

WERNER ENTERPRISES INC
Form 8-K
June 14, 2018

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):
June 14, 2018

WERNER ENTERPRISES, INC.
(Exact name of registrant as specified in its charter)

NEBRASKA (State or other jurisdiction of incorporation or organization)	0-14690 (Commission File Number)	47-0648386 (I.R.S. Employer Identification No.)
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14507 FRONTIER ROAD POST OFFICE BOX 45308 OMAHA, NEBRASKA (Address of principal executive offices)	68145-0308 (Zip Code)
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Registrant's telephone number, including area code: (402) 895-6640

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

- 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. []

ITEM 7.01. REGULATION FD DISCLOSURE.

On June 14, 2018, the registrant issued a press release announcing its upcoming participation in the Oppenheimer 18th Annual Consumer Conference on June 20, 2018. A copy of the press release is furnished as Exhibit 99.1 to this Form 8-K.

A live audio webcast for the event will be publicly available on the conference date on the registrant's internet website: www.werner.com, under the "Investors" link. A replay of the audio webcast will also be accessible by the public on such website for a limited period following the conference date. Details concerning the conference, webcast and replay are included in the exhibit.

In accordance with General Instruction B.2 to the Form 8-K, the information under this Item 7.01 and the press release exhibit to this Form 8-K shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section 18, nor shall such information and exhibit be deemed incorporated by reference in any filing under the Exchange Act or the Securities Act of 1933, as amended (the "Securities Act"), unless the registrant expressly states that such information and exhibit are to be considered "filed" under the Exchange Act or incorporates such information and exhibit by specific reference in an Exchange Act or Securities Act filing.

This Current Report on Form 8-K provided by and the oral public statements made by any representative of the registrant during the conference presentation and webcast announced in this Form 8-K and the related press release, may contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act and made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, as amended. Such forward-looking statements are based on information presently available to the registrant's management and are current only as of the date made. Actual results could also differ materially from those anticipated as a result of a number of factors, including, but not limited to, those discussed in the registrant's Annual Report on Form 10-K for the year ended December 31, 2017. For those reasons, undue reliance should not be placed on any forward-looking statement. The registrant assumes no duty or obligation to update or revise any forward-looking statement, although it may do so from time to time as management believes is warranted or as may be required by applicable securities law. Any such updates or revisions may be made by the registrant by filing reports with the U.S. Securities and Exchange Commission, through the issuance of press releases or by other methods of public disclosure.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits.

99.1 Press release issued by the registrant on June 14, 2018. "Werner Enterprises to Participate in the Oppenheimer 18th Annual Consumer Conference."

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

WERNER ENTERPRISES, INC.

Date: June 14, 2018 By: /s/ John J. Steele
 John J. Steele
 Executive Vice President, Treasurer and
 Chief Financial Officer

Date: June 14, 2018 By: /s/ James L. Johnson
 James L. Johnson
 Executive Vice President, Chief Accounting
 Officer and Corporate Secretary

HT: Opt" align="left"> Retentions receivable	1,084,696	1,062,167	
Advance for construction and equipment			977,463 -
Construction in progress			518,433 81,204
Property and equipment, net			11,429,832 8,381,019
Intangible assets, net			15,399,192 14,243,734
Goodwill			11,151,957 -
Deferred tax asset			- 22,266
Other noncurrent asset			14,939 -
Total noncurrent assets			40,731,766 24,293,062

TOTAL ASSETS

\$185,147,338 \$175,898,554

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES

Accounts payable			\$9,767,193 \$4,490,333
Advance from customers			7,843,587 1,131,193
Taxes payable			

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Accrued liabilities and other payables	26,357	2,000,456
Notes payable - bank acceptances	2,223,938	3,039,701
Loans payable	1,510,985	2,207,280
Total current liabilities	16,837,401	9,059,749
DEFERRED TAX LIABILITY	38,209,461	21,928,712
LONG-TERM PAYABLE	212,475	-
COMMITMENTS AND CONTINGENCIES	371,483	-
STOCKHOLDERS' EQUITY		
Common stock, \$0.001 par value; 75,000,000 shares authorized, 38,601,939 and 38,551,939 shares issued and outstanding at September 30, 2011, and December 31, 2010	38,602	38,552
Paid-in capital	102,523,424	102,251,027
Statutory reserve	4,962,052	5,301,918
Accumulated other comprehensive income	9,969,280	4,252,261
Retained earnings	27,470,582	41,500,015
Total Company stockholders' equity	144,963,940	153,343,773
NONCONTROLLING INTEREST	1,389,979	626,069
TOTAL EQUITY	146,353,919	153,969,842
TOTAL LIABILITIES AND EQUITY	\$185,147,338	\$175,898,554

The accompanying notes are an integral part of these consolidated financial statements.

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SMARTHEAT INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME AND COMPREHENSIVE INCOME (LOSS)
(UNAUDITED)

	NINE MONTHS ENDED SEPTEMBER 30,		THREE MONTHS ENDED SEPTEMBER 30,	
	2011	2010	2011	2010
Net sales	\$ 31,543,940	\$ 83,613,250	\$ 16,573,890	\$ 51,476,821
Cost of goods sold	21,025,243	54,177,914	11,263,003	33,061,854
Gross profit	10,518,697	29,435,336	5,310,887	18,414,967
Operating expenses				
Selling	6,611,522	5,972,651	2,409,435	3,335,303
General and administrative				
R&D	598,117	480,572	85,250	259,879
Bad debt	8,913,261	15,744	3,107,589	(38,484)
G&A expenses	8,550,170	4,126,152	2,244,025	1,840,058
Total operating expenses	24,673,070	10,595,119	7,846,299	5,396,756
Income (loss) from operations	(14,154,373)	18,840,217	(2,535,412)	13,018,211
Non-operating income (expenses)				
Interest income	166,419	322,462	33,925	117,853
Interest expense	(590,242)	(41,871)	(297,007)	(41,871)
Financial income (expense)	(54,999)	(36,430)	22,285	(17,427)
Foreign exchange transaction gain (loss)	(439,983)	24,652	(137,779)	68,323
Other income, net	548,995	134,446	224,766	52,060
Total non-operating income (expenses), net	(369,810)	403,259	(153,810)	178,938
Income (loss) before income tax	(14,524,183)	19,243,476	(2,689,222)	13,197,149
Income tax expense (benefit)	(5,159)	3,059,182	1,322,900	2,092,876
Net income (loss) before noncontrolling interest	(14,519,024)	16,184,294	(4,012,122)	11,104,273
Less: Income (loss) attributable to noncontrolling interest	(149,727)	(16,962)	(15,003)	(2,232)
Net income (loss) to SmartHeat Inc.	(14,369,297)	16,201,256	(3,997,119)	11,106,505
Other comprehensive item	5,717,019	1,931,721	2,091,719	1,418,870

Foreign currency translation gain				
Comprehensive Income (Loss)	\$ (8,652,278)	\$ 18,132,977	\$ (1,905,400)	\$ 12,525,375
Basic weighted average shares outstanding	38,582,342	32,804,292	38,601,939	32,811,125
Diluted weighted average shares outstanding	38,582,342	32,846,171	38,601,939	32,817,520
Basic earnings (loss) per share	\$ (0.37)	\$ 0.49	\$ (0.10)	\$ 0.34
Diluted earnings (loss) per share	\$ (0.37)	\$ 0.49	\$ (0.10)	\$ 0.34

The accompanying notes are an integral part of these consolidated financial statements.

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SMARTHEAT INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

NINE MONTHS ENDED
SEPTEMBER 30,
2011 2010

CASH FLOWS FROM OPERATING ACTIVITIES:

Income (loss) including noncontrolling interest	\$(14,519,024)	\$16,184,294
Adjustments to reconcile income (loss) including noncontrolling interest to net cash used in operating activities:		
Depreciation and amortization	1,252,981	709,544
Provision for bad debt	8,913,261	15,744
Unearned interest on accounts receivable	(71,118)	(74,520)
Stock compensation	272,447	160,959
Loss on disposal of fixed assets	9,548	-
Changes in deferred tax	(58,098)	(23,160)
(Increase) decrease in current assets:		
Accounts receivable	5,854,356	(17,807,291)
Retentions receivable	(232,191)	(1,547,759)
Advances to suppliers	(12,764,507)	(4,761,889)
Other receivables, prepayments and deposits	3,198,367	1,995,914
Inventories	(27,931,844)	(20,659,166)
Increase (decrease) in current liabilities:		
Accounts payable	3,807,969	3,635,847
Advance from customers	6,521,146	2,079,159
Taxes payable	(2,975,398)	608,861
Accrued liabilities and other payables	(2,700,390)	128,354
Net cash used in operating activities	(31,422,495)	(19,355,109)

CASH FLOWS FROM INVESTING ACTIVITIES:

Change in restricted cash	317,415	(12,593)
Acquisition of property & equipment	(2,453,889)	(3,277,320)
Advance for construction and equipment	(977,463)	-
Disposal of fixed assets	39,418	-
Acquisition of intangible asset	(106,971)	(170,689)
Deposit for land use right	-	(9,448,356)
Notes receivable	701,069	(404,449)
Other receivables-advance to third parties	(5,293,224)	-
Cash acquired from acquisition	448,849	-
Cash paid at acquisition	(13,588,207)	-
Construction in progress	(424,286)	(79,008)
Net cash used in investing activities	(21,337,289)	(13,392,415)

CASH FLOWS FROM FINANCING ACTIVITIES:

Warrants exercised	-	85,500
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Proceeds from short-term loans	6,461,314	4,407,357
Repayment to short-term loans	-	(4,407,357)
Other payables-advance from third parties	802,606	-
Cash contribution from noncontrolling interest	754,332	-
Payment on notes payable	(771,988)	(1,812,243)
Net cash provided by (used in) financing activities	7,246,264	(1,726,743)
EFFECT OF EXCHANGE RATE CHANGE ON CASH & EQUIVALENTS	964,251	230,366
NET DECREASE IN CASH & EQUIVALENTS	(44,549,269)	(34,243,901)
CASH & EQUIVALENTS, BEGINNING OF PERIOD	56,806,471	48,967,992
CASH & EQUIVALENTS, END OF PERIOD	\$12,257,202	\$14,724,091
Supplemental cash flow data:		
Income tax paid	\$1,661,821	\$1,634,509
Interest paid	\$563,269	\$137,787

The accompanying notes are an integral part of these consolidated financial statements.

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SMARTHEAT INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 2011 (UNAUDITED) AND 2010

1. ORGANIZATION AND DESCRIPTION OF BUSINESS

SmartHeat Inc., formerly known as Pacific Goldrim Resources, Inc. (the “Company” or “SmartHeat”), was incorporated on August 4, 2006, in the State of Nevada. The Company, through its operating subsidiaries in China and Germany, designs, manufactures, sells and services plate heat exchangers (“PHEs”), PHE Units, which combine PHEs with various pumps, temperature sensors, valves and automated control systems, heat meters and heat pumps for use in commercial and residential buildings.

On April 14, 2008, the Company entered into a Share Exchange Agreement (the “Share Exchange Agreement”) with Shenyang Taiyu Machinery and Electronic Equipment Co., Ltd. (“Taiyu”) and the Taiyu Shareholders. Pursuant to the Share Exchange Agreement, all of the equitable and legal rights, title and interests in and to Taiyu’s share capital of Yuan 25,000,000 were exchanged for 18,500,000 shares of SmartHeat’s common stock (the “Share Exchange”). Concurrent with the Share Exchange, one of SmartHeat’s shareholders cancelled 2,500,000 shares of the 6,549,900 issued and outstanding shares of SmartHeat common stock pursuant to a split-off agreement dated April 14, 2008. As a result of the Share Exchange, Taiyu became a wholly owned subsidiary of SmartHeat.

Prior to the acquisition of Taiyu, the Company was a non-operating public shell. Pursuant to Securities and Exchange Commission (“SEC”) rules, the merger or acquisition of a private operating company into or by a non-operating public shell with nominal net assets was considered a capital transaction rather than a business combination. Accordingly, for accounting purposes the transaction was treated as a reverse acquisition and recapitalization and pro-forma information was not presented. Transaction costs incurred in the reverse acquisition were expensed.

Taiyu was incorporated in Liaoning Province, China in July 2002. Taiyu manufactures and sells PHEs, PHE Units and heat meters. The Company is an authorized dealer of Sondex brand PHEs; Sondex is the second largest PHE plate manufacturer in the world.

On September 25, 2008, the Company entered into a Share Exchange Agreement (the “SanDeKe Agreement”) with Asialink (Far East) Limited (“Asialink”) to acquire all of the outstanding capital stock of SanDeKe Co., Ltd., a Shanghai-based manufacturer of PHEs (“SanDeKe”). The purchase price for SanDeKe was \$741,516. Under the terms of the SanDeKe Agreement, two shareholders of SanDeKe agreed not to compete with SanDeKe’s business for four years after SanDeKe was purchased.

On June 12, 2009, the Company incorporated a new subsidiary, SmartHeat Siping Beifang Energy Technology Co., Ltd. (“SmartHeat Siping”), to manufacture PHEs.

On June 16, 2009, Taiyu closed an asset purchase transaction with Siping Beifang Heat Exchanger Manufacture Co., Ltd. (“Siping Beifang”), a company organized under the laws of the People’s Republic of China (“PRC”), to purchase certain assets consisting of the plant, equipment and certain land use rights for RMB 54,000,000 (\$7,906,296). Taiyu then transferred all the acquired assets to SmartHeat Siping, the newly incorporated subsidiary. The Company paid RMB 7,250,000 (\$1,061,500) upon the completion of inventory inspection, with the remaining purchase consideration paid in full as of June 30, 2011.

On August 14, 2009, the Company formed Beijing SmartHeat Jinhui Energy Technology Co., Ltd. (“Jinhui”), a joint venture in Beijing with registered capital of RMB 10 million (\$1.46 million), to provide consulting services and expand the Company’s sales of PHEs into new industries and regions of China. SmartHeat owns 52% of Jinhui and

invested approximately \$765,000.

On April 7, 2010, the Company formed SmartHeat (China) Investment Co., Ltd. (“SmartHeat Investment”), an investment holding company and wholly owned subsidiary in Shenyang with registered capital of \$70 million.

On April 12, 2010, SmartHeat Investment formed SmartHeat (Shenyang) Energy Equipment Co., Ltd. (“SmartHeat Energy”), a wholly owned subsidiary in Shenyang with registered capital of \$30 million, for the research, development, manufacturing and sales of energy products.

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SMARTHEAT INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 2011 (UNAUDITED) AND 2010

On May 6, 2010, the Company formed SmartHeat (Shanghai) Trading Co., Ltd. (“SmartHeat Trading”) through a nominee to market and expand sales of the Company’s Taiyu-branded products. The Company made a capital contribution of \$1.5 million, and controls and is entitled to 100% of the profit or loss of SmartHeat Trading pursuant to an investment agreement dated February 1, 2010.

On January 7, 2011, the Company invested \$771,658 for 51% of the equity interest in Hohhot Ruicheng Technology Co., Ltd. (“Ruicheng”), a joint venture formed on December 2, 2010, in Hohhot City, China, for the design and manufacture of heat meters.

On March 3, 2011, the Company completed the acquisition of Gustrower Warmepumpen GmbH (“GWP”), a designer and manufacturer of high efficiency heat pumps in Germany, from Conergy AG for EUR 4,248,082 (\$5,898,887) paid at closing. This acquisition will extend the Company’s clean technology heating solutions into the rapidly growing heat pump markets in Europe and China, enabling its customers to purchase technologically advanced heat pumps at competitive prices.

On March 1, 2011, the Company entered into a purchase agreement with Shenyang Bingchuan Refrigerating Machine Limited Company, a Shenyang-based state-owned heat pump manufacturer and designer, which was renamed SmartHeat (Shenyang) Heat Pump Technology Co., Ltd. (“SmartHeat Pump”). The Company paid RMB 50 million (\$7.6 million) to acquire 95% of the equity interest in SmartHeat Pump, with the local government retaining the remaining 5% equity interest.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of SmartHeat’s U.S. parent, Taiyu, SanDeKe, SmartHeat Siping, Jinhui, SmartHeat Investment, SmartHeat Energy, SmartHeat Trading, Ruicheng, GWP and SmartHeat Pump. The “Company” refers collectively to SmartHeat’s U.S. parent, Taiyu, SanDeKe, SmartHeat Siping, Jinhui, SmartHeat Investment, SmartHeat Energy, SmartHeat Trading, Ruicheng, GWP and SmartHeat Pump. All significant intercompany accounts and transactions were eliminated in consolidation.

Noncontrolling Interest

The Company follows Financial Accounting Standards Board’s (“FASB”) Accounting Standards Codification (“ASC”) Topic 810, “Consolidation,” which established new standards governing the accounting for and reporting of noncontrolling interests (“NCIs”) in partially owned consolidated subsidiaries and the loss of control of subsidiaries. Certain provisions of this standard indicate, among other things, that NCIs, previously referred to as minority interests, be treated as a separate component of equity, not as a liability, as was previously the case, that increases and decreases in the parent’s ownership interest that leave control intact be treated as equity transactions rather than as step acquisitions or dilution gains or losses and that losses of a partially owned consolidated subsidiary be allocated to the NCI even when such allocation might result in a deficit balance. This standard also required changes to certain presentation and disclosure requirements. Losses attributable to the NCI in a subsidiary may exceed the NCI’s interests in the subsidiary’s equity. The excess attributable to the NCI is attributed to those interests. The NCI shall continue to be attributed its share of losses even if that attribution results in a deficit NCI balance.

Use of Estimates

In preparing the financial statements in conformity with U.S. generally accepted accounting principles (“U.S. GAAP”), management makes estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the dates of the financial statements, as well as the reported amounts of revenues and expenses during the reporting period. Significant estimates, required by management, include the recoverability of long-lived assets, allowance for doubtful accounts and the reserve for obsolete and slow-moving inventories. Actual results could differ from those estimates.

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SMARTHEAT INC. AND SUBSIDIARIES
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
 SEPTEMBER 30, 2011 (UNAUDITED) AND 2010

Cash and Equivalents

For purposes of the statement of cash flows, the Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. As of September 30, 2011, the Company maintained restricted cash of \$2.23 million in several bank accounts, of which \$1.46 million was cash deposits from customers for securing payment from such customers no later than the warranty period expiration and approximately \$0.77 million was deposits the Company paid to a commercial bank for the bank issuing bank acceptances to the Company's vendors. Of the total restricted cash at September 30, 2011, \$2.08 million will be released to the Company within one year. As of December 31, 2010, the Company maintained restricted cash of \$2.5 million in several bank accounts, of which \$1.05 million was cash deposits from customers for securing payment from such customers no later than the warranty period expiration and approximately \$1.40 million was deposits the Company paid to a commercial bank for the bank issuing bank acceptances to the Company's vendors. Of the total restricted cash at December 31, 2010, \$1.9 million will be released to the Company within one year.

The following table presents in U.S. dollars ("USD") the amount of cash and cash equivalents held by the Company as of September 30, 2011, and December 31, 2010, based on the jurisdiction where it is deposited. The Company's U.S. parent holds cash and cash equivalents in U.S. bank accounts denominated in USD.

As of September 30, 2011	United States	China	Germany	Total
Cash in bank	\$217,465	\$9,725,393	\$2,300,060	\$12,242,918
Cash on hand	-	14,284	-	14,284
Total cash	\$217,465	\$10,139,677	\$2,300,060	\$12,257,202
As of December 31, 2010				
Cash in bank	\$33,299,040	\$23,500,804	\$-	\$56,799,844
Cash on hand	-	6,627	-	6,627
Total cash	\$33,299,040	\$23,507,431	\$-	\$56,806,471

Accounts and Retentions Receivable

The Company maintains reserves for potential credit losses on accounts receivable. Management reviews the composition of accounts receivable and analyzes historical bad debts, customer concentrations, customer credit worthiness, current economic trends and changes in customer payment patterns to evaluate the adequacy of these reserves. Based on historical collection activity, the Company had allowances of \$11.8 million and \$2.3 million at September 30, 2011, and December 31, 2010, respectively.

