement (See acquisition Note 13 below).

Effective April 1, 2005, XRG entered into the Second Amendment to Asset Acquisition Agreement with CTC, and its prior shareholders. XRG has agreed to continue servicing the debt related to the CTC equipment and is entitled to take title to such equipment which is guaranteed by the former CTC shareholders at such time as the guaranties are released and provided that after the annual anniversary date of the agreement, XRG shares have a market value of at least $1.60.

The Company did not assume the liabilities and debts of RSV based upon the results of its due diligence investigations and its limited financial resources. Pursuant to the RSV Merger Agreement, the stock of RSV was to be held in escrow. It is the Company's understanding that the RSV shares were never delivered to the escrow agent. However, the Company issued its shares to the RSV shareholders. In addition, the Company never took title to the RSV assets. Accordingly, the Company believes that the RSV shareholders have the right to retain their shares and the XRG shares issued to the RSV shareholders should be returned to XRG. Based upon the above factors, the Company has written off its investment in the RSV transaction. The Company did not record the $2,030,000 of fixed assets pertaining to the RSV merger. See Note 13 below for a further discussion regarding the RSV transaction.

4. Goodwille

The Company recorded goodwill related to several of its acquisition during the years ended March 31, 2005 and 2004 (See Note 13). The following is the Goodwill balance at March 31, 2005:

Goodwill	$ 4,395,208
Less: impairment charge	(3,719,850)
	$ 675,358

During the fiscal year 2005, the Company evaluated the goodwill of each of its reporting units and recorded a goodwill impairment charge of approximately $3,720,000. The Company determined the goodwill of $2,918,000 for Express Freight Systems, Inc. and $746,000 for Highway Transport Services, Inc. was impaired as these transactions were restructured to non-asset based agency relationships. Also, the $56,000 of goodwill for Highbourne Corporation was determined to be impaired as our relationship with them was terminated and they are no longer affiliated with or are an agent of XRG.

For tax purposes, the goodwill that is recorded is based upon stock consideration which is deemed to be a nontaxable event, therefore, the goodwill would not be amortized on the Company's tax return.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

5. Obligations Due Under Line of Credit

On February 24, 2005 the Company finalized a closing and funding of a Contract of Sale/Security Agreement with Capco Financial Company. The purpose of this financing arrangement was to replace the Company's existing factoring arrangements. Pursuant to this agreement, the Company has the right to advance against 80% of its eligible accounts receivable. The Company is subject to lock-box arrangements and funds from the collection of the Company's receivables will be deposited in a lockbox account and advanced to the Company based upon availability. The interest rate is equal to a daily fee equal to the Greater Bay Bank, N.A. prime rate plus 7% divided by 365 (equivalent to a monthly discount fee of Greater Bay Bank, N.A. prime rate plus 7% divided by 12). At March 31, 2005 the prime rate of interest was 5.75% making the effective daily interest rate for costs of funds advanced at 0.035% per day. Based upon current market rates this effective interest rate is substantially less than the effective cost of funds paid to the Company's previous factorers. As of March 31, 2005, the Company had $4,054,539 due under this arrangement. This debt is secured by all of the personal property of the Company. To obtain this arrangement, the Company paid $195,000 of upfront fees and granted a warrant to purchase 65,220 shares of its common stock. The warrant was valued at $63,881 using the Black Scholes option model. The $258,881 was recorded as deferred financing fees and will be amortized over the one-year term of this arrangement.

6. Notes Payable and Long-Term Debt

The following table outlines the notes payable balance for each entity at March 31, 2005:

XRG, Inc. — Notes payable secured by the assets of the Company: interest ranging from 6.00% to 17.00%; Monthly payments of approximately $13,500 on one note maturing during October 2007; four notes have no principal or interest payments and require a total balloon principal payment of $2,646,275 which is due by December 31, 2005 additionally all accrued interest is due by December 31, 2005 (these balloon notes were due at various times prior to March 31, 2005 and the lenders have extended the notes to December 31, 2005); Secured by all assets of the companies.	$2,992,079
XRG, Inc. — Convertible note payable; interest 10%, interest only payments payable annually; principal due on November 11, 2005, collateral is senior position in the assets of XRG, Inc. This note is convertible into the Company's common stock at a conversion price of $8.40 per share.	100,000
XRG, Inc. — Notes payable; interest 12.0%; interest only payments payable quarterly; principal due between April 2005 and June 2005; at maturity, the note holder will be paid the remaining unpaid principal at an 150% redemption premium plus accrueda interest. These notes are currently overdue.	20,000
XRG, Inc. — Convertible unsecured notes payable; interest 15%; the first 6 months of interest was put into escrow; principal and remaining interest was due December 31, 2004; these notes may be converted into the Company's common stock based upon a $3.00 price per share; Company is obligated to utilize 80% of the cash proceeds from future issuances of certain equity or debt securities, exercise of warrants or options to repay the principal and accrued interest on these notes prior to their maturity. These notes are currently overdue.	155,000
XRG, Inc. — Notes payable; interest ranging from 12.0% to 2,500 shares of common stock per month; these notes are overdue.	60,000
Carolina Truck Connection, Inc. ("CTC") — Notes payable; interest ranging from 6.00% to 8.53%; Monthly payments of approximately $5,100; due at various dates between September 2005 to October 2006; one note required a balloon payment of $180,810 due by November 10, 2004, the lender has extended the due date to December 31, 2005; Secured by equipment.	244,445

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

Highway Transport, Inc. — Notes payable; interest ranging from 8.25% to 15.20%; Monthly payments of approximately $57,000; due at various dates between 2005 to 2009; Secured by equipment.	1,087,671
Total notes payable	$ 4,659,195
Less current portion	(3,809,816)
Long-term portion of notes payable	$ 849,379

The following is a schedule by year of the principal payments required on these notes payable and long-term debt as of March 31, 2005:

Year Ending March 31,	Amount
2006	$3,809,816
2007	332,413
2008	250,176
2009	174,192
2010	92,598
Total	$4,659,195

The Company did not assume the liabilities and debts of RSV based upon the results of its due diligence investigations and its limited financial resources. Pursuant to the RSV Merger Agreement, the stock of RSV was to be held in escrow. It is the Company's understanding that the RSV shares were never delivered to the escrow agent. However, the Company issued its shares to the RSV shareholders. In addition, the Company never took title to the RSV assets. Accordingly, the Company believes that the RSV shareholders have the right to retain their shares and the XRG shares issued to the RSV shareholders should be returned to XRG. Based upon the above factors, the Company has written off its investment related to the RSV transaction. The approximate $1.6 million of debt pertaining to the RSV transaction has not been recorded by the Company at March 31, 2005. See Note 13 below for a further discussion regarding the RSV transaction.

The Company is currently in default under approximately $155,000 of convertible notes due to six note holders. The $155,000 of notes bear default interest of 15%. These notes matured on December 31, 2004.

The Company owes $50,000 to one note holder. This note matured on February 1, 2005. The Company owes this note holder 10,000 shares per month for each month the loan is not paid off.

The Company owes $10,000 to two note holders. $5,000 matured on September 2004 and $5,000 matured on October 2004, Subsequent to March 31, 2005, the notes bearing 12% interest totaling $20,000 have become due and are in default.

On January 5, 2005, Ken Steele, an existing shareholder advanced the Company $500,000 pursuant to a Promissory Note that was originally repayable on February 5, 2005. The interest rate on this Note was 17%. The Note carries a 24% default interest rate commencing as of February 5, 2005. This shareholder is granted demand registration rights on these securities. The Company also agreed to grant this shareholder security interests in vehicle license plates, operating permits, equipment and accounts receivable. This shareholder has agreed to extend the maturity date of this note until December 31, 2005. See Note 16 for further discussion of the note extension and terms.

On February 23, 2005 the Company entered into a $1,180,000 note payable with Barron Partners, LP, ("Barron") its major shareholder. The note bears simple interest at 10.0% with an origination fee of 7.0%. The note is due in sixty days with a default interest rate of 17.0%. This note is secured by all of the Company's assets. The Company is authorized to borrow an additional $800,000 from Barron on the same terms and conditions as set forth in the $1,180,000 note. Any additional equity or debt financing up to $800,000 provided

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

by any source will be used for working capital purposes. Thereafter, the proceeds of capital raised from any source will be allocated 70% to repay the outstanding indebtedness to Barron and Steele on a pro rata basis. Barron has agreed to extend the maturity dates of these notes to December 31, 2005. See Note 16 for further discussion of the note extension and terms.

Previously, Barron advanced the Company $225,810 pursuant to a Promissory Note dated September 10, 2004 (of which $45,000 has been repaid) and a $166,275 Promissory Note dated October 1, 2004. The proceeds of these notes were used to refinance certain of the tractor trailer equipment of Carolina Truck Connection, Inc. ("CTC") which the Company assumed pursuant to its Asset Purchase Agreement with CTC in April 2004. The Company has agreed that Barron shall take a lien upon possession of the CTC tractor/trailer equipment titles which were released from the prior lender from the proceeds of these notes. Barron has agreed to extend the maturity dates of these notes to December 31, 2005. See Note 16 for further discussion of the note extension and terms.

On March 3, 2005 the Company borrowed an additional $800,000 from Barron on the same terms and conditions as set forth in the $1,180,000 note. Any equity or debt financing up to $800,000 provided by any source will be used for working capital purposes. Thereafter, the proceeds of capital raised from any source will be allocated 70% to repay the outstanding indebtedness to Barron and the $500,000 note holder. On June 20, 2005, the Company borrowed an additional $1,250,000 from Barron at a simple interest of 10% with all principal and interest due by December 31, 2005. As a condition for advancing these funds, all of the Barron notes which total $3,577,084 at March 31, 2005 are subordinated to the $500,000 note. Also, all of the Barron notes are secured by all of the assets of the Company. See Note 16 for an additional discussion regarding the Barron notes.

During year ended March 31, 2005, certain note holders converted notes totaling $515,000 to common stock. The Company issued 135,000 shares of its common stock to these note holders for this conversion.

During the year ended March 31, 2004, the Company issued $170,000 of convertible notes payable. In connection with these notes, the Company issued detachable warrants to purchase 17,000 shares of the Company's restricted common stock at an exercise price of $0.02 per share.

During the year ended March 31, 2004, the Company issued a $100,000 convertible note to one individual with a conversion price of $8.40 per share. In connection with this note, the Company issued detachable warrants to purchase 5,000 shares of the Company's restricted common stock at an exercise price of $8.40 per share.

During the year ended March 31, 2004, the Company issued $270,000 of convertible notes payable. In connection with these notes, the Company issued three-year detachable warrants to purchase approximately 90,000 shares of the company's restricted common stock at an exercise price of $3.00 per share. The Company recorded deferred financing costs of $69,800 related to these notes of which $35,900 was the value of warrants issued to the placement agent. These deferred financing costs will be amortized over the term of the notes payable.

During the year ended March 31, 2004, the Company recorded a discount on convertible notes payable for $507,780 which related to the beneficial conversion feature of notes payable. The value of the detachable warrants granted in conjunction with the notes payable issued during the fiscal year 2004 was $283,404 based on the Company's calculation under the Black-Scholes option pricing model and was allocated to the note proceeds as a part of the discount on notes payable. These discounts are being amortized over the life of the related notes.

During the year ended March 31, 2004, certain note holders converted $693,000 in notes payable into 69,300 shares of common stock that was issued during the year. The holders of the notes have surrendered the outstanding notes solely for common stock of the Company. The Company recognized the beneficial conversion feature of these notes which totaled $337,200 as interest expense at the time the notes were converted.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

7. Lease Commitments

The Company rents its corporate office and the lease expires April 2007 and the Company has a facility lease that expires April 2007. The Company also has an operating lease for two trucks which are leased through April 2007. . The Company rents equipment and facilities under operating leases with lease terms of less than one year. The following is the lease commitments for these leases for the next five years:

Year Ending March 31,	Amount
2006	$ 71,343
2007	54,167
2008	3,000
Total	$128,510

Rent expense amounted to $522,764 and $754,707 for the years ended March 31, 2005 and 2004, respectively.

8. Related Party Transactions

The largest shareholder of the Company, Barron Partners, LP ("Barron"), has lent the Company $2,372,085 during the year ended March 31, 2005 and subsequently lent an additional $1,250,000 to the Company. See the Note 6 for the terms of the notes and see Note 16 for subsequent transactions with Barron.

During the fiscal year of 2005, the Company issued 140,000 shares of its common stock to two former executives for payment of $140,000 of accrued compensation and $147,000 of compensation.

During the fiscal year of 2005, the Company issued 100,000 shares of its common stock to its former Chairman of the Board for his services. These shares were valued at $440,000.

During the fiscal year of 2005, the former Chief Operations Officer was issued 12,500 shares of common stock as a bonus. These shares were valued at $55,000. Also, this individual was issued 50,000 shares of common stock in conjunction with his termination from the Company. These shares were valued at $180,000.

On July 1, 2004, ten-year options to purchase 20,000 shares of the Company's common stock option plan were granted to the former Chief Executive Officer of the Company at an exercise price of $4.14 per share. Such options vested immediately. Fair value was determined at the date of grant using the Black-Scholes option pricing model using an expected dividend yield of -0-; a risk free interest rate of 1.11%; expected stock volatility of 46.17% and an expected option life of ten years. These options were valued at $13,200.

The Company's former President and Chief Executive Officer was issued 12,500 shares of the Company's Common Stock valued at $48,750 for past services rendered during the year ended March 31, 2004.

The Company's former Chairman of the Board of Directors was issued 12,500 shares of the Company's Common Stock valued at $48,750 for past services rendered during the year ended March 31, 2004.

The Company issued 15,000 shares of its common stock to an individual who is a partner in the law firm which serves as its corporate and securities counsel. This stock was for partial consideration for legal services rendered during the year ended March 31, 2004 and was valued at $78,000. During the fiscal year 2005, the Company issued 12,500 shares of its common stock to this same individual and was valued at $55,000. This individual subsequently has been appointed as Chairman of the Audit Committee of the Board of Directors.

The terms of the above may not necessarily have been on the same terms as if negotiated from unaffiliated third parties.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

9. Income Taxese

The Company has net operating loss carryforward of approximately $16,770,000 at March 31, 2005 that expires from 2005 to 2025. Annual utilization of the Company's net operating loss carryforward will be limited due to a change in ownership control of the Company's common stock, which took place in 1999. Under federal tax law, this change of ownership of the Company will significantly restrict future utilization of the net operating loss carryforward.

A valuation allowance is required by FASB No. 109 if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax asset will not be realized. The need for the valuation allowance is evaluated periodically by management. Based on available evidence, management concluded that a valuation allowance of 100 percent for March 31, 2005 was necessary.

At March 31, 2005 the Company's non-current net deferred income tax assets (assuming an effective income tax rate of approximately 38%) consisted of the following:

	2005
Deferred income tax asset:	
Net operating loss carryforward	$ 6,373,000e
Allowance for doubtful accounts	51,000
Valuation allowance	(6,345,000)
Total deferred income tax asset e	e $ 79,000
e Deferred income tax liability	
Difference between book and tax for fixed assets	$ (79,000)
Total deferred income tax liability	(79,000)
Net deferred income tax asset	$ —

Differences between the federal benefit computed at a statutory rate and the Company's effective tax rate and provision are as follows as of March 31, 2005 and2004:

	2005	2004
e Statutory benefit e	$(4,710,000)	$(1,513,000)
State tax benefit, net of federal effect	(554,000)	(178,000)
Increase in deferred income tax valuation allowance	3,719,000	1,314,000
Non-deductible expenses	132,000	295,000
Goodwill	1,413,000	—
Loss of net operating loss carryforward	—	82,000
	$ —	$ —

10. Stock Options and Warrants

The Company grants warrants and options to purchase shares of its common stock to various employees and other individuals based on the discretion of the Company's Board of Directors.

On January 9, 2004, the Company filed a form S-8 to register 150,000 shares of common stock to be issued in conjunction with the Company's 2004 Non-Qualified Stock Option Plan. This Plan was established for non-employee directors, consultants and advisors to provide them nonstatutory stock options. The 2004 Non-Qualified Stock Option Plan requires the exercise price to be equal to the fair market value per share on the date the option is granted. The options shall typically expire ten years from the date of grant. The Board of Directors determines the vesting of each award.

During the year ended March 31, 2005, the Company granted warrants to purchase 125,220 shares of its common stock to note holders who lent monies to the Company, granted 2,045 to a consultant who performed services for the Company and granted warrants to purchase 1,181,297 shares of its common stock to placement agents as part of their fee for raising capital for the Company. These warrants were valued at

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

$5,629,567 using the Black Scholes Model. Also during the year ended 2005, the Company granted warrants to purchase 3,956,668 of it common stock to equity investors. The following table shows the various dates the warrants were granted during the year ended March 31, 2005:

4/1/2004	3,710,379
6/15/2004	300,000
6/28/2004	40,000
6/30/2004	218,125
8/3/2004	181,250
9/23/2004	5,125
9/30/2004	158,125
10/21/2004	62,500
10/29/2004	53,125
10/31/2004	406,251
11/23/2004	5,130
1/5/2005	60,000
3/30/2005	65,220
	5,265,230

During the year ended March 31, 2004 the Company granted warrants to purchase 119,500 shares of its common stock to note holders who lent monies to the Company and granted warrants to purchase 32,954 shares of its common stock to a consultant for services performed through March 31, 2004. These services were valued at $111,743 using the Black Scholes Option Model and were recorded as consulting expense during the year ended March 31, 2004. During the year ended March 31, 2004, the Company granted warrants to purchase approximately 6,667 shares of its common stock to a placement agent as part of their fee for raising the $270,000 of notes payable. These warrants were valued at $35,900 using the Black Scholes Option Model. The following table shows the various dates the were granted during the year ended March 31, 2004:

4/1/2003	2,500
4/4/2003	1,000
4/22/2003	2,000
4/29/2003	2,000
5/5/2003	1,000
5/9/2003	1,000
5/27/2003	1,000
5/30/2003	1,000
6/4/2003	2,000
6/10/2003	2,000
7/10/2003	1,000
7/18/2003	3,000
10/3/2003	5,000
11/12/2003	5,000
1/9/2004	14,205
1/13/2004	41,666
1/22/2004	20,000
1/30/2004	23,333
1/31/2004	18,750
2/25/2004	5,000
3/31/2004	6,667
	159,121

The fair value of each warrant that was granted for services or in conjunction with debt issued is estimated on the grant date using the Black-Scholes option pricing model. The following assumptions were made in estimating fair value for the years ended March 31, 2005 and 2004:

	2005	2004
Dividend yield	0%	0%
Risk-free interest rate	2.71% - 4.24%	0.87% - 2.91%
Expected life	5 years	.25 - 5 years
Expected volatility	186.49% - 257.32%	257%

The following is a summary of the status of common stock warrant activity for the years ending March 31, 2004 and 2005:

	Warrants	Weighted Average Exercise price
Outstanding at April 1, 2003	224,279	$ 0.271
Granted	159,121	3.411
Exercised/Exchanged	(248,313)	0.20
Cancelled	(12,179)	4.801
Outstanding at March 31, 2004	122,908	$ 2.63
Granted	5,265,230	0.73
Exercised	(3,189,953)	0.23
Outstanding at March 31, 2005	2,198,185	$1 1.56

Warrants exercisable at December 31, 2005	2,198,185	$	1.56

Weighted average fair value of warrants granted during the year ended March 31, 2005 and 2004 was $4.34 and $5.91, respectively.

The following is a summary of the status of outstanding warrants at March 31, 2005:

	Warrants outstanding			Warrants exercisable	
Exercise Price	Number Outstanding	Weighted Average Remaining contractual life (years)	Weighted average exercise price	Number exercisable	Weighted Average Exercise Price
$0.20 to $0.60	841,667	4	$0.46	841,667	$0.46
$2.00 to $2.40	1,307,768	4	2.04	1,307,768	2.04
$8.00 to $8.40	48,750	4	8.04	48,750	8.04
	2,198,185	4	$1.56	2,198,185	$1.56

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

The following is a summary of the status of common stock option activity for the years ending March 31, 2004 and 2005:

	Options	Weighted Average Exercise price
Outstanding at April 1, 2003	27,500	$0.02
Exercised	(27,500)	0.02
Outstanding at March 31, 2004	—	$ —
Granted	20,000	4.14
Exercised	(20,000)	4.14
Outstanding at March 31, 2005	—	$ —

Weighted average fair value of options granted during the year ended March 31, 2005 was $0.66.

On July 1, 2004, ten year options to purchase 20,000 shares of the Company's common stock option plan were granted to the former Chief Executive Officer of the Company at an exercise price of $4.14 per share. Such options vested immediately. Fair value was determined at the date of grant using the Black-Scholes option pricing model using an expected dividend yield of -0-; a risk free interest rate of 1.11%; expected stock volatility of 46.17% and an expected option life of two days.

11. Other Equity Transactionso

On December 27, 2004 the Company filed a Definitive Information Statement on Schedule 14C with the Securities and Exchange Commission. The Information Statement was filed in connection with a twenty (20) for one (1) reverse stock split effective January 3, 2005. Additionally, on that date, the Company's Certificate of Incorporation was amended and the authorized number of common shares was reduced from 500,000,000 to 25,000,000. The par value remained at $0.001.

On June 15, 2004 the Company entered into an agreement with Barron Partners, LP (Barron) to have the number of shares underlying the warrants owned by Barron reduced to 3,166,667 and the exercise price of the warrant shares reduced to $0.02. Simultaneously Barron Partner, LP exercised all of its warrants in a cashless tender and acquired 3,000,000 shares of the Company's Common Stock through this exercise.

The Company also entered into a Registration Rights Agreement with the Barron. The Company was obligated to file a Registration Statement within ninety (90) days of the final acquisition closing, or on or about July 27, 2004 for the purpose of registering for resale the common shares and the shares underlying the Warrants issued to the Investor. The Registration Rights Agreement contains a liquidated damages provision if the Company fails to have the subject Registration Statement declared effective on or before December 26, 2004 and to maintain the effectiveness of said Registration Statement for two (2) years. Barron is also granted incidental piggyback registration rights. On February 18, 2005 the Company filed a request that its Registration Statement No. 333-12412 filed under cover of Form SB-2 be withdrawn pursuant to Rule 477. The Company's decision to withdraw this registration statement was predicated upon the restructuring of our operations and the need to raise additional capital. In connection with the Company's restructuring during May, 2005, the Company entered into waivers and extensions of liquidated damages rights with all of the holders, who are entitled to liquidated damages in connection with the failure to register the Company's securities on behalf of such selling shareholders. The Company is required to file a new registration statement on or before September 30, 2005 and to have such registration statement declared effective on December 31, 2005. If the new registration statement is not filed and declared effective by such dates, then the holders are entitled to the liquidated damages or penalties for failure to have such registration statement filed and declared effective, with such liquidated damages rights commencing as of September 30, 2005 or December 31, 2005 as applicable. There is no assurance that the Company will be able to timely prepare, file and have declared effective a new selling shareholder registration statement. Liquidated damages due Barron are approximately $292,500 per

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

quarter. Liquidated damages due the other investors are approximately $20,000 per month.

In connection with a Stock Purchase Agreement, the Company agreed to cause the appointment of at least three (3) independent directors and to appoint an audit committee and compensation committee consisting of a majority of outside members. If no such directors are appointed, the Company shall pay to the Investor Barron, pro rata, as liquidated damages an amount equal to twenty four percent (24%) of the purchase price per annum, payable monthly. Provided that the Company complies with the independent director covenant, the Investor has agreed to allow up to fifteen percent (15%) of the voting rights for its shares to be voted by the Company's Board of Directors for one (1) year. The Company appointed 3 directors on November 15, 2004 and Barron has verbally agreed to waive these liquidating damages.

In April 2004, the Company collected the $3,250,000 that was recorded as a stock subscription receivable at March 31, 2004.

During the fiscal year of 2005, the Company issued 5,560,217 shares of common stock which were recorded in common stock payable at March 31, 2004.

During the fiscal year of 2005, the Company issued 1,250,000 shares of common stock in exchange for the cancellation of 5,000,000 shares of Series A Preferred Stock to three executives of the Company.

On December 27, 2004 the Certificate of Incorporation for the Company was amended and the Preferred Stock was eliminated.

During the year ended 2005, the Company received proceeds of $3,969,000 and recorded a stock subscription receivable for $375,000 for 2,078,667 shares of its common stock from various accredited investors pursuant to private placements. These investors were granted five-year warrants to purchase 790,001 shares of its common stock at an exercise price of $2.00. Also during the year ended March 31, 2005, the Company issued an additional 93,333 shares of its common stock to bring certain investors who had purchased stock at $2.40 per share to $2.00 per share which was the price per share the remaining shares were sold for. The Company paid cash of $656,815 for offering costs from the proceeds received. The Company also incurred offering costs valued at $5,454,768 for warrants that were issued in conjunction with these private placements.

During the year ended March 31, 2005, the Company received $104,366 and issued 23,286 shares of its common stock related to the exercise of warrants. Also, during the year ended 2005, warrants (excluding the Barron warrants discussed above) were exercised in a cashless exercise which resulted in 2,792 shares of common stock being issued.

During the year ended March 31, 2005, the Company issued 480,000 shares of common stock and recorded a subscription payable of 315,000 shares in conjunction with several acquisitions. These 795,000 shares were recorded at a value of $2,913,501. Also, in an agreement with R&R, 5,000 shares of common stock were returned and the Company acquired those shares for $38,000. Additionally, per the revised EFS agreement, 187,500 shares are to be returned to the Company. These shares are valued at $975,000 and were recorded as treasury stock at March 31, 2005.

During the year ended March 31, 2005, the Company issued 100,000 shares of its common stock to RSV. XRG has treated the RSV merger as void ab initio (as if it never happened). These shares of stock were valued at $600,000 and were recorded as a settlement expense during the year ended March 31, 2005. The Company has a right to get these 100,000 shares returned and is vigorously defending this right.

During the year ended March 31, 2005 the Company issued 277,620 shares of common stock and recorded a subscription payable for 25,000 shares in exchange for services and compensation valued at $1,064,836 of which $135,000 was recorded as deferred consulting.

During the year ended March 31, 2005, the Company issued 45,135 shares of its common stock and recorded a subscription payable for 44,750 shares of its common stock for interest on certain notes payable. These shares were valued at $213,021.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

During the year ended March 31, 2005, per the request of an investor, $100,000 of the $200,000 investment that was originally recorded as a common stock payable was reclassified to an advance to the Company. The Company issued 25,000 shares of common stock in 2004 for the remaining $100,000 investment.

In 2004, the Company reached a settlement with one of its employees. In accordance with this settlement, the Company issued 50,000 shares to this former employee. These shares were valued at $180,000. The $180,000 was recorded as a settlement loss for the voluntary termination of the employee's employment agreement.