At September 30, 2011, and December 31, 2010, the Company had retentions receivable from customers for product quality assurance of \$4.0 million and \$3.6 million, respectively. The retention rate varies from 5% to 20% of the sales price with variable terms from 3 to 24 months depending on the shipping date, and for PHE Units, the customer acceptance date, of the products and the number of heating seasons that the warranty period covers.

Accounts receivable is net of unearned interest of \$11,742 and \$81,041 at September 30, 2011, and December 31, 2010, respectively. Unearned interest is imputed interest on accounts receivable with due dates over 1 year from the invoice date discounted at the Company's borrowing rate, which was 6.56% at September 30, 2011, and 5.81% at December 31, 2010.

Advance to Suppliers

The Company makes advances to certain vendors to purchase its material and equipment. The advances are interest-free and unsecured.

Inventories

Inventories are valued at the lower of cost or market, with cost determined on a moving weighted average basis. Cost of work in progress and finished goods comprises direct material, direct labor and an allocated portion of production overheads.

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SMARTHEAT INC. AND SUBSIDIARIES
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
 SEPTEMBER 30, 2011 (UNAUDITED) AND 2010

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation. Expenditures for maintenance and repairs are expensed as incurred; additions, renewals and betterments are capitalized. When property and equipment are retired or otherwise disposed of, the related cost and accumulated depreciation are removed from the respective accounts and any gain or loss is included in operations. Depreciation of property and equipment is provided using the straight-line method with a 10% salvage value and estimated lives as follows:

Building	20 years
Vehicles	5 years
Office Equipment	5 years
Production Equipment	5-10 years

Land Use Rights

Right to use land is stated at cost less accumulated amortization. Amortization is provided using the straight-line method over 50 years.

Impairment of Long-Lived Assets

Long-lived assets, which include property, plant and equipment and intangible assets, are reviewed for impairment whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable.

Recoverability of long-lived assets to be held and used is measured by comparing the carrying amount of an asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated undiscounted future cash flows, an impairment charge is recognized based on the excess of the carrying amount over the fair value of the assets. Fair value generally is determined using the asset's expected future discounted cash flows or market value, if readily determinable. Based on its review, the Company believes that, as of September 30, 2011, and December 31, 2010, there were no significant impairments of its long-lived assets.

Warranties

The Company offers to all customers standard warranties on its products for one or two heating seasons depending on the terms negotiated. The Company accrues for warranty costs based on estimates of the costs that may be incurred under its warranty obligations. The warranty expense and related accrual is included in the Company's selling expenses and other payables respectively, and is recorded when revenue is recognized. Factors that affect the Company's warranty liability include the number of units sold, its estimates of anticipated rates of warranty claims, costs per claim and estimated support labor costs and the associated overhead. The Company periodically assesses the adequacy of its recorded warranty liabilities and adjusts the amounts as necessary.

Activity in the Company's warranty reserve as of and during the period ended September 30, 2011, and as of and during the year ended December 31, 2010, is as follows:

	2011	2010
Beginning balance	\$ 398,292	\$ 675,562

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Provisions made or adjusted	(137,000)	(277,270)
Actual costs incurred	(164,851)	-
Ending balance in current liabilities	\$ 96,441	\$ 398,292

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SMARTHEAT INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 2011 (UNAUDITED) AND 2010

Research and Development Costs

Research and development costs are expensed as incurred and included in general and administrative expenses. These costs primarily consist of cost of materials used and salaries paid for the development department of the Company and fees paid to third parties. Research and development costs for the nine months ended September 30, 2011 and 2010, were \$598,117 and \$480,572, respectively. Research and development costs for the three months ended September 30, 2011 and 2010, were \$85,250 and \$260,000, respectively.

Income Taxes

The Company utilizes Statement of Financial Accounting Standards (“SFAS”) No. 109, “Accounting for Income Taxes” (codified in FASB ASC Topic 740), which requires recognition of deferred tax assets and liabilities for expected future tax consequences of events included in the financial statements or tax returns. Under this method, deferred income taxes are recognized for the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

The Company follows the provisions of FASB Interpretation No. 48, “Accounting for Uncertainty in Income Taxes” (codified in FASB ASC Topic 740). When tax returns are filed, it is likely that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. The benefit of a tax position is recognized in the financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above is reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination.

Interest associated with unrecognized tax benefits is classified as interest expense and penalties are classified as selling, general and administrative expense in the statements of income. At September 30, 2011, and December 31, 2010, the Company had not taken any significant uncertain tax position on its tax return for 2010 and prior years or in computing its tax provision for 2010.

Revenue Recognition

The Company’s revenue recognition policies are in compliance with SEC Staff Accounting Bulletin (“SAB”) 104 (codified in FASB ASC Topic 605). Sales revenue is recognized when PHEs, heat meters and heat pumps are delivered, and for PHE Units when customer acceptance occurs, the price is fixed or determinable, no other significant obligations of the Company exist and collectability is reasonably assured. Payments received before all of the relevant criteria for revenue recognition met are recorded as unearned revenue.

The Company's sales generally provide for 30% of the purchase price on placement of an order, 30% on delivery, 30% upon installation and acceptance of the equipment after customer testing and 10% no later than the termination of the standard warranty period, which ranges from 3 to 24 months from the acceptance date.

Sales revenue is the invoiced value of goods, net of value-added tax ("VAT"). All of the Company's products sold in the PRC are subject to a VAT of 17% of the gross sales price. This VAT may be offset by the VAT paid by the Company on raw materials and other materials purchased in China and included in the cost of producing the Company's finished product. The Company recorded VAT payable and VAT receivable net of payments in the financial statements. The VAT tax return is filed offsetting the payables against the receivables. GWP, the Company's German subsidiary, is subject to 19% VAT.

Sales and purchases are recorded net of VAT collected and paid as the Company acts as an agent for the government. VAT taxes are not affected by the income tax holiday.

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At September 30, 2011, the Company had VAT receivable of \$1,355,642 for its subsidiaries in China, which the Company anticipates collecting within one year. The Company does not experience credit losses with respect to its VAT receivable because it is owed to the Company by the PRC government. The Company classifies its VAT receivable as a current asset because it is an asset that is reasonably expected to be realized (or sold or consumed) within one year or within the Company's normal operating cycle.

Sales returns and allowances were \$0 for the nine months ended September 30, 2011 and 2010. Sales returns and allowances were \$0 for the three months ended September 30, 2011 and 2010. The Company does not provide a right of return, price protection or any other concessions to its customers.

The Company provides a standard warranty to all customers, which is not considered an additional service; rather, an integral part of the product's sale. The Company believes the existence of its standard product warranty in a sales contract does not constitute a deliverable in the arrangement and thus there is no need to apply the EITF 00-21 (codified in FASB ASC Topic 605-25) separation and allocation model for a multiple deliverable arrangement. SFAS 5 (codified in FASB ASC Topic 450) specifically addresses the accounting for standard warranties and neither SAB 104 nor EITF 00-21 supersedes SFAS 5. The Company believes that accounting for its standard warranty pursuant to SFAS 5 does not impact revenue recognition because the cost of honoring the warranty can be reliably estimated.

The Company charges for after-sales services provided after the expiration of the warranty period, with after-sales services mainly consisting of cleaning PHEs and repairing and exchanging parts. The Company recognizes such revenue when service is provided. For the nine months ended September 30, 2011 and 2010, revenue from after-sales services after the expiration of the warranty period was \$349,300 and 74,000, respectively. For the three months ended September 30, 2011 and 2010, revenue from after-sales services after the expiration of the warranty period was \$209,100 and \$34,500, respectively.

Cost of Goods Sold

Cost of goods sold consists primarily of material costs and direct labor and manufacturing overhead that are directly attributable to the products. Write-down of inventories to the lower of cost or market is also recorded in cost of goods sold.

Advance from Customers

The Company records payments received from customers in advance of their future orders to advance account. Those orders normally are delivered within a reasonable period of time based upon contract terms with the customers.

Concentration of Credit Risk

Cash includes cash on hand and demand deposits in accounts maintained within China. Balances at financial institutions within China are not covered by insurance. The Company has not experienced any losses in such accounts.

Certain other financial instruments, which subject the Company to concentration of credit risk, consist of accounts and other receivables. The Company does not require collateral or other security to support these receivables. The Company conducts periodic reviews of its customers' financial condition and customer payment practices to minimize collection risk on accounts receivable.

The operations of the Company are located primarily in China. Accordingly, the Company's business, financial condition and results of operations may be influenced by the political, economic and legal environments in China, as well as by the general state of the PRC economy.

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Goodwill

Goodwill is the excess of purchase price and related costs over the value assigned to the net tangible and identifiable intangible assets of businesses acquired. In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets" ("Statement No. 142"), codified in ASC Topic 350, goodwill is not amortized but is tested for impairment, annually or when circumstances indicate a possible impairment may exist. Impairment testing is performed at a reporting unit level. An impairment loss generally would be recognized when the carrying amount of the reporting unit exceeds its fair value, with the fair value of the reporting unit determined using discounted cash flow ("DCF") analysis. A number of significant assumptions and estimates are involved in the application of the DCF analysis to forecast operating cash flows, including the discount rate, the internal rate of return and projections of realizations and costs to produce. Management considers historical experience and all available information at the time the fair values of its reporting units are estimated.

The excess of the purchase price for GWP over the fair value of the net assets acquired of \$5.1 million was recorded as goodwill. The excess of the purchase price for SmartHeat Pump over the fair value of the net assets acquired of \$5.6 million was recorded as goodwill. As of September 30, 2011, the Company concluded there was no impairment of goodwill for the following reasons: (1) the losses of the acquired businesses are temporary because the Company acquired GWP and SmartHeat Pump in March 2011 and is in the transition process of integrating operations and adjusting business strategies; (2) the Company expects the return on investment from the acquired businesses within three years and believes that its overall market share will be expanded with the contribution of sales and marketing resources from the acquired businesses; and (3) sales contracts for the products of the acquired businesses typically are entered into in the third and fourth calendar quarters.

Statement of Cash Flows

In accordance with SFAS No. 95, "Statement of Cash Flows," codified in FASB ASC Topic 230, cash flows from the Company's operations are calculated based upon the local currencies. As a result, amounts shown on the statement of cash flows may not necessarily agree with changes in the corresponding asset and liability on the balance sheet.

Basic and Diluted Earnings (Loss) per Share (EPS)

Basic EPS is computed by dividing income available to common shareholders by the weighted average number of common shares outstanding for the period. Diluted EPS is computed similarly, except that the denominator is increased to include the number of additional common shares that would have been outstanding if the potential common shares had been issued and if the additional common shares were dilutive. Diluted EPS are based on the assumption that all dilutive convertible shares and stock options were converted or exercised. Dilution is computed by applying the treasury stock method. Under this method, options and warrants are assumed to have been exercised at the beginning of the period (or at the time of issuance, if later), and as if funds obtained thereby were used to purchase common stock at the average market price during the period.

The following table presents a reconciliation of basic and diluted earnings (loss) per share for the nine and three months ended September 30, 2011 and 2010:

Nine months ended September	Three months ended September
30,	30,

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	2011	2010	2011	2010
Net income (loss)	\$ (14,369,297)	\$ 16,201,256	\$ (3,997,119)	\$ 11,106,505
Weighted average shares outstanding - basic	38,582,342	32,804,292	38,601,939	32,811,125
Effect of dilutive securities:				
Unexercised warrants and options	-	41,879	-	6,395
Weighted average shares outstanding - diluted	38,582,342	32,846,171	38,601,939	32,817,520
Earnings (loss) per share - basic	\$ (0.37)	\$ 0.49	\$ (0.10)	\$ 0.34
Earnings (loss) per share - diluted	\$ (0.37)	\$ 0.49	\$ (0.10)	\$ 0.34

Basic and diluted earnings (loss) per share are the same for the nine and three months ended September 30, 2011 and 2010, because the common stock equivalent of the convertible securities outstanding, consisting of unexercised warrants issued to investors and options issued to the Company's directors and an officer, are antidilutive and, accordingly, were excluded from the computation of diluted earnings (loss) per share. At September 30, 2011 and 2010, options to purchase 35,000 and 6,666 shares of common stock were outstanding and exercisable, respectively, and warrants to purchase 0 and 96,775 shares of common stock were outstanding and exercisable, respectively (see Note 16).

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Fair Value of Financial Instruments

For certain of the Company's financial instruments, including cash and equivalents, restricted cash, accounts receivable, accounts payable, accrued liabilities and short-term debt, the carrying amounts approximate their fair values due to their short maturities. ASC Topic 820, "Fair Value Measurements and Disclosures," requires disclosure of the fair value of financial instruments held by the Company. ASC Topic 825, "Financial Instruments," defines fair value, and establishes a three-level valuation hierarchy for disclosures of fair value measurement that enhances disclosure requirements for fair value measures. The carrying amounts reported in the consolidated balance sheets for receivables and current liabilities each qualify as financial instruments and are a reasonable estimate of their fair values because of the short period of time between the origination of such instruments and their expected realization and their current market rate of interest. The three levels of valuation hierarchy are defined as follows:

- § Level 1 inputs to the valuation methodology are quoted prices for identical assets or liabilities in active markets.
- § Level 2 inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.
- § Level 3 inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The Company analyzes all financial instruments with features of both liabilities and equity under ASC 480, "Distinguishing Liabilities from Equity," and ASC 815.

As of September 30, 2011, and December 31, 2010, the Company did not identify any assets and liabilities that are required to be presented on the balance sheet at fair value.

Foreign Currency Translation and Comprehensive Income (Loss)

The accounts of the U.S. parent company are maintained in USD. The functional currency of the Company's China subsidiaries is the Chinese Yuan Renminbi ("RMB") and the functional currency of GWP, the Company's subsidiary in Germany, is the Euro ("EUR"). The accounts of the China subsidiaries and German subsidiary were translated into USD in accordance with SFAS No. 52, "Foreign Currency Translation" (codified in FASB ASC Topic 830). According to SFAS No. 52, all assets and liabilities were translated at the exchange rate on the balance sheet date, stockholders' equity was translated at the historical rates and statement of operations items were translated at the weighted average exchange rate for the year. The resulting translation adjustments are reported under other comprehensive income in accordance with SFAS No. 130, "Reporting Comprehensive Income" (codified in FASB ASC Topic 220).

The RMB to USD exchange rates in effect as of September 30, 2011, and December 31, 2010, were USD\$1 = RMB6.3549 and USD\$1 = RMB6.6227, respectively. The weighted average RMB to USD exchange rates in effect for the nine months ended September 30, 2011 and 2010, were USD\$1 = RMB6.4975 and USD\$1 = RMB6.8068, respectively. The exchange rates used in translation from RMB to USD were published by the People's Bank of the People's Republic of China.

The EUR to USD exchange rate in effect as of September 30, 2011, was USD\$1 = EUR0.7354. The weighted average EUR to USD exchange rate in effect for the nine months ended September 30, 2011, was USD\$1 = EUR0.7027. The exchange rates used in translation from EUR to USD were published by OANDA Rates.

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Stock-Based Compensation

The Company accounts for its stock-based compensation in accordance with SFAS No. 123R, “Share-Based Payment, an Amendment of FASB Statement No. 123” (codified in FASB ASC Topics 718 and 505). The Company recognizes in the income statement the grant date fair value of stock options and other equity-based compensation issued to employees and non-employees.

Segment Reporting

SFAS No. 131, “Disclosures about Segments of an Enterprise and Related Information” (codified in FASB ASC Topic 280), requires use of the “management approach” model for segment reporting. The management approach model is based on the way a company’s management organizes segments within the company for making operating decisions and assessing performance. Reportable segments are based on products and services, geography, legal structure, management structure, or any other manner in which management disaggregates a company.

SFAS No. 131 has no effect on the Company’s financial statements as management determined that substantially all of the Company’s operations are conducted in one industry segment.

The following table sets forth a summary of sales by product line for the nine and three months ended September 30, 2011 and 2010:

	Nine months ended September 30,		Three months ended September 30,	
	2011	2010	2011	2010
	(in millions)			
PHEs	\$ 14.19	\$ 40.89	\$ 7.12	\$ 23.68
PHE Units	13.23	33.81	7.95	19.98
Heat meters	2.45	8.91	0.75	7.82
Heat pumps	1.67	-	0.75	-
	\$ 31.54	\$ 83.61	\$ 16.57	\$ 51.48

Reclassifications

Certain prior year amounts were reclassified to conform to the manner of presentation in the current period.

New Accounting Pronouncements

In June 2011, FASB issued ASU 2011-05, “Comprehensive Income (ASC Topic 220): Presentation of Comprehensive Income.” Under the amendments in this update, an entity has the option to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. Under both options, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income and a total amount for comprehensive income. In a single continuous statement, the entity is required to present the components of net income and total net income, the components of other comprehensive income and a total for other comprehensive income, along with the

total of comprehensive income in that statement. In the two-statement approach, an entity is required to present components of net income and total net income in the statement of net income. The statement of other comprehensive income should immediately follow the statement of net income and include the components of other comprehensive income and a total for other comprehensive income, along with a total for comprehensive income. In addition, the entity is required to present on the face of the financial statements reclassification adjustments for items that are reclassified from other comprehensive income to net income in the statement(s) where the components of net income and the components of other comprehensive income are presented. The amendments in this update should be applied retrospectively and are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. The Company is currently assessing the effect that the adoption of this pronouncement will have on its financial statements.

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3. INVENTORIES

Inventories at September 30, 2011, and December 31, 2010, were as follows:

	2011	2010
Raw materials	\$ 34,946,366	\$ 15,803,040
Work in process	1,675,221	3,157,799
Finished goods	21,586,378	7,624,523
Total	\$ 58,207,965	\$ 26,585,362

4. NOTES RECEIVABLE – BANK ACCEPTANCES

The Company sold goods to its customers and received commercial notes (bank acceptance) from them in lieu of payments for accounts receivable. The Company discounted the commercial notes with the bank or endorsed the commercial notes to vendors for payment of their own obligations or to get cash from third parties. Most of the commercial notes have a maturity of less than six months. At September 30, 2011, and December 31, 2010, the Company had notes receivable of \$802,075 and \$1,457,457, respectively. As of September 30, 2011, the Company is contingently liable for the notes endorsed to vendors in the amount of \$423,000.

5. PROPERTY AND EQUIPMENT, NET

Property and equipment consisted of the following at September 30, 2011, and December 31, 2010:

	2011	2010
Building	\$ 4,748,457	\$ 4,556,445
Production equipment	7,234,813	3,923,521
Office equipment	966,0078	794,816
Vehicles	946,547	711,798
Total	13,895,825	9,986,580
Less: Accumulated depreciation	(2,465,993)	(1,605,561)
Net	\$ 11,429,832	\$ 8,381,019

Depreciation for the nine months ended September 30, 2011 and 2010, was \$821,800 and \$518,700, respectively. Depreciation for the three months ended September 30, 2011 and 2010, was \$300,200 and \$119,600, respectively.

6. OTHER RECEIVABLES, PREPAYMENTS AND DEPOSITS

Other receivables, prepayments and deposits consisted of the following at September 30, 2011, and December 31, 2010, respectively:

	2011	2010
Advanced to third parties	\$ 5,293,224	\$ 2,076,862
Deposit for public bids of sales contracts	1,196,958	846,739
Deposit for acquisition of SmartHeat Pump	-	1,834,600
	611,391	115,542

Prepayment for freight and related insurance expenses		
Other deposits	87,957	53,289
Advance to employees	1,197,462	600,427
Other	1,151,528	774,313
Total	\$ 9,538,520	6,301,772

Advanced to third parties were short-term advances to unrelated parties with payment usually due within a year and includes advance to Siping Beifang Heat Exchanger Manufacture Co., Ltd. ("Siping Beifang", see Note 1) of RMB 22 million (\$3.5 million), non-interest bearing and due on December 9, 2011. Deposits for public bidding represented the deposits for bidding on expected contracts, which will be returned to the Company after the bidding process is completed, usually within three to four months from the payment date. Prepayment for freight and related insurance expenses represented prepaid shipping and freight insurance expenses for customers and is generally repaid upon customer receipt of products. Deposits mainly consisted of deposits for rents, payroll expense and utilities. Advanced to employees represented short-term loans to employees and advances for business trips and related expenses. Other receivables, prepayments and deposits are reimbursed or settled within 12 months.

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7. INTANGIBLE ASSETS

Intangible assets consisted mainly of land use rights, trademark, computer software, know-how technology, customer list and covenant not to compete. All land in the PRC is government-owned and cannot be sold to any individual or company. However, the government grants the user a "land use right" to use the land. The Company acquired land use rights during 2005 for \$440,000 (RMB 3,549,682). In June 2009, the Company acquired land use rights for \$3.1 million from Siping Beifang. In November 2010, the Company's subsidiary, SmartHeat Energy, acquired land use rights for \$10.1 million. The Company has the right to use the land for 50 years and is amortizing such rights on a straight-line basis for 50 years.

Intangible assets consisted of the following at September 30, 2011, and December 31, 2010, respectively:

	2011	2010
Land use rights	\$ 14,507,293	\$ 13,884,020
Know-how technology	874,421	275,345
Customer list	206,119	197,784
Covenant not to compete	112,128	107,593
Software	513,566	403,680
Trademark	286,429	-
Total	16,499,956	14,868,422
Less: Accumulated amortization	(1,100,764)	(624,688)
Net	\$ 15,399,192	\$ 14,243,734

Amortization of intangible assets for the nine months ended September 30, 2011 and 2010, was \$430,600 and \$191,000, respectively. Amortization of intangible assets for the three months ended September 30, 2011 and 2010, was \$151,300 and \$67,000, respectively. Annual amortization expense for the next five years from September 30, 2011, is expected to be \$588,000, \$566,000, \$440,000, \$421,000 and \$405,000.

8. CONSTRUCTION IN PROGRESS

The Company had construction in progress of \$518,433 at September 30, 2011, with two ongoing projects. SmartHeat Energy is building a factory with a total estimated cost of \$9 million, of which the Company has paid \$451,000 as of September 30, 2011, and expects this construction to be completed by June 2012. SmartHeat Siping has a construction project of \$68,000 for the laying of a foundation for its machinery installation. This foundation project will be completed in 2011, with remaining cost to complete of \$20,000.

9. TAXES PAYABLE

Taxes payable consisted of the following at September 30, 2011, and December 31, 2010:

	2011	2010
Income tax payable	\$ -	\$ 1,866,569
Value-added tax payable	-	117,779
Other taxes payable	26,357	16,108
Total taxes payable	\$ 26,357	\$ 2,000,456

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10. ACCRUED LIABILITIES AND OTHER PAYABLES

Accrued liabilities and other payables consisted of the following at September 30, 2011, and December 31, 2010:

	2011	2010
Advance from third parties	\$ 802,606	\$ 132,890
Payable to Siping Beifang	-	1,238,166
Other payables	1,211,577	952,593
Warranty reserve (See Note 2)	96,441	398,292
Accrued expenses	113,314	317,840
Total	\$ 2,223,938	\$ 30.21

In March 2017, the 2007 Plan reached the end of its ten-year term and expired. On April [], 2018, upon recommendation of the Compensation Committee, our Board approved and adopted, subject to the approval of the Company's stockholders at the 2018 Annual Meeting, the 2018 Plan. As of December 31, 2017, the Company had 5,951,055 shares that would have been available for future issuance under the 2007 Plan had it not expired.

Required Vote

You may vote for or against this Proposal No. 4, or you may abstain. Approval of this proposal requires the affirmative vote (FOR) of a majority of the shares present or represented by proxy at the 2018 Annual Meeting and entitled to vote thereon. Abstentions will have the same effect as a vote against this proposal. Broker non-votes will have no effect on the outcome of this proposal.

Recommendation of Our Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR PROPOSAL NO. 4.

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PROPOSAL NO. 5

**APPROVAL OF AN AMENDMENT TO THE COMSCORE, INC. AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION TO INCREASE THE NUMBER OF SHARES OF COMMON
STOCK AUTHORIZED FOR ISSUANCE THEREUNDER**

The Board of Directors has declared advisable and directed that there be submitted to the stockholders at the 2018 Annual Meeting a proposed amendment (the "Amendment") to Article IV of the comScore, Inc. Amended and Restated Certificate of Incorporation (the "Charter") that would increase the number of shares of Common Stock authorized for issuance thereunder from 100,000,000 to 150,000,000. The additional shares of Common Stock, if approved for issuance pursuant to the approval of the Amendment, would be identical in terms to the shares of Common Stock currently authorized under the Charter.

The Form of Certificate of Amendment attached as Annex B hereto and incorporated herein by reference reflects the changes that would be implemented to our Charter if the Amendment is approved.

Purpose of and Effects of the Proposed Amendment

In connection with the Company's growth in recent periods through both acquisitions and organically, including the January 2016 merger with Rentrak Corporation, as well as the Company's proposed settlement of certain litigation matters and the Company's January 2018 financing arrangement involving the issuance of senior secured convertible notes, the Company has issued or reserved for issuance a significant number of shares of Common Stock.

In addition, due to our delay in filing periodic reports with the SEC prior to the filing of our 2017 10-K, we have been unable to use our registration statement on Form S-8 to grant equity awards to our directors and employees since February 2016. Further, in March 2017, our 2007 Equity Incentive Plan reached the end of its ten-year term and expired. As described under Proposal No. 4, we are asking our stockholders to approve the 2018 Equity and Incentive Plan at the 2018 Annual Meeting, and if so approved, we expect to grant additional equity awards. As of March 30, 2018, in accordance with our compensation program for employees and directors, we anticipate making equity awards having an aggregate value of approximately \$47.1 million upon approval of the 2018 Equity and Incentive Plan. These awards were recommended for employees and directors in 2016, 2017 and 2018 but were not granted as of March 30, 2018. Based on the closing bid price of our Common Stock on the OTC Pink Tier on March 29, 2018, \$24.07 per share, we expect to award approximately 1,956,000 shares of Common Stock in connection with the employee and director equity awards known as of March 30, 2018. The actual number of shares of Common Stock issued will be based upon the prevailing trading price of our Common Stock at the time the grants are actually made.

The Charter currently authorizes the issuance of up to 100,000,000 shares of Common Stock. As of April 13, 2018 and, to the extent applicable, based on the closing bid price of our Common Stock on the OTC Pink Tier on such date, the Company had [] shares of Common Stock issued and outstanding, [] shares of Common Stock underlying outstanding equity awards, [] shares of Common Stock subject to issuance in pending litigation settlements, and [] shares of Common Stock reserved for issuance upon potential conversion of, and payment of interest on, the Company's outstanding senior secured convertible notes, in addition to the shares expected to be issued pursuant to awards recommended for employees and directors in 2016, 2017 and 2018 as described above. As of such date, [] shares of Common Stock were also held as treasury shares. For certain of these items, including pending litigation settlements and recommended awards for employees and directors, the actual number of shares issued will be based upon the prevailing trading price of our Common Stock at the time of issuance meaning that any decrease in the trading price of our Common Stock will increase the number of shares needed to deliver the prescribed value. Moreover, these estimates do not include any shares for incentive awards to employees and directors for performance

in 2018 or future years.

Furthermore, and as previously disclosed, the Company has the right to conduct a rights offering for up to \$150.0 million in aggregate principal amount of senior secured convertible notes. If we were to issue \$150.0 million in aggregate principal amount of such convertible notes, the terms of which would be substantially similar to the Company's outstanding senior secured convertible notes, up to 5,357,143 shares of Common Stock would be issuable upon conversion thereof, and interest thereon would also be payable, at our option, through the issuance of additional shares of Common Stock.

As a result of the foregoing, the Company does not believe that the number of currently authorized shares of Common Stock available for future issuance provides comScore with the necessary flexibility to be able to continue to grow the Company and its operations in 2018 and future years. We believe that the Amendment would provide the Company with sufficient shares of Common Stock for future issuance to meet its needs for the foreseeable future, including in connection with the above-mentioned litigation settlements, convertible notes, pending and contemplated employee and director awards, and potential rights offering of senior secured convertible notes.

The principal purpose of the Amendment is to increase the number of shares of Common Stock available for future issuance, including for future financing transactions, director and employee compensation plans, and other general corporate purposes. In addition, from time to time, the Company may engage in discussions concerning possible acquisitions that could involve the issuance of securities by the Company. Market conditions, changes in our financial condition or other circumstances could result in a determination by the Company in the future to issue additional shares of Common Stock or securities convertible into shares of Common Stock.

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If approved, the increased number of authorized shares of Common Stock would be available for issuance from time to time for such purposes and consideration as the Board of Directors may determine to be appropriate. No further vote of our stockholders would be required for the issuance of these shares of Common Stock, except as provided under the rules of any national securities exchange or automated quotation system on which the Common Stock may be listed or quoted. The availability of additional shares for issuance, without the delay and expense of obtaining the approval of stockholders at a special meeting, will provide the Company greater flexibility in acting upon proposed transactions or for other appropriate purposes.

Future issuances of Common Stock would increase the number of shares of Common Stock issued and outstanding, thereby decreasing the percentage ownership in comScore (for voting, distributions and all other purposes) represented by existing shares of Common Stock. The availability for issuance of the additional shares of Common Stock and issuance thereof may be viewed as having the effect of discouraging an unsolicited attempt by another person or entity to acquire control of comScore.

If the Amendment is approved by our stockholders at the 2018 Annual Meeting, the Company expects that a Certificate of Amendment, in the form attached hereto as Annex B, would be filed with the Secretary of State of the State of Delaware as soon as practicable after the 2018 Annual Meeting. Without any further action on the part of our stockholders, the Amendment would become effective on the date of any such filing. Prior to any such filing, the Board of Directors reserves the right to delay or abandon the Amendment at its discretion.

Required Vote

You may vote for or against this Proposal No. 5, or you may abstain. Approval of this proposal requires the affirmative vote (FOR) of a majority of the outstanding shares of Common Stock. Abstentions and broker non-votes will have the effect of a vote against this proposal.

Recommendation of Our Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR PROPOSAL NO. 5.

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PROPOSAL NO. 6
RATIFICATION OF APPOINTMENT OF
INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Our Audit Committee has appointed Deloitte & Touche LLP as our independent registered public accounting firm for the year ending December 31, 2018. Deloitte & Touche LLP has served as our independent audit firm since 2017 and audited our financial statements for the fiscal year ended December 31, 2017. For more information about services Deloitte & Touche LLP provided to us, as well as our procedures for approving such services, see **Principal Accounting Fees and Services Pre-Approval Policies and Procedures** on page [] of this proxy statement. A representative of Deloitte & Touche LLP is expected to be present at our 2018 Annual Meeting and will have an opportunity to make a statement and respond to appropriate questions from stockholders.

Ratification of the appointment of Deloitte & Touche LLP as our independent registered public accounting firm is not required by our bylaws or other applicable legal requirements. However, our Board of Directors is submitting the appointment of Deloitte & Touche LLP to our stockholders for ratification as a matter of good corporate practice. If our stockholders fail to ratify the appointment, the Audit Committee will reconsider whether to retain the firm. Even if the appointment is ratified, the Audit Committee may, in its discretion, direct the appointment of a different independent registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of the Company and our stockholders.

Required Vote

The affirmative vote (**FOR**) of a majority of the shares present or represented by proxy at the 2018 Annual Meeting and entitled to vote is required to ratify the appointment of Deloitte & Touche LLP as our independent registered public accounting firm for the year ending December 31, 2018. Abstentions will have the same effect as a vote against this proposal. Broker non-votes will have no effect on the outcome of this proposal.

Recommendation of Our Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR PROPOSAL NO. 6.

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OTHER INFORMATION

Other Matters to be Presented at the Annual Meeting

We do not know of any matters to be presented at our 2018 Annual Meeting other than those described in this proxy statement. If any other matters are properly brought before the annual meeting, proxies will be voted in accordance with the best judgment of the person or persons voting the proxies.

Security Holder Communication with Board Members

Any holder of our common stock may contact the Board of Directors, a committee of the Board of Directors or a specified individual director by writing to the attention of the Board of Directors (or a specified individual director or committee) and sending such communication to the attention of our Corporate Secretary at our executive offices as identified in this proxy statement. Each communication from a stockholder should include the following information in order to permit us to confirm your status as a security holder and enable us to send a response if deemed appropriate:

the name, mailing address and telephone number of the security holder sending the communication;

the number and type of our securities owned by such security holder; and

if the security holder is not a record owner of our securities, the name of the record owner of our securities beneficially owned by the security holder.

Our Corporate Secretary will forward all appropriate communications to the Board of Directors, the applicable Committee of the Board of Directors or individual members of the Board of Directors as specified in the communication. Our Corporate Secretary may, but is not required to, review all correspondence addressed to the Board of Directors, a committee of the Board of Directors or any individual member of the Board of Directors, for any inappropriate correspondence more suitably directed to management.

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Annex A

COMSCORE, INC.

2018 EQUITY AND INCENTIVE COMPENSATION PLAN

1. **Purpose.** The purpose of this Plan is to attract and retain non-employee Directors, Employees and certain consultants to the Company and its Subsidiaries, and to provide to such persons incentives and rewards for service and/or performance.

2. **Definitions.** As used in this Plan:

- (a) **Appreciation Right** means a right granted pursuant to **Section 5** of this Plan.
- (b) **Base Price** means the price to be used as the basis for determining the Spread upon the exercise of an Appreciation Right.
- (c) **Board** means the Board of Directors of the Company.
- (d) **Cash Incentive Award** means a cash award granted pursuant to **Section 8** of this Plan.
- (e) **Change in Control** has the meaning set forth in **Section 12** of this Plan.
- (f) **Code** means the Internal Revenue Code of 1986, as amended from time to time.
- (g) **Committee** means the Compensation Committee of the Board (or its successor(s)), or any other committee of the Board designated by the Board to administer this Plan pursuant to **Section 10** of this Plan.
- (h) **Common Stock** means the common stock, par value \$0.001 per share, of the Company or any security into which such common stock may be changed by reason of any transaction or event of the type referred to in **Section 11** of this Plan.
- (i) **Company** means comScore, Inc., a Delaware corporation, and its successors.
- (j) **Date of Grant** means the date provided for by the Committee on which a grant of Option Rights, Appreciation Rights, Performance Shares, Performance Units, Cash Incentive Awards, or other awards contemplated by **Section 9** of this Plan, or a grant or sale of Restricted Stock, Restricted Stock Units, or other awards contemplated by **Section 9** of this Plan, will become effective (which date will not be earlier than the date on which the Committee takes action with respect thereto).
- (k) **Director** means a member of the Board.
- (l) **Effective Date** means the date this Plan is approved by the Stockholders.

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- (m) **Employee** means any person, including officers and Directors, employed by the Company or any Subsidiary. Neither service as a Director nor payment of a director's fee by the Company will be sufficient to constitute employment by the Company or any Subsidiary.
- (n) **Evidence of Award** means an agreement, certificate, resolution or other type or form of writing or other evidence approved by the Committee that sets forth the terms and conditions of the awards granted under this Plan. An Evidence of Award may be in an electronic medium, may be limited to notation on the books and records of the Company and, unless otherwise determined by the Committee, need not be signed by a representative of the Company or a Participant.
- (o) **Exchange Act** means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, as such law, rules and regulations may be amended from time to time.
- (p) **Incentive Stock Option** means an Option Right that is intended to qualify as an incentive stock option under Section 422 of the Code or any successor provision.
- (q) **Management Objectives** means the measurable performance objective or objectives established pursuant to this Plan for Participants who have received grants of Performance Shares, Performance Units or Cash Incentive Awards or, when so determined by the Committee, Option Rights, Appreciation Rights, Restricted Stock, Restricted Stock Units, dividend equivalents or other awards pursuant to this Plan. If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company, or the manner in which it conducts its business, or other events or circumstances render the Management Objectives unsuitable, the Committee may in its discretion modify such Management Objectives or the acceptable levels of achievement, in whole or in part, as the Committee deems appropriate and equitable.
- (r) **Market Value per Share** means, as of any particular date, if the Common Stock is listed on any established stock exchange or traded on any established market, and unless otherwise determined by the Committee, the closing price of a share of Common Stock as quoted on such exchange or market on the date of determination, as reported in a source the Committee deems reliable. If there is no closing price for the Common Stock on the particular date, then the Market Value per Share will be the closing price on the last preceding date for which such quotation exists. If there is no regular public trading market for the shares of Common Stock, then the Market Value per Share shall be the fair market value as determined in good faith by the Committee. The Committee is authorized to adopt another fair market value pricing method provided such method is stated in the applicable Evidence of Award and is in compliance with the fair market value pricing rules set forth in Section 409A of the Code.
- (s) **Optionee** means the optionee named in an Evidence of Award evidencing an outstanding Option Right.
- (t) **Option Price** means the purchase price payable on exercise of an Option Right.

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- (u) Option Right means the right to purchase shares of Common Stock upon exercise of an award granted pursuant to **Section 4** of this Plan.
- (v) Participant means a person who is selected by the Committee to receive benefits under this Plan and who is at the time (i) an Employee, including a person who has agreed to commence serving in such capacity within 90 days of the Date of Grant, (ii) a consultant (provided that such person satisfies the Form S-8 definition of employee), or (iii) a non-employee Director.
- (w) Performance Period means, in respect of a Cash Incentive Award, Performance Share or Performance Unit, a period of time established pursuant to **Section 8** of this Plan within which the Management Objectives relating to such Cash Incentive Award, Performance Share or Performance Unit are to be achieved.
- (x) Performance Share means a bookkeeping entry that records the equivalent of one share of Common Stock awarded pursuant to **Section 8** of this Plan.
- (y) Performance Unit means a bookkeeping entry awarded pursuant to **Section 8** of this Plan that records a unit equivalent to \$1.00 or such other value as is determined by the Committee.
- (z) Person means any individual, entity, or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act).
- (aa) Plan means this comScore, Inc. 2018 Equity and Incentive Compensation Plan, as may be amended or amended and restated from time to time.
- (bb) Predecessor Plan means the comScore, Inc. 2007 Equity Incentive Plan, as amended and restated from time to time.
- (cc) Restricted Stock means shares of Common Stock granted or sold pursuant to **Section 6** of this Plan as to which neither the substantial risk of forfeiture nor the prohibition on transfers has expired.
- (dd) Restricted Stock Units means an award made pursuant to **Section 7** of this Plan of the right to receive shares of Common Stock, cash or a combination thereof at the end of the applicable Restriction Period.
- (ee) Restriction Period means the period of time during which Restricted Stock Units are subject to restrictions, as provided in **Section 7** of this Plan.
- (ff) Spread means the excess of the Market Value per Share on the date when an Appreciation Right is exercised over the Base Price provided for with respect to the Appreciation Right.
- (gg) Stockholder means an individual or entity that owns one or more shares of Common Stock.

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(hh) **Subsidiary** means a corporation, company or other entity (i) more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or (ii) which does not have outstanding shares or securities (as may be the case in a partnership, joint venture, limited liability company, unincorporated association or other similar entity), but more than 50% of whose ownership interest representing the right generally to make decisions for such other entity is, now or hereafter, owned or controlled, directly or indirectly, by the Company; provided, however, that for purposes of determining whether any person may be a Participant for purposes of any grant of Incentive Stock Options, **Subsidiary** means any corporation in which the Company at the time owns or controls, directly or indirectly, more than 50% of the total combined Voting Power represented by all classes of stock issued by such corporation.

(ii) **Voting Power** means, at any time, the combined voting power of the then-outstanding securities entitled to vote generally in the election of Directors in the case of the Company or members of the board of directors or similar body in the case of another entity.