During the year ended March 31, 2005, the Company granted 20,000 common stock options to an executive. The exercise price was lower than the market value of the therefore the Company recorded $13,200 value for these options based upon the difference between the exercise price and the market value of the stock. During the second quarter of 2005, these options were exercised and the Company received $85,902.

During the year ended March 31, 2005, 96,667 warrants issued to investors during the first quarter of 2005 that had an exercise price of $3.00 per share were reissued at $2.00 per share. Also during the year ended March 31, 2005, warrants that were previously granted to purchase 40,000 shares of the Company's common stock for private placement fees and had an exercise price of $2.40 were reissued at $2.00 per share.

During the fiscal year of 2005, the Company issued 140,000 shares of its common stock to two executives for payment of $140,000 of accrued compensation and $147,000 of compensation. Also, the Company recorded a settlement payable of $12,000 for 5,000 shares of its common stock to be issued to an employee per his employment agreement.

During year ended March 31, 2005, certain note holders converted notes totaling $515,000 to common stock. The Company issued 135,000 shares of its common stock to these note holders for this conversion.

To order for the Company to obtain a factoring arrangement, the Company granted a warrant to purchase 65,220 shares of its common stock. The warrant was valued at $63,881 using the Black Scholes option model. The $63,881 was recorded as deferred financing fees and will be amortized over the one-year term of this arrangement.

During the year ended March 31, 2005, the Company granted a warrant to purchase 60,000 shares of its common stock to a note holder who lent the Company operating capital. This warrant was valued at $110,918 and was recorded as a discount to debt. This debt discount was amortized to interest expense during the fiscal year 2005.

12. Commitments and Contingencies

The Company has employment contracts with certain of its officers and employees. At March 31, 2005, the Company has minimum payments related to these employment contracts over the next five years of:

Year Ending March 31,	Amount
2006	$ 835,547
2007	511,546
2008	462,486
2009	410,907
2010	156,000
Total	$2,376,486

The following is a summary of current pending legal proceedings and claims. From time to time, we may be involved in other litigation relating to our business. There is no assurance that we may not be involved in future litigation which will have a material adverse affect upon us due to the costs associated with defending such matters or an unfavorable outcome in such proceedings. Our recent restructuring and limited financial resources increases the risk that we will be involved in future litigation.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

• Highbourne Litigation

On April 8, 2005, a principal of AGB Transportation Services, LLC, the successor in interest to Highbourne Corporation, notified XRG that AGB was terminating the Terminal Agreement dated October 4, 2004 between AGB and the Company. AGB alleged that XRG failed to make timely payments of certain regular commissions and monthly productivity bonuses. XRG disagrees with the allegations made by AGB and believes that the termination was improper. On April 27, 2005, XRG filed a complaint against Highbourne Corporation, its successor in interest, AGB and the principals of these entities. The complaint alleges that AGB and its shareholders breached the original Acquisition Agreement entered into between the parties in February 2004. In addition, the complaint alleges that the AGB shareholders have violated the confidential and non-compete provisions of their employment agreements. XRG alleges that the actions of AGB and its shareholders in entering into a new agency agreement with a third party, American Trans-Freight, LLC, and the utilization by such parties of XRG's transportation equipment is improper. Furthermore, XRG alleges that such parties are improperly using its customer list, supplier list, shipper contracts and owner/operator contracts for their own benefit and for the benefit of a competitor of XRG. Due to AGB and its shareholders terminating the terminal agreement, subsequent to yearend March 31, 2005, the operations of Highbourne will no longer be included in the Company's financial statements.

•aCouture Litigationa

On May 4, 2005, XRG was served with a complaint filed by Stephen R. Couture, alleging that XRG was in breach of his employment agreement. Mr. Couture alleges that XRG unilaterally and arbitrarily reduced the compensation due Mr. Couture to an amount less than the amount provided for in his agreement. In addition, Mr. Couture alleged that XRG unilaterally did away with car reimbursement and car insurance benefits provided in the Employment Agreement. In addition, he alleged that XRG has failed to pay his unused vacation. Mr. Couture's employment agreement has a very narrow definition of termination for cause limited to conviction of a felony, conviction of misappropriation of assets or otherwise defrauding XRG. In addition, the resignation of Donald Huggins as a director potentially triggers a "change of control" provision under his agreement entitling him to 299% of base annual compensation as a severance payment. XRG has requested that outside counsel review the activities of Mr. Couture to determine whether there is a basis to institute counterclaims and affirmative defenses against Mr. Couture. XRG also maintains Mr. Couture voluntarily agreed to the compensation reduction in light of XRG's current financial position and limited working capital. If Mr. Couture were to prevail in this action, XRG could potentially be liable to Mr. Couture for approximately four (4) years of additional compensation at a base salary of One Hundred Twenty-Five Thousand Dollars ($125,000) per year plus attorney fees. This case is in its early stages and it is too early to predict the outcome or settlement of this matter. However, XRG intends to vigorously defend against this action. No accrual has been recorded recording this matter.

• Noteholder Litigationa

We are a defendant in a lawsuit filed by five individuals who are the holders of our 15% senior convertible notes and warrants. We are in default in the payment obligations under these notes. We were obligated to repay such notes in the event of subsequent financings and these notes have matured. We have the accrued interest and the notes payable recorded on our books at March 31, 2005. The Company may have some additional legal expense reimbursement to these note holders which has not been accrued. We have submitted a settlement offer to the plaintiffs' counsel in connection with this matter. Pursuant to the settlement offer, XRG would become current in interest payments and extend the maturity date of these notes until December 31, 2005. Barron would agree to subordinate its right of repayment on its notes to the subject notes in this proceeding. There is no assurance that we will be able to settle this matter or raise affirmative defenses.

•aFormer Employee Claims

Andrew Davis, a former employee has filed a charge of discrimination with the EEOC as well as a complaint with the Department of Labor alleging he was terminated in violation of Sarbanes-Oxley. Both are in the initial stages and we are in the process of responding to both federal agencies. We have received a preliminary indication from the EEOC that it does not intend to proceed with this matter.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

We believe the claims by Mr. Davis are without merit and that they are retaliatory in nature in connection with his termination as part of our cost cutting. The day after Mr. Davis was terminated our data processing systems were substantially damaged and Mr. Davis received a trespass warning from the Clearwater Police Department. We intend to vigorously defend this matter and to institute counterclaims against Mr. Davis for damages we have incurred.

• RSV Claims

In April 2004, XRG through a wholly owned subsidiary, entered into an Agreement and Plan of Merger with RSV, Inc., a Tennessee corporation ("RSV"). XRG issued the shareholders of RSV 100,000 shares of its Common Stock (post split), and agreed to assume certain indebtedness and liabilities of RSV. XRG has determined not to assume the liabilities and debts of RSV due to the results of its due diligence investigations and XRG's limited financial resources. Counsel to RSV has alleged damages in excess of $400,000 relating to XRG's failure to assume the debt of RSV and fulfill the conditions of the Merger Agreement.

Pursuant to the RSV Merger Agreement, the stock of RSV was to be held in escrow. However, it is XRG's understanding that RSV shares were never delivered to the escrow agent. In addition, XRG never took title to the RSV assets. However, XRG issued its shares to the RSV shareholders. XRG never took title to the RSV assets. Accordingly, XRG believes that the RSV shareholders have the right to a return of their RSV shares and that the XRG shares issued to the RSV shareholders should be returned XRG.

Based upon the above factors, we have treated the RSV merger as void ab initio (as if it never happened). No financial transactions for RSV, except for certain note payments made by XRG on RSV's behalf, have been recorded. We have recorded an accrual for the damages claimed by RSV as of March 31, 2005.

13. Acquisitionso

During the year ended March 31, 2005, the Company was focused on acquiring, consolidating, and operating short and long haul truckload carriers. The Company's acquisition strategy targets both asset and non-asset based truckload carriers in the contiguous 48 states. Based upon these criteria, the Company made the following acquisitions as outlined below.

Express Freight Systems, Inc.

The Company acquired Express Freight Systems, Inc. on April 21, 2004. Pursuant to the terms of a Merger Agreement, Express Freight Systems, Inc. ("EFS"), a Tennessee corporation was the survivor in a merger with a subsidiary of ours. EFS is now a wholly-owned subsidiary of XRG. EFS is based in Chattanooga, Tennessee. EFS has an owner-operator based fleet with a pool of approximately 270 trailers which were leased to the Company from an entity owned by the prior shareholders of EFS pursuant to a Master Equipment Lease Agreement ("MELA"). This lease was recorded as a capital lease obligation of $2,371,397 at the acquisition date. The MELA required the Company to pay Express Leasing Systems, Inc. approximately $55,000 per month for a term of 36 months, at which time the Company was required to purchase the trailers for $1 million. The Company also leased the office building through an operating lease with monthly lease payments of $6,000 through April 30, 2010. The Company also leased a facility in California which is a month to month lease with monthly lease payments of $30,677.

Pursuant to the terms of the EFS Merger Agreement $2,000,000 from the Stock Purchase Agreement was paid to the shareholders of EFS. An additional $1,000,000 was recorded as a liability to the shareholders of EFS and in addition EFS shareholders were issued 375,000 shares of the Company's common stock as part of the merger and employment agreements. These shares were valued at $1,950,000 in total based upon the quoted trading price on the acquisition date. The Company also issued 17,500 shares for acquisition costs related to this acquisition. The total purchase price for EFS was $3,066,000.

EFS had a factoring agreement whereby its accounts receivable are factored with full recourse for unpaid invoices in excess of 90 days old. This agreement provided for the payment of factoring fees.

EFS, as a wholly-owned subsidiary of ours entered into 6 new employment agreements with the former shareholders and key employees of EFS. The former major shareholder of EFS agreed to a 3 year employment agreement. All other individuals have 10 year employment agreements. Annual compensation ranged from $125,000 to $250,000 per annum. The agreements contained nondisclosure and restrictive

covenant arrangements. If the agreements are terminated for any reason other than cause, the employees are due compensation for the remainder of the employment agreement's term.

The EFS Merger Agreement provided the Company with certain rights of indemnification in connection with the breach of a representation or warranty by EFS or its prior shareholders. The Company withheld $100,000 in a cash escrow agreement to satisfy unpaid taxes and other liabilities. $31,000 of these taxes and liabilities were paid from escrow during the nine months ended December 31, 2004. The Company also issued a blanket corporate guaranty pursuant to which the Company guaranteed all obligations of EFS pursuant to the terms of the Merger Agreement, including but not limited to, the MELA capital lease, and lease for the EFS offices, which are owned by the wife of the major EFS shareholder and the employment agreements. The Company's blanket guaranty also contained cross default provisions.

On August 12, 2004 the Company's counsel advised the former shareholders of EFS that the Company believed that there were various breaches of the representations and warranties by the EFS shareholders in connection with the EFS Merger. On August 16, 2004 EFS and an entity formed by the former EFS shareholders, Express Freight, Inc. ("EFI") entered into a Terminal Agreement. EFS referred to as the Carrier and EFI as the Agent under this Terminal Agreement. EFI is entitled to a commission of 85% of revenues on shipments that are secured, processed and supervised under the direction of EFI as the Agent. Under this Terminal Agreement, EFS as the Carrier is not responsible for any expenses incurred in the operation of the Agent's terminal. EFS is responsible for all legal documentation and paperwork and is the primary obligor on shipments, to pay commissions on line hauls, including accessorial charges and to provide the Agent weekly summaries of accounts standings and an account of commissions due. For shipments under this Terminal Agreement EFS is the primary obligor in regards to the delivery of the shipment, establishing customer pricing, and has credit risk on the shipments. The Company records both revenues for the dollar value of services billed by the Company to the customer and purchased transportation expense for the costs of transportation paid by the Company to the agent upon delivery of the shipment. Fuel surcharges billed to customers for freight hauled by this Terminal Agreement are excluded from revenue and paid in entirety to EFI. In the event either party fails to perform any covenant or condition under the Terminal Agreement and such default continues for a period of thirty (30) days after notice, the Terminal Agreement may be terminated by the non-breaching party. The parties agree that if a default occurs on the part of the Agent that is not cured, or if the Agent terminates the Terminal Agreement, the damages payable to the Company will be Two Million Dollars ($2,000,000) if occurring in the first year of the Terminal Agreement and Four Hundred Thousand Dollars ($400,000) less each year thereafter. Further, the Agent and certain of the EFS shareholders agree to be personally liable on a joint and several basis for this termination obligation.

As part of the Terminal Agreement the former shareholders of EFS and XRG entered into a Bullet Point Merger Agreement Addendum ("Addendum") which provides that the parties will reach agreement on certain matters, including but not limited to, the following:

- mutual termination of the Master Equipment Lease Agreement ("MELA");
- mutual termination of the Facility Lease Agreement for the office building in Chattanooga, Tennessee from the prior shareholders of EFS and a warehouse facility in California;
- all employment agreements are mutually terminated with the former EFS shareholders and employees;
- the former EFS shareholders personally assume all overdraft bank liabilities and bank loans of EFS. In addition, former EFS shareholders assume trade payables and accruals prior to March 1, 2004. All bad debt and charge-backs attributable to receivables outstanding as of April 21, 2004 are assumed by the former EFS shareholders;
- the One Million Dollar ($1,000,000) deferred payment obligation under the EFS Merger Agreement is terminated;
- if XRG fails to make the required ComData fuel funding or settle agency payments timely and in full, then EFI has the right to terminate the Terminal Agreement. EFS is required to advance funds necessary for regulatory compliance, fund vehicle license requirements and fund owner/operator payments;
- EFS is required to maintain liability and cargo insurance in full force and effect and maintain ancillary insurance benefits related to physical damage coverages;
- the former EFS shareholders may engage in the boat hauling business without violating any non-compete provisions;

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

- the parties anticipate entering into mutual releases subject to the above covenants and representations.

Effective as of April 26, 2005, XRG finalized a Settlement Agreement with Express Leasing Systems, Inc., Express Freight, Inc. and the former shareholders and employees of Express Freight Systems, Inc. (Express) This Settlement Agreement formalized the understandings of the parties in connection with the restructuring of the original merger with Express, and the subsequent restructuring of that merger into an agency arrangement, pursuant to a Terminal Agreement with an effective date of August 16, 2004 and related Bullet Point Addendum. The Settlement Agreement formalizes the understandings of the parties pursuant to the Bullet Point Addendum which is summarized above. XRG has the obligation to fulfill certain funding obligations pursuant to the Settlement Agreement on a timely basis, including but not limited to funding COMDATA, funding driver payroll, paying insurance, advance funding license/tag fees, and other items as set forth in the Settlement Agreement. The failure to make these fundings is considered a "Major Funding Default", pursuant to the Settlement Agreement. Upon the occurrence of a Second Funding Default, the Terminal Agreement can be terminated and shall be released from any further liability or obligations to damage provisions of the Terminal Agreement. Pursuant to the terms of the Settlement Agreement, XRG is entitled to a return of 187,500 shares issued in connection with the Express merger. XRG has the risk of a Major Funding Default being declared because of its limited financial resources if it was unable to timely fulfill its funding obligations under Section 3 of the Settlement Agreement. A Major Funding Default has been alleged to already have been committed. XRG disputes this assertion. However, if two Major Funding Defaults were deemed to have occurred, which would result in a potential termination of the Terminal Agreement, this would have a material adverse effect on the financial position of XRG.

The Company included the results of EFS in its financial statements beginning April 21, 2004 (the closing date of the transaction). However, fuel surcharges billed to customers for freight hauled by independent contractors who provide capacity to the Company under exclusive lease arrangements are excluded from revenue and paid in entirety to the independent contractors. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition and adjusted based upon the August 16, 2004 amendment. After August 16, 2004, EFS is accounted for as an agency relationship, thus it is no longer consolidated in the Company's financial statements except those transactions related to an agency agreement (ie. Accounts receivable).

	Initial purchase price entry	Adjustment	Final purchase price entry
Accounts receivable	$ 1,609,474	$ —	$ 1,609,474
Other current assets	99,031	(1,892)	97,139
Fixed assets	3,739,650	(3,618,599)	121,051
Goodwill	5,679,625	(2,761,489)	2,918,136
Total assets acquired	11,127,780	(6,381,980)	4,745,800
Accrued expenses and payables	(1,857,781)	1,743,098	(114,683)
Other liabilities	(2,371,397)	2,307,409	(63,988)
Notes payable	(662,623)	662,623	—
Factorer line of credit	(1,501,129)	—	(1,501,129)
Total liabilities assumed	(6,392,930)	4,713,130	(1,679,800)
Total purchase price	$ 4,734,850	$ (1,668,850)	$ 3,066,000

EFS Capital lease obligation

As part of the Express Freight Systems, Inc. (EFS) acquisition, the company acquired the tractor and trailer assets acquired and assumed a capital lease that expires in 2007. The asset was being amortized over its estimated productive life. Amortization of the asset held under the capital lease is included with depreciation expense. This lease required payments of $55,000 a month for 36 months with a requirement to purchase the equipment for $1,000,000 at the end of the lease term. During the second quarter of 2004, the Company entered into an amendment to the agreement with the EFS prior shareholders which mutually terminated this capital lease. Therefore, during the second quarter of 2004, the Company eliminated this capital lease and the related fixed assets that were financed by the lease from its books in accordance with the amended agreement with the EFS prior shareholders.

RSV, Inc.

The Company entered into a merger agreement with RSV, Inc. on April 29, 2004. RSV is a van/asset based carrier with approximately 42 tractors headquartered in Kings Point, Tennessee. Pursuant to the terms of the Merger Agreement, RSV, Inc. ("RSV"), the Company issued a total of 100,000 shares of its common stock to the two RSV shareholders. These shares were valued at $600,000 in total based upon the quoted trading price on the acquisition date. There was no cash paid at closing to the RSV shareholders. The Company is obligated

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

to remove the majority RSV shareholder as a guarantor on approximately $2,000,000 of RSV debt within 45 days. The Company's failure to consummate a refinancing, payoff or satisfaction of the RSV debt within such timeframes entitles the RSV shareholder, subject to the terms and conditions of the stock escrow agreement, to a return of the RSV shares. The majority RSV shareholder has granted the Company an extension of time to remove the guarantees on the RSV debt.

Subsequent to yearend March 31, 2005, XRG has determined not to assume the liabilities and debts of RSV due to the results of its due diligence investigations and XRG's limited financial resources. Counsel to RSV has alleged damages in excess of $400,000 relating to XRG's failure to assume the debt of RSV and fulfill the conditions of the Merger Agreement. Pursuant to the RSV Merger Agreement, the stock of RSV was to be held in escrow. It is XRG's understanding that RSV shares were never delivered to the escrow agent. However, XRG issued its shares to the RSV shareholders. In addition, XRG never took title to the RSV assets. Accordingly, XRG believes that the RSV shareholders have the right to retain their RSV shares and that the XRG shares issued to the RSV shareholder should be returned to XRG. Based upon the above factors, XRG has written off its investment related to the RSV transaction that was recorded as a deposit on investment. No financial transactions have been recorded for RSV. The Company has accrued for $262,000 of settlement expenses related to this transaction and recorded the $600,000 value of the stock issued to RSV as a settlement expense.

Highway Transport, Inc.

Effective April 1, 2004 the Company acquired certain of the assets and assumed certain of the liabilities which comprises the business of Highway Transport, Inc. ("HTI"), an Alabama corporation in exchange for 17,500 shares of its restricted common stock. These shares were valued at $98,000 in total based upon the quoted trading price on the acquisition date. The Company acquired approximately $942,000 of HTI's equipment and assumed approximately $1,600,000 of notes payable and other commercial obligations. The Company also entered into a commercial sublease agreement for the HTI facilities with one of the HTI shareholders. This sublease has a term through March 31, 2006 with monthly fixed annual rent of $1,750 per month. The Company also entered into 3 year employment agreements with the two HTI shareholders. One employment agreement has annual compensation of $125,000; the other employment agreement has annual compensation of $75,000. HTI primarily operates a flatbed operation.

The Company included the results of HTI in its financial statements beginning April 1, 2004. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition.

	Initial purchase price entry	Adjustment	Final purchase price entry
r current assets	$ 38,910	$ —	$ 38,910
Fixed assets	1,355,200	(413,000)	942,200
Goodwill	393,793	351,760	745,553
assets acquired	1,787,903	(61,240)	1,726,663
rued expenses	(96,000)	—	(96,000)
Notes payable	(1,593,903)	61,240	(1,532,663)
iabilities assumed	(1,689,903)	61,240	(1,628,663)
Total purchase price	$ 98,000	$ —	$ 98,000

See Note 16 for a discussion of the subsequent event whereby the Company and Highway agreed to terminate the Asset Purchase Agreement and entered into a Terminal Agreement with Highway. Highway was consolidated in the Company's financial statements through March 31, 2005. Once the Company entered into the Terminal Agreement subsequent to yearend, it was treated as an agency agreement and will no longer be consolidated with the Company's financial statements.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

Highbourne Corporation

Effective April 2, 2004 the Company closed an asset acquisition agreement with Highbourne Corporation ("HBC"), an Illinois corporation. The Company issued a total of 10,000 shares of restricted common stock to the two stockholders of HBC. These shares were valued at $56,000 in total based upon the quoted trading price on the acquisition date. Inasmuch as this is a non-asset based carrier, the Company did not assume any long-term equipment or other liabilities in connection with this acquisition. The Company agreed to lease the current HCB facilities from one of the HBC shareholders for a 24 month term with $3,000 monthly payments. The Company entered into two year employment agreements with each of the HBC shareholders at rates of $32,000 and $85,000 per annum respectively. The Company has also agreed to pay the major HBC shareholder an annual commission equal to two percent of the gross revenue billed each year through the HBC operation in the form of its restricted common stock valued at market on the day of payment. The Company also agreed to a quarterly bonus program based upon quarterly operating results.

The Company included the results of HBC in its financial statements beginning April 1, 2004 (the closing date was April 2, 2004. However, fuel surcharges billed to customers for freight hauled by independent contractors who provide capacity to the Company under exclusive lease arrangements are excluded from revenue and paid in entirety to the independent contractors. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition.

Goodwill	56,000
Total assets acquired	56,000
Total liabilities assumed	—
Total purchase price	$ 56,000

On October 4, 2004, the Company ("Carrier") mutually entered into a five year Terminal Agreement with the shareholders of Highbourne Corporation under AGB Transportation Services, LLC ("Agent"). This Terminal Agreement entitles the Highbourne Corporation shareholders as Agent to receive a commission of 85% of revenues on shipments that are secured, processed and supervised under the direction of the Agent. Under this agreement, Carrier is not responsible for any expenses incurred for the operation of the Agent's terminal. The Company is responsible for all legal documentation and paperwork and is the primary obligor on shipments, to pay commissions on line hauls, including accessorial charges and to provide the Agent weekly summaries of accounts standings and an account of commissions due. For shipments under this Terminal Agreement the Company is the primary obligor in regards to the delivery of the shipment, establishing customer pricing, and has credit risk on the shipments. The Company records both revenues for the dollar value of services billed by the Company to the customer and purchased transportation expense for the costs of transportation paid by the Company to the agent upon delivery of the shipment. Fuel surcharges billed to customers for freight hauled by this Terminal Agreement are excluded from revenue and paid in entirety to Agent.

The Company has been operating under this Terminal Agreement since October 4, 2004. Pursuant to this agreement, Agent agreed to a reduced rent of the current Highbourne Corporation facilities of $1,000 per month. In addition, the employment agreements with the two Highbourne Corporation shareholders at salaries of $32,000 and $85,000 per annum respectively were mutually terminated.

On April 8, 2005, a principal of AGB Transportation Services, LLC, the successor in interest to Highbourne Corporation, notified XRG that AGB was terminating the Terminal Agreement dated October 4, 2004 between AGB and the Company. AGB alleged that XRG failed to make timely payments of certain regular commissions and monthly productivity bonuses. XRG disagrees with the allegations made by AGB and believes that the termination was improper. On April 27, 2005, XRG filed a complaint against Highbourne Corporation, its successor in interest, AGB and the principals of these entities. The complaint alleges that AGB and its shareholders breached the original Acquisition Agreement entered into between the parties in February 2004. In addition, the complaint alleges that the AGB shareholders have violated the confidential and non-compete provisions of their employment agreements. XRG alleges that the actions of AGB and its shareholders in entering into a new agency agreement with a third party, American Trans-Freight, LLC, and the utilization by such parties of XRG's transportation equipment is improper. Furthermore, XRG alleges that such parties are improperly using its customer list, supplier list, shipper contracts and owner/operator contracts for their own benefit and for the benefit of a competitor of XRG. Due to AGB and its shareholders terminating the terminal

Highbourne was consolidated in the Company's financial statements until April 8, 2005 when the terminal agreement was terminated.

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

agreement, subsequent to yearend March 31, 2005, the operations of Highbourne will no longer be included in the Company's financial statements.

Carolina Truck Connection, Inc.

On April 28, 2004 the Company closed an Asset Purchase Agreement with Carolina Truck Connection, Inc. ("CTC"), a North Carolina corporation. The Company issued 60,000 shares of its restricted common stock to the two shareholders of CTC. These shares were valued at $372,000 in total based upon the quoted trading price on the acquisition date. The Company assumed approximately $354,000 of long-term debt relating to this Asset Purchase Agreement with CTC. The Company is obligated to remove the majority CTC shareholder as a guarantor on this debt within 45 days. This period can be extended for an additional 45 days if the Company is able to establish commercially reasonable best efforts in facilitating a pay-off, refinancing or satisfaction of this debt. This period has been verbally extended.

Previously, Barron advanced the Company $225,809.96 pursuant to a Promissory Note dated September 10, 2004 (of which $45,000 has been repaid) and a $166,275 Promissory Note dated October 1, 2004. The proceeds of these notes were used to refinance certain of the tractor trailer equipment of Carolina Truck Connection, Inc. ("CTC") which the Company assumed pursuant to its Asset Purchase Agreement with CTC in April 2004. The Company has agreed that Barron shall take a lien upon possession of the CTC tractor/trailer equipment titles which were released from the prior lender from the proceeds of these notes. Barron has agreed to extend the maturity dates of these notes to December 31, 2005.

The Company also entered into employment/consulting agreements with the CTC shareholders. The two-year employment agreement includes base compensation of $62,000. The consulting agreement requires compensation at an hourly rate of $100 and terminates on December 31, 2005.