3. Shares Available Under this Plan.

(a) Maximum Shares Available Under this Plan.

- (i) Subject to adjustment as provided in **Section 11** of this Plan and the share counting rules set forth in **Section 3(b)** of this Plan, the number of shares of Common Stock available under this Plan for awards of (A) Option Rights or Appreciation Rights, (B) Restricted Stock, (C) Restricted Stock Units, (D) Performance Shares or Performance Units, (E) awards contemplated by **Section 9** of this Plan, or (F) dividend equivalents paid with respect to awards made under this Plan will not exceed in the aggregate 10,650,000 shares of Common Stock. Such shares may be shares of original issuance or treasury shares or a combination of the foregoing.
 - (ii) The aggregate number of shares of Common Stock available under **Section 3(a)(i)** of this Plan will be reduced by (A) one share of Common Stock for every one share of Common Stock subject to an award of Option Rights or Appreciation Rights granted under this Plan, and (B) two shares of Common Stock for every one share of Common Stock subject to an award other than of Option Rights or Appreciation Rights granted under this Plan.
- (b) Share Counting Rules.
- (i) Except as provided in **Section 22** of this Plan, if any award granted under this Plan (in whole or in part) is cancelled or forfeited, expires, is settled for cash, or is unearned, the shares of Common Stock subject to such award will, to the extent of such cancellation, forfeiture, expiration, cash settlement, or unearned amount, again be available under **Section 3(a)(i)** above (at a rate of one share of Common Stock for every one share of Common Stock subject to awards of Option Rights or Appreciation Rights and two shares of Common Stock for every one share of Common Stock subject to awards other than of Option Rights or Appreciation Rights).

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- (ii) If, after December 31, 2017, any shares of Common Stock subject to an award granted under the Predecessor Plan are forfeited, or an award granted under the Predecessor Plan (in whole or in part) is cancelled or forfeited, expires, is settled for cash, or is unearned, the shares of Common Stock subject to such award will, to the extent of such cancellation, forfeiture, expiration, cash settlement, or unearned amount, be available for awards under this Plan (at a rate of one share of Common Stock for every one share of Common Stock subject to such award).

- (iii) Notwithstanding anything to the contrary contained in this Plan: (A) shares of Common Stock withheld by the Company, tendered or otherwise used in payment of the Option Price of an Option Right will not be added (or added back, as applicable) to the aggregate number of shares of Common Stock available under **Section 3(a)(i)** of this Plan; (B) shares of Common Stock withheld by the Company, tendered or otherwise used to satisfy tax withholding with respect to awards other than as described in clause (C) will not be added (or added back, as applicable) to the aggregate number of shares of Common Stock available under **Section 3(a)(i)** of this Plan; (C) shares of Common Stock withheld by the Company, tendered or otherwise used prior to the tenth anniversary of the Effective Date to satisfy tax withholding with respect to awards other than Option Rights or Appreciation Rights shall be added back (but only to the extent such withholding did not exceed the minimum amounts of tax required to be withheld) to the aggregate number of shares of Common Stock available under **Section 3(a)(i)** of this Plan; (D) shares of Common Stock subject to an Appreciation Right that are not actually issued in connection with the settlement of such Appreciation Right on the exercise thereof, will not be added back to the aggregate number of shares of Common Stock available under **Section 3(a)(i)** of this Plan; and (E) shares of Common Stock reacquired by the Company on the open market or otherwise using cash proceeds from the exercise of Option Rights will not be added (or added back, as applicable) to the aggregate number of shares of Common Stock available under **Section 3(a)(i)** of this Plan.

- (iv) If, under this Plan, a Participant has elected to give up the right to receive compensation in exchange for shares of Common Stock based on fair market value, such shares of Common Stock will not count against the aggregate limit under **Section 3(a)(i)** of this Plan.

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(c) **Limit on Incentive Stock Options.** Notwithstanding anything to the contrary contained in this Plan, and subject to adjustment as provided in **Section 11** of this Plan, the aggregate number of shares of Common Stock actually issued or transferred by the Company upon the exercise of Incentive Stock Options will not exceed 10,650,000 shares of Common Stock.

(d) **Individual Director Limit.** Notwithstanding anything to the contrary contained in this Plan, and subject to adjustment as provided in **Section 11** of this Plan, in no event will any non-employee Director in any one calendar year be granted compensation for such service having an aggregate maximum value (measured at the Date of Grant as applicable, and calculating the value of any awards under this Plan based on the grant date fair value for financial reporting purposes) in excess of \$900,000.

4. Option Rights. The Committee may, from time to time and upon such terms and conditions as it may determine, authorize the granting to Participants of Option Rights. Each such grant may utilize any or all of the authorizations, and will be subject to all of the requirements, contained in the following provisions:

(a) Each grant will specify the number of shares of Common Stock to which it pertains subject to the limitations set forth in **Section 3** of this Plan.

(b) Each grant will specify an Option Price per share of Common Stock, which (except with respect to awards under **Section 22** of this Plan) may not be less than the Market Value per Share on the Date of Grant.

(c) Each grant will specify whether the Option Price will be payable (i) in cash, by check acceptable to the Company or by wire transfer of immediately available funds, (ii) by the actual or constructive transfer to the Company of shares of Common Stock owned by the Optionee having a value at the time of exercise equal to the total Option Price, (iii) subject to any conditions or limitations established by the Committee, by the withholding of shares of Common Stock otherwise issuable upon exercise of an Option Right pursuant to a net exercise arrangement (it being understood that, solely for purposes of determining the number of treasury shares held by the Company, the shares of Common Stock so withheld will not be treated as issued and acquired by the Company upon such exercise), (iv) by a combination of such methods of payment, or (v) by such other methods as may be approved by the Committee.

(d) To the extent permitted by law, any grant may provide for deferred payment of the Option Price from the proceeds of sale through a bank or broker on a date satisfactory to the Company of some or all of the shares of Common Stock to which such exercise relates.

(e) Successive grants may be made to the same Participant whether or not any Option Rights previously granted to such Participant remain unexercised.

(f) Each grant will specify the period or periods of continuous service by the Optionee with the Company or any Subsidiary, if any, that is necessary before any Option Rights or installments thereof will become exercisable. Option Rights may provide for continued vesting or the earlier exercise of such Option Rights, including in the event of the retirement, death or disability of a Participant or in the event of a Change in Control.

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- (g) Any grant of Option Rights may specify Management Objectives that must be achieved as a condition to the exercise of such rights.
- (h) Option Rights granted under this Plan may be (i) options, including Incentive Stock Options, that are intended to qualify under particular provisions of the Code, (ii) options that are not intended to so qualify, or (iii) combinations of the foregoing. Incentive Stock Options may only be granted to Participants who meet the definition of employees under Section 3401(c) of the Code.
- (i) No Option Right will be exercisable more than 10 years from the Date of Grant. The Committee may provide in any Evidence of Award for the automatic exercise of an Option Right upon such terms and conditions as established by the Committee.
- (j) Option Rights granted under this Plan may not provide for any dividends or dividend equivalents thereon.
- (k) Each grant of Option Rights will be evidenced by an Evidence of Award. Each Evidence of Award will be subject to this Plan and will contain such terms and provisions, consistent with this Plan, as the Committee may approve.

5. Appreciation Rights.

- (a) The Committee may, from time to time and upon such terms and conditions as it may determine, authorize the granting to any Participant of Appreciation Rights. An Appreciation Right will be the right of the Participant to receive from the Company an amount determined by the Committee, which will be expressed as a percentage of the Spread (not exceeding 100%) at the time of exercise.
- (b) Each grant of Appreciation Rights may utilize any or all of the authorizations, and will be subject to all of the requirements, contained in the following provisions:
 - (i) Each grant may specify that the amount payable on exercise of an Appreciation Right will be paid by the Company in cash, shares of Common Stock or any combination thereof.
 - (ii) Any grant may specify that the amount payable on exercise of an Appreciation Right may not exceed a maximum specified by the Committee on the Date of Grant.
 - (iii) Any grant may specify waiting periods before exercise and permissible exercise dates or periods.

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- (iv) Each grant will specify the period or periods of continuous service by the Participant with the Company or any Subsidiary, if any, that is necessary before the Appreciation Rights or installments thereof will become exercisable. Appreciation Rights may provide for continued vesting or the earlier exercise of such Appreciation Rights, including in the event of the retirement, death or disability of a Participant or in the event of a Change in Control.
- (v) Any grant of Appreciation Rights may specify Management Objectives that must be achieved as a condition of the exercise of such Appreciation Rights.
- (vi) Appreciation Rights granted under this Plan may not provide for any dividends or dividend equivalents thereon.
- (vii) Successive grants of Appreciation Rights may be made to the same Participant regardless of whether any Appreciation Rights previously granted to the Participant remain unexercised.
- (viii) Each grant of Appreciation Rights will be evidenced by an Evidence of Award. Each Evidence of Award will be subject to this Plan and will contain such terms and provisions, consistent with this Plan, as the Committee may approve.

(c) Also, regarding Appreciation Rights:

- (i) Each grant will specify in respect of each Appreciation Right a Base Price, which (except with respect to awards under **Section 22** of this Plan) may not be less than the Market Value per Share on the Date of Grant; and
- (ii) No Appreciation Right granted under this Plan may be exercised more than 10 years from the Date of Grant. The Committee may provide in any Evidence of Award for the automatic exercise of an Appreciation Right upon such terms and conditions as established by the Committee.

6. Restricted Stock. The Committee may, from time to time and upon such terms and conditions as it may determine, authorize the grant or sale of Restricted Stock to Participants. Each such grant or sale may utilize any or all of the authorizations, and will be subject to all of the requirements, contained in the following provisions:

- (a) Each such grant or sale will constitute an immediate transfer of the ownership of shares of Common Stock to the Participant in consideration of the performance of services, entitling such Participant to voting, dividend and other ownership rights, but subject to the substantial risk of forfeiture and restrictions on transfer hereinafter described.
- (b) Each such grant or sale may be made without additional consideration or in consideration of a payment by such Participant that is less than the Market Value per Share on the Date of Grant.

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- (c) Each such grant or sale will provide that the Restricted Stock covered by such grant or sale will be subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code for a period to be determined by the Committee on the Date of Grant or until achievement of Management Objectives referred to in **Section 6(e)** of this Plan.
- (d) Each such grant or sale will provide that during or after the period for which such substantial risk of forfeiture is to continue, the transferability of the Restricted Stock will be prohibited or restricted in the manner and to the extent prescribed by the Committee on the Date of Grant (which restrictions may include rights of repurchase or first refusal of the Company or provisions subjecting the Restricted Stock to a continuing substantial risk of forfeiture while held by any transferee).
- (e) Any grant of Restricted Stock may specify Management Objectives that, if achieved, will result in termination or early termination of the restrictions applicable to such Restricted Stock.
- (f) Notwithstanding anything to the contrary contained in this Plan, Restricted Stock may provide for continued vesting or the earlier termination of restrictions on such Restricted Stock, including in the event of the retirement, death or disability of a Participant or in the event of a Change in Control.
- (g) Any such grant or sale of Restricted Stock will require that any and all dividends or other distributions paid thereon during the period of such restrictions be automatically deferred and/or reinvested in additional Restricted Stock, which will be subject to the same restrictions as the underlying award. For the avoidance of doubt, any such dividends or other distributions on Restricted Stock will be deferred until, and paid contingent upon, the vesting of such Restricted Stock.
- (h) Each grant or sale of Restricted Stock will be evidenced by an Evidence of Award. Each Evidence of Award will be subject to this Plan and will contain such terms and provisions, consistent with this Plan, as the Committee may approve. Unless otherwise directed by the Committee, (i) all certificates representing Restricted Stock will be held in custody by the Company until all restrictions thereon will have lapsed, together with a stock power or powers executed by the Participant in whose name such certificates are registered, endorsed in blank and covering such shares or (ii) all Restricted Stock will be held at the Company's transfer agent in book entry form with appropriate restrictions relating to the transfer of such Restricted Stock.
- 7. Restricted Stock Units.** The Committee may, from time to time and upon such terms and conditions as it may determine, authorize the granting or sale of Restricted Stock Units to Participants. Each such grant or sale may utilize any or all of the authorizations, and will be subject to all of the requirements, contained in the following provisions:
- (a) Each such grant or sale will constitute the agreement by the Company to deliver shares of Common Stock or cash, or a combination thereof, to the Participant in the future in consideration of the performance of services, but subject to the fulfillment of such conditions (which may include the achievement of Management Objectives) during the Restriction Period as the Committee may specify.

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- (b) Each such grant or sale may be made without additional consideration or in consideration of a payment by such Participant that is less than the Market Value per Share on the Date of Grant.
- (c) Notwithstanding anything to the contrary contained in this Plan, Restricted Stock Units may provide for continued vesting or the earlier lapse or other modification of the Restriction Period, including in the event of the retirement, death or disability of a Participant or in the event of a Change in Control.
- (d) During the Restriction Period, the Participant will have no right to transfer any rights under his or her award and will have no rights of ownership in the shares of Common Stock deliverable upon payment of the Restricted Stock Units and will have no right to vote them, but the Committee may, at or after the Date of Grant, authorize the payment of dividend equivalents on such Restricted Stock Units on a deferred and contingent basis, either in cash or in additional shares of Common Stock; provided, however, that dividend equivalents or other distributions on shares of Common Stock underlying Restricted Stock Units will be deferred until and paid contingent upon the vesting of such Restricted Stock Units.
- (e) Each grant or sale of Restricted Stock Units will specify the time and manner of payment of the Restricted Stock Units that have been earned. Each grant or sale will specify that the amount payable with respect thereto will be paid by the Company in shares of Common Stock or cash, or a combination thereof.
- (f) Each grant or sale of Restricted Stock Units will be evidenced by an Evidence of Award. Each Evidence of Award will be subject to this Plan and will contain such terms and provisions, consistent with this Plan, as the Committee may approve.
- 8. Cash Incentive Awards, Performance Shares and Performance Units.** The Committee may, from time to time and upon such terms and conditions as it may determine, authorize the granting of Cash Incentive Awards, Performance Shares and Performance Units. Each such grant may utilize any or all of the authorizations, and will be subject to all of the requirements, contained in the following provisions:
- (a) Each grant will specify the number or amount of Performance Shares or Performance Units, or amount payable with respect to a Cash Incentive Award, to which it pertains, which number or amount may be subject to adjustment to reflect changes in compensation or other factors.
- (b) The Performance Period with respect to each Cash Incentive Award or grant of Performance Shares or Performance Units will be such period of time as will be determined by the Committee, which may be subject to continued vesting or earlier lapse or other modification, including in the event of the retirement, death or disability of a Participant or in the event of a Change in Control.
- (c) Each grant of a Cash Incentive Award, Performance Shares or Performance Units will specify Management Objectives which, if achieved, will result in payment or early payment of the award, and each grant may specify in respect of such specified Management Objectives a minimum acceptable level or levels of achievement and may set forth

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a formula for determining the number of Performance Shares or Performance Units, or amount payable with respect to a Cash Incentive Award, that will be earned if performance is at or above the minimum or threshold level or levels, or is at or above the target level or levels, but falls short of maximum achievement of the specified Management Objectives.

(d) Each grant will specify the time and manner of payment of a Cash Incentive Award, Performance Shares or Performance Units that have been earned. Any grant may specify that the amount payable with respect thereto may be paid by the Company in cash, in shares of Common Stock, in Restricted Stock or Restricted Stock Units or in any combination thereof.

(e) Any grant of a Cash Incentive Award, Performance Shares or Performance Units may specify that the amount payable or the number of shares of Common Stock, Restricted Stock or Restricted Stock Units payable with respect thereto may not exceed a maximum specified by the Committee on the Date of Grant.

(f) The Committee may, on the Date of Grant of Performance Shares or Performance Units, provide for the payment of dividend equivalents to the holder thereof either in cash or in additional shares of Common Stock, subject in all cases to deferral and payment on a contingent basis based on the Participant's earning and vesting of the Performance Shares or Performance Units, as applicable, with respect to which such dividend equivalents are paid.

(g) Each grant of a Cash Incentive Award, Performance Shares or Performance Units will be evidenced by an Evidence of Award. Each Evidence of Award will be subject to this Plan and will contain such terms and provisions, consistent with this Plan, as the Committee may approve.

9. Other Awards.

(a) Subject to applicable law and the applicable limits set forth in **Section 3** of this Plan, the Committee may authorize the grant to any Participant of shares of Common Stock or such other awards that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or relating to, shares of Common Stock or factors that may influence the value of such shares, including, without limitation, convertible or exchangeable debt securities, other rights convertible or exchangeable into shares of Common Stock, purchase rights for shares of Common Stock, awards with value and payment contingent upon performance of the Company or specified Subsidiaries, affiliates or other business units thereof or any other factors designated by the Committee, and awards valued by reference to the book value of the shares of Common Stock or the value of securities of, or the performance of specified Subsidiaries or affiliates or other business units of the Company. The Committee will determine the terms and conditions of such awards. Shares of Common Stock delivered pursuant to an award in the nature of a purchase right granted under this **Section 9** will be purchased for such consideration, paid for at such time, by such methods, and in such forms, including, without limitation, shares of Common Stock, other awards, notes or other property, as the Committee determines.

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- (b) Cash awards, as an element of or supplement to any other award granted under this Plan, may also be granted pursuant to this **Section 9**.
- (c) The Committee may authorize the grant of shares of Common Stock as a bonus, or may authorize the grant of other awards in lieu of obligations of the Company or a Subsidiary to pay cash or deliver other property under this Plan or under other plans or compensatory arrangements, subject to such terms as will be determined by the Committee in a manner that complies with Section 409A of the Code.
- (d) The Committee may, at or after the Date of Grant, authorize the payment of dividends or dividend equivalents on awards granted under this **Section 9** on a deferred and contingent basis, either in cash or in additional shares of Common Stock; provided, however, that dividend equivalents or other distributions on shares of Common Stock underlying awards granted under this **Section 9** will be deferred until and paid contingent upon the earning and vesting of such awards.
- (e) The Evidence of Award will specify the time and terms of delivery of an award granted under this **Section 9**.
- (f) Notwithstanding anything to the contrary contained in this Plan, awards under this **Section 9** may provide for the earning or vesting of, or earlier elimination of restrictions applicable to, such award, including in the event of the retirement, death or disability of a Participant or in the event of a Change in Control.

10. Administration of this Plan.

- (a) This Plan will be administered by the Committee. The Committee may from time to time delegate all or any part of its authority under this Plan to a subcommittee thereof. To the extent of any such delegation, references in this Plan to the Committee will be deemed to be references to such subcommittee.
- (b) The interpretation and construction by the Committee of any provision of this Plan or of any Evidence of Award (or related documents) and any determination by the Committee pursuant to any provision of this Plan or of any such agreement, notification or document will be final and conclusive. No member of the Committee shall be liable for any such action or determination made in good faith. In addition, the Committee is authorized to take any action it determines in its sole discretion to be appropriate subject only to the express limitations contained in this Plan, and no authorization in any Plan section or other provision of this Plan is intended or may be deemed to constitute a limitation on the authority of the Committee.
- (c) To the extent permitted by law, the Committee may delegate to one or more of its members, to one or more officers of the Company, or to one or more agents or advisors, such administrative duties or powers as it may deem advisable, and the Committee, the subcommittee, or any person to whom duties or powers have been delegated as aforesaid, may employ one or more persons to render advice with respect to any responsibility the Committee, the subcommittee or such person may have under this Plan. The Committee may, by resolution, authorize one or more officers of the Company to do one or both of the following on the same basis as the Committee: (i) designate employees to be recipients of awards under this Plan; and

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(ii) determine the size of any such awards; provided, however, that (A) the Committee will not delegate such responsibilities to any such officer for awards granted to an employee who is an officer, Director, or more than 10% beneficial owner (as such term is defined in Rule 13d-3 promulgated under the Exchange Act) of any class of the Company's equity securities that is registered pursuant to Section 12 of the Exchange Act, as determined by the Committee in accordance with Section 16 of the Exchange Act; (B) the resolution providing for such authorization shall set forth the total number of shares of Common Stock such officer(s) may grant; and (C) the officer(s) will report periodically to the Committee regarding the nature and scope of the awards granted pursuant to the authority delegated.

11. Adjustments. The Committee shall make or provide for such adjustments in the number of and kind of shares of Common Stock covered by outstanding Option Rights, Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Shares and Performance Units granted hereunder and, if applicable, in the number of and kind of shares of Common Stock covered by other awards granted pursuant to **Section 9** of this Plan, in the Option Price and Base Price provided in outstanding Option Rights and Appreciation Rights, respectively, in Cash Incentive Awards, and in other award terms, as the Committee, in its sole discretion, exercised in good faith, determines is equitably required to prevent dilution or enlargement of the rights of Participants that otherwise would result from (a) any extraordinary cash dividend, stock dividend, stock split, combination of shares, recapitalization or other change in the capital structure of the Company, (b) any merger, consolidation, spin-off, split-off, spin-out, split-up, reorganization, partial or complete liquidation or other distribution of assets, issuance of rights or warrants to purchase securities, or (c) any other corporate transaction or event having an effect similar to any of the foregoing. Moreover, in the event of any such transaction or event or in the event of a Change in Control, the Committee may provide in substitution for any or all outstanding awards under this Plan such alternative consideration (including cash), if any, as it, in good faith, may determine to be equitable in the circumstances and shall require in connection therewith the surrender of all awards so replaced in a manner that complies with Section 409A of the Code. In addition, for each Option Right or Appreciation Right with an Option Price or Base Price, respectively, greater than the consideration offered in connection with any such transaction or event or Change in Control, the Committee may in its discretion elect to cancel such Option Right or Appreciation Right without any payment to the Person holding such Option Right or Appreciation Right. The Committee shall also make or provide for such adjustments in the number of shares of Common Stock specified in **Section 3** of this Plan as the Committee in its sole discretion, exercised in good faith, determines is appropriate to reflect any transaction or event described in this **Section 11**; provided, however, that any such adjustment to the number specified in **Section 3(c)** of this Plan will be made only if and to the extent that such adjustment would not cause any Option Right intended to qualify as an Incentive Stock Option to fail to so qualify.

12. Change in Control. For purposes of this Plan, except as may be otherwise prescribed by the Committee with respect to an award made under this Plan, a Change in Control will be deemed to have occurred upon the occurrence (after the Effective Date) of any of the following events:

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(a) any Person becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either (i) the then-outstanding Common Stock (the Outstanding Company Common Stock) or (ii) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of Directors (the Outstanding Company Voting Securities); provided, however, that, for purposes of this definition, the following acquisitions shall not constitute a Change in Control: (A) any acquisition directly from the Company, (B) any acquisition by the Company, (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (D) any acquisition pursuant to a transaction that complies with **Sections 12(c)(i), (c)(ii) and (c)(iii)** below;

(b) individuals who, as of the Effective Date, constitute the Board (the Incumbent Board) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a Director subsequent to the Effective Date whose election, or nomination for election by the Stockholders, was approved by a vote of a majority of the Directors then comprising the Incumbent Board (either by specific vote or by approval of the proxy statement of the Company in which such individual is named as a nominee for Director, without objection to such nomination) shall be considered as though such individual was a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of Directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(c) consummation of a reorganization, merger, statutory share exchange or consolidation or similar transaction involving the Company or any of its Subsidiaries, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or securities of another entity by the Company or any of its Subsidiaries (each, a Business Combination), in each case unless, following such Business Combination, (i) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock (or, for a non-corporate entity, equivalent securities) and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or, for a non-corporate entity, equivalent governing body), as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and the Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any entity resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination) beneficially owns, directly or indirectly, 50% or more of, respectively, the then-outstanding shares of common stock (or, for a non-corporate entity, equivalent securities) of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that such ownership existed prior to the Business Combination, and (iii) at least a majority of the members of the board of directors (or, for a non-corporate entity, equivalent governing body) of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

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(d) approval by the Stockholders of a complete liquidation or dissolution of the Company.

13. Detrimental Activity and Recapture Provisions. Any Evidence of Award may reference a clawback policy of the Company or provide for the cancellation or forfeiture of an award or the forfeiture and repayment to the Company of any gain related to an award, or other provisions intended to have a similar effect, upon such terms and conditions as may be determined by the Committee from time to time, if a Participant, either (a) during employment or other service with the Company or a Subsidiary, or (b) within a specified period after termination of such employment or service, engages in any detrimental activity, as described in the applicable Evidence of Award or such clawback policy. In addition, notwithstanding anything in this Plan to the contrary, any Evidence of Award or such clawback policy may also provide for the cancellation or forfeiture of an award or the forfeiture and repayment to the Company of any shares of Common Stock issued under and/or any other benefit related to an award, or other provisions intended to have a similar effect, upon such terms and conditions as may be required by the Committee or under Section 10D of the Exchange Act and any applicable rules or regulations promulgated by the Securities and Exchange Commission or any national securities exchange or national securities association on which the shares of Common Stock may be traded.

14. Non-U.S. Participants. In order to facilitate the making of any grant or combination of grants under this Plan, the Committee may provide for such special terms for awards to Participants who are foreign nationals or who are employed by the Company or any Subsidiary outside of the United States of America or who provide services to the Company or any Subsidiary under an agreement with a foreign nation or agency, as the Committee may consider necessary or appropriate to accommodate differences in local law, tax policy or custom. Moreover, the Committee may approve such supplements to or amendments, restatements or alternative versions of this Plan (including sub-plans) as it may consider necessary or appropriate for such purposes, without thereby affecting the terms of this Plan as in effect for any other purpose, and the secretary or other appropriate officer of the Company may certify any such document as having been approved and adopted in the same manner as this Plan. No such special terms, supplements, amendments or restatements, however, will include any provisions that are inconsistent with the terms of this Plan as then in effect unless this Plan could have been amended to eliminate such inconsistency without further approval by the Stockholders.

15. Transferability.

(a) Except as otherwise determined by the Committee, no Option Right, Appreciation Right, Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit, Cash Incentive Award, award contemplated by **Section 9** of this Plan or dividend equivalents paid with respect to awards made under this Plan will be transferable by the Participant except by will or the laws of descent and distribution. In no event will any such award granted under this Plan be transferred for value. Except as otherwise determined by the Committee, Option Rights and Appreciation Rights will be exercisable during the Participant's lifetime only by him or her or, in the event of the Participant's legal incapacity to do so, by his or her guardian or legal representative acting on behalf of the Participant in a fiduciary capacity under state law or court supervision.

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(b) The Committee may specify on the Date of Grant that part or all of the shares of Common Stock that are (i) to be issued or transferred by the Company upon the exercise of Option Rights or Appreciation Rights, upon the termination of the Restriction Period applicable to Restricted Stock Units or upon payment under any grant of Performance Shares or Performance Units or (ii) no longer subject to the substantial risk of forfeiture and restrictions on transfer referred to in **Section 6** of this Plan, will be subject to further restrictions on transfer, including minimum holding periods.

16. Withholding Taxes. To the extent that the Company is required to withhold federal, state, local or foreign taxes or other amounts in connection with any payment made or benefit realized by a Participant or other Person under this Plan, and the amounts available to the Company for such withholding are insufficient, it will be a condition to the receipt of such payment or the realization of such benefit that the Participant or such other Person make arrangements satisfactory to the Company for payment of the balance of such taxes or other amounts required to be withheld, which arrangements (in the discretion of the Committee) may include relinquishment of a portion of such benefit. If a Participant's benefit is to be received in the form of shares of Common Stock, and such Participant fails to make arrangements for the payment of taxes or other amounts, then, unless otherwise determined by the Committee, the Company will withhold shares of Common Stock having a value equal to the amount required to be withheld. Notwithstanding the foregoing, when a Participant is required to pay the Company an amount required to be withheld under applicable income, employment, tax or other laws, the Participant may elect, unless otherwise determined by the Committee, to satisfy the obligation, in whole or in part, by having withheld, from the shares of Common Stock required to be delivered to the Participant, shares of Common Stock having a value equal to the amount required to be withheld or by delivering to the Company other shares of Common Stock held by such Participant. The shares of Common Stock used for tax or other withholding will be valued at an amount equal to the fair market value of such shares of Common Stock on the date the benefit is to be included in Participant's income. In no event will the fair market value of the shares of Common Stock to be withheld and delivered pursuant to this **Section 16** exceed the minimum amount required to be withheld, unless (i) an additional amount can be withheld and not result in adverse accounting consequences, (ii) such additional withholding amount is authorized by the Committee, and (iii) the total amount withheld does not exceed the Participant's estimated tax obligations attributable to the applicable transaction. Participants will also make such arrangements as the Company may require for the payment of any withholding tax or other obligation that may arise in connection with the disposition of shares of Common Stock acquired upon the exercise of Option Rights.

17. Compliance with Section 409A of the Code.

(a) To the extent applicable, it is intended that this Plan and any grants made hereunder comply with the provisions of Section 409A of the Code, so that the income inclusion provisions of Section 409A(a)(1) of the Code do not apply to the Participants. This Plan and any grants made hereunder will be administered in a manner consistent with this intent. Any reference in this Plan to Section 409A of the Code will also include any regulations or any other formal guidance promulgated with respect to such section by the U.S. Department of the Treasury or the Internal Revenue Service.

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(b) Neither a Participant nor any of a Participant's creditors or beneficiaries will have the right to subject any deferred compensation (within the meaning of Section 409A of the Code) payable under this Plan and grants hereunder to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as permitted under Section 409A of the Code, any deferred compensation (within the meaning of Section 409A of the Code) payable to a Participant or for a Participant's benefit under this Plan and grants hereunder may not be reduced by, or offset against, any amount owed by a Participant to the Company or any of its Subsidiaries.

(c) If, at the time of a Participant's separation from service (within the meaning of Section 409A of the Code), (i) the Participant will be a specified employee (within the meaning of Section 409A of the Code and using the identification methodology selected by the Company from time to time) and (ii) the Company makes a good faith determination that an amount payable hereunder constitutes deferred compensation (within the meaning of Section 409A of the Code) the payment of which is required to be delayed pursuant to the six-month delay rule set forth in Section 409A of the Code in order to avoid taxes or penalties under Section 409A of the Code, then the Company will not pay such amount on the otherwise scheduled payment date but will instead pay it, without interest, on the first business day of the seventh month after such separation from service.

(d) Solely with respect to any award that constitutes nonqualified deferred compensation subject to Section 409A of the Code and that is payable on account of a Change in Control (including any installments or stream of payments that are accelerated on account of a Change in Control), a Change in Control shall occur only if such event also constitutes a change in the ownership, change in effective control, and/or a change in the ownership of a substantial portion of assets of the Company as those terms are defined under Treasury Regulation §1.409A-3(i)(5), but only to the extent necessary to establish a time and form of payment that complies with Section 409A of the Code, without altering the definition of Change in Control for any purpose in respect of such award.

(e) Notwithstanding any provision of this Plan and grants hereunder to the contrary, in light of the uncertainty with respect to the proper application of Section 409A of the Code, the Company reserves the right to make amendments to this Plan and grants hereunder as the Company deems necessary or desirable to avoid the imposition of taxes or penalties under Section 409A of the Code. In any case, a Participant will be solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on a Participant or for a Participant's account in connection with this Plan and grants hereunder (including any taxes and penalties under Section 409A of the Code), and neither the Company nor any of its affiliates will have any obligation to indemnify or otherwise hold a Participant harmless from any or all of such taxes or penalties.

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18. Amendments.

(a) The Board may at any time and from time to time amend this Plan in whole or in part; provided, however, that if an amendment to this Plan, for purposes of applicable stock exchange rules and except as permitted under **Section 11** of this Plan, (i) would materially increase the benefits accruing to Participants under this Plan, (ii) would materially increase the number of securities which may be issued under this Plan, (iii) would materially modify the requirements for participation in this Plan, or (iv) must otherwise be approved by the Stockholders in order to comply with applicable law or the rules of the NASDAQ Stock Market or, if the shares of Common Stock are not traded on the NASDAQ Stock Market, the principal national securities exchange upon which the shares of Common Stock are traded or quoted, all as determined by the Board, then, such amendment will be subject to Stockholder approval and will not be effective unless and until such approval has been obtained.

(b) Except in connection with a corporate transaction or event described in **Section 11** of this Plan or in connection with a Change in Control, the terms of outstanding awards may not be amended to reduce the Option Price of outstanding Option Rights or the Base Price of outstanding Appreciation Rights, or cancel outstanding underwater Option Rights or Appreciation Rights (including following a Participant's voluntary surrender of underwater Option Rights or Appreciation Rights) in exchange for cash, other awards or Option Rights or Appreciation Rights with an Option Price or Base Price, as applicable, that is less than the Option Price of the original Option Rights or Base Price of the original Appreciation Rights, as applicable, without Stockholder approval. This **Section 18(b)** is intended to prohibit the repricing of underwater Option Rights and Appreciation Rights and will not be construed to prohibit the adjustments provided for in **Section 11** of this Plan. Notwithstanding any provision of this Plan to the contrary, this **Section 18(b)** may not be amended without approval by the Stockholders.

(c) If permitted by Section 409A of the Code, but subject to the paragraph that follows, including in the case of termination of employment or service, or in the case of unforeseeable emergency or other circumstances or in the event of a Change in Control, to the extent a Participant holds an Option Right or Appreciation Right not immediately exercisable in full, or any Restricted Stock as to which the substantial risk of forfeiture or the prohibition or restriction on transfer has not lapsed, or any Restricted Stock Units as to which the Restriction Period has not been completed, or any Cash Incentive Awards, Performance Shares or Performance Units which have not been fully earned, or any dividend equivalents or other awards made pursuant to **Section 9** of this Plan subject to any vesting schedule or transfer restriction, or who holds shares of Common Stock subject to any transfer restriction imposed pursuant to **Section 15(b)** of this Plan, the Committee may, in its sole discretion, provide for continued vesting or accelerate the time at which such Option Right, Appreciation Right or other award may be exercised or the time at which such substantial risk of forfeiture or prohibition or restriction on transfer will lapse or the time when such Restriction Period will end or the time at which such Cash Incentive Awards, Performance Shares or Performance Units will be deemed to have been fully earned or the time when such transfer restriction will terminate or may waive any other limitation or requirement under any such award.

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(d) Subject to **Section 18(b)** of this Plan, the Committee may amend the terms of any award theretofore granted under this Plan prospectively or retroactively. Except for adjustments made pursuant to **Section 11** of this Plan, no such amendment will materially impair the rights of any Participant without his or her consent. The Board may, in its discretion, terminate this Plan at any time. Termination of this Plan will not affect the rights of Participants or their successors under any awards outstanding hereunder and not exercised in full on the date of termination.

19. **Governing Law.** This Plan and all grants and awards and actions taken hereunder will be governed by and construed in accordance with the internal substantive laws of the State of Delaware.

20. **Effective Date/Termination.** This Plan will be effective as of the Effective Date. No grants will be made on or after the Effective Date under the Predecessor Plan, provided that outstanding awards granted under the Predecessor Plan will continue unaffected following the Effective Date. No grant will be made under this Plan on or after the tenth anniversary of the Effective Date, but all grants made prior to such date will continue in effect thereafter subject to the terms thereof and of this Plan. For clarification purposes, the terms and conditions of this Plan shall not apply to or otherwise impact previously granted and outstanding awards under the Predecessor Plan.

21. Miscellaneous Provisions.

(a) The Company will not be required to issue any fractional shares of Common Stock pursuant to this Plan. The Committee may provide for the elimination of fractions or for the settlement of fractions in cash.

(b) This Plan will not confer upon any Participant any right with respect to continuance of employment or other service with the Company or any Subsidiary, nor will it interfere in any way with any right the Company or any Subsidiary would otherwise have to terminate such Participant's employment or other service at any time.

(c) Except with respect to **Section 21(e)** of this Plan, to the extent that any provision of this Plan would prevent any Option Right that was intended to qualify as an Incentive Stock Option from qualifying as such, that provision will be null and void with respect to such Option Right. Such provision, however, will remain in effect for other Option Rights and there will be no further effect on any provision of this Plan.

(d) No award under this Plan may be exercised by the holder thereof if such exercise, and the receipt of cash or stock thereunder, would be, in the opinion of counsel selected by the Company, contrary to law or the regulations of any duly constituted authority having jurisdiction over this Plan.

(e) Absence on leave approved by a duly constituted officer of the Company or any of its Subsidiaries will not be considered interruption or termination of service of any employee for any purposes of this Plan or awards granted hereunder.

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- (f) No Participant will have any rights as a Stockholder with respect to any shares of Common Stock subject to awards granted to him or her under this Plan prior to the date as of which he or she is actually recorded as the holder of such shares of Common Stock upon the stock records of the Company.
- (g) The Committee may condition the grant of any award or combination of awards authorized under this Plan on the surrender or deferral by the Participant of his or her right to receive a cash bonus or other compensation otherwise payable by the Company or a Subsidiary to the Participant.
- (h) Except with respect to Option Rights and Appreciation Rights, the Committee may permit Participants to elect to defer the issuance of shares of Common Stock under this Plan pursuant to such rules, procedures or programs as it may establish for purposes of this Plan and which are intended to comply with the requirements of Section 409A of the Code. The Committee also may provide that deferred issuances and settlements include the crediting of dividend equivalents or interest on the deferral amounts.
- (i) If any provision of this Plan is or becomes invalid or unenforceable in any jurisdiction, or would disqualify this Plan or any award under any law deemed applicable by the Committee, such provision will be construed or deemed amended or limited in scope to conform to applicable laws or, in the discretion of the Committee, it will be stricken and the remainder of this Plan will remain in full force and effect. Notwithstanding anything in this Plan or an Evidence of Award to the contrary, nothing in this Plan or in an Evidence of Award prevents a Participant from providing, without prior notice to the Company, information to governmental authorities regarding possible legal violations or otherwise testifying or participating in any investigation or proceeding by any governmental authorities regarding possible legal violations, and for purpose of clarity a Participant is not prohibited from providing information voluntarily to the Securities and Exchange Commission pursuant to Section 21F of the Exchange Act.

22. Stock-Based Awards in Substitution for Awards Granted by Another Company. Notwithstanding anything in this Plan to the contrary:

- (a) Awards may be granted under this Plan in substitution for or in conversion of, or in connection with an assumption of, stock options, stock appreciation rights, restricted stock, restricted stock units or other stock or stock-based awards held by awardees of an entity engaging in a corporate acquisition or merger transaction with the Company or any Subsidiary. Any conversion, substitution or assumption will be effective as of the close of the merger or acquisition, and, to the extent applicable, will be conducted in a manner that complies with Section 409A of the Code. The awards so granted may reflect the original terms of the awards being assumed or substituted or converted for and need not comply with other specific terms of this Plan, and may account for shares of Common Stock substituted for the securities covered by the original awards and the number of shares subject to the original awards, as well as any exercise or purchase prices applicable to the original awards, adjusted to account for differences in stock prices in connection with the transaction.

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(b) In the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary merges has shares available under a pre-existing plan previously approved by stockholders and not adopted in contemplation of such acquisition or merger, the shares available for grant pursuant to the terms of such plan (as adjusted, to the extent appropriate, to reflect such acquisition or merger) may be used for awards made after such acquisition or merger under this Plan; provided, however, that awards using such available shares may not be made after the date awards or grants could have been made under the terms of the pre-existing plan absent the acquisition or merger, and may only be made to individuals who were not employees or directors of the Company or any Subsidiary prior to such acquisition or merger.

(c) Any shares of Common Stock that are issued or transferred by, or that are subject to any awards that are granted by, or become obligations of, the Company under **Sections 22(a)** or **22(b)** of this Plan will not reduce the shares of Common Stock available for issuance or transfer under this Plan or otherwise count against the limits contained in **Section 3** of this Plan. In addition, no shares of Common Stock subject to an award that is granted by, or becomes an obligation of, the Company under **Sections 22(a)** or **22(b)** of this Plan, will be added to the aggregate limit contained in **Section 3(a)(i)** of this Plan.