Effective April 1, 2005, XRG entered into the Second Amendment to Asset Acquisition Agreement with CTC, and its prior shareholders. XRG has agreed to issue an additional 350,000 shares of its common stock as additional consideration in connection with the original Asset Acquisition Agreement. In addition, the Company agreed to issue one of the former CTC shareholders 25,000 shares in consideration for past consulting services. These were accrued for at March 31, 2005 and were valued at $27,500. XRG has agreed to continue servicing the debt related to the CTC equipment and is entitled to take title to such equipment which is guaranteed by the former CTC shareholders at such time as the guaranties are released and provided that after the annual anniversary date of this agreement, XRG shares have a market value of at least $1.60. CTC also has the right to convert the original Asset Acquisition Agreement into an Agency Agreement with the revenue split being 85% to CTC and 15% to XRG.

The Company included the results of CTC in its financial statements beginning May 1, 2004 (the closing date was April 28, 2004). The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition.

	Initial purchase price entry	Adjustment	Final purchase price entry
Fixed assets	$ 556,500	$ (137,500)	$ 419,000
Goodwill	304,500	349,417	653,917
Total assets acquired	861,000	211,917	1,072,917
Notes payable	(489,000)	134,583	(354,417)
Total liabilities assumed	(489,000)	134,583	(354,417)
Total purchase price	$ 372,000	$ 346,500	$ 718,500

CTC is consolidated with the Company's financial statements.

The premium paid by the Company above the fair value of the net assets acquired on all of the above acquisitions pertains to the organized work force acquired. CTC is consolidated with the Company's financial statements.

14. Unaudited Pro Forma Consolidated Financial Information for Acquisitions

The following unaudited pro forma consolidated financial information presents the combined results of operations of the Company as if each of the acquisitions had occurred on April 1, 2003. The unaudited pro forma consolidated financial information is not intended to represent or be indicative of the consolidated results of operations of the Company that would have been reported had the acquisition been completed as of the dates presented, and should not be taken as representative of the future consolidated results of operations of the Company. Summarized unaudited pro forma consolidated results were as follows:

XRG, Inc. and Subsidiaries
Notes to Consolidated Financial Statements

	For the year ended March 31,	
	2005	2004
Revenues	$ 40,387,525	$40,143,626
Net loss	$(13,950,955)	$(5,520,026)
Basic loss per share	$ (1.23)	$ (4.23)

15. Equipment Purchases

In June 2003, the Company executed a purchase agreement with a truckload carrier (J. Bently Companies, Inc.) in Sweetwater, Tennessee to acquire equipment assets consisting of approximately 275 freight trailers. The purchase price of these assets was approximately $3,400,000, including the assumption of approximately $2,200,000 of equipment loans, the payment of $50,000 in cash, and the issuance of $1,150,000 worth of shares of the Company's Common Stock. The agreement relating to this equipment purchase contains a true up adjustment provision, which requires the Company to issue additional shares of its common stock based upon the then prevailing market price such that the total value of its common stock equals $1,150,000 at adjustment dates of six and twelve months from the closing date. During August 2003, the Company made the $50,000 cash payment and issued 1,150,000 shares of its Common Stock to the J. Bently Companies, Inc. shareholders, which are classified as transportation equipment deposits in the Company's financial statements until it is able to obtain a clear title to these assets.

On April 12, 2004 the Company modified the agreement with J. Bently Companies, Inc. to issue 800,000 shares of additional common stock and eliminate the true up provision of the agreement. Therefore the deposit on the transportation equipment was repriced based upon the terms of this revised agreement and the common stock shares were recorded at $437,000 which is a reduction of $713,000. The Company recorded a common stock payable of $304,000 for the 800,000 additional shares of common stock to be issued. At March 31, 2004, the transportation equipment deposits recorded on the Company's books is $791,000.

During the year ended March 31, 2004, the Company also entered into a fleet owner agreement with the truckload carrier to manage the utilization of these assets for a two year period. Pursuant to the terms of this agreement, the Company pays to the truckload carrier 67% of gross freight revenues as compensation for the movement of its freight. In addition, the Company agreed to pay 2% of gross revenues as a commission. During the year ended March 31, 2004, the Company advanced J. Bently Companies, Inc. $994,794. On March 31, 2004, this advance was determined to be uncollectible and written off as a bad debt.

On June 2, 2005, the agreement with J. Bently Companies was restructured. The original purchase agreement, amendments thereto, employment agreements associated with the acquisition, the original override agreement and the original fleet owner agreement were terminated. In lieu thereof, XRG and a J. Bently Company shareholder entered into a new terminal agreement; where the revenue split being 85% to CTC and 15% to XRG. This terminal agreement has a term of five years. In addition, XRG has entered into a new trailer lease and fleet owner agreement with this J. Bently Company shareholder, which requires the payment of seventy-six percent of line haul revenue to him for utilization of his equipment, which is a credit against the 85% agent fee due in accordance to the terminal agreement. In addition, XRG agreed to issue a total of 150,000 shares of its restricted common stock to the J. Bently Company shareholders, subject to certain vesting provisions relating to the Terminal Agreement remaining in full force and effect through April 30, 2007. In addition, XRG has agreed to reimburse these J. Bently Company shareholders $90,000 for previous deposits for insurance and to pay $52,000 for workers compensation insurance overcharges.

XRG, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

16. Subsequent Events

No.	Event Description	Date
A.	CTC Addendum	4/1/05
B.	Highbourne/AGB Terminal Litigation	4/8/05
C.	Administrative Services Agreement (amended 5/20/05)	4/20/05
D.	EFS Settlement	4/21/05
E.	Larry Berry Employment Agreement	4/22/05
F.	Barron Interim Financing	5/20/05
G.	Ken Steel Restructure	5/20/05
H.	Waivers of Liquidated Damages	5/20/05
I.	Huggins, Brennan Releases, Leong & Francis on Board of Directors	5/20/05
J.	Highway Settlement	5/30/08
K.	Bentley Settlement	6/2/05

A. Carolina Truck Connection, Inc. — Amendment

Effective April 1, 2005, XRG entered into the Second Amendment to Asset Acquisition Agreement with Carolina Truck Connection, Inc., Larry Puckridge and Robert Luther. XRG has agreed to issue Mr. Puckridge and Mr. Luther an additional 350,000 shares as additional consideration in connection with the original Asset Acquisition Agreement. In addition, XRG agreed to issue Mr. Puckridge 25,000 shares in consideration for past consulting services. XRG has agreed to continue servicing the debt related to the CTC equipment and is entitled to take title to such equipment which is guaranteed by Mr. Puckridge at such time as Mr., Puckridge's guaranties are released and provided that after the annual anniversary date of this Agreement XRG shares have a market value of at least $1.60. CTC also has the right to convert the original Asseto Acquisition Agreement into an Agency Agreement with the revenue split being 85% to CTC and 15% to XRG.o

B. Termination of Highbourne Asset Acquisition Agreement/AGB Terminal Agreement – Related Litigation

On April 8, 2005, a principal of AGB Transportation Services, LLC, the successor in interest to Highbourne Corporation, notified XRG that AGB was terminating the Terminal Agreement dated October 4, 2004 between AGB and the Company. AGB alleged that XRG failed to make timely payments of certain regular commissions and monthly productivity bonuses. XRG disagrees with the allegations made by AGB ando believes that the termination was improper. On April 27, 2005, XRG filed a complaint against Highbourne Corporation, its successor in interest,o AGB and the principals of these entities. The complaint alleges that AGB and its shareholders breached the original Acquisition Agreement entered into between the parties in February 2004. In addition, the complaint alleges that the AGB shareholders have violated the confidential and non-compete provisions of their employment agreements. XRG alleges that the actions of AGB and its shareholders in entering into a new agency agreement with a third party, American Trans-Freight, LLC, and the utilization by such parties of XRG's transportation equipment iso improper. Furthermore, XRG alleges that such parties are improperly using its customer list, supplier list, shipper contracts and owner/operator contracts for their own benefit and for the benefit of a competitor of XRG. Due to AGB and its shareholders terminating the terminal agreement, subsequent to yearend March 31, 2005, the operations of Highbourne will no longer be included in the Company's financial statements.

C. Administrative Services Agreement with R&R Express, Inc. and Richard Francis

Effective April 20, 2005 the Company entered into an Administrative Services Agreement with R&R Express, Inc. ("R&R") and Richard Francis. The Company appointed Mr. Francis as its Chief Executive Officer, replacing Kevin Brennan. Mr. Francis is also the President ofo R&R. Pursuant to the Administrative Services Agreement, R&R is responsible for certain of the daily administrative, procedural ando regulatory issues relating to the Company's operations. The Company has agreed to pay R&R an administrative services fee equal to 12% of o line haul revenue (excluding pass throughs) for all agents. This fee is payable weekly.

XRG, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

In addition the Company agreed to issue to each R&R and Mr. Francis 150,000 shares of its common stock. The Company also agreed to pay Mr. Francis an annual salary of $150,000 per year from its G&A subsidiary as compensation for serving as its Chief Executive Officer and certain of its subsidiaries. The salary of Mr. Francis is considered a credit against the service fee payable to R&R.

The Administrative Services Agreement has a five (5) year term, which is consistent with the term of the Company's Terminal Agreements with its agents. The Administrative Services Agreement is cancelable by R&R prior to its date of expiration by providing the Company at least one (1) year written notice. The Company may cancel the Administrative Services Agreement at any time with at least forty-five (45) days' prior written notice to R&R. R&R has agreed to a non-competition and non-solicitation of its customers, employees and agents during the term of the agreement and for a twenty-four (24) month period thereafter, excluding the business of R&R Intermodal, Inc.

Pursuant to the Administrative Services Agreement, XRG is the carrier of record and insurer of all freight subject to the Terminal Agreements. All invoicing, bills ofdading and other documents evidencing liability, ownership or legal obligations shall be the responsibility of XRG. XRG has the right to establish all pricing policies under the Terminal Agreements. XRG has the risk of loss as it relates to the ultimate collection of accounts receivable and uninsured cargo losses. XRG is the primary obligor with customers pursuant to the Terminal Agreements.

D. Formal Settlement Agreement re: EFS

Effective as of April 26, 2005, XRG finalized a Settlement Agreement with Express Leasing Systems, Inc. ("ELS"), Express Freight, Inc. ("EF") and the former shareholders and employees ("Holders") of Express Freight Systems, Inc. ("EFS"). This Settlement Agreement formalized theo understandings of the parties in connection with the restructuring of the original merger with EFS in April 2004, and the subsequent restructuring of that merger into an agency arrangement, pursuant to a Terminal Agreement with an effective date of August 16, 2004 and related Bullet Point Addendum. The Settlement Agreement formalizes the understandings of the parties pursuant to the Bullet Point Addendum.o

Material terms of the Settlement Agreement are summarized below:

- The mutual termination of the Master Equipment Lease Agreement ("MELA"). The MELA required the Company to pay Express Leasing Systems, Inc. approximately $55,000 per month for a term of 36 months and contained a $1,000,000 buyout at lease end. This lease consisted ofo a pool of approximately 270 trailers from an entity owned by the prior shareholders of EFS. This termination provides a provision that allo trailers under the MELA are made available to the Company for the movement of its freight.
- The mutual termination of the Facility Lease Agreement for the office building in Chattanooga, Tennessee from the prior shareholders of EFS and a warehouse facility in California.
- Pursuant to the terms of the EFS Merger Agreement $2,000,000 from the Stock Purchase Agreement was paid to the former shareholders of EFS that they will retain as purchase consideration. In addition, the former EFS shareholders were issued 375,000 shares of the Company's common stock. 187,500 shares of the Company's common stock will be forfeited and returned to it as part of the amendment. The additional $1,000,000 payment to the former EFS shareholders was mutually terminated as part of this amendment.
- EFS, as a wholly-owned subsidiary of ours entered into 6 new employment agreements with the former shareholders and key employees ofo EFS. The former president of EFS agreed to a 3 year employment agreement. All other individuals had 10 year employment agreements in which annual compensation ranged from $125,000 to $250,000 per annum. These agreements contained nondisclosure and restrictive covenant arrangements. These agreements were mutually terminated by the Company and the former EFS shareholders and employees.
- Former EFS shareholders personally assumed all overdraft bank liabilities and bank loans, as well as, all bank loans of Express Freight Systems, Inc. In addition, former EFS shareholders assumed all

trade payables and accruals prior to March 1, 2004. All bad debts and charge-backs attributable to receivables outstanding as of April 21, 2004 were assumed by the former EFS Shareholders.

- The Company entered into a Terminal Agreement which entitles the former EFS shareholders as Agent to receive a commission of 85% of revenues on shipments that are secured, processed and supervised under its direction. Under this agreement, the Company is not responsible for any expenses incurred for the operation of the Agent's terminal.

XRG has the obligation to fulfill certain funding obligations pursuant to the Settlement Agreement on a timely basis, including but not limited to funding COMDATA, funding driver payroll, paying insurance, advance funding license/tag fees, and other items as set forth in the Settlement Agreement. The failure to make these fundings is considered a "Major Funding Default", pursuant to the Settlement Agreement. Upon the occurrence of a Second Funding Default, EF and the Holders have the right to terminate the Terminal Agreement and shall be released from any further liability or obligations to damage provisions of the Terminal Agreement.

Pursuant to the terms of the Settlement Agreement, XRG is entitled to a return of 187,500 shares issued in connection with the EFS merger. XRG has the risk of EF declaring a Major Funding Default because of its limited financial resources if the Company was unable to timely fulfill its funding obligations under the Settlement Agreement. Representatives of EF have alleged that XRG has already committed a Major Funding Default. XRG disputes this assertion. However, if two (2) Major Funding Defaults were deemed to have occurred, which would result in a potential termination of the Terminal Agreement, this would have a material adverse effect on the financial position of XRG.

E. **Larry Berry Employment Agreement**

On April 22, 2005, the Company finalized an Employment Agreement between Larry M. Berry and XRG G&A, Inc. Mr. Berry is employed as an Acquisition Specialist and reports directly to the Company's Chief Executive Officer and assists in entering into agency agreements, terminal agreements, asset based acquisitions and other similar agreements with trucking companies. Mr. Berry is entitled to a weekly draw of $3,000. In addition, he is entitled to compensation in an amount equal to one-half (1/2) of one percent (1%) of all invoice line haul revenueso . attributable to agency, transfer and acquisition agreements entered into with truckload candidates directed to XRG by Mr. Berry. As of theo date of this Agreement, Mr. Berry is entitled to be paid such compensation with respect to invoice line haul revenues of EFS Corp., o Highbourne Corporation, Carolina Truck Connection, Inc., and Highway Transport, Inc. XRG has agreed to issue Mr. Berry options to acquireo 100,000 shares of its common stock at a nominal exercise price of $.01. XRG also agreed to issue Mr. Berry shares of its common stock valuedo at $1.00 per share as compensation for all prior amounts owed to Mr. Berry for past compensation. The payments due Mr. Berry are made byo R&R and are considered a credit against the fees payable to R&R pursuant to the Administrative Services Agreement.

F.o **Interim Financing Arrangements with Barron**

In order to satisfy the Company's interim working capital requirements, it has borrowed funds from Barron, its largest shareholder. Theo following table sets forth a summary of the date, amount, interest rate, collateral and extended maturity date relating to such borrowings:

Date	Amount	Interest Rate	Collateral	Current Maturity Date	Extended Maturity Date
9/20/04	$ 225,809.86	6%	20 Trailers ando all assets	3/31/05	12/31/05
10/1/04	166,275.00	6%	15 Tractors and all assets	3/31/05	12/31/05
2/23/05	1,180,000.00	10%	All Assets	4/23/05	12/31/05
3/3/05	800,000.00	10%	All Assets	5/1/05o	12/31/05
6/20/05	1,250,000.00	10%	All Assets	12/31/05	N/A

XRG, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

On May 20, 2005, the Company entered into a Promissory Notes Modification Agreement with Barron, extending the due date of all of the above Notes, until December 31, 2005. In connection with this arrangement, Barron agreed to subordinate its right of payment and interest on such Notes and other future indebtedness to Kenneth A. Steel, Jr., who is the holder of a $500,000 Promissory Note of XRG.

The June 2005 funding the Company received from Barron consisted of $1,600,000 of Units. A $100,000 Unit consisted of (i) a $78,125 Promissory Note, and (ii) $21,875 allocated to acquire 10,937.5 shares of the Company's common stock at $2.00 per share and the right to acquire 343,750 Common Stock Purchase Warrants with an exercise price of $2.00. Accordingly, in June 2005, Barron invested $350,000 to acquire 175,000 shares of the Company's common stock and is the holder of a $1,250,000 Promissory Note. In addition, Barron has the right to acquire 5,500,000 shares of the Company's Common Stock pursuant to the Common Stock Purchase Warrant with an issue date of June 2, 2005, at an exercise price of $2.00.

The shares and warrants issued to Barron have registration rights, most favored nation's anti-dilution protection, cashless exercise provisions, and registration rights with liquidated damages.

G Restructured Arrangements with Kenneth A. Steel, Jr.

On January 5, 2005 Mr. Steel, an existing shareholder advanced the Company $500,000 pursuant to a promissory note that was originally repayable on February 5, 2005. The Company did not pay this note as due and obtained an original extension through March 31, 2005. As part of the Company's recent restructuring it has entered into a new restated promissory note with Ken Steel for $500,000, which is payable on December 31, 2005 and bears interest at 17%. Default interest is 24% XRG has agreed to grant Mr. Steel a lien and security interest in its assets. Barron has agreed to subordinate repayment of principal and interest on all Barron notes to the repayment of Mr. Steel's note. In May 2005, XRG paid Mr. Steel approximately $72,900 as forbearance consideration and loan fees. Interest is payable monthly. The Company has agreed to issue Mr. Steel warrants to acquire up to 1,000,000 shares of its Common Stock at an exercise price of $2.00 per share, subject to anti-dilution adjustment. This warrant is substantially the same form of warrant as issued to other investors with favored nations and anti-dilution rights. Such rights were also granted to other affiliates of Mr. Steel.

H Waivers of Liquidated Damages

In February, 2005 the Company withdrew a registration statement filed under cover of Form SB-2 on behalf of certain selling shareholders. The company's decision to withdraw this registration statement was predicated upon the restructuring of its operations and the need to raise additional capital. In connection with its restructuring during May, 2005, the Company entered into waivers and extensions of liquidated damages rights with all of the holders, who are entitled to liquidated damages in connection with the failure to register the Company's securities on behalf of such selling shareholders. The Company is required to file a new registration statement on or before September 30, 2005 and to have such registration statement declared effective on December 31, 2005. If the new registration statement is not filed and declared effective by such dates, then the holders are entitled to the liquidated damages or penalties for failure to have such registration statement filed and declared effective, with such liquidated damages rights commencing as of September 30, 2005 or December 31, 2005 as applicable. There is no assurance that the Company will be able to timely prepare, file and have declared effective a new selling shareholder registration statement. Liquidated damages due Barron are approximately $292,500 per quarter. Liquidated damages due the other investors are approximately $20,000 per month.

I Changes in Officers/Directors

Mr. Francis was appointed as XRG's Chief Executive Officer in April, 2005 in connection with the Administrative Services Agreement with R&R. On May 20, 2005 Mr. Francis and Mr. Leong were appointed to the Company's Board of Directors to fill vacancies created by the resignations of Mr. Huggins and Mr. Brennan, as described below. Effective May 20, 2005 a Mutual General Release was entered into between XRG, Barron and Donald Huggins. Mr. Huggins agreed that upon execution of this Release by all parties, he shall resign as a

XRG, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

Director of XRG. Mr. Huggins agreed to release XRG and Barron from all claims, including but not limited to, obligations of XRG to Mr. Huggins pursuant to his Consulting Agreement dated March 1, 2004 and the Amendment thereto dated February 10, 2005. Mr. Huggins was released of all claims by XRG or Barron except claims grounded upon fraud, malfeasance, misappropriation of assets or theft. In addition, Mr. Huggins agreed to reduce his stock ownership in the Company by twenty-five percent (25%) so that his net holdings is approximately five hundred fifty two thousand five hundred (552,500) shares.

XRG also entered into a similar agreement effective May 20, 2005 with its former Chief Executive Officer, Mr. Kevin Brennan. The Company agreed to pay Mr. Brennan Thirteen Thousand Four Hundred Twenty-Five and 90/100 Dollars ($13,425.90) and Mr. Brennan agreed to reduce his stock ownership in the Company from five hundred twenty-nine thousand one hundred sixty-seven (529,167) shares to three hundred sixty-nine eight hundred seventy (369,870) shares. In addition, Mr. Brennan released XRG from all obligations under his Employment Agreement originally dated March 1, 2004 as amended on February 10, 2005. XRG and Barron agreed to release Mr. Brennan from any claims or causes of action excepting only those which are grounded or based upon fraud, malfeasance, misappropriation of assets or theft.

J. **Restructuring of Highway Transport, Inc. Acquisition**

In April 2004, XRG entered into an Asset Purchase Agreement for Highway Transport, Inc., an Alabama corporation ("HTI"), and its shareholders, Mr. Brown and Mr. Adams. Pursuant to this Agreement, XRG agreed to acquire certain transportation equipment and other assets use by HTI and to assume the debt and liabilities of HTI. In order to resolve disputes among the parties in connection with the prior Asset Purchase Agreement, XRG, HTI and its principals entered into a Termination Agreement and Terminal Agreement effective May 30, 2005.

Pursuant to the Termination Agreement, XRG repaid HTI $180,000, the proceeds of which was used to make debt service payments on obligations due United Bank and to satisfy other payables of HTI. XRG is also obligated to issue the principals of HTI 75,000 shares of its Common Stock.

The Termination Agreement requires XRG to pay HTI $6,000 per month for the first 41 months after the Termination Agreement, and $16,000 per month thereafter for 19 months ("Settlement Payments"). The understanding of the parties is that the Settlement Payments will be directed to United Bank to pay down the obligations of XRG and HTI to United Bank ("Settlement Payments"). It is the intent and desire of the parties to restructure the obligations due United Bank, such that XRG is the primary obligor on 4/7's and HTI and its principals are the obligors on the other 3/7's of the amounts due United Bank, which approximates $807,000 as of March 31, 2005. XRG is currently the primary obligor one these obligations to United Bank. There is no assurance that XRG will be successful in restructuring the United Bank obligations, which limits XRG's obligations to 4/7's of the amount due United Bank.

The Terminal Agreement with HTI has a term for five (5) years. HTI covenants to use XRG on an exclusive basis as its carrier. XRG agrees toe pay HTI eighty-seven percent (87%) of revenues. XRG shall retain the remaining thirteen percent (13%) of HTI revenues. If HTI ceases operations, sell substantially all of its assets, terminates the Terminal Agreement, or defaults in performing its obligations under the Terminal Agreement, XRG will be relieved of its obligations to make any remaining Settlement Payments. If any of such events occur within six (6) months after the effective date of the Termination Agreement, all previous shares of XRG common stock issued to the principals of HTI shalle be immediately canceled.

If XRG does not fund COMDATA immediately when due or make settlement of commissions on HTI invoices in presently available fund and fails to cure such default within a 24-hour period after receiving written notice, such shall constitute a major funding default ("Major Fundinge Default"). During any rolling 30-day period, XRG shall permit two Major Funding Defaults, then HTI shall have the right to terminate thee Terminal Agreement and be released of any further obligations to XRG.

XRG, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

K. J. Bently Companies

On June 2, 2005, the agreement with J. Bently Companies was restructured. The original purchase agreement, amendments thereto, employment agreements associated with the acquisition, the original override agreement and the original fleet owner agreement were terminated. In lieu thereof, XRG and a J. Bently Company shareholder entered into a new terminal agreement; where the revenue split being 85% to CTC and 15% to XRG. This terminal agreement has a term of five years. In addition, XRG has entered into a new trailer lease and fleet owner agreement with this J. Bently Company shareholder, which requires the payment of seventy-six percent of line haul revenue to him for utilization of his equipment, which is a credit against the 85% agent fee due in accordance to the terminal agreement. In addition, XRG agreed to issue a total of 150,000 shares of its restricted common stock to the J. Bently Company shareholders, subject to certain vesting provisions relating to the Terminal Agreement remaining in full force and effect through April 30, 2007. In addition, XRG has agreed to reimburse these J. Bently Company shareholders $90,000 for previous deposits for insurance and to pay $52,000 for workers compensation insurance overcharges.

Table of Contents

ITEM 13. EXHIBITS

EXHIBITS AND SEC REFERENCE NUMBERS

Exhibit No.	Description of Exhibit
3.1	Certificate of Incorporation of USA Polymers, Inc. (2)
3.2	Amendment to Certificate of Incorporation of USA Polymers, Inc. changing name to XRG, Inc. (2)
3.3	Agreement and Plan of Merger of XRG, Inc. and XRG International, Inc. (2)
3.4	Certificate of Merger of XRG, Inc. and XRG International, Inc. — Delaware. (2)
3.5	Certificate of Merger of XRG, Inc. and XRG International, Inc. — New Jersey. (2)
3.6	Amendment to Certificate of Incorporation to Increase Authorized Shares of XRG, Inc. (2)
3.7	Bylaws of XRG, Inc. (2)
3.8	Amendment to Certificate of Incorporation to Increase Authorized Shares of XRG, Inc. dated July 7, 2003. (3)
3.9	Certificate of Designation, Preferences and Rights of Series A Preferred Stock of XRG, Inc. (3)
3.95	Amendment to Certificate of Incorporation to Increase Authorized Shares of XRG, Inc. dated July 29, 2004 (5)
10.1	Lease Agreement between Pittsburgh Properties, Ltd. and XRG, Inc. dated August 28, 2001. (2)
10.2	Administrative Services Agreement between XRG G&A, Inc. and KDR Transport, Inc. dated February 1, 2002. (1)
10.3	Lease Agreement between Highwoods/Florida Holdings, L.P. and XRG, Inc. dated September 5, 2002. (3)
10.4	Asset Purchase Agreement between J. Bently Companies, Inc. and XRG, Inc. (3)
10.5	Fleet Owner Agreement between J. Bently Companies, Inc. and XRG, Inc. (3)
10.5.5	Asset Acquisition Agreement Addendum between J. Bently Companies, Inc. and XRG, Inc. (4)
10.6	Employment Agreement between Neil Treitman and XRG, Inc. (3)
10.7	Stock Option Agreement between Michael T. Cronin and XRG, Inc. (3)
10.8	Stock Option Agreement between Neil Treitman and XRG, Inc. (3)
10.9	Employment Agreement between Kevin Brennan and XRG, Inc. (4)
10.10	Employment Agreement between Stephen Couture and XRG, Inc. (4)
10.11	Consultant Agreement between Donald G. Huggins, Jr. and XRG, Inc. (4)
10.12	Stock Purchase Agreement between XRG, Inc. and R&R Intermodal dated August 20, 2003. (7)

Exhibit No.	Description of Exhibit
10.13	Stock Purchase Agreement Addendum between XRG, Inc. and R&R Intermodal dated January 1, 2004. (8)
10.12	XRG, Inc. 2004 Non-Qualified Stock Option Plan. (6)
10.13	Independent Contractor Agreement between XRG Logistics, Inc. and J. Bently Companies, Inc. dated August 30, 2003. (9)
10.14	XRG, Inc. Amended & Restated 2004 Non-Qualified Stock Option Plan. (10)
10.15	Stock Purchase Agreement Addendum No. 2 between XRG, Inc. and R&R Intermodal dated July 8, 2004. (11)
10.16	Form of Stock Purchase Agreement between XRG, Inc. and Barron Partners, LP, dated March 31, 2004.(12)
10.17	Form of Series A Common Stock Purchase Warrant, issued to Barron Partners, LP.(12)
10.18	Form of Series B Common Stock Purchase Warrant, issued to Barron Partners, LP.(12)
10.19	Registration Rights Agreement by and between XRG, Inc. and Barron Partners, LP.(12)
10.20	Agreement and Plan of Merger by and among XRG, Inc., XRG Acquisition Sub I, Inc., Express Freight Systems, Inc. and the Shareholders of Express Freight Systems, Inc., originally dated January 31, 2004.(12)
10.21	Addendums to Agreement and Plan of Merger, dated March 29, 2004 and April 21, 2004.(12)
10.22	Articles of Merger between XRG Acquisition Sub I, Inc. and Express Freight Systems, Inc., filed April 21, 2004 — including Plan of Merger.(12)
10.23	Master Equipment Lease Agreement by and between Express Leasing Systems, Inc. and Express Freight Systems, Inc., dated April 21, 2004.(12)
10.24	Employment Agreement between Express Freight Systems, Inc. and John Limerick, Sr.(12)
10.25	Employment Agreement between Express Freight Systems, Inc. and Matthew Limerick.(12)
10.26	Employment Agreement between Express Freight Systems, Inc. and Gregory L. Poe.(12)
10.27	Employment Agreement between Express Freight Systems, Inc. and John Limerick, III(12)
10.28	Employment Agreement between Express Freight Systems, Inc. and Douglas F. Varnell.(12)
10.29	Employee Agreement between Express Freight Systems, Inc. and Mark Limerick.(12)
10.30	Blanket Corporate Guaranty of XRG, Inc.(12)
10.31	Agreement and Plan of Merger by and between XRG, Inc. and its wholly owned subsidiary XRG Acquisition Sub II, Inc. and RSV, Inc., a Tennessee corporation and its Shareholders, dated February, 2004 with Addendum, dated March 29, 2004.(12)
10.32	Addendum to Agreement and Plan of Merger dated March 29, 2004.(12)
10.33	Articles and Plan of Merger by and between RSV, Inc. and XRG Acquisition Sub II, Inc., filed on April 29, 2004.(12)

Exhibit No.	Description of Exhibit
10.34	Stock Escrow Agreement by and between XRG, Inc. and Richard Venable.(12)
10.35	Noncompetition Agreement with Richard Venable.(12)
10.36	Asset Acquisition Agreement by and between XRG, Inc., Highway Transport, Inc. and the Shareholders of Highway Transport, Inc., dated March 31, 2004.(12)
10.37	Bill of Sale, Assignment of Contract, and Assumption Agreement by and between Highway Transport, Inc. and XRG, Inc., effective April 2, 2004 (without exhibits).(12)
10.38	Commercial Sublease Agreement, executed by XRG, Inc. in connection with Highway Transport, Inc. facilities.(12)
10.39	Employment Agreement by and between XRG Logistics, Inc. and Eddie R. Brown.(12)
10.40	Employment Agreement by and between XRG Logistics, Inc. and Milton Adams.(12)
10.41	Asset Purchase Agreement dated February 28, 2004, by and between Highbourne Corporation, XRG, Inc. and the Shareholders of Highbourne Corporation.(12)
10.42	Bill of Sale, Assignment of Contract and Assumption Agreement by and between Highbourne Corporation and XRG, Inc., effective April 2, 2004 (without exhibits).(12)
10.43	Commercial Sublease Agreement, executed by XRG, Inc. in connection with the Sublease of the Highbourne Corporation facilities. (12)
10.44	Employment Agreement by and between XRG Logistics, Inc. and Sherrie J. Kenner.(12)
10.45	Employment Agreement by and between XRG Logistics, Inc. and Steven M. Orenic.(12)
10.46	Asset Purchase Agreement, dated February, 2004 by and among XRG, Inc., Carolina truck Connection, Inc. and the Shareholders of Carolina Truck Connection, Inc.(12)
10.47	Bill of Sale, Assignment of Contract and Assumption Agreement by and between Carolina Truck Connection, Inc. and XRG, Inc., effective April 28, 2004 (without exhibits).(12)
10.48	Commercial Sublease Agreement, executed by XRG, Inc. in connection with the Carolina Truck Connection, Inc. facilities.(12)
10.49	Security Agreement by and between XRG, Inc. and Larry Puckridge.(12)
10.50	Noncompetition and Consulting Agreement of Mr. Larry Puckridge.(12)
10.51	Stock Purchase Agreement Addendum between XRG, Inc. and J. Bently Companies, Inc. dated April 12, 2004. (4)
10.52	Form of XRG, Inc. Subscription Agreement dated June 14, 2004.(13)
10.53	Placement Agent agreement between XRG, Inc. and Vertical Capital Partners, Inc. dated June 17, 2004.(13)
10.54	Form of XRG, Inc. Registration Rights Agreement dated June 14, 2004.(13)
10.55	Amendment No.1 to Common Stock Purchase A and B Warrants between XRG, Inc. and Barron Partners, LP dated June 15, 2004. (13)

Exhibit No.	Description of Exhibit
10.56	Form of XRG, Inc. Subscription Agreement dated July 30, 2004.(13)
10.57	Funds Escrow Agreement between XRG, Inc. and Various Subscribers dated July 30, 2004.(13)
10.58	Form of Warrant Agreement between XRG, Inc. and Various Subscribers dated July 30, 2004.(13)
10.59	Form of Warrant Agreement between certain finders and the Company dated March 31, 2004 and June 15, 2004.(13)
10.60	Lease Agreement by and between Wilder Corporation of Delaware and XRG, Inc. dated July 29, 2004 (14)
10.61	Terminal Agreement between Express Freight Systems, Inc. and Express Freight, Inc. dated August 16, 2004 (14)
10.62	Merger Agreement Addendum between the former shareholders of Express Freight Systems, Inc. and XRG, Inc. (14)
10.63	Promissory Note between Barron Partners, LP and XRG, Inc. dated September 10, 2004 (14)
10.64	Administrative Services Agreement between XRG, Inc., XRG G&A, Inc. and R&R Express, Inc. and Richard Francis (15)
10.65	Employment Agreement by and between XRG G&A, Inc. and Larry M. Berry (15)
10.66	Second Amendment to Asset Acquisition Agreement by and among XRG, Inc. and Carolina Truck Connection, Inc., Larry Puckridge, Robert Luther (15)
10.67	Letter of Resignation from Kevin B. Brennan, as Chief Executive Officer and Member of Board of Directors (15)
10.68	Amendment to Employment Agreement — Kevin Brennan (16)
10.69	Amendment to Consulting Agreement — Don Huggins (16)
10.70	Letter of Agreement with Walker Street Associates (16)
10.71	$1,180,000 Promissory Note payable to Barron Partners, LP dated February 23, 2005 (16)
10.72	Security Agreement with Barron Partners, LP dated February 23 2005 (16)
10.73	$500,000 Promissory Note payable to Ken Steel dated January 5, 2005 (16)
10.74	Promissory Note Modification Agreement for Extension until March 31, 2005 with Ken Steel, dated February 6, 2005 (16)
10.75	Promissory Note Modification Agreement for Extension until March 31, 3005 with Barron Fund, LP, dated February 16, 2005 (16)
10.76	Contract of Sale and Security Agreement by and between XRG, Inc. and Capco Financial Company, a division of Greater Bay Bank, N.A. (16)
10.77	Deposit Account Control Agreement between Wachovia Bank, Capco Financial, and XRG, Inc., dated February 15, 2006 (16)
10.78	Promissory Notes Modification Agreement with Barron Partners, LP (17)

Exhibit No.	Description of Exhibit
10.79	Copy of $1,250,000 Promissory Note, payable to Barron Partners, LP (17)
10.80	Copy of $350,000 Subscription Agreement with Barron Partners, LP (17)
10.81	Copy of Common Stock to Purchase Warrant for 5,500,000 shares with Barron Partners, LP (17)
10.82	Escrow Agreement regarding Conditions to Funding (17)
10.83	Amendment No. 1 to Administrative Services Agreement between XRG, Inc., XRG G&A, Inc., R&R Express, Inc. and Richard Francis (17)
10.84	Agreement with Ken Steel (17)
10.85	Restated $500,000 Promissory Note, payable to Ken Steel (17)
10.86	Form of Warrant issued to Ken Steel (17)
10.87	Conditional Waiver and Extension of Liquidated Damages Rights (17)
10.88	Agreement by and among XRG, Inc., XRG Logistics, Inc., J. Bently Companies, its successors, Joseph Stapleton and Stanley Shadden (17)
10.89	Fleet Owner Agreement by and between Joseph Stapleton and XRG Logistics, Inc. (17)
10.90	Trailer Lease by and between XRG Logistics, Inc. and Joseph Stapleton (17)
10.91	Terminal Agreement by and between XRG Logistics, Inc. and Stanley Shadden (17)
10.92	Settlement Agreement by and between XRG, Inc., Express Leasing Systems, Inc., Express Freight, Inc. and Holders (17)
10.93	Mutual Release by and between Donald Huggins, XRG, Inc. and Barron Partners, LP (17)
10.94	Mutual Release by and between Kevin Brennan, XRG, Inc. and Barron Partners, LP (17)
10.95	Termination Agreement between Highway Transport, Inc., its shareholder and XRG, Inc. (18)
10.96	Termination Agreement between Highway Transport, Inc. and XRG Logistics, Inc. (18)
10.97	Employment Agreement between Stanley Shadden and XRG Logistics, Inc. dated September 1, 2003.(19)
10.98	Employment Agreement between Larry M. Berry and XRG Logistics, Inc. dated November 1, 2003.(19)
10.99	Employment Agreement between Gary Walborn and XRG G&A, Inc. dated January 1, 2004.(19)
10.100	Employment Agreement between Herman Rios and XRG G&A, Inc. dated May 1, 2004.(19)
10.101	Employment Agreement between Richard S. Francis and XRG G&A, Inc. dated July 1, 2004.(19)
10.102	Employment Agreement between Richard S. Francis and R&R Express Intermodal, Inc. dated July 1, 2004.(19)
10.103	Consulting Agreement by and between KDR Transport, Inc. and XRG, Inc. dated July 7, 2004.(19)
10.104	Common Stock Purchase Warrant issued to Greater Bay Bank, N.A. (Capco affiliate) for 63,820 shares.(19)
10.105	Letter Agreement with Oberon Securities.(19)

Exhibit No.	Description of Exhibit
10.106	Consulting Agreement with Michael Conroy.(19)
31	Section 302 Certification of the Sarbanes-Oxley Act of 2002*
32	Section 906 Certification of the Sarbanes-Oxley Act of 2002*
99.1	Code of Ethics(19)

(1) Incorporated by reference to the Registrant's Form 10-KSB filed on July 10, 2002.
(2) Incorporated by reference to the Registrant's Registration Statement on Form 10-SB, File No. 0-49659, filed March 4, 2002.
(3) Incorporated by reference to the Registrant's Form 10-KSB filed on July 14, 2003.
(4) Incorporated by reference to the Registrant's Form 10-KSB filed on July 14, 2004.
(5) Incorporated by reference to the Registrant's Definitive Schedule 14(C) filed on September 29, 2004.
(6) Incorporated by reference to the Registrant's Form S-8 filed on January 9, 2004e
(7) Incorporated by reference to the Registrant's Form 8-K filed on August 22, 2003.e
(8) Incorporated by reference to the Registrant's Form 8-K filed on February 9, 2004.
(9) Incorporated by reference to the Registrant's Form 10-QSB filed on November 24, 2003.
(10) Incorporated by reference to the Registrant's Amendment No.1 to Form S-8 filed on February 27, 2004.
(11) Incorporated by reference to the Registrant's Form 8-K/A Amendment No.1 filed on July 8, 2004.
(12) Incorporated by reference to the Registrant's Form 8-K/A Amendment No.3 filed on July 13, 2004.
(13) Incorporated by reference to the Registrant's Form 10-QSB filed on August 25, 2004.e
(14)e Incorporated by reference to the Registration Form 10K-SB for March 31, 2005.e
(15)e Incorporated by reference to the Registration Form 8-K filed on April 26, 2005.e
(16) Incorporated by reference to the Registration Form 8-K filed on March 3, 2005.e
(17)e Incorporated by reference to the Registration Form 8-K filed on June 3, 2005.e
(18) Incorporated by reference to the Registration Form 8-K filed on June 9, 2005.e
(19)e Incorporated by reference to the Registration Form 10-K-SB filed on July 14, 2005.
*e Filed herewith.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The following table sets forth fees billed to us by our auditors during the fiscal years ended March 31, 2005 for: (i) services rendered for the audit of our annual financial statements and the review of our quarterly financial statements, (ii) services by our auditor that are reasonably related to the performance of the audit or review of our financial statements and that are not reported as Audit Fees, (iii) services rendered in connection with tax compliance, tax advice and tax planning, and (iv) all other fees for services rendered. "All other fees" includes fees related to (or paid for) in the fiscal year ended March 31, 2005.

	March 31, 2005
(i) Audit Feese	$74,856
(ii) Audit Related Feese	-0-
(iii) Tax Fees	-0-
(iv) All Other Fees	-0-

Audit Committee Pre-Approval Process. Policies and Procedures

The appointment of Mahoney Cohen & Company, CPA, P.C. was approved by our Board of Directors. Our principal auditors have performed their audit procedures in accordance with pre-approved policies and procedures established by our Board of Directors. Our principal auditors have informed our Board of Directors of the scope and nature of each service provided. With respect to the provisions of services other than audit, review, or attest services, our principal accountants brought such services to the attention of our Board of Directors, or one or more members of our Board of Directors to whom authority to grant such approval had been delegated prior to commencing such services. Such services primarily consisted of tax related services and discussions of Sarbanes-Oxley 404.

SIGNATURES

In accordance with Sections 13 or 15(d) of the Exchange Act, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated this 16th day of December, 2005.

XRG, INC.
By:/s/ Richard Francis
Richard Francis
President, Chief Executive Officer,
Chief Financial Officer and
Director

By:/s/ Jay Ostrow
Jay Ostrow
Principal Accounting Officer,
Controller

KNOW ALL PERSONS BY THESE PRESENTS that each person whose signature appears below constitutes and appoints Richard Francis, his attorney-in-fact, to sign any amendments to this report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, hereby ratifying and confirming all the said attorney-in-fact may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Exchange Act, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Richard Francis Richard Francis	Chief Executive Officer, Chief Financial Officer And Director	December 16, 2005
/s/ Michael T. Cronin Michael T. Cronin	Director	December 16, 2005
/s/ Terence Leong Terence Leong	Director	December 16, 2005

EXHIBIT 31

CERTIFICATION PURSUANT TO RULE 13A-14
OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Richard Francis, certify that:

1. I have reviewed this annual report on Amendment No. 1 to Form 10-KSB of XRG, Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and:o

(a) other than as disclosed in Item 8A, I am in the process of designing such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

(b) other than as disclosed in Item 8A, evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

(c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on my evaluation as of the Evaluation Date;

5. I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

(a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and o

6. I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: December 16, 2005.

/s/ Richard Francis
Richard Francis
President, Chief Executive Officer and Chief Financial Officer

EXHIBIT 31

CERTIFICATION PURSUANT TO RULE 13A-14
OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jay Ostrow, certify that:

1. I have reviewed this Amendment No. 1 to annual report on Form 10-KSB of XRG. Inc.;o

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact of omit to state a Material fact necessary too make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period coveredo by this annual report;o

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all materialo respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report:

4. I an responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) foro the registrant and:o

(a)other than as disclosed In Item 8A, I am in the process of designing such disclosure controls and procedures to ensure that material Informationo relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the periodo in which this annual report is being prepared;o

(b) other than as disclosed in Item 8A, evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

(c)presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on my evaluation as ofo the Evaluation Date;

5. I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):o

(a)all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process,o summarize and report financial data and have Identified for the registrant's auditors any material weaknesses in internal controls: and

(b)any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; ando

6. I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantlyo affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficienciesо and material weaknesses.o

Date: December 16, 2005.

/s/ Jay Ostrow
Jay Ostrow, Controller
Principal Accounting Officer

EXHIBIT 32

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of XRG, Inc. (the "Company"), on Amendment No. 1 to Form 10-KSB of the year ended March 31, 2005, I hereby certify solely for the purpose of complying with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The annual report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

2. The information contained in the annual report fairly presents, in all materials respects, the financial condition and results of operations of the Company.

Date: December 16, 2005.

/s/ Richard Francis
Name:Print Richard Francis
Title: Chief Executive Officer and Chief Financial Officer

/s/ Jay Ostrow
Name:Print Jay Ostrow
Title: Principal Accounting Officer, Controller

Table of Contents

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

FORM 8-K

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

Date of Report (Date of earliest event reported): December 31, 2005

Commission File Number 0-49659

XRG, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	58-2583457
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)
601 Cleveland Street, Suite 501-13, Clearwater, Florida	33755
(Address of principal executive offices)	(Zip Code)

(727) 475-3060
(Registrant's telephone number)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

TABLE OF CONTENTS

Table of Contents

Item 1.02 Termination of a Material Definitive Agreement

- **Termination of Bently Companies Agency Agreement**

We have decided to terminate our relationship with J. Bently Companies. As of approximately December 16, 2005, we will no longer be operating under the Agency Agreement that was entered into with J. Bently Companies in June 2005. Accordingly, the revenues from J. Bently Companies will no longer be considered part of the XRG book of business. Although the operations of J. Bently Companies contributed to our revenues, the expenses and other costs associated with J. Bently Companies resulted in a negative contribution to our operating income.

- **Termination of Wachovia Banking Relationship**

On December 28, 2005, we received a letter from Wachovia Bank that it intends to terminate its banking and other financial relationships with XRG within next 30 days. Historically, this bank has allowed us to operate on the overdraft position, which has been a source of working capital. There is no assurance that we will be able to locate an alternative financial institution, which provides us with similar financial accommodations.

Item 2.04 Triggering Events to Accelerate or Increase a Direct Financial Obligation or an Obligation under Off-Balance Sheet Arrangement

- **Interim Financing Arrangements with Barron Partners, LPe**

In order to satisfy our interim working capital requirements, we have borrowed funds from Barron Partners, LP ("Barron") our largest shareholder. The following table sets forth a summary of the date, amount, interest rate, collateral, and maturity dates relating to such borrowings:

Date	Amount	Interest Rate	Collateral	Initial Maturity Date	Extended Maturity Date
9/10/04	$ 225,809.86	6%	20 Trailers	3/31/05	12/31/05
10/01/04	166,275.00	6%	15 Tractors	3/31/05	12/31/05
2/23/05	1,180,000.00	10%	All Assets	4/23/05	12/31/05
3/03/05	800,000.00	10%	All Assets	5/01/05	12/31/05
6/02/05	1,250,000.00	10%	All Assets	12/31/05	N/A
7/29/05	600,000.00	18%	All Assets	12/31/05	N/A
11/18/05	30,000	18%	All Assets	3/31/06	N/A

On May 20, 2005, we entered into a Promissory Notes Modification Agreement with Barron, extending the due date of all of the above Notes, until December 31, 2005. In connection with this arrangement, Barron agreed to subordinate its right of payment and interest on such Notes and other future indebtedness to Kenneth A. Steel, Jr., who is the holder of a $500,000 Promissory Note of XRG. We are obligated to use at least seventy percent (70%) of the proceeds from any debt on equity financings to repay these notes. All of these notes have cross-default provisions. We were unable to repay Barron by December 31, 2005. Accordingly, all of the above notes are now in default.

- **Restructured Arrangements with Kenneth A. Steel, Jr.**

On January 5, 2005 Mr. Steel, an existing shareholder advanced us $500,000 pursuant to a promissory note that was originally repayable on February 5, 2005. We did not pay this note as due and obtained an original extension through March 31, 2005. We have entered into a new restated promissory note with Ken Steel for $500,000, which was payable on December 31, 2005 and bears interest at 17%. Default interest is 24%. XRG has agreed to grant Mr. Steel a lien and security interest in its assets. Barron has agreed to subordinate repayment of principal and interest on all Barron notes to the repayment of Mr. Steel's note. XRG paid Mr. Steel approximately $72,900 to satisfy past defaults and as forbearance consideration. Interest is payable monthly. During June 2005, the Company granted a warrant to this noteholder to acquire up to 1,000,000 shares of its Common Stock at an exercise price of $2.00 per share, subject to anti-dilution adjustment. This warrant was valued at $721,068 of which $500,000 was recorded as a discount on notes payable and $221,068 was recorded to a deferred equity account. These amounts will be amortized with interest expense over the life of the note. We were unable to repay Mr. Steel by December 31, 2005, and accordingly, his note is in default.

- **Our Failure to register shares has resulted in liquidated damages**

In February, 2005 we withdrew a registration statement filed under cover of Form SB-2 on behalf of certain selling shareholders. Our decision to withdraw this registration statement was predicated upon the restructuring of our operations and the need to raise additional capital. In connection with our restructuring we have entered into a waiver and extension of liquidated damages rights with all of the holders, who are entitled to liquidated damages in connection with the failure to register our securities on behalf of such selling shareholders. We are required to file a new registration statement on or before September 30, 2005 and to have such registration statement declared effective on December 31, 2005. If the new registration statement is not filed and declared effective by such dates, then the holders are entitled to the liquidated damages or penalties for failure to have such registration statement filed and declared effective, with such liquidated damages rights commencing as of September 30, 2005 or December 31, 2005 as applicable. There is no assurance that we will be able to timely prepare, file and have declared effective a new selling shareholder registration statement. Liquidated damages due Barron are approximately $292,500 per quarter. Liquidated damages due the other investors are approximately are approximately $20,000 per month. Although we filed a new registration statement before September 30, 2005, we were unable to have this registration statement declared effective before December 31, 2005. Accordingly, we are subject to the liquidated damages to the investors as described above.

- **Defaults under other promissory notes**

The holders of approximately $145,000 of outstanding promissory notes have obtained judgments against XRG for the principal amount of such notes plus accrued interests and other charges, which aggregate approximately $175,464. This amount bears interest at seven percent (7%). The judgments were entered into on December 21, 2005. $80,000 of other promissory notes are past the maturity dates of the notes. Our cash flow from operations was not sufficient to generate enough cash to pay off all of these obligations by December 31, 2005.

We are currently in negotiations with Barron, Mr. Steel, the noteholders, and the other investors with liquidated damages rights regarding extension, forbearance, and modification of such parties' rights. There is no assurance that we will be able to successfully renegotiate, extend or modify the rights of such individuals and entities. In addition, we may be required to issue additional equity securities or modify the terms of outstanding warrants in order to renegotiate or satisfy such obligations. Such modifications or additional issuance of equity securities would be extremely diluted to existing shareholders.

Table of Contents

SIGNATURE

Pursuant to the requirements of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: January 3, 2006

XRG, INC.
By: /s/ Richard Francis
Print Name: Richard Francis
Title: Chief Executive Officer

Other Authorities

Section 153. Rule 12h-3, Securities and Exchange Commission

SEC Compliance and Disclosure Interpretations

http://prod.resource.cch.com/resource/scion/document/default/09013e2c85a7970b?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

¶8727 [Suspension of Section 15(d) Reporting]

Question 153.01

Question: Section 15(d) of the Exchange Act provides an automatic suspension of the periodic reporting obligation as to any fiscal year (except for the fiscal year in which the registration statement became effective) if an issuer has fewer than 300 security holders of record *at the beginning* of such fiscal year. In contrast, Rule 12h-3 permits a company to suspend its reporting obligation under Section 15(d) if the requirements of the rule are met *at any time* during the fiscal year. Is a Form 15 required to be filed under Rule 12h-3 as a condition of the suspension?

> **Answer:** Because situations exempted by Rule 12h-3 (*e.g.*, there are fewer than 300 security holders of record in the middle of a fiscal year) do not meet the literal test of Section 15(d), Rule 12h-3 requires the filing of Form 15 as a condition of the suspension. By contrast, under Rule 15d-6, if an issuer has fewer than 300 security holders of record at the beginning of the fiscal year, a Form 15 should be filed to notify the Commission of such suspension, but the suspension is granted by statute and is not contingent on filing the Form 15.

Reference: Exchange Act Section 15(d); Rule 12h-3

History: Issued July 1997; modified September 30, 2008.

¶8728 [Revival of Filing Duty]

Question 153.02

Question: A company's obligation to file periodic reports was automatically suspended under Section 15(d) for fiscal year 2007 because the class of securities at issue was held by less than 300 record holders on the first day of the company's fiscal year. Subsequently, on the first day of fiscal year 2010, the number of record holders exceeded 300, and as a result, the company's obligation to file periodic reports under Section 15(d) "revived." What is the first report due for this company?

> **Answer:** The first report due will be a Form 10-K for the previous fiscal year (fiscal year 2009). This position is consistent with the "look back" provision of Rule 12h-3(e), which provides that a company that suspends its reporting obligation under Rule 12h-3, but subsequently has that reporting obligation "revived," must begin reporting again under Section 15(d) by filing a Form 10-K for its previous fiscal year. Similarly, a company that must file a registration statement on Form 10 to register a class of securities under Section 12(g) must include financial statements for its previous fiscal year.

Reference: Exchange Act Section 15(d); Rule 12h-3; Form 10-K

History: Issued September 30, 2008.

¶8729 [Current Fiscal Year]

Question 153.03

Question: Can a company suspend its reporting obligations under Section 15(d) with respect to "the fiscal year within which such registration statement became effective"?

Answer: No. A company must always file the Form 10-K for the fiscal year in which the registration statement is declared effective. The 10-K is required regardless of whether the company suspends its reporting obligation under Section 15(d) or Rule 12h-3.

Reference: Exchange Act Section 15(d); Rule 12h-3; Form 10-K

History: Issued September 30, 2008.

Section 249. Rule 477—Withdrawal of Registration Statement or Amendment, Securities and Exchange Commission

SEC Compliance and Disclosure Interpretations

http://prod.resource.cch.com/resource/scion/document/default/09013e2c85a708ee?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

¶1350 [Effective Date]

Question 249.01

Question: Does the withdrawal procedure specified in Rule 477 apply only before the effective date of a registration statement and/or before any sale is made?