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Annex B
CERTIFICATE OF AMENDMENT OF
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF COMSCORE, INC.

comScore, Inc. (the Corporation), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

FIRST: That at a meeting of the Board of Directors (the Board) of the Corporation, resolutions were duly adopted setting forth a proposed amendment (the Amendment) of the Amended and Restated Certificate of Incorporation of the Corporation, declaring the Amendment to be advisable and submitting the Amendment at a meeting of the stockholders of the Corporation for consideration thereof.

SECOND: That thereafter, pursuant to resolutions of the Board, an annual meeting of stockholders of the Corporation was duly called and held on May 30, 2018, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware and at which meeting the necessary number of shares as required by statute and the Amended and Restated Certificate of Incorporation of the Corporation were voted in favor of approval of the Amendment.

THIRD: That Section A.1 of Article IV of the Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated in full as follows:

A. Capital Stock.

1. This Corporation is authorized to issue two classes of stock, to be designated, respectively, **Common Stock** and **Preferred Stock**. The total number of shares which the Corporation is authorized to issue is One Hundred and Fifty-Five Million (155,000,000) shares. One Hundred and Fifty Million (150,000,000) shares shall be Common Stock, par value \$0.001 per share, and Five Million (5,000,000) shares shall be Preferred Stock, par value \$0.001 per share.

FOURTH: That the Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by an authorized officer of the Corporation this ___ day of _____, 2018.

By:
Name: Carol A. DiBattiste
Title: General Counsel & Chief Compliance,
Privacy and People Officer

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new roman; FONT-SIZE: 10pt">Exercised

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Outstanding at September 30, 2011

60,000

\$

10.32

3.01

Exercisable at September 30, 2011

35,000

\$

4.60

1.79

There were no options exercised during the nine months ended September 30, 2011 and 2010. The Company recorded \$121,946 and \$142,869 as compensation expense for stock options during the nine months ended September 30, 2011

and 2010, respectively. There were no options exercised during the three months ended September 30, 2011 and 2010. The Company recorded \$19,215 and \$87,895 as compensation expense for stock options during the three months ended September 30, 2011 and 2010, respectively.

On April 18, 2011, the Company issued 50,000 shares of stock to an employee as a bonus. The Company recorded \$150,500 as stock compensation expense during the nine months ended September 30, 2011.

Stock Issued for Consulting Service

On January 1, 2010, the Company entered into a one-year service agreement with a consultant to provide business development assistance and engineering advice regarding the sales and marketing of the Company's products. On July 16, 2010, the Company and consultant amended the compensation terms under the consulting agreement. The Company compensated the consultant on a quarterly basis at \$6,250 and 500 restricted shares of the Company's common stock in 2010. Starting from 2011, the Company compensated the consultant on a quarterly basis at \$6,250.

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SMARTHEAT INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 2011 (UNAUDITED) AND 2010

17. COMMITMENTS

Employment Agreements

On January 1, 2008, Taiyu entered into a 3-year employment agreement with Jun Wang, the Company's Chief Executive Officer, which agreement was renewed on the same terms through December 31, 2013, upon mutual agreement between Mr. Wang and Taiyu. Pursuant to the terms of his employment agreement, Mr. Wang shall receive a salary not less than the lowest minimum wage per month paid in Shenyang and shall be based on the uniform wage and incentive system in Shenyang. Effective on February 1, 2010, the Compensation Committee approved an increase in Mr. Wang's annual compensation to a base salary of \$150,000 per year.

On January 1, 2008, Taiyu entered into a 3-year employment agreement with Zhijuan Guo, the Company's Chief Financial Officer, which agreement was renewed on the same terms through December 31, 2013, upon mutual agreement between Ms. Guo and Taiyu. Pursuant to the terms of her employment agreement, Ms. Guo shall receive a salary not less than the lowest minimum wage per month paid in Shenyang and shall be based on the uniform wage and incentive system in Shenyang. In addition, Ms. Guo shall be entitled to overtime pay in accordance with the applicable law.

On February 1, 2010, SmartHeat entered into an employment agreement with Xudong Wang, the Company's Vice President of Strategy and Development, for a term ending on June 30, 2013. Mr. Wang is compensated at RMB 70,000 (\$10,648) per month and eligible for annual cash bonuses at the sole discretion of the Board of Directors.

Lease Agreements

The Company leased offices for its sales representative in several different cities in China under various one-year, non-cancellable and renewable operating lease agreements. Rental expense for the nine months ended September 30, 2011 and 2010, was approximately \$325,200 and \$142,000, respectively. Rental expense for the three months ended September 30, 2011 and 2010, was approximately \$72,800 and \$71,000, respectively.

Capital Contribution

The Company formed SmartHeat Investment on April 7, 2010, as an investment holding company with registered capital of \$70 million to enable its establishment and investment in new businesses in China. Under PRC company law, registered capital must be used in the operations of the domestic company within its approved business scope. SmartHeat Investment was established as a separate subsidiary of the Company to allow for the allocation of capital to new businesses in China separate from its existing subsidiaries and operations. The Company contributed \$30 million in capital to SmartHeat Investment on April 15, 2010, from proceeds of its underwritten public offering that closed on September 22, 2009. On April 12, 2010, SmartHeat Investment formed SmartHeat Energy, a wholly owned subsidiary in Shenyang with registered capital of \$30 million, subsequently satisfied out of the registered capital of SmartHeat Investment, for the research, development, manufacturing and sale of energy products. As of September 30, 2011, the Company is committed to contribute the remaining \$40 million in registered capital to SmartHeat Investment by April 2015. The Company plans to satisfy this contribution through cash flow provided by operations and funds raised through offerings of its securities, if and when the Company determines such offerings are required, and at such time that the Company identifies a new acquisition, investment or business opportunity to be financed through SmartHeat Investment, although no specific investment candidate has been identified to date. If the Company is unable to make

the required capital contribution to registered capital, the Company may be subject to a negotiated penalty related to the unsatisfied portion of registered capital. If the Company chooses to pay the penalty, the Company can request that its registered capital be reduced to the amount already paid or to another amount that can be completed by a new due date. The Company may also apply for a grace period, or may apply to reduce its registered capital prior to the payment becoming due.

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SMARTHEAT INC. AND SUBSIDIARIES
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
 SEPTEMBER 30, 2011 (UNAUDITED) AND 2010

18. CONTINGENCIES

The Company's operations in the PRC are subject to specific considerations and significant risks not typically associated with companies in North America and Western Europe. These include risks associated with, among others, the political, economic and legal environments in China and foreign currency exchange. The Company's results may be adversely affected by changes in PRC government policies with respect to laws and regulations, anti-inflationary measures, currency conversion and remittance abroad and rates and methods of taxation, among other things.

The Company's sales, purchases and expense transactions in China are denominated in RMB and all of the Company's assets and liabilities in China are also denominated in RMB. The RMB is not freely convertible into foreign currencies under the current PRC law. In China, foreign exchange transactions are required by law to be transacted only by authorized financial institutions. Remittances in currencies other than RMB may require certain supporting documentation in order to affect the remittance.

19. ACQUISITION AND UNAUDITED PRO FORMA INFORMATION

On March 3, 2011, the Company completed the acquisition of GWP, a designer and manufacturer of high efficiency heat pumps. This acquisition will extend the Company's clean technology heating solutions into the rapidly growing heat pump markets in Europe and China, enabling its customers to purchase technologically advanced heat pumps at competitive prices. The purchase price was EUR 4,248,082 (\$5,898,887), which was negotiated based on a two-times multiple of GWP's projected net income over the three years following the acquisition, and was paid at closing.

The following table summarizes the preliminary fair values of the assets acquired and liabilities assumed at the date of acquisition. The fair values of the assets acquired and liabilities assumed at agreement date were used for the purpose of purchase price allocation. The Company determined that little or no identifiable intangible assets, consisting of outstanding patents, technology and customer lists, were acquired with GWP based on the Company's due diligence and discussions with the seller. Accordingly, the excess of the purchase price over the fair value of the net assets acquired of \$5,134,627 was recorded as goodwill.

Cash	\$ 239,686
Accounts receivable	137,185
Other receivables	24,254
Inventory	667,412
Property and equipment	350,382
Goodwill	5,134,627
Accounts payable	(536,907)
Other payables	(117,752)
Purchase price	\$ 5,898,887

On March 1, 2011, the Company entered into a purchase agreement with SmartHeat Pump, a Shenyang-based state-owned heat pump manufacturer and designer. The Company paid RMB 50 million (\$7.6 million) to acquire 95% of the equity interests in SmartHeat Pump, with the local government retaining the remaining 5% equity interest. The purchase price was negotiated based on a two-times multiple of the projected net income of SmartHeat Pump over the three years following the acquisition.

The following table summarizes the preliminary fair values of the assets acquired and liabilities assumed at the date of the SmartHeat Pump acquisition. The fair values of the assets acquired and liabilities assumed at the agreement date were used for the purpose of purchase price allocation. The Company determined that little or no identifiable intangible assets, consisting of outstanding patents, technology and customer lists, were acquired with SmartHeat Pump based on the Company's due diligence and discussions with the seller. Accordingly, the excess of the purchase price over the fair value of the net assets acquired of \$5,629,951 was recorded as goodwill.

Cash	\$ 189,438
Accounts receivable	920,463
Other receivable	263,220
Inventory	1,265,455
Property and equipment	759,341
Intangible assets	858,409
Goodwill	5,629,951
Accounts payable	(446,334)
Other payable and accrued expenses	(686,195)
Short-term loan	(760,433)
Deferred tax liability	(285,069)
Noncontrolling interest	(103,915)
Purchase price	\$ 7,604,331

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SMARTHEAT INC. AND SUBSIDIARIES
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
 SEPTEMBER 30, 2011 (UNAUDITED) AND 2010

The amounts of revenue and earnings (loss) of GWP and SmartHeat Pump since their respective acquisition dates included in the consolidated income statement for the nine months ended September 30, 2011, are \$1,245,558 and \$(955,266) for GWP, and \$1,605,701 and \$(1,080,012) for SmartHeat Pump, respectively.

The following unaudited pro forma consolidated results of operations for SmartHeat for the nine months ended September 30, 2011 and 2010, presents the operations of SmartHeat, GWP and SmartHeat Pump as if the acquisitions occurred at January 1, 2011 and 2010, respectively. The pro forma results are not necessarily indicative of the actual results that would have occurred had the acquisitions been completed as of the beginning of the periods presented, nor are they necessarily indicative of future consolidated results.

	2011	2010
Net sales	\$ 31,941,435	\$ 88,074,205
Cost of goods sold	21,333,437	57,277,335
Gross profit	10,607,998	30,796,870
Total operating expenses	25,172,723	12,675,369
Income (loss) from operations	(14,564,725)	18,121,501
Total non-operating income (expenses)	(397,771)	425,108
Income (loss) before income tax	(14,962,496)	18,546,609
Income tax expense	(5,151)	(3,059,436)
Net income (loss) before noncontrolling interest	(14,957,345)	15,487,174
Less: Loss attributable to noncontrolling interest	160,113	29,578
Net income (loss) to SmartHeat Inc.	\$ (14,797,232)	\$ 15,516,752
Weighted average shares outstanding	38,582,342	32,804,292
Earnings (loss) per share	\$ (0.38)	\$ 0.47

expand our sales of PHEs into new industries and regions of China. On April 7, 2010, we formed SmartHeat (China) Investment Co., Ltd. (“SmartHeat Investment”), an investment holding company and wholly owned subsidiary in Shenyang with registered capital of \$70 million for our investment in and establishment of new companies and businesses in China. On April 12, 2010, SmartHeat Investment formed SmartHeat (Shenyang) Energy Equipment Co., Ltd. (“SmartHeat Energy”), a wholly owned subsidiary with registered capital of \$30 million for the research, development, manufacturing and sales of energy products. On May 6, 2010, we formed SmartHeat (Shanghai) Trading Co., Ltd. (“SmartHeat Trading”) through a nominee to market and expand sales of our Taiyu-branded products in China. On December 2, 2010, we formed Hohhot Ruicheng Technology Co., Ltd. (“Ruicheng”), a joint venture in Hohhot City, China, for the design and manufacture of heat meters, of which we acquired 51% of the equity interest for our investment of \$771,658 on January 7, 2011. On March 3, 2011, we completed the acquisition of Gustrower Warmepumpen GmbH (“GWP”), a designer and manufacturer of high efficiency heat pumps in Germany, for EUR 4,248,082 (\$5,898,887) paid at closing. The acquisition of GWP will extend our clean technology heating solutions into the rapidly growing heat pump markets in Europe and China, enabling our customers to purchase technologically advanced heat pump technology at competitive prices. On March 1, 2011, we entered into a purchase agreement with Shenyang Bingchuan Refrigerating Machine Limited Company, a Shenyang-based state-owned heat pump manufacturer and designer renamed SmartHeat (Shenyang) Heat Pump Technology Co., Ltd. (“SmartHeat Pump”). We paid RMB 50 million (\$7.6 million) to acquire 95% of the equity interest in SmartHeat Pump, with the local government retaining the remaining 5% equity interest.

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Our Corporate Structure

We are a U.S. holding company with no material assets other than the ownership interests of our subsidiaries through which we design, manufacture and sell our clean technology PHEs and related systems. Taiyu, SanDeKe, SmartHeat Siping and SmartHeat Investment are our wholly foreign-owned enterprises (“WFOEs”) authorized by their respective business licenses to operate our businesses in China. GWP is our wholly owned subsidiary in Germany. We own 52% and 51%, respectively, of the equity interests of our PRC-based joint ventures, Jinhui and Ruicheng. SmartHeat Energy is a wholly owned subsidiary of SmartHeat Investment. Taiyu owns 95% of the equity interests of SmartHeat Pump. We control SmartHeat Trading through an investment agreement, dated February 1, 2010 (the “SmartHeat Trading Agreement”), entered into with the nominee owner of SmartHeat Trading, Cleantech Holdings Inc., a British Virgin Islands company (“Cleantech Holdings”). We have no direct ownership interest in SmartHeat Trading or Cleantech Holdings; instead, pursuant to the SmartHeat Trading Agreement, we invested \$1.5 million as the registered capital of SmartHeat Trading in exchange for our right to control 100% of the shareholder rights in SmartHeat Trading and our rights to 100% of its profit or loss.

Our corporate structure as of the date of this report is set forth in the following diagram:

- (1) We control and are entitled to 100% of the profit or loss of SmartHeat Trading pursuant to contractual arrangements between SmartHeat and the nominee owner of SmartHeat Trading. We have no direct ownership interest in SmartHeat Trading.

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Principal Factors Affecting Our Financial Performance

Our revenues are subject to fluctuations due to the timing of sales of high-value products, the impact of seasonal spending patterns, the timing and size of projects our customers perform, changes in overall spending levels in the industry, changes in PRC government fiscal policies, inflation in China and other unpredictable factors that may affect customer ordering patterns. Our revenues may fluctuate significantly due to the seasonal nature of central heating services in the PRC because the equipment used in residential buildings must be delivered and installed prior to the beginning of the heating season in late fall, which occurs during the third and fourth calendar quarters in China. Additionally, any significant delays in the commercial launch or any lack or delay of commercial acceptance of new products, unfavorable sales trends in existing product lines or impacts from the other factors mentioned above, could adversely affect our revenue growth or cause a sequential decline in quarterly revenue.

In response to inflationary concerns, the PRC government instituted tightened fiscal policies in 2011 that have contributed to a general slowdown in many sectors of China's economy and restricted bank lending practices. Historically, approximately 40% of our customers, representing the majority of our total sales, consist of state-owned enterprises in China. Many of these customers, the majority of whom are real estate developers, have encountered difficulties in 2011 in obtaining grants from the PRC government and faced an extended bank loan application process, both of which typically are used to finance the purchase of our products. Accordingly, the deflationary policy of the PRC government affected the number of new sales of our PHE Units and PHEs as certain state-owned enterprises deferred the bidding for new projects in the first half of 2011 because of their working capital difficulties or abandoned existing projects. The decline in new projects among state-owned enterprises and increased peer competition contributed to a decline in sales of our PHE Units and PHEs in 2011. We also canceled contracts with certain of these state-owned customers that were unable to make payments or that had requested adjustments to their payment terms in response to their financial difficulties. Although these events caused a decrease in our sales in 2011, we expect that a portion of the canceled PHE Unit and PHE orders will be reinstated and contracts that have been partially delayed will be performed within this fiscal year or 2012, reducing the impact of the drop in our sales over the long term. Furthermore, we plan to diversify our reliance on the PRC market as we integrate the European business of GWP, which we acquired in March 2011.

Our revenues also may fluctuate significantly due to material costs, which normally account for approximately 80% of our cost of sales. We have experienced and anticipate continued fluctuation in raw material costs as a result of world economic conditions, such as the price of stainless steel used to produce plates for our PHEs and PHE Units. We monitor the commodities markets for pricing trends and changes, but we do not engage in hedging transactions to protect against raw material fluctuations. Instead, we attempt to mitigate the short-term risks of price swings by purchasing raw materials in advance based on production needs and projected sales. We typically experience significantly stronger sales during the second half of the year, which is the start of the fall and winter seasons in China, during which we historically generate approximately 74% of our revenue. Accordingly, we have increased our inventory and advances to suppliers during the first three quarters of 2011 in anticipation of our historical high season for production. Although we currently are able to obtain adequate supplies of raw materials, it is impossible to predict future availability or cost. Unfavorable fluctuations in the price, quality or availability of required raw materials could negatively affect our cash flows and ability to meet the demands of our customers, which could result in the loss of future sales.

Our profitability generally depends upon the margin between the cost to us of certain goods used in the manufacturing process, such as plates, pumps, water tanks, sensors, controlling systems and other raw materials, as well as our fabrication costs associated with converting such goods and raw materials compared to the selling price of our products, and the overall supply of raw materials. It is our intention to base the selling prices of our products upon the associated raw materials costs to us, which typically make up approximately 80% of total cost. We may not be able to pass all increases in raw material costs and ancillary acquisition costs associated with taking possession of raw

materials through to our customers, however, and there may be a time lag as we bid on new projects and renegotiate pricing with our existing customers.

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Significant Accounting Policies

While our significant accounting policies are more fully described in Note 2 to our consolidated financial statements, we believe the following accounting policies are the most critical to aid you in fully understanding and evaluating this management discussion and analysis.

Basis of Presentation

Our financial statements are prepared in accordance with generally accepted accounting principles in the U.S. (“U.S. GAAP”).

Principle of Consolidation

The accompanying consolidated financial statements include the accounts of SmartHeat’s U.S. parent and its subsidiaries, Taiyu, SanDeKe, SmartHeat Siping, Jinhui, SmartHeat Investment, SmartHeat Energy, SmartHeat Trading, Ruicheng, GWP and SmartHeat Pump. The “Company” refers collectively to SmartHeat’s U.S. parent, Taiyu, SanDeKe, SmartHeat Siping, Jinhui, SmartHeat Investment, SmartHeat Energy, SmartHeat Trading, Ruicheng, GWP and SmartHeat Pump. All significant inter-company accounts and transactions were eliminated in consolidation.

Use of Estimates

In preparing the financial statements in conformity with U.S. GAAP, management makes estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the dates of the financial statements, as well as the reported amounts of revenues and expenses during the reporting period. Significant estimates, required by management, include the recoverability of long-lived assets, allowance for doubtful accounts, and the reserve for obsolete and slow-moving inventories. Actual results could differ from those estimates.

Accounts Receivable

Our policy is to maintain reserves for potential credit losses on accounts receivable. Management reviews the composition of accounts receivable and analyzes historical bad debts, customer concentrations, customer credit worthiness, current economic trends and changes in customer payment patterns to evaluate the adequacy of these reserves. Accounts receivable are net of unearned interest. Unearned interest represents imputed interest on accounts receivable with due dates over one year from the invoice date discounted at our borrowing rate for the year.