Answer: Yes. A registration statement may be withdrawn under Rule 477 before effectiveness or after effectiveness if no securities were sold. Once any security has been sold under a registration statement, Rule 477 withdrawal becomes unavailable. Instead, the registration statement can be post-effectively amended to deregister the remaining unsold securities.

Reference: Rule 477

History: Issued July 1997; modified January 26, 2009.

¶1351 [Withdrawn Registration Statement]

Question 249.02

Question: May a registrant filing an initial public offering on Form S-1 incorporate by reference exhibits it filed with a previous Securities Act registration statement which was withdrawn pursuant to Rule 477?

Answer: Yes. The withdrawn registration statement remains a filed document for purposes of Rule 411(c) and, accordingly, the exhibits may be incorporated by reference.

Reference: Rule 477

History: Issued July 1997; modified January 26, 2009.

ANNUAL REPORT

Pursuant to Rule 15c2-(11)(a)(5)

For

METATRON INC.

Dated: April 20, 2018

All information contained in this Information and Disclosure Statement has been compiled to fulfill the disclosure requirements of Rule 15c2-11 (a)(5) promulgated under the Securities and Exchange Act of 1934, as amended. The enumerated captions contained herein correspond to the sequential format as set forth in the rule.

METATRON INC.

Table of Contents

Metatron Inc.

ANNUAL REPORT

All information contained in this Annual Report has been compiled to fulfill the disclosure requirements of Rule 15c2-11 (a)(5) promulgated under the Securities and Exchange Act of 1934, as amended. The enumerated captions contained herein correspond to the sequential format as set forth in the rule.

No dealer, salesman or any other person has been authorized to give any information or to make any representations not contained herein in connection with the Issuer. Any representations not contained herein must not be relied upon as having been made or authorized by the Issuer.

Delivery of this information does not imply that the information contained herein is correct as of any time subsequent to the date of this Issuer Annual Report.

ITEM 1. THE EXACT NAME OF THE ISSUER AND ITS PREDECESSORS

The exact name of the Issuer is:

Metatron Inc. (hereinafter referred to as "MRNJ", "Issuer" or "Company") effective April 24, 2009.

The names and history of the Issuer's predecessors:

XRG Inc. – January 16, 2002 to April 24, 2009
USA Polymers Inc. – November 17, 2000 to January 16, 2002

We were incorporated on November 17, 2000 as USA Polymers Inc. We changed our name to XRG Inc. and began operations as a holding company that owned subsidiary interstate trucking companies on July 23, 2001. On March 24, 2009 we entered into a joint venture agreement with Rcomm Inc. under which we have pursued our current business strategy.

ITEM 2. ADDRESS OF THE ISSUER'S PRINCIPAL EXECUTIVE OFFICES

Company Headquarters:
160 Greentree Drive Suite 101
Dover, De 19904
Telephone and Fax (302) 861-0431
Website: www.metatroninc.com

Investor Relations Firm:
Telephone (302) 861-0431
Email ir@metatroninc.com

Press Release /information:
Investor Relations: Pacific Equity Alliance LLC
Investor Contact(s): Zachary R. Logan/Grady Powel
Telephone (858) 886-7238
Email info@pacif8ificequityusa.com

ITEM 3. SECURITY INFORMATION

Trading symbol
The Company's trading symbol is MRNJ.

The Company's CUSIP
The Company's CUSIP is 59140T202.

Par or Stated Value:

Par value of Common Stock - $0.001
Par value of Preferred Stock - $0.001
Stated Value of Series 'A' Preferred Stocke $100

Shares Authorized:

As of the date of this Annual Report, the Issuer has three classes of securities outstanding, Common Stock, Preferred Stock, and Series "A" Preferred Stock.

Common Stock
As of December 31, 2017, we have 6,000,000,000 shares authorized and 5,189,967,275 shares issued and outstanding of which 4,281,120,718 are freely tradable.

As of December 31, 2017, we have 1,671 shareholders ofrecord.

Preferred Stock
As of December 31, 2017, we have 5,000,000 shares authorized, and one (1) share issued and outstanding.

Series "A" Preferred Stock
As of December 31, 2017, we have one (1) shares authorized, and one (1) share of Series "A" Convertible Preferred Stock, issued and outstanding.

Transfer Agent
Pacific Stock Transfer Company
500 E. Warm Springs Road, Suite 240
Las Vegas, NV 89119
Web: www.pacificstocktransfer.com

Beth Looker, Client Services
Email: beth@pacificstocktransfer.com
Telephone: 702-361-3033 Ext. 106
Fax: 702-433-1979

Pacific Stock Transfer Company is registered under the Exchange Act, and reports to the Securities and Exchange Commission.

Restrictions on the transfer of any security:
None

Describe any trading suspension orders issued by the SEC in the past 12 months:
None

ITEM 4. ISSUANCE HISTORY

Events by the Issuer Resulting in Changes in Total Shares Outstanding for the Past Two Fiscal Years.

On March 22, 2009 we entered into an agreement with Belmont Partners LLC ("Belmont") by which Belmont acquired fifty three percent (53%) of our common stock. On March 24, 2009 we entered into an agreement with
Belmont and South Bay Financial Solutions Inc., ("South Bay"), pursuant to which South Bay acquired 50.01% of our total issued and outstanding common stock.

On March 24, 2009 we experienced a change of control as Belmont Partners LLC sold 10,114,774 shares of our common stock to South Bay Financial Solutions Inc.

On March 24, 2009, we issued one share of Series "A", Convertible Preferred Stock to TDC Ventures LLC for the sum of $100.00.

On June 3, 2009 we issued Rcomm Inc. sole stockholder twenty million (20,000,000) shares of common stock in exchange of all Rcomm's outstanding stocks. This was accounted for as a reverse merger acquisition having Rcomm, Inc. as the surviving entity.

On June 9, 2009 we converted the sum of $479,359 of outstanding debt to PHP Holdings Inc. into 2,396,793 shares of common stock.

On June 9, 2009, we converted the sum of $436,177 of outstanding debt to Rovert Consulting Inc. into 2,180,885 shares of

common stock.

On June 9, 2009, we converted the sum of $360,000 of outstanding debt due to Beach Cities Home Improvement Inc. into 1,800,000 shares of common stock.

On September 3, 2009 we acquired iMobilize Inc. in exchange for the issuance of four hundred twenty eight thousand five hundred seventy one (428,571) shares of common stock to iMobilize's sole shareholder valued at $0.35 per share or $150,000.

On September 11, 2009 we converted the sum of $216,323 of outstanding debt to PHP Holdings Inc. into 2,704,042 shares of common stock.

On October 1, 2009 we acquired Just Data Billing Inc. in exchange for the issuance of three hundred twenty two thousand five hundred eighty one (322,581) shares of common stock to its sole shareholder.

On October 7, 2009 we converted the sum of $127,500 of outstanding debt to PHP Holdings Inc. into 1,500,000 shares of common stock.

On October 19, 2009 we converted the sum of $216,203 of outstanding debt to PHP Holdings Inc. into 3,088,616 shares of common stock.

On November 23, 2009 we acquired PB Magic, Inc. in exchange for the issuance of five million (5,000,000) shares of common stock to its sole shareholder.

On December 7, 2009 we converted the sum of $110,224 of outstanding debt to PHP Holdings Inc. into 3,325,000 shares of common stock.

On December 9, 2009 we converted the sum of $124,485 of outstanding debt to PHP Holdings Inc. into 3,755,190 shares of common stock.

On December 9, 2009 we converted the sum of $136,809 of outstanding debt to PHP Holdings Inc. into 4,126,954 shares of common stock.

On December 10, 2009 we converted the sum of $151,575 of outstanding debt to PHP Holdings Inc. into 4,572,408 shares of common stock.

On January 6, 2010 we converted the sum of $126,962 of outstanding debt to PHP Holdings Inc. into 5,520,077 shares of common stock.

On January 8, 2010 we converted the sum of $382,194 of outstanding debt to PHP Holdings Inc. into 6,066,564 shares of common stock.

On January 12, 2010 we converted the sum of $390,029 of outstanding debt to PHP Holdings Inc. into 6,667,154 shares of common stock.

On January 13, 2010 we converted the sum of $428,641 of outstanding debt to PHP Holdings Inc. into 7,327,202 shares of common stock.

On January 14, 2010 we converted the sum of $249,032 of outstanding debt to PHP Holdings Inc. into 6,385,441 shares of common stock.

On February 25, 2010 we converted the sum of $164,936 of outstanding debt to PHP Holdings Inc. into 9,664,226 shares of common stock.

On February 25, 2010 we converted the sum of $181,265 of outstanding debt to PHP Holdings Inc. into 10,620,984 shares of common stock.

On February 25, 2010 we converted the sum of $199,210 of outstanding debt to PHP Holdings Inc. into 11,672,461 shares

of common stock.

On February 25, 2010 we converted the sum of $218,932 of outstanding debt to PHP Holdings Inc. into 12,828,035 shares of common stock.

On February 25, 2010 we converted the sum of $240,606 of outstanding debt to PHP Holdings Inc. into 14,098,011 shares of common stock.

On February 25, 2010 we converted $254,327 of outstanding debt to PHP Holdings Inc. into 14,901,989 shares of common stock.

On March 1, 2010 we converted the sum of $60,917 of outstanding debt to PHP Holdings Inc. into 5,000,000 shares of common stock.

On March 15, 2010 we converted the sum of $97,300 of outstanding debt to PHP Holdings Inc. into 13,900,000 shares of common stock.

On April 30, 2010 we converted the sum of $97,000 of outstanding debt to PHP Holdings Inc. into 13,000,000 shares of common stock.

On April 30, 2010 we converted the sum of $97,300 of outstanding debt to PHP Holdings Inc. into 13,900,000 shares of common stock.

On September 27, 2010 we converted the sum of $48,450 of outstanding debt to PHP Holdings Inc. into 17,000,000 shares of common stock.

On September 28, 2010 we converted the sum of $81,682 of outstanding debt to PHP Holdings Inc. into 28,660,393 shares of common stock.

On June 23rd 2015 Metatron Inc. announced that it has completed a 1:10000 reverse split of its common stock. This corporate action took effect at the open of business June 24, 2015

On August 3rd 2015 Metatron Inc issued 5,000,000 shares of restricted common stock to it's CEO Ralph Riehl

On August 3rd 2015 Metatron Inc issued 5,000,000 shares of restricted common stock to it's COO Denis Sluka

On August 28th 2015 Metatron Inc issued 20,000,000 shares of restricted common stock to it's CEO Ralph Riehl

On August 28th 2015 Metatron Inc issued 20,000,000 shares of restricted common stock to it's COO Denis Sluka

On September 8th 2015 Metatron Inc issued 50,000,000 shares of restricted common stock to it's CEO Ralph Riehl

On September 8th 2015 Metatron Inc issued 50,000,000 shares of restricted common stock to it's COO Denis Sluka

On September 15th 2015 Metatron Inc issued 9,750,000 of common stock to Car Rus Consulting Ltd.

On September 29th 2015 Metatron Inc issued 145,000,000 shares of restricted common stock to it's CEO Ralph Riehl

On September 29th 2015 Metatron Inc issued 145,000,000 shares of restricted common stock to it's COO Denis Sluka

ITEM 5. FINANCIAL STATEMENTS

The Company does not have audited financial statements.

Unaudited financial statements for the Company for the year ended December 31, 2017, are included herein. Management of the Company internally prepared these financial statements.

Metatron, Inc

Statement of Cash Flows

Twelve Months Ended

December 31 ,2017

	2017	2016
OPERATING ACTIVITIES		
Net Income	(148,606)	(152,369)
Accounts Receivable	(34)	(1,212)
Notes Payable Current Portion	-	48,000
Accounts Payable		
Net cash provided by Operating Activities	(148,640)	(105,581)
Investing Activities		
Content	-	-
Acquisition of RComm		
property and Equipment		
Net Cash provided by Investin Activities	-	-
FINANCING ACTIVITIES		
Notes Payable	148,985	115,479
Shareholders' Equity:Common Stock $.001 Par Value		1,873,917
Shareholders' Equity:Paid in Capital		(1,884,246)
Opening Balance Equity		
Preferred Stock Issuance		
Net cash provided by Financing Activities	148,985	105,150
Net cash increase for period	345	(431)
Cash at beginning of period	63	495
Cash at end of period	408	64

Metatron, Inc
Statement of Stockholders Equity
For the Twelve Months Ending December 31,2017
(Unaudited)

	Preferred Stock		Common Stock				
	Number of Shares	Amount	Number of Shares	Amount	Paid In Capital	Accumulated Deficit(Income)	Total Stockholders Equity
Balance December 31, 2016	1	100	3,986,373,852	2,443,537	5,784,353	(7,309,893)	918,098
Net Income(Loss) for the Twelve months Ended December 31,2017						(148,606)	(148,606)
Balance December 31,2017	1	100	3,986,373,852	2,443,537	5,784,353	(7,458,499)	769,491

Metatron, Inc
Statement of Income
Twelve Months Ended
December
31,2017
(Unaudited)

	Three Months Ended December		Twelve Months Ended December	
	2017	2016	2017	2016
Ordinary Income/Expense				
Income				
Revenue	5,009	10,776	32,351	52,370
Total Income	5,009	10,776	32,351	52,370
Product Cost	14,237	12,110	59,462	89,504
General and Administrative	21,474	47,731	121,495	115,235
Total Cost & Expenses	35,711	59,841	180,957	204,739
Net Ordinary Income	(30,702)	(49,065)	(148,606)	(152,369)
Net Income	(30,702)	(49,065)	(148,606)	(152,369)
Income (Loss) Per Share:				
Basic			(0.0000286)	(0.0000695)
Diluted			(0.0000248)	(0.0000509)
Number of Shares Used in the per share Calculation				
Basic			5,189,967,275	2,191,847,253
Diluted			6,000,000,000	2,994,000,000

Metatron, Inc
Balance Sheet
As of December 31, 2017
(Unaudited)

	December 31,2017	December 31,2016
ASSETS		
Current Assets		
Cash and Cash Equivalents	408	64
Receivables	65,658	65,624
Total Current Assets	66,066	65,688
Fixed Assets		
Property & Equipment, Net	1,474	1,474
Total Fixed Assets	1,474	1,474
Other Assets		
Acquisition of RComm	14,935	14,935
Acquistion of IMobilize	149,750	149,750
Acquistion of Just Data	100,000	100,000
Acquistion of PB Magic	750,000	750,000
Content	154,470	154,470
Total Other Assets	1,169,155	1,169,155
TOTAL ASSETS	1,236,695	1,236,317
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable	-	-
Accrued Interest	6,350	6,350
Notes Payable- Current Portion	188,391	188,391
Total Other Current Liabilities	194,741	194,741
Total Current Liabilities	194,741	194,741
Long Term Liabilities		
Notes Payable	272,463	123,479
Total Long Term Liabilities	272,463	123,479
Total Liabilities	467,204	318,220
Equity		
Retained Earnings	(7,309,893)	(7,157,524)
Shareholders' Equity		
Preferred Stock $.001 Par Value: 5,000,000 Shares Authorized: 1 SH Issued and Outstanding as of 9/30/17	100	100
Common Stock $.001 Par Value: 6,000,000,000 Shares Authorized: 4,281,120,718 non-restricted Issued and Outstanding, 908,846,557 restricted and outstanding as of 12/31/17	2,443,537	2,443,537
Paid in Capital	5,784,353	5,784,353
Total Shareholders' Equity	8,227,990	8,227,990
Retained (Loss)/Earning	(148,606)	(152,369)
Total Equity	769,491	918,097
TOTAL LIABILITIES & EQUITY	1,236,695	1,236,317

The accompanying notes are an integral part of these financial statements.

METATRON INC.
NOTES TO FINANCIAL STATEMENTS
Internally prepared by management
December 31, 2017

NOTE 1 ORGANIZATION

Metatron, Inc. was incorporated on November 17, 2000 under the laws of the State of Delaware as USA Polymers Inc. On July 26, 2001 we filed a certificate of amendment to change our name to XRG Inc, and began operations as a holding company that owned subsidiary interstate trucking companies.

On March 22, 2009 we entered into an agreement with Belmont Partners LLC ("Belmont") by which Belmont acquired fifty three percent (53%) of our common stock. On March 24, 2009 we entered into an agreement with Belmont and South Bay Financial Solutions Inc., ("South Bay"), pursuant to which South Bay acquired 50.01% of our total issued and outstanding common stock.

On March 24, 2009 we experienced a change of control as Belmont Partners LLC sold 10,114,774 shares of our common stock to South Bay Financial Solutions Inc.

On March 24, 2009, we issued one share of Series "A", Convertible Preferred Stock to TDC Ventures LLC for the sum of $100.00.

On May 24, 2009 we amended our Articles of Incorporation to change our name to Metatron Inc., increased our authorized common stock to one hundred million (100,000,000) and reverse split our issued and outstanding common stock by a four to one (4-1) ratio at that time.

On June 3, 2009 we acquired Rcomm Inc. in exchange for the issuance of twenty million (20,000,000) shares of common stock to Rcomm's sole shareholder. The excess cost of acquisition of Rcomm. Inc. asset was reported as other assets in the company's books.

On September 3, 2009 we acquired iMobilize Inc. in exchange for the issuance of four hundred twenty eight thousand five hundred seventy one (428,571) shares of common stock to iMobilize's sole shareholder. The cost of acquisition was valued at $150,000 and the excess cost of acquisition against i-Mobilize's assets were reported as other assets in the company's books.

On October 1, 2009 we acquired Just Data Billing Inc. in exchange for the issuance of three hundred twenty two thousand five hundred eighty one (322,581) shares of common stock to its sole shareholder. The excess cost of acquisition against Just Data's assets were reported as other assets in the company's books.

On November 23, 2009 we acquired PB Magic, Inc. in exchange for the issuance of five million (5,000,000) shares of common stock to its sole shareholder. The excess cost of acquisition against PB Magic's assets were reported as other assets in the company's books.

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(A) Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with Generally

Accepted Accounting Principles in the United States of America for the presentation of financial information, but do not include all the information and footnotes required for complete financial statements.

The comparison data of 2008 Balance Sheet is the financial data of Rcomm, Inc. only, as the acquirer in accordance with APB No. 16. Rcomm's 2008 stockholders' Equity is not comparable to 2009, for the reason that the original shares of Rcomm has been replaced by 20-million shares of Metatron.

(B) Basis of Consolidation

The Company's financial statements for the fiscal year ended December 31, 2009 are consolidated to include the accounts of Metatron Inc. and its wholly owned subsidiaries, iMobilize Inc., Just Data Inc. and PB Magic Inc. All significant inter-company accounts and transactions have been eliminated in consolidation.

(C) Cash and Cash Equivalents

For purposes of the cash flow statements, the Company considers all highly liquid investments with original maturities of three months or less at the time of purchase to be cash equivalents.

(D) Revenue Recognition

The Company recognizes revenue on arrangements in accordance with Securities and Exchange Commission Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements" and No. 104, "Revenue Recognition". In all cases, revenue is recognized only when the price is fixed or determinable, persuasive evidence of an arrangement exists, the service is performed and collectability is reasonably assured.

(E) Property and Equipment

The Company values property and equipment at cost and depreciates these assets using the straight-line method over their expected useful life. The Company uses a three year life for software and five year life for computer equipment. As of December 31, 2009, the company net property and equipment is $1,474.

(F) Income Taxes

The Company accounts for income taxes under the Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" ("Statement 109"). Under Statement 109, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Under Statement 109, the effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

(G) Income (Loss) Per Share

Basic income (loss) per common share is computed based upon the weighted average common shares outstanding as defined by Financial Accounting Standards No. 128, "Earnings per Share."
Diluted income per share includes the dilutive effects of stock options, warrants, and stock equivalents. To the extent stock options, warrants, stock equivalents and warrants are anti-dilutive, they are excluded from the calculation of diluted income per share. For the three month and nine month periods ended September 30, 2009 there were no shares issuable upon conversion of notes payable and no shares issuable upon the exercise of stock options.

(H) Recent Accounting Pronouncements

In May 2009, the FASB issued SFAS No. 165, "Subsequent Events" ("SFAS 165"). SFAS 165 sets forth the period after the balance sheet date during which management of a reporting entity should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements, and the disclosures that an entity should make about events or transactions that occurred after the balance sheet date. SFAS 165 will be effective for interim or annual period ending after June 15, 2010 and will be applied prospectively. The Company will adopt the requirements of

this pronouncement for the quarter ended June 30, 2010.
The Company does not anticipate the adoption of SFAS 165 will have an impact on its consolidated results of operations or consolidated financial position.
In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)" ("SFAS 167"), which modifies how a company determines when an entity that is insufficiently capitalized or is not controlled through voting (or similar rights) should be consolidated. SFAS 167 clarifies that the determination of whether a company is required to consolidate an entity is based on, among other things, an entity's purpose and design and a company's ability to direct the activities of the entity that most significantly impact the entity's economic performance. SFAS 167 requires an ongoing reassessment of whether a company is the primary beneficiary of a variable interest entity. SFAS 167 also requires additional disclosures about a company's involvement in variable interest entities and any significant changes in risk exposure due to that involvement. SFAS 167 is effective for fiscal years beginning after June 15, 2010.

NOTE 3 STOCKHOLDERS' EQUITY

On March 22, 2009 we entered into an agreement with Belmont Partners LLC ("Belmont") by which Belmont acquired fifty three percent (53%) of our common stock. On March 24, 2009 we entered into an agreement with Belmont and South Bay Financial Solutions Inc., ("South Bay"), pursuant to which South Bay acquired 50.01% of our total issued and outstanding common stock.

On March 24, 2009 we experienced a change of control as Belmont Partners LLC sold 10,114,774 shares of our common stock to South Bay Financial Solutions Inc.

On March 24, 2009, we issued one share of Series "A", Convertible Preferred Stock to TDC Ventures LLC for the sum of $100.00.

On June 3, 2009 we issued Rcomm Inc. sole stockholder twenty million (20,000,000) shares of common stock in exchange of all Rcomm's outstanding stocks. This was accounted for as a reverse merger acquisition having Rcomm, Inc. as the surviving entity.

On June 9, 2009 we converted the sum of $479,359 of outstanding debt to PHP Holdings Inc. into 2,396,793 shares of common stock.

On June 9, 2009, we converted the sum of $436,177 of outstanding debt to Rovert Consulting Inc. into 2,180,885 shares of common stock.

On June 9, 2009, we converted the sum of $360,000 of outstanding debt due to Beach Cities Home Improvement Inc. into 1,800,000 shares of common stock.

On September 3, 2009 we acquired iMobilize Inc. in exchange for the issuance of four hundred twenty eight thousand five hundred seventy one (428,571) shares of common stock to iMobilize's sole shareholder valued at $0.35 per share or $150,000.

On September 11, 2009 we converted the sum of $216,323 of outstanding debt to PHP Holdings Inc. into 2,704,042 shares of common stock.

On October 1, 2009 we acquired Just Data Billing Inc. in exchange for the issuance of three hundred twenty two thousand five hundred eighty one (322,581) shares of common stock to its sole shareholder.

On October 7, 2009 we converted the sum of $127,500 of outstanding debt to PHP Holdings Inc. into 1,500,000 shares of common stock.

On October 19, 2009 we converted the sum of $216,203 of outstanding debt to PHP Holdings Inc. into 3,088,616 shares of common stock.

On November 23, 2009 we acquired PB Magic, Inc. in exchange for the issuance of five million (5,000,000) shares of common stock to its sole shareholder.

On December 7, 2009 we converted the sum of $110,224 of outstanding debt to PHP Holdings Inc. into 3,325,000 shares of

common stock.

On December 9, 2009 we converted the sum of $124,485 of outstanding debt to PHP Holdings Inc. into 3,755,190 shares of common stock.

On December 9, 2009 we converted the sum of $136,809 of outstanding debt to PHP Holdings Inc. into 4,126,954 shares of common stock.

On December 10, 2009 we converted the sum of $151,575 of outstanding debt to PHP Holdings Inc. into 4,572,408 shares of common stock.

On January 6, 2010 we converted the sum of $126,962 of outstanding debt to PHP Holdings Inc. into 5,520,077 shares of common stock.

On January 8, 2010 we converted the sum of $382,194 of outstanding debt to PHP Holdings Inc. into 6,066,564 shares of common stock.

On January 12, 2010 we converted the sum of $390,029 of outstanding debt to PHP Holdings Inc. into 6,667,154 shares of common stock.

On January 13, 2010 we converted the sum of $428,641 of outstanding debt to PHP Holdings Inc. into 7,327,202 shares of common stock.

On January 14, 2010 we converted the sum of $249,032 of outstanding debt to PHP Holdings Inc. into 6,385,441 shares of common stock.

On February 25, 2010 we converted the sum of $164,936 of outstanding debt to PHP Holdings Inc. into 9,664,226 shares of common stock.

On February 25, 2010 we converted the sum of $181,265 of outstanding debt to PHP Holdings Inc. into 10,620,984 shares of common stock.

On February 25, 2010 we converted the sum of $199,210 of outstanding debt to PHP Holdings Inc. into 11,672,461 shares of common stock.

On February 25, 2010 we converted the sum of $218,932 of outstanding debt to PHP Holdings Inc. into 12,828,035 shares of common stock.

On February 25, 2010 we converted the sum of $240,606 of outstanding debt to PHP Holdings Inc. into 14,098,011 shares of common stock.

On February 25, 2010 we converted $254,327 of outstanding debt to PHP Holdings Inc. into 14,901,989 shares of common stock.

On March 1, 2010 we converted the sum of $60,917 of outstanding debt to PHP Holdings Inc. into 5,000,000 shares of common stock.

On March 15, 2010 we converted the sum of $97,300 of outstanding debt to PHP Holdings Inc. into 13,900,000 shares of common stock.

On April 30, 2010 we converted the sum of $97,000 of outstanding debt to PHP Holdings Inc. into 13,000,000 shares of common stock.

On April 30, 2010 we converted the sum of $97,300 of outstanding debt to PHP Holdings Inc. into 13,900,000 shares of common stock.

On September 27, 2010 we converted the sum of $48,450 of outstanding debt to PHP Holdings Inc. into 17,000,000 shares of common stock

On September 28, 2010 we converted the sum of $81,682 of outstanding debt to PHP Holdings Inc. into 28,660,393 shares of common stock.

NOTE 4 NOTES PAYABLE

On May 20, 2005, the Company entered into a Promissory Notes Modification Agreement with Barron Partners, LP ("Barron"), formerly its largest shareholder, extending the due date of all of the Barron Notes, until December 31, 2005. Subsequently, the note was extended until December 31, 2006.

On June 28, and October 20, 2006, the company issued convertible notes payable to Barron in the amounts of $25,000 and $1,500,000 respectively.