Impairment of Long-Lived Assets

We assess the impairment of long-lived assets, which include property, plant and equipment and intangible assets, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The following are indicators management considers in determining whether it is necessary to test assets for impairment in accordance with ASC 360-10-35-21:

- Significant decrease in the market price of a long-lived asset or asset group;
- Significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used or in its physical condition;
- Significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset or asset group, including an adverse action or assessment by a regulator;
- Accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset or asset group;

- Current-period operating or cash flow loss combined with a history of operating or cash flow losses, or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset or asset group; and
- Current expectation that, more likely than not, a long-lived asset or asset group will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.

Recoverability of long-lived assets to be held and used is measured by comparing the carrying amount of an asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated undiscounted future cash flows, an impairment charge is recognized based on the excess of the carrying amount over the fair value of the assets. Fair value generally is determined using the asset's expected future discounted cash flows or market value, if readily determinable. We believe at this time that the carrying amounts and useful lives of our long-lived assets continue to be appropriate; there can be no assurance, however, that there will not be significant changes from our current forecasts, which could result in future impairment charges.

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Revenue Recognition

Our revenue recognition policies are in compliance with SEC Staff Accounting Bulletin (“SAB”) 104 (codified in Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 605). Sales revenue is recognized when PHEs heat meters, and heat pumps are delivered, and for PHE Units when customer acceptance occurs, the price is fixed or determinable, no other significant obligations of ours exist and collectibility is reasonably assured. Payments received before all of the relevant criteria for revenue recognition are recorded as unearned revenue.

Our agreements with our customers generally provide that 30% of the purchase price is due upon placement of an order, 30% upon delivery and 30% upon installation and acceptance of the equipment after customer testing. As a common practice in the heating manufacturing business in China, payment of the final 10% of the purchase price is due no later than the termination date of the standard warranty period, which ranges from 3 to 24 months from the acceptance date.

Our standard warranty is provided to all customers and is not considered an additional service; rather, it is an integral part of the product sale. We believe the existence of the standard product warranty in a sales contract does not constitute a deliverable in the arrangement and thus there is no need to apply the EITF 00-21 (codified in FASB ASC Topic 605-25) separation and allocation model for a multiple deliverable arrangement. SFAS 5 (codified in FASB ASC Topic 450) specifically addresses the accounting for standard warranties and neither SAB 104 nor EITF 00-21 supersedes SFAS 5. We believe accounting for our standard warranty pursuant to SFAS 5 does not impact revenue recognition because the cost of honoring the warranty can be reliably estimated.

We charge for after-sales services provided after the expiration of the warranty period, with after-sales services mainly consisting of cleaning PHEs and repairing and exchanging parts. We recognize such revenue when service is provided. The revenue earned from these services was not material.

Foreign Currency Translation and Comprehensive Income (Loss)

The functional currency of our subsidiaries in China is the Chinese Yuan Renminbi (“RMB”). The functional currency of GWP, our German subsidiary, is the Euro (“EUR”). For financial reporting purposes, RMB and EUR were translated into United States dollars (“USD”) as the reporting currency. Assets and liabilities are translated at the exchange rate in effect at the balance sheet date. Revenues and expenses are translated at the average rate of exchange prevailing during the reporting period. Translation adjustments arising from the use of different exchange rates from period to period are included as a component of stockholders’ equity as “Accumulated other comprehensive income.” Gains and losses resulting from foreign currency transactions are included in income. There has been no significant fluctuation in exchange rate for the conversion of RMB to USD after the balance sheet date.

We use Statement of Financial Accounting Standards (“SFAS”) No. 130, “Reporting Comprehensive Income” (codified in FASB ASC Topic 220). Comprehensive income is comprised of net income and all changes to the statements of stockholders’ equity, except those due to investments by shareholders, changes in paid-in capital and distributions to shareholders.

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Recent Accounting Pronouncements

In June 2011, FASB issued ASU 2011-05, "Comprehensive Income (ASC Topic 220): Presentation of Comprehensive Income." Under the amendments in this update, an entity has the option to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. Under both options, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income and a total amount for comprehensive income. In a single continuous statement, the entity is required to present the components of net income and total net income, the components of other comprehensive income and a total for other comprehensive income, along with the total of comprehensive income in that statement. In the two-statement approach, an entity is required to present components of net income and total net income in the statement of net income. The statement of other comprehensive income should immediately follow the statement of net income and include the components of other comprehensive income and a total for other comprehensive income, along with a total for comprehensive income. In addition, the entity is required to present on the face of the financial statements reclassification adjustments for items that are reclassified from other comprehensive income to net income in the statement(s) where the components of net income and the components of other comprehensive income are presented. The amendments in this update should be applied retrospectively and are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. We are currently assessing the effect that the adoption of this pronouncement will have on our financial statements.

Results of Operations

Nine Months Ended September 30, 2011, Compared to the Nine Months Ended September 30, 2010

The following table sets forth the results of our operations for the years indicated as a percentage of net sales:

	2011		2010	
	\$	% of Sales	\$	% of Sales
Sales	\$ 31,543,940		\$ 83,613,250	
Cost of sales	21,025,243	66.7%	54,177,914	64.8%
Gross profit	10,518,697	33.3%	29,435,336	35.2%
Operating expenses	24,673,070	78.2%	10,595,119	12.7%
Income (loss) from operations	(14,154,373)	(44.9)%	18,840,217	22.5%
Other income (expenses), net	(369,810)	(1.2)%	403,259	0.5%
Income tax expense (benefit)	(5,159)	(0)%	3,059,182	3.7%
Noncontrolling interest	(149,727)	(0.5)%	(16,962)	0%
Net income (loss) to the Company	\$ (14,369,297)	(45.6)%	\$ 16,201,256	19.4%

Sales. Net sales in the nine months ended September 30, 2011, were \$31.54 million, consisting of \$13.23 million for PHE Units, \$14.19 million for PHEs, \$2.45 million for heat meters and \$1.67 million for heat pumps, while our net sales in the same period of 2010 were \$83.61 million, consisting of \$33.81 million for PHE Units, \$40.89 million for PHEs and \$8.91 million for heat meters, an overall decrease of \$52.07 million or 62%. The decrease in sales was due

primarily to a 49% decrease in sales volume for the nine months ended September 30, 2011, compared to the same period in 2010. The sales volume of PHE Units decreased 50% compared to the same period of 2010, PHEs decreased 38% and heat meters decreased 62%. We began sales of heat pumps in 2011. The decrease in sales volume resulted from tightened fiscal policy in China, which has contributed to a general slowdown in many sectors of the Chinese economy and caused the abandonment of certain projects by customers. Most of our customers are real estate developers that encountered difficulties in obtaining loans typically used to finance the purchase of our products, which resulted in an unexpected cancelation of orders and delays in the performance of PHE Unit and PHE contracts. In addition, we re-evaluated the credit and payment history of our customers and determined to give up certain customers based on our review.

We have a strict review process for approving each sales contract, especially with respect to the determination of a sales price. The sales price is determined under each contract in proportion to our estimated cost in order to ensure our gross profit. Our sales price varies according to each sale depending mainly on each customer's specific requirements and our negotiation of the contract amount and term. We believe our marketing policy remains successful and have maintained the same program as last year, but we adjusted our pricing policy in 2011 in order to obtain more contracts. The decrease of average selling price, in addition to decreased sales volume, resulted in a decrease of sales across product lines for the nine months ended September 30, 2011, compared to the same period of 2010.

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Cost of Sales. Cost of sales for the nine months ended September 30, 2011, was \$21.03 million, while our cost of sales for the same period of 2010 was \$54.18 million, a decrease of \$33.15 million or 61%. Cost of sales mainly consisted of the cost of materials and labor, as well as factory overhead. Materials cost is normally 80% of total cost, while factory overhead cost is about 15% and labor cost is about 5%. The decrease in cost of sales is attributable to the decrease in production and sales volume in the nine months ended September 30, 2011. Cost of sales as a percentage of sales was 66.7% for the nine months ended September 30, 2011, and 64.8% for the same period of 2010, an increase of 1.9%. The slight increase in cost of sales as a percentage of sales was due to overall inflation in China, which resulted in a 3% pricing increase of our raw material purchases and a nearly 10% increase of labor cost. Also, due to significant decreased production volume, the overhead cost absorbed by individual products increased for the nine months ended September 30, 2011, compared to the same period in 2010. The gross profit margin of SmartHeat Pump, our subsidiary acquired in March 2011, was break even due to low production, high research and development expense and adjusted marketing strategy. In order to ease the pressure from inflation, we implemented new controls over our purchasing process and raw material pricing by adopting a new budgetary control system to monitor our fixed costs and continued improvements to our manufacturing process to decrease labor cost and improve manufacturing efficiency.

Gross Profit. Gross profit was \$10.52 million for the nine months ended September 30, 2011, compared to \$29.44 million in the same period of 2010, or gross profit margins of 33.3% and 35.2%, respectively. The decreased gross profit was due primarily to inflation-related increases to our production costs, including increased prices for raw material, increased labor cost and decreased production volume.

Operating Expenses. Operating expenses consisting of selling, general and administrative expenses totaled \$24.67 million for the nine months ended September 30, 2011, compared to \$10.60 million for the same period of 2010, an increase of \$14.08 million or 133%. Operating expenses as a percentage of sales were 78.2% in the nine months ended September 30, 2011, compared to 12.7% in the same period of 2010. The increase in operating expenses mainly resulted from increased bad debt allowance of approximately \$8.91 million and expansion of our business, which included additional costs of hiring more sales personnel, higher depreciation expense, training our marketing team and establishing new sales offices in more regions of China.

We recorded a bad debt allowance of \$8.91 million for the nine months ended September 30, 2011, primarily attributed to payment delays caused by the working capital difficulties of many of our state-owned customers. Due to the current deflationary fiscal policy of the PRC government, some of our state-owned customers encountered difficulties in obtaining grants from the government and loans from state-owned banks, both of which typically are used to finance the purchase of our products, which resulted in unexpected delays in paying our accounts receivable in a timely manner. Generally, we account for 50% of the amount of accounts receivable with aging over 180 days and 100% of the amount of accounts receivable with aging over 360 days as bad debt allowance. We do not expect a significant risk with respect to the overdue accounts receivable for which we took the bad debt allowance and believe that a substantial portion of the bad debt will be repaid as the Chinese government restores grants and credit policies. We believe the government's stringent fiscal policy impacting our customers will be temporary and the expansion and training of our marketing team and other employees to date will increase sales and improve the efficiency of our operations. Nevertheless, we will institute a rigorous program of cost cutting to continue to tightly control our budget and implement additional cost control measures, including a review of the staffing levels of our employees in response to the decrease in revenue.

As part of our strategy to expand market share in China, consolidate management and reduce reliance on our current state-owned customers that have encountered financial difficulties in 2011, we increased sales personnel and management. This strategy includes the opening of additional branch offices and centralizing management over sales and marketing across subsidiaries, which increased costs for personnel, training and rent in the nine months ended September 30, 2011. We hired 270 more employees in the nine months ended September 30, 2011, resulting in an

increase of employee compensation and employee welfare and benefit expenses of \$2.10 million. Our after-sales service cost increased \$0.16 million, rental expenses increased \$0.15 million, technology consulting fees increased \$0.46 million, R&D expense increased \$0.13 million and new plant expenses increased \$0.35 million in the nine months ended September 30, 2011 over the same period in 2010. Our legal, audit and related expenses were approximately \$662,000 in the nine months ended September 30, 2011, in connection with the acquisitions of GWP and SmartHeat Pump in March 2011. In addition, we canceled certain contracts with some of our state-owned customers that have experienced financial difficulties attributed to the current deflationary policy in China.

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Other income (expenses), net. Our other expense for the nine months ended September 30, 2011, was \$369,810 compared to net other income of \$403,259 for the same period of 2010, a decrease of \$773,069 or 192%. The decrease was due mainly to increased interest expenses of \$0.55 million from increased short-term loans and increased foreign exchange transaction loss of \$0.46 million.

Income tax expense (benefit). We had income tax benefit of \$5,159 for the nine months ended September 30, 2011, compared to income tax expense of \$3.06 million for the same period of 2010. The effective income tax rate for the nine months ended September 30, 2011, was 0% compared to 15.9% for the same period of 2010 as a result of our loss.

Taiyu and SanDeKe are governed by the Income Tax Law of the PRC concerning privately-run enterprises, which are generally subject to tax at a statutory rate of 25% on income reported in the statutory financial statements after appropriated tax adjustments. According to the new income tax law that became effective January 1, 2008, new high-tech enterprises given special support by the PRC government are subject to an income tax rate of 15%. Taiyu was recognized as a new high-tech enterprise and registered its status with the tax bureau, providing it with an income tax rate of 15%. The local PRC government reviews the high-tech status of such enterprises annually. SanDeKe is exempt from income tax for two years starting from its first profitable year and is entitled to a 50% discount on the income tax rate from 2010 through 2012. The income tax rate for SanDeKe is 12% and 11% for 2011 and 2010, respectively.

SmartHeat Siping, Jinhui, SmartHeat Investment, SmartHeat Energy, SmartHeat Pump, Ruicheng and SmartHeat Trading are subject to the regular 25% PRC income tax rate. GWP is subject to a 15% corporate income tax in Germany.

Net Income (Loss). Our net loss for the nine months ended September 30, 2011, was \$14.37 million compared to net income of \$16.20 million for the same period of 2010, a decrease of \$30.57 million or 189%. Net loss as a percentage of sales was 45.6% in the nine months ended September 30, 2011, and net income as a percentage of sales was 19.4% in the 2010 period. This decrease in net income was attributable to the decrease of net sales and increased bad debt allowance reserve and other operating expenses.

Three Months Ended September 30, 2011, Compared to the Three Months Ended September 30, 2010

The following table sets forth the results of our operations for the years indicated as a percentage of net sales:

	2011		2010	
	\$	% of Sales	\$	% of Sales
Sales	\$ 16,573,890		\$ 51,476,821	
Cost of sales	11,263,003	68.0%	33,061,854	64.2%
Gross profit	5,310,887	32.0%	18,414,967	35.8%
Operating expenses	7,846,299	47.3%	5,396,756	10.5%
Income (loss) from operations	(2,535,412)	(15.3)%	13,018,211	25.3%
Other income (expenses), net	(153,810)	(0.9)%	178,938	0.3%
Income tax expense (benefit)	1,322,900	8%	2,092,876	4.0%
Noncontrolling interest	(15,003)	(0.1)%	(2,232)	-%

Net income (loss)	\$	(3,997,119)	(24.1)%	\$	11,106,505	21.6%
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Sales. Net sales in the three months ended September 30, 2011, were \$16.57 million, consisting of \$7.95 million for PHE Units, \$7.12 million for PHEs, \$0.75 million for heat meters and \$0.75 million for heat pumps, while our net sales in the same period of 2010 were \$51.48 million, consisting of \$19.98 million for PHE Units, \$23.68 million for PHEs and \$7.82 million for heat meters, an overall decrease of \$34.90 million or 68%. The decrease in sales was due primarily to a 64% decrease in sales volume for the nine months ended September 30, 2011, compared to the same period in 2010. The sales volume of PHE Units decreased 61% compared to the same period of 2010, PHEs decreased 59% and heat meters decreased 65%. We began sales of heat pumps in 2011. The decrease in sales volume resulted from tightened fiscal policy in China, which has contributed to a general slowdown in many sectors of the Chinese economy and caused the abandonment of certain projects by customers. Most of our customers are real estate developers that encountered difficulties in obtaining loans typically used to finance the purchase of our products, which resulted in an unexpected cancelation of orders and delays in the performance of PHE Unit and PHE contracts. In addition, we re-evaluated the credit and payment history of our customers and determined to give up certain customers based on our review.

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We have a strict review process for approving each sales contract, especially with respect to the determination of a sales price. The sales price is determined under each contract in proportion to our estimated cost in order to ensure our gross profit. Our sales price varies according to each sale depending mainly on each customer's specific requirements and our negotiation of the contract amount and term. We believe our marketing policy remains successful and have maintained the same program as last year, but we adjusted our pricing policy in 2011 in order to obtain more contracts. The decrease of average selling price, in addition to decreased sales volume, resulted in a decrease of sales across product lines for the three months ended September 30, 2011, compared to the same period of 2010.

Cost of Sales. Cost of sales for the three months ended September 30, 2011, was \$11.26 million, while our cost of sales for the same period of 2010 was \$33.06 million, a decrease of \$21.80 million or 66%. Cost of sales mainly consisted of the cost of materials and labor, as well as factory overhead. Materials cost is normally 80% of total cost, while factory overhead cost is about 15% and labor cost is about 5%. The decrease in cost of sales is attributable to the decrease in production and sales volume in the three months ended September 30, 2011. Cost of sales as a percentage of sales was 68.0% for the three months ended September 30, 2011, and 64.2% for the same period of 2010, an increase of 3.8%. The slight increase in cost of sales as a percentage of sales was due to overall inflation in China, which resulted in a 3% pricing increase of our raw material purchases and a nearly 10% increase of labor cost. Also, due to significant decreased production volume, the overhead cost absorbed by individual products increased for the three months ended September 30, 2011, compared to the same period in 2010. The gross profit margin of SmartHeat Pump, our subsidiary acquired in March 2011, was break even due to low production, high research and development expense and adjusted marketing strategy. In order to ease the pressure from inflation, we implemented new controls over our purchasing process and raw material pricing by adopting a new budgetary control system to monitor our fixed costs and continued improvements to our manufacturing process to decrease labor cost and improve manufacturing efficiency.

Gross Profit. Gross profit was \$5.31 million for the three months ended September 30, 2011, compared to \$33.06 million in the same period of 2010, or gross profit margins of 32.0% and 35.8%, respectively. The decrease in our gross profit margin was due to the increase of cost of sales as a percentage of sales, caused primarily by inflation-related increases to our production costs, including increased prices for raw material, increased labor cost and decreased production volume.

Operating Expenses. Operating expenses consisting of selling, general and administrative expenses totaled \$7.85 million for the three months ended September 30, 2011, compared to \$5.40 million for the same period of 2010, an increase of \$2.45 million or 45%. Operating expenses as a percentage of sales were 47.3% in the three months ended September 30, 2011, compared to 10.5% in the same period of 2010. The increase in operating expenses mainly resulted from increased bad debt allowance of approximately \$3.11 million and expansion of our business, which included additional costs of hiring more sales personnel, higher depreciation expense, training our marketing team and establishing new sales offices in more regions of China.

We recorded a bad debt allowance of \$3.11 million for the three months ended September 30, 2011, primarily attributed to payment delays caused by the working capital difficulties of many of our state-owned customers. Due to the current deflationary fiscal policy of the PRC government, some of our state-owned customers encountered difficulties in obtaining grants from the government and loans from state-owned banks, both of which typically are used to finance the purchase of our products, which resulted in unexpected delays in paying our accounts receivable in a timely manner. Generally, we account for 50% of the amount of accounts receivable with aging over 180 days and 100% of the amount of accounts receivable with aging over 360 days as bad debt allowance. We do not expect a significant risk with respect to the overdue accounts receivable for which we took the bad debt allowance and believe that a substantial portion of the bad debt will be repaid as the Chinese government restores grants and credit policies. We believe the government's stringent fiscal policy impacting our customers will be temporary and the expansion and training of our marketing team and other employees to date will increase sales and improve the efficiency of our

operations. Nevertheless, we will institute a rigorous program of cost cutting to continue to tightly control our budget and implement additional cost control measures, including a review of the staffing levels of our employees in response to the decrease in revenue.

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Other income (expenses), net. Our other expense for the three months ended September 30, 2011, was \$153,810 compared to net other income of \$178,938 for the same period of 2010, a decrease of \$332,748 or 186%. The decrease was due mainly to increased interest expenses of \$0.26 million from increased short-term loans and increased foreign exchange transaction loss of \$0.21 million.