On November 27, 2007, Barron Partners, LP assigned the total amount of convertible notes payable in the amount of $4,537,084.86 to Max Communications.

On April 1, 2009 Max Communications assigned the total amount of notes payable to PHP Holdings Inc.

On April 1, 2009, Kenneth Steel assigned the total amount of notes payable in the amount of $360,000 to Beach Cities Home Improvement Inc.

On April 3, 2009 Barron assigned the total amount of notes payable to Rovert Consulting Inc

On June 9, 2009 PHP Holdings Inc. converted $479,359 of its outstanding debt into 2,396,793 shares of common stock.

On June 9, 2009, Rovert Consulting Inc. converted $436,177 of its outstanding debt into 2,180,885 shares of common stock.

On June 9, 2009, Beach Cities Home Improvement Inc. converted $360,000 of its outstanding debt into 1,800,000 shares of common stock.

On September 11, 2009, PHP Holdings Inc. converted $216,323 of its outstanding debt into 2,704,042 shares of common stock.

On October 7, 2009 we converted the sum of $127,500 of outstanding debt to PHP Holdings Inc. into 1,500,000 shares of common stock.

On October 19, 2009 we converted the sum of $216,203 of outstanding debt to PHP Holdings Inc. into 3,088,616 shares of common stock.

On December 7, 2009 we converted the sum of $110,224 of outstanding debt to PHP Holdings Inc. into 3,325,000 shares of common stock.

On December 9, 2009 we converted the sum of $124,485 of outstanding debt to PHP Holdings Inc. into 3,755,190 shares of common stock.

On December 9, 2009 we converted the sum of $136,809 of outstanding debt to PHP Holdings Inc. into 4,126,954 shares of common stock.

On December 10, 2009 we converted the sum of $151,575 of outstanding debt to PHP Holdings Inc. into 4,572,408 shares of common stock.

On January 6, 2010 PHP Holdings Inc. converted $126,962 of outstanding debt into 5,520,077 shares of common stock.

On January 8, 2010 PHP Holdings Inc. converted $382,194 of outstanding debt into 6,066,564 shares of common stock.

On January 12, 2010 PHP Holdings Inc. converted $390,029 of outstanding debt into 6,667,154 shares of common stock.

On January 13, 2010 PHP Holdings Inc. converted $428,641 of outstanding debt into 7,327,202 shares of common stock.

On January 14, 2010 PHP Holdings Inc. converted $249,032 of outstanding debt into 6,385,441 shares of common stock.

On January 19, 2010 PHP Holdings Inc. converted $294,294 of outstanding debt into 8,793,654 shares of common stock.

On February 25, 2010 PHP Holdings Inc. converted $164,936 of outstanding debt into 9,664,226 shares of common stock.

On February 25, 2010 PHP Holdings Inc. converted $181,265 of outstanding debt into 10,620,984 shares of common stock.

On February 25, 2010 PHP Holdings Inc. converted $218,932 of outstanding debt into 12,828,035 shares of common stock.

On February 25, 2010 PHP Holdings Inc. converted $240,606 of outstanding debt into 14,098,011 shares of common stock.

On February 25, 2010 PHP Holdings Inc. converted $254,327 of outstanding debt into 14,901,989 shares of common stock.

On March 1, 2010 PHP Holdings Inc. converted $60,917 of outstanding debt into 5,000,000 shares of common stock.

On March 15, 2010 PHP Holdings Inc. converted $97,300 of outstanding debt into 13,900,000 shares of common stock.

On April 30, 2010 PHP Holdings Inc. converted $91,000 of outstanding debt into 13,000,000 shares of common stock.

On April 30, 2010 PHP Holdings Inc. converted $97,300 of outstanding debt into 13,900,000 shares of common stock.

On September 27, 2010 PHP Holdings Inc. converted $48,450 of outstanding debt into 17,000,000 shares of common stock.

On September 28, 2010 PHP Holdings Inc. converted $81,682 of outstanding debt into 28,660,393 shares of common stock.

Note Payable - $15,000
On February 18, 2014, the Company entered into a Note agreement for $15,000 with Glenn Harrold for the purpose of funding app development. The Note carries an interest rate of 10% commencing on January 1, 2015. First payment is due September 1, 2015 of $1,000 to be applied to principal and accrued interest

Note Payable - $29,547.54
On May 7, 2014, the Company entered into a Note agreement for $29,547.54 with SoundTrue Inc for royalty payments. The Note carries an interest rate of 10% commencing on July 1, 2015. First payment is due July 1, 2015 of $1,000 to be applied to principal and accrued interest

On September 15th, 2014, the Company entered into a Note agreement for $7000 with Zoe Partners for royalty payments and app development. The Note carries an interest rate of 10% and payment is due November 15th 2014.

Current Note Payable - $34,907.80
On January 6, 2012, the Company entered into a Note agreement for $34,907.80 with SoundTrue Inc for overdue royalty payments. The Note carries an interest rate of 10%. First payment is due January 10th, 2012 of $10,000 to be applied to principal and accrued interest. Balance on Notes is 29,369.62. Payment schedule is $10,000 due January 10, 2012; $10,000 due February 10, 2012; $15,287.73 due on March 15, 2012.

Note Payable - $20,000
On March 18, 2014, the Company entered into a Note agreement for $20,000 with Glenn Harrold for the purpose of funding app development. The Note carries an interest rate of 10% commencing on January 1, 2015. First payment is due September 1, 2015 of $1,000 to be applied to principal and accrued interest 12,000 is considered Notes Payable Current. Minimum payment of $1,000 are due the first of each month, beginning September 1, 2015 to be applied the prinicpal and interest.

Note Payable - $23,041.72 (initial balance)
Morning Star has been providing cash infusion for funding app development. The Notes carry an interest rate of 10%

Ongoing monthly payments of $1,700 are to be applied to principal and accrued interest Balance on Note is $18,700 and is considered Notes Payable Current.

Current Note Payable - $7,650
On September 14, 2014, the Company entered into a Note agreement for $7,650 with Bonetti Ltd for royalty payments and app development. The Note carries an interest rate of 10% and first payment is due November 10, 2014. Principal and interest shall be paid in monthly installments with $1,650 due on November 10, 2014; $2,000 due on December 10, 2014; and $4,000 due on December 15, 2014.

Current Note Payable - $40,000
On November 6, 2014, the Company entered into a Note agreement for $40,000 with Meyers and Associates for advisory services. The Note carries an interest rate of 10%.

Current Note Payable - $40,000
On November 6, 2014, the Company entered into a Convertible Note agreement for $40,000 with Moneta Equity Partners. The Note carries an interest rate of 10%.

Current Note Payable - $12,671.40
On November 6, 2015 Amended and Restated $12,671.40 Convertible Promissory Note with Apollo.

Current Note Payable - $10,000
On July 29, 2015, the Company entered into a Note agreement for $10,000 with Apollo. The Note carries an interest rate of 12% Principal and interest are due January 29, 2016. Interest rate changes to 22% for the unpaid balance after May 5, 2016.

Current Note Payable - $5,000
On November 5, 2015 , the Company entered into a Note agreement for $5,000 with Apollo. The Note carries an interest rate of 12% Principal and interest are due May 5 2016. Interest rate changes to 22% for the unpaid balance after May 5, 2016.

Current Note Payable - 15,000
On November 6, 2014, the Company entered into a Convertible Note agreement for $15,000 with Greg Traina. The Note carries an interest rate of 10% The Note and interest are on due November 6, 2016 in lump sum.

Current Note Payable - 10,000
On November 6, 2014, the Company entered into a Convertible Note agreement for $10,000 with Moneta Equity Partners. The Note carries an interest rate of 10%.

Current Note Payable - $20,000
On November 6, 2014, the Company entered into a Note agreement for $20,000 with Eilers Law Group for legal services. The Note carries an interest rate of 10%.

Note Payable - $15,000/$22,500
On November 6, 2014, the Company entered into a Convertible Note agreement for $15,000/ $22,500 with Greg Traina. The Note carries an interest rate of 10% The note and interest are due on November 6, 2016 in lump sum. The remaining balance on the note is $5,500

Note Payable - $20,000
On April 21 2016, the Company entered into a Convertible Note agreement for $20,000 with Apollo. The Note carries an interest rate of 12% .

Note Payable - $5,000
On April 22, 2016, the Company entered into a Convertible Note agreement for $5,000 with Greg Traina. The Note carries an interest rate of 10% .

Note Payable - $2,500
On May 12 2016, the Company entered into a Convertible Note agreement for $2,500 with Greg Traina. The Note carries an interest rate of 10% .

Note Payable - $2,500
On May 18, 2016, the Company entered into a Convertible Note agreement for $2,500 with Greg Traina. The Note carries an interest rate of 10% .

Note Payable - $5,000
On June 1, 2016, the Company entered into a Convertible Note agreement for $5,000 with Greg Traina. The Note carries an interest rate of 10% .

Note Payable - $20,000
On April 21, 2016, the Company entered into a Convertible Note agreement for $20,000 with Apollo. The Note carries an interest rate of 12% .

Note Payable - $19,500
On May 17, 2016, the Company entered into a Convertible Note agreement for $19,500 with Apollo. The Note carries an interest rate of 12% .

Note Payable - $9,000
On June 17, 2016, the Company entered into a Convertible Note agreement for $9,000 with Brandon Harrison. The Note carries an interest rate of 10% .

Note Payable - $2,500
On June 20th, 2016, the Company entered into a Convertible Note agreement for $2,500 with Greg Traina. The Note carries an interest rate of 10% The Note and interest are on due June 20th, 2017 in lump sum.

Note Payable - $2,500
On December 6, 2016, the Company entered into a Convertible Note agreement for $2,500 with Greg Traina. The Note carries an interest rate of 10% The Note and interest are on due June 6, 2017 in lump sum.

"Note Payable - $10,000
On July 28th, 2015, the Company entered into a Convertible Note agreement for $10,000 for Investor Relation Services with B&K Enterprise of Santa Rosa. The Note carries an interest rate of 10%.

Note Payable - $10,000
On Dec 15, 2015, the Company entered into a Convertible Note agreement for $10,000 with B&K Enterprise of Santa Rosa. The Note carries an interest rate of 10%.

Note Payable - $9,000
On Jun 27, 2016, the Company entered into a Convertible Note agreement for $9,000 with B&K Enterprise of Santa Rosa. The Note carries an interest rate of 10%.

Note Payable - $5,000
On July 5 2016, the Company entered into a Convertible Note agreement for $5,000 with Brandon Harrison. The Note carries an interest rate of 10% .

Note Payable - $2,500
On July 13 2016, the Company entered into a Convertible Note agreement for $2,500 with Apollo. The Note carries an interest rate of 12% .

Note Payable - $2,500
On July 14 2016, the Company entered into a Convertible Note agreement for $2,500 with Greg Traina. The Note carries an interest rate of 10% .

Note Payable - $35,000
On July 28, 2015, the Company entered into a Convertible Note agreement for $35,000 with CorporateAds.com LLC of Michigan. The Note carries an interest rate of 10%.

Note Payable - $2,000
On July 29 2016, the Company entered into a Convertible Note agreement for $2,000 with Apollo. The Note carries an

interest rate of 12% .

Note Payable - $1,500
On August 2 2016, the Company entered into a Convertible Note agreement for $1,500 with Brandon Harrison. The Note carries an interest rate of 10% .

Note Payable - $3,000
On August 8 2016, the Company entered into a Convertible Note agreement for $3,000 with Greg Traina. The Note carries an interest rate of 10% .

Note Payable - $1,500
On August 11 2016, the Company entered into a Convertible Note agreement for $1,500 with Brandon Harrison. The Note carries an interest rate of 10% .

Note Payable - $2,500
On August 18 2016, the Company entered into a Convertible Note agreement for $2,500 with Greg Traina. The Note carries an interest rate of 10% .

Note Payable - $2,000
On August 25 2016, the Company entered into a Convertible Note agreement for $2,000 with Apollo. The Note carries an interest rate of 12% .

Note Payable - $12,000
On September 13 2016, the Company entered into a Convertible Note agreement for $12,000 with Apollo. The Note carries an interest rate of 12% .

Note Payable - $2,000
On Oct 13, 2016, the Company entered into a Convertible Note agreement for $2,000 with B&K Enterprise of Santa Rosa. The Note carries an interest rate of 10%.

Note Payable - $35,000
On Mar 1st, 2017, the Company entered into a Convertible Note agreement for $35,000 for Investor Relation Services with B&K Enterprise of Santa Rosa. The Note carries an interest rate of 10%.

NOTE 5 COMMITMENTS AND CONTINGENCIES

(A) Employment Agreements

The Company has no Employment Agreements in force.

(B) Consulting Agreements

The Company has no Consulting Agreements in force.

(C) Operating Lease Agreements

The Company has no Lease Agreements in force.

(D) Investment Agreements

The Company has no Investment Agreements in force.

(E) Litigation.

To management's knowledge, the Company is not subject to any pending or threatened litigation.

NOTE 6 RELATED PARTY TRANSACTIONS

On August 5, 2009, a shareholder advanced the amount of $25,000 to the company and we agreed to issue 67,568 shares of our restricted common stock to PHP Holdings, Inc., a Belize corporation. These shares will be issued during the fourth quarter of 2009.

On August 20, 2009, a shareholder advanced the amount of $4,500 to the company and we agreed to issue 12,162 shares of our restricted common stock to PHP Holdings, Inc., a Belize corporation. These shares will be issued during the fourth quarter of 2009.

The company incurred accumulated advances from a shareholder in the amount of $23,343. This amount was repaid by a third party on October 1, 2009

ITEM 6. ISSUER'S BUSINESS, PRODUCTS, AND SERVICES

Business Operations

Today we operate as a digital content aggregator and distributor of downloadable content apps, available in Internet stores. We occasionally provide professional consulting services in the areas of web development, mobile software, online marketing, "Pay-per-Click" (PPC) management, SEO services and corporate strategy to our content generator clients and internet-based businesses.

We also provide fully integrated internet professional services to our clients to enable them to create, develop and enhance their interactive capabilities. We develop Internet services and strategies that add value to our clients' businesses. The services we provide include strategic planning, Web site content development, graphic design and computer programming. The following is a description of the scope of our services:

Date and State of Incorporation

The Issuer was incorporated in the State of Delaware as USA Polymers Inc., on November 17, 2000

Primary and Secondary SIC Codes

Primary SIC Code: 5990
Secondary SIC Code: 7389

Issuers Fiscal Year End Date

The Issuer's fiscal year end is December 31.

Principal Products or Services, and Their Markets

A. We operated as a holding company which operated trucking companies from July 23, 2001 until March 24, 2009 whene we executed a joint venture agreement with Rcomm Inc. to operate as an Internet consultant prior to the acquisition ofe Rcomm on June 3, 2009.e

Strategic Services. After a thorough analysis, we help clients develop internet strategies for their businesses in thee context of their overall corporate and marketing goals. Whether for an existing project in need of a new vision, or ae new idea looking to be solidified into a viable venture, we have the creative expertise to help determine the best coursee of action.e

Our strategic services include:e

- Concept creation, service selection, and campaign strategy
- Detailed reports and market insights
- Strategic direction based on market research
- Strategic competition campaign analysis

We also help our clients use the internet as an effective means of dealing with their customers. We specialize in robust, turnkey website development that reflects the entire B2B or B2C relationship, including:

- Introducing relevant, customized information, products and services

- Demonstrating the benefits of client products and services.e
- Permitting customers to efficiently effect transactions with our clients.e

Creative Services. We assist our clients in producing digital content and designing websites that are user-friendly and that effectively present our clients' products and services. Management has been involved with the internet, and e-commerce in particular, since its infancy and puts this depth of experience to work for our client base. We work very closely with our clients to create published content that fits their business and captures the consumer's attention, but also makes sure to address vital criteria such as:

- Projecting a professional imagee
- Offering informative contente
- Including user-friendly navigatione
- Incorporating fast-loading graphicse

Regarding e-commerce solutions, our e-commerce stores (both storefronts and backend) and online catalogs allow clients to display products or services and collect payment details from their websites. Whether integrating an existing business with the power of the web or starting from scratch, the company uses the latest technology and feature-rich programming which allows clients to fully manage their store or catalog without special software or advanced computer skills.

In summation, we advise clients on how they can bring their digital content online and develop the tools and strategy necessary to maximize the probability of success.

B. Our products and services are distributed on the Internet through advertising and through word of mouth promotion bye our existing clients.

C. We have publicly announced the following deals to acquire content from the owners through purchase or license, fore processing and sale as downloadable mobile and multi-media apps, during 2015. The status as of January 7, 2018 are as follows:e

- Travel Video Store-100 Apps deployed, more Apps in development
- Glenn Harrold- more Apps in development
- Social Media/Dating App and Movie App in development
- Eckhart Tolle Tv App updated
- Metatron-owned content – Over 500 Apps for sale with multiple Apps in development
- Miscellaneous Content Providers – 50 Apps for sale and multiple mega-Apps in development

D. We face intense competition, which could harm our business, and we expect competition to intensify in the future. Oure market is relatively new, intensely competitive, highly fragmented and subject to rapid technological change. Wee expect competition to intensify and increase over time because:e

- there are few barriers to entering the online content distribution business;e
- the Internet industry is consolidating;e
- many of our competitors are forming cooperative relationships; ande
- almost all of our competitors have longer operating histories, greater name recognition, larger establishede client bases, longer client relationships and significantly greater financial, technical, personnel ande marketing resources than we do. Our competitors may be able to undertake more extensive marketinge campaigns, adopt more aggressive pricing policies and make more attractive offers to potential clients,e employees and strategic partners.e

Further, our competitors may have technology and the capability to perform Internet services that are equal or superior to ours or that achieve greater market acceptance than our products. We have no patented or other proprietary technology that would limit competitors from duplicating our services. We must rely on the skills of our personnel and the quality of our client service.

Increased competition is likely to result in price reductions, reduced gross margins additional marketing expenses and loss of market share, any of which would have a material adverse effect on our business, results of operations and financial condition. We cannot assure you that we will be able to compete successfully against existing or future competitors.

If we fail to remain competitive, then our revenues may decline, which could adversely affect our future operating results and our ability to grow our business.

E. We do not utilize raw materials in our business. Our principal suppliers are Verizon for internet bandwidth and AT&Te for mobile phone service. We also utilize Macintosh computers manufactured by Apple Inc.

F. Our business is subject to certain risks and concentrations including dependence on third party internet servicee providers, exposure to risks associated with online commerce security and credit card fraud. Significant changes in this industry or changes in customer buying behavior or advertiser spending behavior, including those changes that may result from the current economic downturn, could adversely affect our operating results.

G. January 29, 2010 iMobilize filed for patent protection on its proprietary mobile content delivery system, which thee Company has branded as "SyncStream." It is a streaming video application which allows an increase in the capacity and speed of mobile application content deployment.

H.e Government approval is not required for the provision of any of our services.e

ITEM 7. ISSUER'S FACILITIES

We currently rent our corporate domicile on a yearly basis in Dover, Delaware at the cost of $1200 per year. Our business is completely operated over the internet, which allows our personnel to work from their homes or other locations as they deem necessary. At this time the Company feels this space adequately meets the needs of the Company.

ITEM 8. OFFICERS, DIRECTORS, AND CONTROL PERSONS

A.e Officers and Directorse

Ralph Joseph (Joe) Riehl	Chief Executive Officer (CEO), President, Secretary and Director
Denis Sluka	Chief Operating Officer (COO) and Director

B.e Involvement in Certain Legal Proceedingse

None of the officers, directors, promoters or control persons of the Issuer have been involved in the past five (5) years in any of the following:

(1)e A conviction in a criminal proceeding or named as a defendant in a pending criminal proceedinge (excluding traffic violations and minor offenses);e

(2)e The entry of an order, judgment, or decree, not subsequently reverse, suspended or vacated, by ae court of competent jurisdiction that permanently or temporarily enjoined, barred, suspended ore otherwise limited such person's involvement in any type of business, securities, commodities ore bank activities;e

(3)e A finding or judgment by a court of competent jurisdiction (in a civil action), the Securities ande Exchange Commission, the Commodity Futures Trading Commission, or a state securitiese regulator of a violation of federal or state securities or commodities law, which finding ore judgment has not been reversed, suspended, or vacated; ore

(4)e The entry of an order by a self-regulatory organization that permanently or temporarily barrede suspended or otherwise limited such person's involvement in any type of business or securitiese activities.e

C.e Beneficial Shareholderse

The name, address and shareholdings of all persons beneficially owning more than five percent of any class of the Company's equity securities or officers and directors of the Company are:

	Common Directly Owned	Common Indirectly Owned	Percentage of Ownership
Ralph Joseph (Joe) Riehl 160 Greentree Drive Suite 101	452,820,525 (1)	0	11.36%

Dover, DE 19904			
Denis Sluka 160 Greentree Drive Suite 101 Dover, DE 19904	452,820,525	0	11.36%

(1) Joe Riehl owns one share of Series "A" Preferred Stock, and accordingly is able to control any vote of the shareholders. See Part B, Section V herein

ITEM 9. THIRD PARTY PROVIDERS

Counsel

Bauman & Associates Law Firm
Frederick C. Bauman
6440 Sky Pointe Dr., Ste 140-149
Las Vegas, NV 89131
Phone: (702)-533-8372
Email: fred@lawbauman.com

Public Relations Consultant:

160 Greentree Drive Suite 101
Dover, De 19904
Phone: (302)-861-0431
Email: ir@metatroninc.com

Investor Relations Consultant:

160 Greentree Drive Suite 101
Dover, De 19904
Phone: (302)-861-0431
Email: ir@metatroninc.com

Other Advisors:

None

ITEM 10. ISSUER CERTIFICATION

I, **Ralph Joseph Riehl**, Chief Executive Officer and President certify that:

1. I have reviewed this annual disclosure statement of Metatron, Inc.;

2. Based on my knowledge, this disclosure statement does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this disclosure statement; and

3. Based on my knowledge, the financial statements, and other financial information included or incorporated by reference in this disclosure statement, fairly present in all material respects the financial condition, results of operations, and cash flows of the issuer as of, and for, the periods presented in this disclosure statement.

Date: April 20, 2018,

Signature: */s/ Ralph Joseph Riehl*
Title: Chief Executive Officer and President

Public Law 88-467

AN ACT

August 20, 1964
[S. 1642]

To amend the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, to extend disclosure requirements to the issuers of additional publicly traded securities, to provide for improved qualification and disciplinary procedures for registered brokers and dealers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Securities Acts Amendments of 1964".

Securities Acts Amendments of 1964.

SEC. 2. Section 3(a) of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following four paragraphs:

Definitions.
48 Stat. 882.
15 USC 78c.

"(18) The term 'person associated with a broker or dealer' means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, including any employee of such broker or dealer, except that for the purposes of section 15(b) of this title (other than paragraph (7) thereof), persons associated with a broker or dealer whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purpose of any portion or portions of this title, persons, including employees, controlled by a broker or a dealer.

Post, p. 570.

"(19) The terms 'investment company', 'affiliated person', and 'insurance company' have the same meanings as in the Investment Company Act of 1940.

54 Stat. 789.
15 USC 80a-51.

"(20) The terms 'investment adviser' and 'underwriter' have the same meanings as in the Investment Advisers Act of 1940.

15 USC 80b-20.

"(21) The term 'person associated with a member' means a person who is registered with a registered securities association pursuant to its rules or who is associated with a broker or dealer which is a member of such association."

Registration requirements.
48 Stat. 892.
15 USC 78l.

SEC. 3. (a) Section 12(b) of the Securities Exchange Act of 1934 is amended as follows:

(1) Subparagraphs (I) through (K) of paragraph (1) are redesignated as (J) through (L), respectively.

(2) A new subparagraph (I) is added after subparagraph (H) to read as follows:

"(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;"

(3) A new paragraph (3) is added at the end of subsection (b) to read as follows:

"(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security."

(b) Section 12(f) of said Act is amended to read as follows:

Unlisted trading privileges.
15 USC 78l.

"(f)(1) Notwithstanding the foregoing provisions of this section, any national securities exchange, subject to the terms and conditions hereinafter set forth—

"(A) may continue unlisted trading privileges to which a security had been admitted on such exchange prior to the effective date of subsection (g)(1) of section 12 of this title.

Post, p. 566.

"(B) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security duly listed and registered on any other national securities exchange.

If an extension of unlisted trading privileges to a security was originally based upon its listing and registration on another national securities exchange, such privileges shall continue in effect only so long as such security shall remain listed and registered on any other national securities exchange.

"(2) No application pursuant to this subsection shall be approved unless the Commission finds, after appropriate notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is necessary or appropriate in the public interest or for the protection of investors.

"(3) The Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this title.

"(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

"(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

"(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this title. The powers and duties of the Commission under section 19(b) of this title shall be applicable to the rules of an exchange in respect of any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 13, 14, or 16 of this title."

48 Stat. 898. 15 USC 78s.

Post, p. 569.

Post, p. 579.

(c) Section 12 of said Act is further amended by adding thereto the following new subsection:

Issuers engaged in interstate commerce.

Ante, p. 565. 15 USC 78l.

"(g)(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

"(A) within one hundred and twenty days after the last day of its first fiscal year ended after the effective date of this sub-

section on which the issuer has total assets exceeding $1,000,000 and a class of equity security (other than an exempted security) held of record by seven hundred and fifty or more persons; and

"(B) within one hundred and twenty days after the last day of its first fiscal year ended after two years from the effective date of this subsection on which the issuer has total assets exceeding $1,000,000 and a class of equity security (other than an exempted security) held of record by five hundred or more but less than seven hundred and fifty persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

48 Stat. 897. 15 USC 78r.

"(2) The provisions of this subsection shall not apply in respect of—

Nonapplicability.

"(A) any security listed and registered on a national securities exchange.

"(B) any security issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940.

54 Stat. 803. 15 USC 80a-8.

"(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

"(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"(E) any security of an issuer which is a 'cooperative association' as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

46 Stat. 11. 12 USC 1141-1141j.

"(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

"(G) any security issued by an insurance company if all of the following conditions are met:

"(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or

other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

"(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

"(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title.

Post, p. 579.

Exemptions.

"(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

Termination of registration.

"(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than three hundred persons. The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

Definition.

"(5) For the purposes of this subsection the term 'class' shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms 'total assets' and 'held of record' as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection."

Ante, p. 566.
15 USC 78l.

(d) Section 12 of said Act is further amended by adding thereto the following new subsection:

"(h) The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 13, 14, or 15(d) or may exempt from section 16 any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this title, classify issuers and prescribe requirements appropriate for each such class."

Post, pp. 569, 574, 579.

(e) Section 12 of said Act is further amended by adding thereto the following new subsection:

"(i) In respect of any securities issued by banks the deposits of which are insured in accordance with the Federal Deposit Insurance Act, the powers, functions, and duties vested in the Commission under this title to administer and enforce sections 12, 13, 14(a), 14(c), and 16 (1) with respect to national banks and banks operating under the Code of Law for the District of Columbia are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection and none of the rules, regulations, forms or orders issued or adopted by the Commission pursuant to this title shall be in any way binding upon such officers and agencies in the performance of such functions, or upon any such banks in connection with the performance of such functions."

64 Stat. 873. 12 USC 1811 note.

Ante, pp. 565-568; *infra; post*, pp. 570, 579.

SEC. 4. Section 13(a) of the Securities Exchange Act of 1934 is amended to read as follows:

Reports. 48 Stat. 894. 15 USC 78m.

"SEC. 13. (a) Every issuer of a security registered pursuant to section 12 of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

"(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

"(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange."

SEC. 5. (a) Section 14(a) of the Securities Exchange Act of 1934 is amended to read as follows:

Proxies. 15 USC 78n.

"SEC. 14. (a) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title."

(b) Section 14(b) of said Act is amended to read as follows:

"(b) It shall be unlawful for any member of a national securities exchange, or any broker or dealer registered under this title, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to give, or to refrain from giving a proxy, consent, or authorization in respect of any security registered pursuant to section 12 of this title and carried for the account of a customer."

Ante, p. 569.

(c) Section 14 of said Act is further amended by adding thereto the following new subsection:

Ante, pp. 565-569.

"(c) Unless proxies, consents, or authorizations in respect of a security registered pursuant to section 12 of this title are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under subsection (a) of this section, prior to any annual or other meeting of the holders of such security, such issuer shall, in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made, but no information shall be required to be filed or transmitted pursuant to this subsection before July 1, 1964."

Over-the-counter markets.
49 Stat. 1377.
15 USC 78o.

SEC. 6. (a) Section 15(a) of the Securities Exchange Act of 1934 is amended to read as follows:

"SEC. 15. (a) (1) No broker or dealer (other than one whose business is exclusively intrastate) shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange, unless such broker or dealer is registered in accordance with subsection (b) of this section.

"(2) The Commission may by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions or for specified periods, exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rules, regulations, or orders."

Brokers, registrations.

(b) Section 15(b) of said Act is amended to read as follows:

"(b)(1) A broker or dealer may be registered for the purposes of this section by filing with the Commission an application for registration, which shall contain such information in such detail as to such broker or dealer and any persons associated with such broker or dealer as the Commission may by rules and regulations require as necessary or appropriate in the public interest or for the protection of investors. Except as hereinafter provided, such registration shall become effective thirty days after the receipt of such application by the Commission or within such shorter period of time as the Commission may determine.

"(2) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application shall contain such information in such detail as to the applicant and as to the successor and any person associated with the applicant or the successor, as the Commission may by rules and regulations require as necessary or appropriate in the public interest or for the protection of investors. Except as hereinafter provided, such registration shall become effective thirty days after the receipt of such application by the Commission or within such shorter period of time as the Commission may determine. Such registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt such application as its own.

"(3) If any amendment to any application for registration pursuant to this subsection is filed prior to the effective date of the registration, such amendment shall be deemed to have been filed simultaneously with and as part of such application; except that the Commission may,

if it appears necessary or appropriate in the public interest or for the protection of investors, defer the effective date of any such registration as thus amended until the thirtieth day after the filing of such amendment.

"(4) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any broker or dealer registered pursuant to this subsection or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith. 48 Stat. 885. 15 USC 78e.

"(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of, any broker or dealer if it finds that such censure, denial, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated— Denial of registration.

"(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

"(B) has been convicted within ten years preceding the filing of the application or at any time thereafter of any felony or misdemeanor which the Commission finds—

"(i) involves the purchase or sale of any security.

"(ii) arises out of the conduct of the business of a broker, dealer, or investment adviser.

"(iii) involves embezzlement, fraudulent conversion, or misappropriation of funds or securities.

"(iv) involves the violation of section 1341, 1342, or 1343 of title 18, United States Code. 62 Stat. 763; 70 Stat. 523.

"(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

"(D) has willfully violated any provision of the Securities Act of 1933, or of the Investment Advisers Act of 1940, or of the Investment Company Act of 1940, or of this title, or of any rule or regulation under any of such statutes. 48 Stat. 74; 54 Stat. 789. 15 USC 77a, 80a-51, 80b-20.

"(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or the Investment Advisers Act of 1940, or the Investment Company Act of 1940, or of this title, or of any rule or regulation under any of such statutes or has failed reasonably to supervise, with a view to preventing violations of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this clause (E) no person shall be deemed to have failed reasonably to supervise any person, if—

"(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

"(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

"(F) is subject to an order of the Commission entered pursuant to paragraph (7) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer, which order is in effect with respect to such person.

Postponement of registration.

"(6) Pending final determination whether any registration under this subsection shall be denied, the Commission may by order postpone the effective date of such registration for a period not to exceed fifteen days, but if, after appropriate notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, the Commission shall so order. Pending final determination whether any such registration shall be revoked, the Commission shall by order suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer, or any broker or dealer for whom an application for registration is pending, is no longer in existence or has ceased to do business as a broker or dealer, the Commission shall by order cancel the registration or application of such broker or dealer.

"(7) The Commission may, after appropriate notice and opportunity for hearing, by order censure any person, or bar or suspend for a period not exceeding twelve months any person from being associated with a broker or dealer, if the Commission finds that such censure, barring, or suspension is in the public interest and that such person has committed or omitted any act or omission enumerated in clause (A), (D) or (E) of paragraph (5) of this subsection or has been convicted of any offense specified in clause (B) of said paragraph (5) within ten years of the commencement of the proceedings under this paragraph or is enjoined from any action, conduct, or practice specified in clause (C) of said paragraph (5). It shall be unlawful for any person as to whom such an order barring or suspending him from being associated with a broker or dealer is in effect, willfully to become, or to be, associated with a broker or dealer, without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him, without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care, should have known, of such order.

"(8) No broker or dealer registered under section 15 of this title shall, during any period when it is not a member of a securities association registered with the Commission under section 15A of this title, effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange) unless such broker or dealer and all natural persons associated with such broker or dealer

Post, pp. 574-579.

meet such specified and appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable. The Commission shall establish such standards by rules and regulations, which may—

"(A) appropriately classify brokers and dealers and persons associated with brokers and dealers (taking into account relevant matters, including types of business done and nature of securities sold).

"(B) specify that all or any portion of such standards shall be applicable to any such class.

"(C) require persons in any such class to pass examinations prescribed in accordance with such rules and regulations.

"(D) provide that persons in any such class other than a broker or a dealer and partners, officers, and supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) of brokers or dealers, may be qualified solely on the basis of compliance with such specified standards of training and such other qualifications as the Commission finds appropriate.

The Commission may prescribe by rules and regulations reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any examination administered by it, or under its direction. The Commission may cooperate with securities associations registered under section 15A of this title and with national securities exchanges in administering examinations and may require brokers and dealers subject to this paragraph and persons associated with such brokers and dealers to pass examinations administered by or on behalf of any such association or exchange and to pay to such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such examinations. Post, pp. 574-579.

"(9) In addition to the fees and charges authorized by paragraph (8), each broker or dealer registered under section 15 of this title not a member of a securities association registered pursuant to section 15A of this title shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed by the Commission because such broker or dealer is not a member of such a securities association. The Commission shall establish such fees and charges by rules and regulations.

"(10) No broker or dealer subject to paragraph (8) of this subsection shall effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange) in contravention of such rules and regulations as the Commission may prescribe designed to promote just and equitable principles of trade, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, and in general, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market."

(c) Section 15(c) of said Act is amended by adding at the end thereof the following new paragraphs: 52 Stat. 1075. 15 USC 78o.

"(4) If the Commission finds, after notice and opportunity for hearing, that any person subject to the provisions of section 12, 13, or subsection (d) of section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person to comply with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order. Ante, pp. 565-569; Post, p. 574.

"(5) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading, otherwise than on a national securities exchange, in any security (other than an exempted security) for a period not exceeding ten days. No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended."

49 Stat. 1379. 15 USC 78o.

(d) Section 15(d) of said Act is amended to read as follows:

"(d) Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this title in respect of a security registered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than three hundred persons. For the purposes of this subsection, the term 'class' shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof."

48 Stat. 74; 68 Stat. 683. 15 USC 77a-77z.

Ante, pp. 565-569.

Definition.

National securities associations. Registration requirements. 52 Stat. 1070. 15 USC 78o-3.

SEC. 7. (a) Section 15A(b) of the Securities Exchange Act of 1934 is amended as follows:

(1) The semicolons at the end of paragraphs (1) through (8) are stricken out and periods are inserted in lieu thereof.

(2) Paragraph (3) thereof is amended to read as follows:

"(3) the rules of the association provide that any broker or dealer who makes use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, may become a member of such association, except such as are excluded pursuant to paragraph (4) or (5) of this subsection, or a rule of the association permitted under this paragraph. The rules of the association may restrict membership in such association on such specified geographical basis, or on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest or for the protection of investors and to carry out the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to or refuse to continue in such association any broker or dealer if—

"(A) such broker or dealer, whether prior or subsequent to becoming such, or

"(B) any person associated with such broker or dealer, whether prior or subsequent to becoming so associated,

has been and is suspended or expelled from a national securities exchange or has been and is barred or suspended from being associated with all members of such exchange, for violation of any rule of such exchange.".

(3) Paragraph (4) thereof is amended to read as follows:

"(4) the rules of the association provide that, except with approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no broker or dealer shall be admitted to or continued in membership in such association, if such broker or dealer—

"(A) has been and is suspended or expelled from a registered securities association (whether national or affiliated) or from a national securities exchange or has been and is barred or suspended from being associated with all members of such association or from being associated with all brokers or dealers which are members of such exchange, for violation of any rule of such association or exchange which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade.

"(B) is subject to an order of the Commission denying, suspending for a period not exceeding twelve months, or revoking his registration pursuant to section 15 of this title, or expelling or suspending him from membership in a registered securities association or a national securities exchange, or barring or suspending him from being associated with a broker or dealer. *Ante*, pp. 570-574.

"(C) whether prior or subsequent to becoming a broker or dealer, by his conduct while associated with a broker or dealer, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such broker or dealer, and in entering such a suspension, expulsion, or order, the Commission or any such exchange or association shall have jurisdiction to determine whether or not any person was a cause thereof.

"(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person who, if such person were a broker or dealer, would be ineligible for admission to or continuance in membership under clause (A), (B), or (C) of this paragraph."

(4) Paragraphs (5) through (10) thereof are redesignated as paragraphs (6) through (11), respectively, and a new paragraph (5) is added to read as follows:

"(5) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall become a member and no natural person shall become a person associated with a member, unless such person is qualified to become a member or a person associated with a member in conformity with specified and appropriate standards with respect to the training, experience, and such other qualifications of such person as the association finds necessary or desirable, and in the case of a member, the financial responsibility of such member. For the purpose of defining such standards and the application thereof, such rules may—

"(A) appropriately classify prospective members (taking into account relevant matters, including type of business done and nature of securities sold) and persons proposed to be associated with members.

"(B) specify that all or any portion of such standards shall be applicable to any such class.

"(C) require persons in any such class to pass examinations prescribed in accordance with such rules.

"(D) provide that persons in any such class other than prospective members and partners, officers and supervisory employees (which latter term may be defined by such rules and as so defined shall include branch managers of members) of members, may be qualified solely on the basis of compliance with specified standards of training and such other qualifications as the association finds appropriate.

"(E) provide that applications to become a member or a person associated with a member shall set forth such facts as the association may prescribe as to the training, experience, and other qualifications (including, in the case of an applicant for membership, financial responsibility) of the applicant and that the association may adopt procedures for verification of qualifications of the applicant.

"(F) require any class of persons associated with a member to be registered with the association in accordance with procedures specified by such rules (and any application or document supplemental thereto required by such rules of a person seeking to be registered with such association shall, for the purposes of subsection (a) of section 32 of this title, be deemed an application required to be filed under this title)."

48 Stat. 904.
15 USC 78ff.

(5) Redesignated paragraph (9) is amended to read as follows:

"(9) the rules of the association provide that its members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violation of its rules.".

(6) Redesignated paragraph (10) is amended to read as follows:

"(10) the rules of the association provide a fair and orderly procedure with respect to the disciplining of members and persons associated with members and the denial of membership to any broker or dealer seeking membership therein or the barring of any person from being associated with a member. In any proceeding to determine whether any member or other person shall be disciplined, such rules shall require that specific charges be brought; that such member or person shall be notified of, and be given an opportunity to defend against, such charges; that a record shall be kept; and that the determination shall include—

"(A) a statement setting forth any act or practice in which such member or other person may be found to have engaged, or which such member or other person may be found to have omitted.

"(B) a statement setting forth the specific rule or rules of the association of which any such act or practice, or omission to act, is deemed to be in violation.

"(C) a statement whether the acts or practices prohibited by such rule or rules, or the omission of any act required thereby, are deemed to constitute conduct inconsistent with just and equitable principles of trade.

"(D) a statement setting forth the penalty imposed.

In any proceeding to determine whether a broker or dealer shall be denied membership or whether any person shall be barred from being associated with a member, such rules shall provide that the broker or dealer or person shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial or bar which are under consideration; that a record shall be kept; and that the determination shall set forth the specific grounds upon which the denial or bar is based.".

(7) Section 15A(b) of said Act is further amended by adding at the end thereof the following:

Ante, p. 574.
15 USC 78o-3.

"(12) the rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be disseminated by any member or any person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, both at the wholesale and retail level, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting and publishing quotations.

The provisions of this subsection, as in effect prior to the date of enactment of the Securities Acts Amendments of 1964, shall be applicable to the rules of any registered securities association which was registered on such date until July 1, 1964. After July 1, 1964, the Commission may, after notice and opportunity for hearing, suspend the registration of any such association if it finds that the rules thereof do not conform to the requirements of this subsection, as amended by section 7 of the Securities Acts Amendments of 1964, and any such suspension shall remain in effect until the Commission issues an order determining that such rules have been modified to conform with such requirements."

(b) Section 15A(d)(2) is amended by striking the figure "(9)" inserting in lieu thereof "(10)", and by inserting "and paragraph (12)," immediately after "inclusive,".

(c) Section 15A(g) is amended to read as follows:

52 Stat. 1070.
15 USC 78o-3.

"(g) If any registered securities association (whether national or affiliated) takes any disciplinary action against any member thereof or any person associated with such a member or denies admission to any broker or dealer seeking membership therein, or bars any person from being associated with a member, such action shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall operate as a stay of such action until an order is issued upon such review pursuant to subsection (h), unless the Commission otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments)."

(d) Section 15A(h) of said Act is amended to read as follows:

"(h)(1) In a proceeding to review disciplinary action taken by a registered securities association against a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for hearing, upon consideration of the record before the association and such other evidence as it may deem relevant—

"(A) finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has found him to have engaged in or omitted, and

"(B) determines that such acts or practices, or omission to act, are in violation of such rules of the association as have been designated in the determination of the association,

the Commission shall by order dismiss the proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable principles of trade, and shall so declare. If it appears to the Commission that the evidence does not warrant the finding required in clause (A), or if the Commission determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the association, or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the association.

"(2) If, after appropriate notice and opportunity for hearing, the Commission finds that any penalty imposed upon a member or person associated with a member is excessive or oppressive, having due regard to the public interest, the Commission shall by order cancel, reduce, or require the remission of such penalty.

"(3) In any proceeding to review the denial of membership in a registered securities association or the barring of any person from being associated with a member, if the Commission, after appropriate notice and hearing, and upon consideration of the record before the association and such other evidence as it may deem relevant, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, the Commission shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the association and require it to admit the applicant broker or dealer to membership therein, or to permit such person to be associated with a member."

52 Stat. 1070. 15 USC 78o-3.

(e) Section 15A(k)(2) of said Act is amended to read as follows:

"(2) The Commission may in writing request any registered securities association to adopt any specified alteration of or supplement to its rules with respect to any of the matters hereinafter enumerated. If such association fails to adopt such alteration or supplement within a reasonable time, the Commission is authorized by order to alter or supplement the rules of such association in the manner theretofore requested, or with such modifications of such alteration or supplement as it deems necessary if, after appropriate notice and opportunity for hearing, it appears to the Commission that such alteration or supplement is necessary or appropriate in the public interest or for the protection of investors or to effectuate the purposes of this section, with respect to—

"(A) the basis for, and procedure in connection with, the denial of membership or the barring from being associated with a member or the disciplining of members or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof.

"(B) the method for adoption of any change in or addition to the rules of the association.

"(C) the method of choosing officers and directors.

"(D) affiliation between registered securities associations."

(f) Section 15A(l) of said Act is amended (1) by striking out the semicolon at the end of paragraph (1) thereof and inserting a period, and (2) by striking out paragraph (2) and inserting the following:

"(2) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or

to expel from a registered securities association any member thereof, or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof, if the Commission finds that such member or person—

"(A) has violated any provision of this title or any rule or regulation thereunder, or has effected any transaction for any other person who, he had reason to believe, was violating with respect to such transaction any provision of this title or any rule or regulation thereunder.

"(B) has willfully violated any provision of the Securities Act of 1933, as amended, or of any rule or regulation thereunder, or has effected any transaction for any other person who, he had reason to believe, was willfully violating with respect to such transaction any provision of such Act or rule or regulation."

48 Stat. 74; 68 Stat. 683. 15 USC 77a-77z.

SEC. 8. (a) Section 16(a) of the Securities Exchange Act of 1934 is amended to read as follows:

48 Stat. 896. 15 USC 78p.

"SEC. 16. (a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month."

Ante, pp. 565-569.

(b) Section 16 of said Act is further amended by redesignating subsection (d) thereof as (e) and adding a new subsection (d) as follows:

"(d) The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on a national securities exchange or an exchange exempted from registration under section 5 of this title) for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market."

15 USC 78e.

SEC. 9. Section 20(c) of the Securities Exchange Act of 1934 is amended to read as follows:

15 USC 78t.

"(c) It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report, or information under this title or any rule or regulation thereunder without just cause to hinder, delay, or obstruct the making or filing of any such document, report, or information."

48 Stat. 901; 15 USC 78w.

SEC. 10. Subsection (b) of section 23 of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following new sentence: "The Commission shall include in its annual reports to the Congress for the fiscal years ended on June 30 of 1965, 1966, and 1967 information, data, and recommendations specifically related to the operation of the amendments to this Act made by the Securities Acts Amendments of 1964."

49 Stat. 1380; 15 USC 78ff.

SEC. 11. The first sentence of subsection (b) of section 32 of the Securities Exchange Act of 1934 is amended (1) by striking out "pursuant to an undertaking contained in a registration statement as provided in" and inserting in lieu thereof "required to be filed under" and (2) by inserting immediately after "this title" the following: "or any rule or regulation thereunder".

48 Stat. 77; 15 USC 77d; 68 Stat. 684; 15 USC 77e.

SEC. 12. Section 4 of the Securities Act of 1933 is amended to read as follows:

"SEC. 4. The provisions of section 5 shall not apply to—

"(1) transactions by any person other than an issuer, underwriter, or dealer.

"(2) transactions by an issuer not involving any public offering.

"(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

"(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

"(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 8 is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

54 Stat. 857; 15 USC 77h.

"(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

"(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders."

Effective dates.

SEC. 13. The amendments made by this Act shall take effect as follows:

(1) The effective date of section 12(g)(1) of the Securities Exchange Act of 1934, as added by section 3(c) of this Act, shall be July 1, 1964.

(2) The effective date of the amendments to sections 12(b) and 15(a) of the Securities Exchange Act of 1934, contained in sections 3(a) and 6(a), respectively, of this Act, shall be July 1, 1964.

(3) All other amendments contained in this Act shall take effect on the date of its enactment.

Approved August 20, 1964.

FREQUENTLY ASKED QUESTIONS ABOUT SUSPENDING/TERMINATING REPORTING OBLIGATIONS

What are the ways in which an issuer can enter the registration and reporting system under the Securities Exchange Act of 1934 (the "Exchange Act")?

There are several ways in which an issuer can become obligated to file periodic and current reports under the Exchange Act, including through registration of a class of securities with the U.S. Securities and Exchange Commission (the "SEC"), or as a result of the effectiveness of a registration statement for the offer and sale of securities under the Securities Act of 1933 (the "Securities Act"):[1]

- A company that files a registration statement pursuant to the Securities Act which becomes effective incurs reporting obligations pursuant to Section 15(d) of the Exchange Act;
- An issuer, other than a bank or bank holding company, must register a class of equity securities under Section 12(g) of the Exchange Act if, on the last day of its fiscal year, the issuer's total assets exceed $10 million and a class of its equity securities (other than exempted securities) is held of record by either (i) 2,000 persons, or (ii) 500 persons who are not accredited investors;
- An issuer that is a bank or bank holding company must register a class of equity securities under Section 12(g) of the Exchange Act if, on the last day of its fiscal year, the issuer's total assets exceed $10 million and a class of its equity securities (other than exempted securities) is held of record by 2,000 or more persons;
- An issuer may register a class of equity securities under Section 12(g) of the Exchange Act on a voluntary basis;
- An issuer must register its securities pursuant to Section 12(b) of the Exchange Act when listing on a national securities exchange, such as the New York Stock Exchange ("NYSE") or NASDAQ; and

[1] We discuss the ways in which an issuer can enter the Exchange Act reporting system in Frequently Asked Questions About Periodic Reporting Requirements for U.S. Issuers – Overview http://www.mofo.com/files/Uploads/Images/FAQ-Periodic-Reporting-Requirements-for-US-Issuers-Overview.pdf. These Frequently Asked Questions focus on issues for domestic issuers. Please also refer to our Frequently Asked Questions About Foreign Private Issuers, available on our website at http://www.mofo.com/files/Uploads/Images/100521FAQForeignPrivate.pdf.

- An issuer can succeed automatically toe reporting obligations under Sections 12(b),e 12(g) or 15(d) if the issuer meets the conditionse for succession of another reporting issuer'se registration and/or reporting obligationse pursuant to a merger or acquisition.e

How does an issuer terminate and/or suspend its registration and reporting obligations under the Exchange Act?

There are several steps that an issuer must take to terminate and/or suspend its Exchange Act reporting obligations. If the issuer has a class of securities registered under Section 12(b), then either the issuer or the national securities exchange must file a Form 25 to initiate the delisting/deregistration process. If an issuer has a class of securities registered under Section 12(g), then it must file a Form 15 to terminate the registration and reporting obligations under Section 12(g). If an issuer has a reporting obligation under Section 15(d), then it must file a Form 15 to suspend its Section 15(d) reporting obligation pursuant to Exchange Act Rule 12h-3 (Section 15(d) reporting obligations also may be suspended by operation of law, as discussed below). In each case, the issuer must satisfy specific conditions that are described in more detail in these Frequently Asked Questions.

How does an issuer with a class of securities registered pursuant to Section 12(b) initiate the delisting/ deregistration process?

When an issuer has a class of securities registered under Section 12(b) and listed on a national securities exchange, Rule 12d2-2 and Form 25 govern the delisting and deregistration process. Form 25 is a one-page form that is used by issuers or the national securities exchange to file a notice of delisting/deregistration. The filer checks the applicable box to indicate the subparagraph of Rule 12d2-2 that is relied on for the delisting/deregistration.

If an issuer wishes to delist/deregister a class of securities from more than one exchange, must a Form 25 be filed with respect to each exchange?

A separate Form 25 must be filed for each exchange on which an issuer's securities are listed. An issuer may seek to delist/deregister more than one class of securities of the same issuer on one Form 25.

What are the filing deadlines for notifying an exchange of delisting?

If the issuer is initiating the delisting, the issuer must notify the exchange at least 10 days prior to filing the Form 25. The delisting process itself is conducted by the exchange as the security is struck from the securities exchange's listing and is no longer traded on that exchange. The issuer or the exchange may file the Form 25.

Are there any special requirements that need to be met when filing a Form 25?

The issuer must have (i) complied with applicable state law and the exchange's rules regarding the voluntary delisting of its securities; (ii) provided the exchange with the 10-day notice described above; and (iii)epublished notice of its plans to delist, together withe the reasons therefor, via a press release and on its website at least 10 days in advance of the date it intends to file the Form 25. The issuer must represent in the Form 25 that it has met those requirements, as well as make similar representations to the exchange in its initial notice of intent to delist.

How long does it take for delisting and deregistration under Section 12(b) to occur once a Form 25 is filed?

In general, once a Form 25 is filed, delisting occurs automatically within 10 days, which is the automatic effective date of the Form 25. However, deregistration under Section 12(b) does not occur for another 80 days, as pursuant to General Instruction 5 to Form 25 and Rule 12d2-2(d)(2), deregistration occurs 90 days after the filing of the Form 25. If the filer needs to amend the Form 25 before the 10-day delisting period runs, then deregistration occurs 90 days from the filing of the amended Form 25.

When may an issuer stop filing reports after a Form 25 is filed for delisting/deregistration under Section 12(b)?

If an issuer does not have any reporting obligations with respect to any other class of securities, and is not required to continue reporting based on an obligation under Section 12(g) or Section 15(d) with respect to the class of securities that is delisted, then the issuer will not be required to file any current or periodic reports that are due on or after the date the Form 25 becomes effective. Until the termination of the Section 12(b) reporting obligation is effective 90 days after the Form 25 is filed (or such shorter period as the SEC may determine), any other obligations, such as those under the proxy rules, Section 16(b) and certain beneficial ownership reporting requirements will continue to apply. Once the termination of the Section 12(b) reporting obligation is effective 90 days after the Form 25 is filed, all reporting obligations arising from the Section 12(b) registration are terminated. This entire delisting/deregistration process is designed to operate by the passage of time, with a "safety valve" allowing the SEC to intervene in limited circumstances if necessary. The SEC does not usually provide for any shorter period of time for delisting/deregistration under Section 12(b).

If an issuer had previously registered the class of securities under Section 12(g), is the Section 12(g) registration terminated at the same time as the Section 12(b) registration?

When an issuer delists/deregisters a class of securities under Section 12(b), it must determine whether it has a reporting obligation under Section 12(g). In the event that an issuer had registered a class of securities under Section 12(g) prior to the time that it registered that class of securities under Section 12(b), then the Section 12(g) registration (which had been suspended by the Section 12(b) registration) would revive. This situation is common for issuers that were quoted on NASDAQ prior to its registration as a national securities exchange, because they had originally registered under Section 12(g) in connection with their initial NASDAQ listing, and then were deemed to be registered under Section 12(b) upon the effectiveness of NASDAQ's registration as a national securities exchange in 2006.

If an issuer registered a class of securities only under Section 12(b), could a class of securities be deemed registered under Section 12(g) once the Section 12(b) registration is terminated?

If an issuer had not previously registered a class of securities under Section 12(g) prior to registering the class of securities under Section 12(b), then the issuer would need to determine whether Rule 12g-2 would deem the deregistered class of securities as registered under Section 12(g).

Rule 12g-2 provides that any class of securities which would have been required to be registered except for

the fact that it was exempt from such registration because it was listed and registered on a national securities exchange or because it was issued by a registered investment company, shall upon the termination of the listing and registration of such class or the termination of the registration of such issuer and without the filing of an additional registration statement be deemed to be registered, if at the time of such termination: (i) the issuer of such class of securities has elected to be regulated as a business development company and such election has not been withdrawn; or (ii)esecurities of the class are not exempt from suche registration pursuant to Section 12 or applicable rulese and all securities of such class are held of record by 300e or more persons.e

How does an issuer terminate its reporting obligation arising because the issuer has a class of securities registered, or deemed registered, under Section 12(g)?

An issuer seeking to terminate its registration under Section 12(g) must file a Form 15. Form 15 provides a certification and notice of termination of registration under Rule 12(g), which becomes effective 90 days after the Form 15 is filed.

An issuer that has a class of equity securities registered under Section 12(g) may terminate that registration pursuant to Section 12(g)(4) if: (i) the number of record holders of that class falls below 300; (ii) the number of record holders of that class falls below 500 and the issuer's assets have been no more than $10 million at the end of each of its last three fiscal years; or (iii)ein the case of a bank or bank holding company, the number of record holders falls below 1,200.e

If an issuer files a Form 15 to terminate registration under Section 12(g), it does not have to file any current or periodic reports that are due on or after the date the Form 15 is filed (assuming reporting obligations under Section 15(d) are likewise suspended, as discussed below). Until the termination of the Section 12(g) registration is effective 90 days after the Form 15 is filed (or such shorter period as the SEC may determine), any other obligations, such as those under the proxy rules, Section 16(b), and certain beneficial ownership reporting requirements, will continue to apply. Once the termination of the Section 12(g) registration is effective 90 days after the Form 15 is filed, all reporting obligations arising from the Section 12(g) registration are terminated. As is the case with Section 12(b) registration discussed above, the SEC does not usually provide for any shorter period of time for deregistration under Section 12(g).

If an issuer has terminated its registration under Sections 12(b) and/or 12(g), may it still have a reporting obligation under Section 15(d)?

In those situations where an issuer has terminated its registration under Section 12(b) and/or Section 12(g), the issuer may still have ongoing reporting obligations as a result of Section 15(d).

An issuer filing any Securities Act registration statement that becomes effective incurs a reporting obligation under Section 15(d), which subjects the issuer to the same periodic and current reporting regime applicable to issuers with a class of securities registered under Section 12; however, the proxy rules, the third-party tender offer rules and Sections 16, 13(d) and 13(f) reporting do not apply. The Section 15(d) reporting obligation typically first arises at the time of the issuer's initial public offering registration and is incurred again with each subsequent Securities Act registration

statement that goes effective, or with each annual update of a registration statement pursuant to Section 10(a)(3) of the Securities Act.

An issuer can never "terminate" its reporting obligations under Section 15(d); rather the reporting obligation arising under Section 15(d) can only be suspended. In 1964, when the SEC adopted amendments to the Securities Act, Section 15(d) was added to reflect a policy concern that the SEC had with respect to investors who purchase securities in an offering registered under the Securities Act. The SEC's view was that such investors need the benefit of continued disclosure, even if the issuer is not registered under the Exchange Act. If an issuer no longer satisfies the requirements under which it was able to cease reporting under Section 15(d), then the suspension ends and the reporting obligation returns without any further action of the issuer.

Under what circumstances can an issuer suspend its reporting obligation under Section 15(d)?

An issuer's reporting obligations under Section 15(d) are suspended: (i) while an issuer has a class of securities registered under Section 12; or (ii) if, on the first day of any fiscal year other than the year in which the Securities Act registration statement became effective, there are fewer than 300 record holders of the class of securities offered under the Securities Act registration statement.

In addition to the automatic suspension specified in Section 15(d), Rule 12h-3 permits an issuer to suspend its Section 15(d) reporting obligation if, at any time, the issuer:

- is current in its Exchange Act reportinge obligations;e
- has (1) fewer than 300 record holders of thee class of securities offered under the Securitiese Act registration statement; or (2) fewer thane 500 record holders and its assets must not havee exceeded $10 million on the last day of each of the issuer's three most recent fiscal years; and
- has not had a Securities Act registratione statement relating to that class of securitiese become effective in the fiscal year for which thee issuer seeks to suspend reporting, or has note had a registration statement that was requirede to be updated by Section 10(a)(3) of thee Securities Act during the fiscal year for whiche the issuer seeks to suspend reporting, and, ife the issuer is relying on the fewer than 500e record holder and $10 million in assetse threshold noted above, during the twoe preceding fiscal years.e

What form must an issuer file to suspend its reporting obligation under Section 15(d)?

An issuer files a Form 15 to suspend its reporting obligation under Section 15(d) (which may be the same Form 15 filed to terminate Section 12(g) registration). If the reporting obligation is suspended under Section 15(d) by operation of the statutory provision, the filing of a Form 15 is not a condition to the statutory suspension, but rather is required to serve as a notice of the suspension pursuant to Rule 15d-6. If the issuer suspends its reporting obligation under Rule 12h-3, then Rule 12h-3(a) requires the filing of the Form 15 as a condition to the suspension. If the certification of termination on Form 15 is subsequently withdrawn or denied, the company must file all reports that would have been required if the Form 15 had not been filed.

Does the SEC Staff provide relief with respect to the Section 15(d) reporting obligation?

The SEC Staff issued Staff Legal Bulletin No. 18 to provide "blanket" relief for issuers seeking to rely on Rule 12h-3 to avoid filing periodic reports that otherwise would be due after an issuer is acquired, or where an initial public offering is abandoned.[2] The relief is necessary where any Securities Act registration statement (*e.g.*, a Form S-1, Form S-3 or Form S-8) became effective or had been updated (automatically by incorporation by reference of a Form 10-K, or otherwise) or was required to be updated prior to the suspension under Section 15(d).

The relief is necessary because Rule 12h-3(c) disallows suspension of the Section 15(d) obligation for the remainder of a fiscal year in which any Securities Act registration statement of the issuer went effective or was required to be updated under Section 10(a)(3) of the Securities Act. As a result, outstanding registration statements can be particularly problematic when an issuer seeks to suspend its Section 15(d) reporting obligation. For example, an acquirer seeking to immediately stop filing periodic and current reports of an acquired issuer following an acquisition of that issuer would find that Rule 12h-3(c) prevents the acquirer from doing so if any acquiree registration statement became effective or was required to be updated in the last fiscal year (even though the acquirer has become the sole shareholder of the acquired issuer through the acquisition); thus, without relief, there would be no suspension of the reporting obligation until the fiscal year following the acquisition (when presumably there will no longer be any effective registration statements because any offerings would have been terminated as a result of the acquisition). Similar problems arise for an issuer when it fails to successfully execute an IPO, because the Form S-1 registration statement became effective and triggered a Section 15(d) reporting obligation, even though no securities were sold to the public. In no-action letters preceding the issuance of Staff Legal Bulletin No. 18, the Staff effectively read subparagraph (c) out of Rule 12h-3, but only to allow suspension for issuers that were acquired or that had a Securities Act registration go effective for an abandoned IPO (and, more recently, when an issuer that meets the assets/number of record holders tests and simply wishes to "go dark" and stop reporting).

The Staff will continue to consider no-action letters, however, outside of the merger and abandoned IPO context, such as when an issuer is "going dark" because the number of record holders of the class of securities has fallen below the Section 15(d)/Rule 12h-3 thresholds.

What conditions must be satisfied in order to rely on the Staff's positions in Staff Legal Bulletin No. 18?

In order to rely on the Staff's positions in Staff Legal Bulletin No. 18 and file a Form 15 in reliance on Rule 12h-3, the issuer:

- •e must no longer have a class of securitiese registered under Section 12;e
- •e must comply with all of the other requirementse of Rule 12h-3 (*i.e.*, must have filed all reportse required by Section 13(a) for the shorter of itse most recent three fiscal years and the portione of its current year, or since the Section 15(d)e obligation was incurred, and as of the time ofe filing the Form 15 (to terminate Section 12(g)e

[2] Staff Legal Bulletin No. 18 (March 15, 2010) is available at: http://www.sec.gov/interps/legal/cfslb18.htm.

registration, if any, and suspend Section 15(d) reporting) must have fewer than 300 record holders of the class of securities, or fewer than 500 record holders and assets that did not exceed $10 million on the last day of each of the issuer's three most recent fiscal years);

- must have deregistered any unsold securitiese from Securities Act registration statements,e and/or withdrawn any registration statementse if there were no sales; ande
- must not otherwise file Exchange Act reportse during the time period in which the issuere wants to rely on Rule 12h-3 to suspend thee Section 15(d) reporting obligation (*i.e.*, noe "voluntary" SEC filings under the terms of ane indenture or otherwise).e

When are filings related to the delisting/deregistration and suspension of the Section 15(d) reporting obligation made in the context of an acquisition of a reporting issuer?

In order to satisfy the third condition in Staff Legal Bulletin No. 18 stated above, the process of deregistration or withdrawal must be completed *prior* to filing the Form 15. For situations where there is an outstanding Securities Act registration statement (pursuant to which sales were made), the issuer must file a post-effective amendment to the outstanding registration statement, which amendment, unless automatically effective pursuant to Rule 464 (*e.g.*, a post-effective amendment to an automatic shelf, a Form S-8 or a Form S-3 registering a dividend reinvestment plan), must be declared effective by the Staff prior to filing the Form 15. This post-effective amendment contains simply an explanatory note about deregistration, and Part II information.

Alternatively, if no sales were made pursuant to a registration statement that went effective during the year, then the issuer would merely need to submit a withdrawal request under Securities Act Rule 477. In Securities Act Rules Compliance and Disclosure Interpretation No. 249.01, the Staff indicates that a registration statement may be withdrawn using Rule 477 (i) before effectiveness or (ii) after effectiveness if no securities were sold. While a Rule 477 withdrawal request is not declared "effective" by the Staff, as with a post-effective amendment, the Staff does need to consent to the withdrawal before the registration statement and any pre-effective amendments are considered withdrawn.

Can an issuer have its Exchange Act registration revoked?

In some cases, the SEC may revoke an issuer's registration pursuant to Section 12 of the Exchange Act because of a long track record of delinquent filings. The SEC has the authority to revoke such registration under Section 12(j) of the Exchange Act. In many instances, a revocation proceeding under Section 12(j) will be preceded by a 10-day suspension in trading. This suspension will most likely continue for a longer period of time because brokers cannot resume quotations until they determine that the issuer has satisfied the information requirements of Rule 15c2-11, which usually is not possible because of the missing periodic reports.

The SEC's Division of Corporation Finance and Division of Enforcement have been working jointly on a delinquent filer program for several years. Delinquent

filers are identified and provided notice and an opportunity to become current. If delinquent filers do not become current even after an opportunity has been provided, the SEC institutes a revocation proceeding. Most revocation proceedings are decided against issuers and the issuer's registration is revoked.

Does an issuer have reporting obligations even after its 1934 Act registration is revoked?

Even if an issuer's registration is revoked, an issuer may continue to have a reporting obligation under Section 15(d). The potential penalty for not filing reports under Section 15(d) is a fine of $100 for every day the delinquency continues. The SEC, however, has rarely invoked this penalty.

By Scott Lesmes, Partner, in
the Corporate Group,
Morrison & Foerster LLP

SEC No-Action Letters, Staff Legal Bulletin No. 18 (Reporting Obligations), Securities and Exchange Commission, (Mar. 15, 2010)

SEC No-Action Letters
WSB File No. 0315201022

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40CG-NOAL+WSB%230315201022%29sdv0243ef00487b4a10009a87001b7840a5b201?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

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WSB Subject Categories: 70, 72, 92

References:

Securities Exchange Act of 1934, Section 12(h); Rule 12h-3

Securities Exchange Act of 1934, Section 13(a)

Securities Exchange Act of 1934, Section 15(d)

Washington Service Bureau Summary

Headnote

...The staff provides its views regarding certain situations where issuers may use 1934 Act Rule 12h-3 to suspend their reporting obligations under Section 15(d). The staff legal bulletin ("SLB") outlines when an issuer may rely on Rule 12h-3. It also details two common situations that give rise to favorable no-action responses under the rule. These are where the initial public offer has been abandoned, and where the issuer has been acquired by another entity. The SLB then goes on to outline conditions that must be satisfied in these two situations in order for an issuer to avail itself of Rule 12h-3. The issuer may not have a class of securities registered under Section 12 of the 1934 Act. It must comply with the other requirements of Rule 12h-3. It must deregister any unsold securities from 1933 registration statements and withdraw from registration any registration statements if there were no sales. The issuer must not otherwise file the 1934 Act reports during the time period in which it seeks to avail itself of the suspension by Rule 12h-3. The staff adds that since it has issued an extensive number of no-action responses on Rule 12h-3, it is of the view that on a going-forward basis, an issuer that fits within either of the two situations and who satisfies the conditions of the SLB does not need a no-action response before filing a Form 15 to suspend its Section 15(d) reporting obligations in reliance on Rule 12h-3. An issuer must file a Form 15 for each class of securities for which there is a Section 15(d) obligation.

[INQUIRY LETTER]

Division of Corporation Finance

Securities and Exchange Commission

Exchange Act Rule 12h-3

Staff Legal Bulletin No. 18 (CF)

Action: Publication of CF Staff Legal Bulletin

Date: March 15, 2010

Summary: This staff legal bulletin provides the Division of Corporation Finance's views regarding certain situations in which issuers may utilize Rule 12h-3 under the Securities Exchange Act of 1934 to suspend their reporting obligations under Section 15(d) of the Exchange Act.

Supplementary Information: The statements in this legal bulletin represent the views of the Division of Corporation Finance. This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Office of Chief Counsel in the Division of Corporation Finance at (202) 551-3500.

I. Introduction

Over the past several years, the staff of the Division of Corporation Finance has responded to an increasing number of routine no-action requests from issuers seeking to suspend their reporting obligations under Section 15(d) of the Exchange Act by relying on Rule 12h-3 under the Exchange Act. [1] The purpose of this legal bulletin is to:

- explain the operation of Section 15(d) and Rule 12h-3;
- identify two common situations that give rise to favorable no-action responses under Rule 12h-3;
- set forth the conditions that must be satisfied in these situations in order for an issuer to avail itself of the reporting suspension provided by Rule 12h-3; and
- discuss the Division's approach to processing Rule 12h-3 no-action requests on a going-forward basis.

II. The Operation of Section 15(d) and Rule 12h-3

When an issuer's registration statement under the Securities Act of 1933 becomes effective, Section 15(d) requires the issuer to file the reports required by Section 13(a) of the Exchange Act with respect to each class of securities covered by the registration statement. As the Commission has explained, the purpose of periodic reporting under Section 15(d) is "to assure a stream of current information about an issuer for the benefit of purchasers in the registered offering, and for the public, in situations where Section 13 of the Exchange Act would not otherwise apply." [2] The issuer must continue to file these reports until the Section 15(d) reporting obligation for each class of securities is suspended.

The Section 15(d) reporting obligation is suspended while a class of securities is registered under Section 12 of the Exchange Act. In addition, there are two other ways in which a Section 15(d) reporting obligation may be suspended. First, Section 15(d) provides for an automatic statutory suspension of this reporting obligation if, on the first day of any fiscal year other than the fiscal year in which a Securities Act registration statement became effective, there are fewer than 300 record holders of the class of securities offered under the Securities Act registration statement. Second, an issuer may seek to avail itself of the suspension provided by Rule 12h-3 at any time *during* the issuer's fiscal year if it meets the conditions of the rule.

In order to rely on Rule 12h-3, the issuer:

- must be current in its Exchange Act reporting obligations; [3]

• must have (1) fewer than 300 record holders of the class of securities offered under the Securities Act registration statement; or (2) fewer than 500 record holders and its assets must not have exceeded $10 million on the last day of each of the issuer's three most recent fiscal years; [4] and

• must not have had a Securities Act registration statement relating to that class of securities become effective in the fiscal year for which the issuer seeks to suspend reporting, or have had a registration statement that was required to be updated by Section 10(a)(3) of the Securities Act during the fiscal year for which the issuer seeks to suspend reporting, and, if the issuer is relying on the fewer than 500 record holder and $10 million in assets threshold noted above, during the two preceding fiscal years.

It is this last requirement, contained in Rule 12h-3(c), that has prompted issuers to seek no-action relief from the staff. [5]

In order to avail itself of the suspension provided by Rule 12h-3, the issuer must also file a certification of termination on Form 15. If the certification of termination on Form 15 is subsequently withdrawn or denied, the company must file all reports that would have been required if the Form 15 had not been filed. [6] Similarly, if in the future the issuer no longer satisfies the requirements under which it was able to cease reporting under Section 15(d), the suspension ends and the reporting obligation returns without any action by the issuer. [7]

III. Two Common Situations That Give Rise to Favorable No-Action Responses Under Rule 12h-3

In the following two situations, the Division has repeatedly expressed the view that Rule 12h-3 (c) does not preclude an issuer from filing a Form 15 to suspend its Section 15(d) reporting obligation with respect to a class of securities, even though a Securities Act registration statement relating to that class became effective or was required to be updated by Section 10 (a)(3) during the time period specified in Rule 12h-3(c).

• *Abandoned Initial Public Offering:* An issuer with no Exchange Act reporting obligations has a Securities Act registration statement become effective, but does not sell any securities pursuant to the registration statement. The issuer files an application to withdraw the registration statement pursuant to Securities Act Rule 477, and the staff consents to the withdrawal. [8]

• *Acquired Issuer:* An issuer has been acquired by another entity, resulting in the class or classes of securities for which the issuer has a Section 15(d) reporting obligation being either: (1) extinguished; or (2) held or assumed by only one recordholder, the acquiring entity. [9]

In these two situations, subject to the conditions noted below, the Division has repeatedly expressed the view that continued Exchange Act reporting no longer serves the purposes underlying Section 15(d) and Rule 12h-3 because there are either no public shareholders or no longer any public shareholders of the class of securities for which there is a Section 15(d) reporting obligation, thereby making the benefits of periodic reporting not commensurate with the burdens imposed. [10] Consequently, the Division has agreed with issuers that Rule 12h-3(c) would not preclude them from filing Forms 15 to suspend their reporting obligations under Section 15(d) in these two situations.

IV. Conditions That Must Be Satisfied in These Two Situations in Order for an Issuer to Avail Itself of the Reporting Suspension Provided by Rule 12h-3

When an issuer fits within either situation described in Part III above, and satisfies the conditions discussed below, the Division has repeatedly expressed the view that the application of Rule 12h-3(c) would not preclude the issuer from filing a Form 15 to suspend its reporting obligation for a class of securities under Section 15(d), even though a Securities Act registration statement relating to that class became effective or was required to be updated by Section 10 (a)(3) during the time period specified in Rule 12h-3(c).

1. The issuer must not have a class of securities registered under Section 12 of the Exchange Act

An issuer may not rely on Rule 12h-3 to suspend its Section 15(d) reporting obligation if it has a class of securities registered, or required to be registered, under Section 12 of the Exchange Act. Section 15(d) provides that the obligation to file reports under Section 15(d) is automatically suspended if and so long as any class of securities of an issuer is registered pursuant to Section 12. Accordingly, any Forms 25 and 15 to terminate Section 12 registration for any class of securities registered under Section 12 must be properly filed before suspension of a Section 15(d) reporting obligation may be effected pursuant to Rule 12h-3. [11]

2. The issuer must comply with the other requirements of Rule 12h-3

The issuer may not exceed the recordholder and asset thresholds in Rule 12h-3(b)(1). The issuer must file a Form 15 and be current in its Exchange Act reporting obligations as of the date of filing the Form 15.

3. The issuer must deregister any unsold securities from Securities Act registration statements and withdraw any registration statements if there were no sales

The issuer must have terminated all registered securities offerings and cannot have any unsold securities remaining on any Securities Act registration statement. In this regard, the issuer must have filed post-effective amendments to deregister all unsold securities under Securities Act registration statements or, if there were no sales made pursuant to a registration statement, an application to withdraw the registration statement. These post-effective amendments or applications to withdraw must be effective or consented to before filing the Form 15. [12] Also, the issuer may not have any pre-effective Securities Act registration statements on file with the Commission that have not been withdrawn.

4. The issuer must not otherwise file Exchange Act reports during the time period in which it seeks to avail itself of the suspension provided by Rule 12h-3

If the issuer will continue to have any outstanding debt, neither the indenture nor any documents related thereto may require the issuer to submit, provide, furnish or file reports under the Exchange Act with the Commission or the indenture trustee during the time period in which the issuer seeks to avail itself of the suspension provided by Rule 12h-3. Otherwise, suspending the issuer's obligation to file reports under Section 15(d) would have no practical effect on the issuer's preparation of Exchange Act reports.

V. The Division's Approach to Processing Rule 12h-3 No-Action Requests on a Going-Forward Basis

The Division has issued an extensive number of no-action responses regarding the ability of an issuer to rely on Rule 12h-3 for a class of securities, notwithstanding the fact that a Securities Act registration statement relating to that class became effective or was required to be updated by Section 10(a)(3) during the time period specified in Rule 12h-3(c). Because of the routine nature of these requests, the large body of no-action precedent and the guidance in this legal bulletin, the Division is of the view that, on a going-forward basis, an issuer that fits within either of the two situations identified above and satisfies the conditions set forth in this legal bulletin does not need a no-action response from the Division before filing a Form 15 to suspend its Section 15(d) reporting obligation in reliance on Rule 12h-3. In order to cease reporting, an issuer must file a Form 15 for each class of securities for which there is a Section 15(d) reporting obligation.

The Division will continue to entertain questions regarding the availability of Rule 12h-3 for situations that fall outside the facts and conditions discussed in this legal bulletin. [13]

Footnotes

1 Excluding requests for no-action letters under Exchange Act Rule 14a-8, the shareholder proposal rule, approximately one-third of all interpretive, no-action and exemptive requests acted on by the Office of Chief Counsel during fiscal year 2009 involved the application of Rule 12h-3. In fiscal year 2010 to date, approximately 60% of such requests acted on by the Office have involved Rule 12h-3.

2 See Exchange Act Release No. 20263 (Oct. 5, 1983).

3 More specifically, the issuer must have filed all reports required by Section 13(a) for the shorter of its most recent three fiscal years and the portion of its current year, or the period since it became subject to a Section 15(d) reporting obligation. See Rule 12h-3(a). In addition, if the issuer obtained an extension of time under Rule 12b-25 under the Exchange Act to file a required periodic report, it still would have to file the periodic report in question before availing itself of the suspension provided by Rule 12h-3. *See* Exchange Act Release No. 20263 at II.2.

4 *See* paragraphs (b)(1)(i) and (ii) of Rule 12h-3. In addition, paragraph (b)(2) of Rule 12h-3 requires that the class of securities not be registered under Section 12.

5 For example, an issuer may have an effective Form S-3 or Form S-8. The automatic incorporation by reference of its annual report on Form 10-K into the Form S-3 or Form S-8 serves as the Section 10(a)(3) update for those registration statements, thus calling into question the availability of Rule 12h-3 to suspend reporting.

6 *See* Rule 12h-3(a).

7 If on the first day of any subsequent fiscal year the thresholds in Rule 12h-3(b)(1) are exceeded, the suspension of reporting obligations under Section 15(d) will lapse, and the issuer would be required to resume periodic and current reporting under Section 15(d) in the manner specified in Rule 12h-3(e).

8 *See, e.g., Liberty Lane Acquisition Corp*, (July 28, 2008).

9 *See, e.g., Wyeth* (Nov. 4, 2009). In proposing to adopt former Rule 12h-4 under the Exchange Act, the predecessor to Rule 12h-3, the Commission noted that: "Recent acquisition activity has given rise to many ... applications [for reporting relief] in situations where a corporation is the sole holder of a class of an acquired company's securities subject to a section 15(d) duty to file reports [and that] any benefit of requiring corporations to either file reports ... or to apply for exemption ... is generally outweighed both by the burden of compliance imposed upon such corporations and by the burden placed upon the staff in processing routine ... applications." See Exchange Act Release No. 15757 (Apr. 23, 1979). Similarly, less than one year after the Commission adopted paragraph (c) of Rule 12h-3 in 1984, the Division indicated that Rule 12h-3(c) was not intended to require a company that was acquired in a merger to remain subject to the reporting requirements of Section 15(d) solely because the company had a Form S-8 that was updated pursuant to Section 10(a)(3) during the fiscal year in which the merger was consummated. *See C. Michael Harrington* (Jan. 4, 1985).

10 As the Commission has observed, Congress allowed the Section 15(d) reporting obligation to be suspended out of the recognition that "with respect to Section 15(d) ... the benefits of periodic reporting by an issuer might not always be commensurate with the burdens imposed." See Exchange Act Release No. 20263.

11 See Exchange Act Rules Compliance and Disclosure Interpretations 144.01 and 144.02 regarding the timing for filing forms when a Section 12 registration is being terminated.

12 *See* Item 512(a)(3) of Regulation S-K. Post-effective amendments to Forms S-8 filed for the purpose of removing unsold securities from registration are effective upon filing, while post-effective amendments to most other registration statements for such purpose must be declared effective by the Division. See Securities Act Rule 464. Similarly, the staff must consent to applications to withdraw registration statements. *See* Securities Act Rule 477. Note that the requirement to file a post-effective amendmert to deregister unsold securities does not apply to registration statements that have expired under Securities Act Rule 415(a)(5). Under Rule 415 (a)(5), if three years have elapsed since the initial effective date of the registration statement under which they were being offered and sold, and a new registration statement has not been filed under Rule 415(a)(6), the offering of securities on the registration statement has expired. The registration statement will not be required to be updated under Item 512(a)(3) of Regulation S-K and will not need to be post-effectively amended to deregister unsold securities.

13 For example, an issuer with a "going dark" fact pattern—in which the number of record holders of the class of securities subject to the Section 15(d) reporting obligation has fallen below the thresholds in Rule 12h-3(b)(1), and there have been no sales pursuant to Securities Act registration statements during the fiscal year with respect to which the issuer seeks to suspend reporting—must continue to seek no-action relief to suspend its

Section 15(d) reporting obligation if it does not meet the requirements of Rule 12h-3. *See, e.g., International Wire Group, Inc.* (Nov. 6, 2009).