Income tax expense (benefit). We had income tax expense of \$1.32 million for the three months ended September 30, 2011, compared to income tax expense of \$2.09 million for the same period of 2010. The effective income tax rate for the three months ended September 30, 2011, was 49.2% compared to 15.9% for the same period of 2010. During the six months ended June 30, 2011, we recorded a \$1.33 million tax benefit resulting primarily from provision of bad debt allowance. During the quarter ended September 30, 2011, management believed the realization of deferred tax benefits from these losses remains uncertain due to our continuing losses. Accordingly, a 100% deferred tax asset valuation allowance has been provided during the quarter and the \$1.33 million tax benefit recorded previously was reversed in the third quarter of 2011.

Taiyu and SanDeKe are governed by the Income Tax Law of the PRC concerning privately-run enterprises, which are generally subject to tax at a statutory rate of 25% on income reported in the statutory financial statements after appropriated tax adjustments. According to the new income tax law that became effective January 1, 2008, new high-tech enterprises given special support by the PRC government are subject to an income tax rate of 15%. Taiyu was recognized as a new high-tech enterprise and registered its status with the tax bureau, providing it with an income tax rate of 15%. The local PRC government reviews the high-tech status of such enterprises annually. SanDeKe is exempt from income tax for two years starting from its first profitable year and is entitled to a 50% discount on the income tax rate from 2010 through 2012. The income tax rate for SanDeKe is 12% and 11% for 2011 and 2010, respectively.

SmartHeat Siping, Jinhui, SmartHeat Investment, SmartHeat Energy, SmartHeat Pump, Ruicheng and SmartHeat Trading are subject to the regular 25% PRC income tax rate. GWP is subject to a 15% corporate income tax in Germany.

Net Income (Loss). Our net loss for the three months ended September 30, 2011, was \$4.0 million compared to net income of \$11.11 million for the same period of 2010, a decrease of \$15.10 million or 136%. Net loss as a percentage of sales was 24.1% in the three months ended September 30, 2011, and net income as a percentage of sales was 21.6% in the 2010 period. This decrease in net income was attributable to the significant decrease of net sales and increased bad debt allowance reserve and other operating expenses.

Liquidity and Capital Resources

On November 23, 2010, we closed a public offering of 5,740,814 shares of our common stock at \$5.00 per share, which includes 740,814 shares sold as a result of the underwriters exercising their over-allotment option. After underwriting discounts and commissions and related expenses, we received net proceeds of \$27,040,741.

As of September 30, 2011, we had cash and equivalents of \$12.28 million. Working capital was \$106.21 million at September 30, 2011. The ratio of current assets to current liabilities was 3.78:1 at September 30, 2011.

The following is a summary of cash provided by or used in each of the indicated types of activities during the nine months ended September 30, 2011 and 2010:

	2011	2010
Cash provided by (used in):		
Operating activities	\$ (31,422,495)	\$ (19,355,109)

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Investing activities	\$	(21,337,289)	\$	(13,392,415)
Financing activities	\$	7,246,264	\$	(1,726,743)

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Net cash flow used in operating activities was \$31.42 million in the nine months ended September 30, 2011, compared to net cash flow used in operating activities of \$19.36 million in the same period of 2010. The increase in net cash outflow in operating activities was due mainly to decreased net income, increased payment of advance to suppliers, inventory and payment made for income tax and value-added tax (“VAT”). We typically experience significantly stronger sales during the second half of the calendar year, which is the fall and winter season in China, during which we historically generate approximately 74% of our sales. Accordingly, we increased inventory and advances to suppliers in the nine months ended September 30, 2011, in advance of anticipated production needs.

Net cash flow used in investing activities was \$21.34 million in the nine months ended September 30, 2011, compared to net cash used in investing activities of \$13.39 million in the same period of 2010. The increase of net cash flow used in investing activities was due mainly to the acquisition of SmartHeat Pump and GWP for \$13.59 million, purchase of property and equipment of \$2.45 million, advance to third party of \$5.29 million and \$0.42 million on construction in progress, partially offset by cash acquired from acquisition of \$0.45 million and proceeds from note receivables of \$0.70 million.

Net cash flow provided by financing activities was \$7.25 million in the nine months ended September 30, 2011, compared to net cash used in financing activities of \$1.73 million in the same period of 2010. The cash inflow was mainly from the proceeds from a short-term loan of \$6.46 million, cash advance from third party of \$0.80 million and capital contribution from noncontrolling interest of \$0.75 million, partially offset by payment on notes payable of \$0.77 million, while in the 2010 period, we had \$0.09 million cash inflow from warrants exercised, but repaid \$1.81 million on notes payable.

Our agreements with our customers generally provide that 30% of the purchase price is due upon the placement of an order, 30% upon delivery and 30% upon installation and acceptance of the equipment after customer testing. As a common practice in the heating manufacturing business in China, payment of the final 10% of the purchase price is due no later than the termination date of the standard warranty period, which ranges from 3 to 24 months from the acceptance date, or up to 2 heating seasons. Our receipts for payment on our products depend on the complexity of the equipment ordered, which impacts manufacturing, delivery, installation, testing times and warranty periods. For example, PHEs are less complex than PHE Units and therefore have a shorter manufacturing, acceptance, warranty and payment schedule. We may experience payment delays from time to time, which historically have been from 1 to 3 months from the due date, but given the temporary financial difficulties of some of our state-owned customers in China during the first half of 2011, we have experienced longer payment delays from these customers. Our accounts receivable and inventory turnover are relatively low and days sales outstanding ratio relatively high. Consequently, collection on our sales is slow and capital is tied up in inventories, which may result in pressure on cash flows. For the nine months ended September 30, 2011, we had accounts receivable turnover of 1.77 on an annualized basis, with days sales outstanding of 206 and inventory turnover of 1.12 on an annualized basis. For the nine months ended September 30, 2010, we had accounts receivable turnover of 2.68 on an annualized basis, with days sales outstanding of 136 and inventory turnover of 3.25 on an annualized basis. The low accounts receivable turnover and high days outstanding was due to the temporary financial difficulties of some of our state-owned customers that resulted in a delay in their making payments to us. The low inventory turnover rate was due to our decreased sales volume as a result of our state-owned customers’ temporary financial difficulty.

As of September 30, 2011, we had accounts receivable of \$51,296,381, of which \$4,369,178 was with aging within 30 days, \$6,690,544 was with aging over 30 days and within 90 days, \$8,280,705 was with aging over 90 days and within 180 days, \$29,966,228 was with aging over 180 days and within 360 days and \$1,989,726 was with aging over 360 days. At September 30, 2011, net accounts receivable was \$35,435,963, or gross accounts receivable of \$51,296,381 less bad debt allowance of \$11,848,994, unearned interest of \$11,742 and current and noncurrent retention receivables of \$3,999,682. As of October 31, 2011, we have collected \$3.5 million of the accounts receivable outstanding as of September 30, 2011.

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Our accounts receivable typically remain outstanding for a significant period of time based on the standard payment terms with our customers described above. The increase in amount of accounts receivable outstanding for more than 180 days in 2011 was due mainly to payment delays from certain state-owned customers that experienced working capital difficulties in the first half of 2011 because of the current deflationary fiscal policy of the PRC government. We do not expect a significant risk with respect to these overdue accounts receivable. We took the bad debt allowance against some of these customers and believe that a substantial portion of the bad debt will be repaid in 2011 and first quarter of 2012 as the PRC government restores grants and credit policies.

We recognize the final 5-10% of the purchase price as a retention receivable, which is due no later than the termination of our warranty period. The deferral of the final payment is a common practice in the heating manufacturing business in China. Sometimes our customers are required to deposit 5-10% of the sales price on high value products, like an assembled heat exchanger unit or the main part of a PHE, into designated bank accounts as restricted cash for securing the payment after such period expires. Based on our historical experience, there have been no defaults on such deferrals. Therefore, we believe the potential risks and uncertainty associated with defaults on such receivables are not material.

Dividend Distribution

We are a U.S. holding company that conducts substantially all of our business through our wholly owned and other consolidated operating entities in China and Germany. We will of necessity rely in part on dividends paid by our subsidiaries in China and Germany for our cash needs, including the funds necessary to pay dividends and other cash distributions to our shareholders, to service any debt we may incur and to pay our operating expenses. The payment of dividends by entities organized in China is subject to limitations. In particular, PRC regulations currently permit payment of dividends only out of accumulated profits as determined in accordance with accounting standards and regulations in China. Our PRC subsidiaries also are required to set aside at least 10% of their after-tax profit based on PRC accounting standards each year to a statutory surplus reserve fund until the accumulative amount of such reserve reaches 50% of registered capital. These reserves are not distributable as cash dividends. In addition, our PRC subsidiaries, at their discretion, may allocate a portion of their after-tax profit to their staff welfare and bonus fund, which may not be distributed to equity owners except in the event of liquidation. Moreover, if any of our subsidiaries in China or Germany incur debt on its own behalf in the future, the instruments governing the debt may restrict such subsidiary's ability to pay dividends or make other distributions to us. Any limitation on the ability of one of our subsidiaries to distribute dividends and other distributions to us could materially and adversely limit our ability to make investments or acquisitions that could be beneficial to our businesses, pay dividends or otherwise fund and conduct our business.

Off-Balance Sheet Arrangements

We have not entered into any other financial guarantees or other commitments to guarantee the payment obligations of any third parties. We have not entered into any derivative contracts that are indexed to our shares and classified as stockholders' equity or that are not reflected in our consolidated financial statements. Furthermore, we do not have any retained or contingent interest in assets transferred to an unconsolidated entity that serves as credit, liquidity or market risk support to such entity. We do not have any variable interest in any unconsolidated entity that provides financing, liquidity, market risk or credit support to us or engages in leasing, hedging or research and development services with us.

Contractual Obligations

We were obligated for the following short-term loans as of September 30, 2011, and December 31, 2010:

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	2011	2010
From a commercial bank in the PRC for RMB 5,000,000 entered into on October 19, 2010. The loan bore interest at 6.94% with maturity on October 18, 2011, but was repaid in September 2011. The loan was pledged by bank deposit.	\$ -	\$ 754,979
From a commercial bank in the PRC for RMB 17,000,000 entered into on June 1, 2010. The loan currently bore interest at 5.31% with maturity on June 30, 2011. The loan was guaranteed by a third party. The loan was paid in full when it matured.	-	2,566,929
From a commercial bank in the PRC for RMB 13,000,000 entered into on August 9, 2010. The loan bore interest at 5.31% with maturity on June 30, 2011. The Company pledged its building and land use rights for this loan. The loan was paid in full when it matured.	-	1,962,946
From a commercial bank in the PRC for RMB 25,000,000 entered into on September 14, 2010. The loan currently bears interest at 7.22% with maturity on September 13, 2011, and was renewed until September 13, 2012. The loan was pledged by bank deposit.	3,933,972	3,774,895
From a commercial bank in the PRC for RMB 10,000,000 entered into on June 27, 2011. The loan currently bears interest at 7.57% with maturity on June 27, 2012. The loan was pledged by bank deposit.	1,573,589	-
From a commercial bank in the PRC for RMB 50,000,000 entered into on June 29, 2011. The loan currently bears interest at 6.94% with maturity on January 27, 2012. The loan was guaranteed by SanDeKe.	7,867,944	-
From a commercial bank in the PRC for RMB 3,000,000 entered into on June 30, 2011. The loan currently bears interest at 6.63% with maturity on June 29, 2012. The loan was guaranteed by a third party.	472,077	-
From a commercial bank in the PRC for RMB 5,000,000 entered into on July 6, 2011. The loan currently bears interest at 6.63% with maturity on July 5, 2012. The loan was guaranteed by a third party.	786,795	-
From a commercial bank in the PRC for RMB 3,000,000 entered into on July 15, 2011. The loan currently bears interest at 6.89% with maturity on July 14, 2012. The loan was guaranteed by a third party.	472,077	-
From a commercial bank in the PRC for RMB 1,600,000 entered into on August 1, 2011. The loan currently bears interest at 6.89% with maturity on July 31, 2012. The loan was guaranteed by a third party.	251,774	-
From a commercial bank in the PRC for RMB 3,300,000 entered into August 16, 2011. The loan currently bears interest at 6.89% with maturity on August 15, 2012. The loan was guaranteed by a third party.	519,284	-
From a commercial bank in the PRC for RMB 1,100,000 entered into on August 23, 2011. The loan currently bears interest at 6.89% with maturity on August 22, 2012. The loan was guaranteed by a third party.	173,095	-
From a commercial bank in the PRC for RMB 5,000,000 entered into on September 21, 2011. The loan currently bears interest at 7.22% with maturity on September 20, 2012. The loan was pledged by bank deposit.	786,794	-
	\$ 16,837,401	\$ 9,059,749

Of the loans listed above that are guaranteed by a third party, the guarantees were provided by the same third party company, the guarantee term is one year and we not required to pay for this guarantee service as we provide the same guarantee service to loans of the third party company in return. As of September 30, 2011, we have signed a contract to provide guarantee of up to RMB 30 million (\$4.7 million) in loans for this third party company.

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Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risks related to fluctuations in currency exchange rates and commodity prices for certain of our raw materials. We currently do not engage in forward foreign exchange agreements or other hedging transactions in an effort to reduce our exposure to foreign currency exchange risk. We do not engage in hedging transactions to protect against raw material pricing fluctuations; instead, we attempt to mitigate the short-term risks of price swings by purchasing raw materials in advance.

Our Annual Report on Form 10-K for the year ended December 31, 2010, as amended, contains information about our exposure to market risks under “Item 7A. Quantitative and Qualitative Disclosures about Market Risk.” There has been no material change in our exposure to market risks during the nine months ended September 30, 2011.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, our principal executive officer and principal financial officer, respectively, evaluated the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (“Exchange Act”), as of the end of the period covered by this Quarterly Report. Based on this evaluation, our chief executive officer and chief financial officer concluded that, as of September 30, 2011, our disclosure controls and procedures are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during our most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We may become involved in various lawsuits and legal proceedings arising in the ordinary course of business. Litigation is subject to inherent uncertainties and an adverse result in these or other matters may arise from time to time that may have an adverse effect on our business, financial conditions or operating results. We are currently not aware of any such legal proceedings or claims that will have, individually or in the aggregate, a material adverse effect on our business, financial condition or operating results.

Item 1A. Risk Factors

In addition to the following new risk factors, you should consider carefully the factors discussed in the “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2010, as amended, which could materially affect our business.

Risks Related to Doing Business in China

PRC labor laws may adversely affect our results of operations.

On June 29, 2007, the PRC government promulgated a new labor law, namely, the Labor Contract Law of the PRC (the “Labor Contract Law”), which became effective on January 1, 2008. The Labor Contract Law imposes greater liabilities on employers and significantly affects the cost of an employer’s decision to reduce its workforce. It additionally requires that employers base certain termination decisions on seniority and not merit. In the event we decide to significantly change or decrease our workforce in China, the Labor Contract Law could adversely affect our ability to effect such changes in a manner that is most advantageous to our business or in a timely and cost-effective manner, thus materially and adversely affecting our financial condition and results of operations.

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Under the Enterprise Income Tax Law, we may be classified as a “resident enterprise” of China. Such classification will likely result in unfavorable tax consequences to us and our non-PRC resident shareholders.

We are a U.S. holding company that conducts substantially all of our business through our wholly owned and other consolidated entities in China, and we derive substantially all of our income from these entities. Prior to January 1, 2008, dividends derived by foreign enterprises from business operations in China were not subject to PRC enterprise income tax. Under the PRC Enterprise Income Tax Law (the “EIT Law”) and its implementing rules, both of which became effective on January 1, 2008, an enterprise established outside of China with “de facto management bodies” within China is considered a “resident enterprise,” meaning that it must be treated as a PRC domestic enterprise for enterprise income tax purposes. The implementing rules of the EIT Law define de facto management as “substantial and overall management and control over the production and operations, personnel, accounting, and properties” of the enterprise.

On April 22, 2009, the State Administration of Taxation issued the Notice Concerning Relevant Issues Regarding Cognizance of Chinese Investment Controlled Enterprises Incorporated Offshore as Resident Enterprises pursuant to Criteria of de facto Management Bodies (the “Notice”), which further interprets the application of the EIT Law and its implementation regarding non-PRC enterprise or group controlled offshore entities. Pursuant to the Notice, an enterprise incorporated in an off-shore jurisdiction and controlled by a PRC enterprise or group will be classified as a “non-domestically incorporated resident enterprise” if: (i) its senior management in charge of daily operations reside or perform their duties mainly in China; (ii) its financial or personnel decisions are made or approved by bodies or persons in China; (iii) its substantial assets and properties, accounting books, corporate chops, board and shareholder minutes are kept in China; and (iv) at least half of its directors with voting rights or senior management often reside in China. A “resident enterprise” would be subject to an enterprise income tax rate of 25% on its worldwide income and must pay a withholding tax at a rate of 10% when paying dividends to its non-PRC shareholders. However, detailed measures on imposition of tax from non-domestically incorporated resident enterprises are not yet available. Therefore, it is unclear how tax authorities will determine tax residency based on the facts of each case.

We may be deemed to be a “resident enterprise” by PRC tax authorities because substantially all members of our senior management team are located in China. If the PRC tax authorities determine that we are a “resident enterprise” for PRC enterprise income tax purposes, a number of unfavorable PRC tax consequences could follow. First, we may be subject to the enterprise income tax at a rate of 25% on our worldwide taxable income as well as PRC enterprise income tax reporting obligations. In our case, this would mean that income such as interest on financing proceeds and non-PRC source income would be subject to PRC enterprise income tax at a rate of 25%. Second, although under the EIT Law and its implementing rules dividends paid to us from our PRC subsidiaries would qualify as “tax-exempt income,” we cannot guarantee that such dividends will not be subject to a 10% withholding tax, as the PRC foreign exchange control authorities, which enforce the withholding tax, have not yet issued guidance with respect to the processing of outbound remittances to entities that are treated as “resident enterprises” for PRC enterprise income tax purposes. Finally, it is possible that future guidance issued with respect to the new “resident enterprise” classification could result in a situation in which a 10% withholding tax is imposed on dividends we pay to our non-PRC shareholders and with respect to gains derived by our non-PRC shareholders from transferring our shares. If we were treated as a “resident enterprise” by PRC tax authorities, we would be subject to taxation in both the U.S. and China, and our PRC tax may not be creditable against our U.S. tax.

Risks Related to our Securities

If we are unable to regain compliance with the minimum bid requirements of the NASDAQ Global Select Market, our stock may be delisted, which could limit investors’ ability to effect transactions in our common stock and subject our common stock to additional trading restrictions.

Our common stock currently is listed on the NASDAQ Global Select Market. On September 29, 2011, we received notice from the Listing Qualifications Department of the NASDAQ Stock Market LLC indicating that, for the last 30 consecutive business days, the bid price for our common stock had closed below the minimum \$1.00 per share bid closing price required for continued inclusion on the NASDAQ Global Select Market under NASDAQ Listing Rule 5450(a)(1). Under the NASDAQ Listing Rules, we are provided 180 calendar days, or until March 27, 2012, to regain compliance with the minimum bid price requirement. In order to regain compliance, shares of our common stock must maintain a minimum bid closing price of at least \$1.00 per share for a minimum of ten consecutive business days. If we are unable to regain compliance with the minimum bid price requirements of the NASDAQ Global Select Market, we may apply to transfer our common stock to the NASDAQ Capital Market if we meet certain listing requirements for such market under the NASDAQ Listing Rules, whereby we may be provided with an additional period of time to regain compliance with the minimum bid price requirement.

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We cannot assure you that we will be able to solve the deficiency and regain compliance with the NASDAQ minimum bid price requirements, however. If our common stock is delisted from trading on the NASDAQ markets, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our common stock;
 - a reduced liquidity with respect to our common stock;
- a determination that our common stock is a “penny stock,” which would require brokers trading in our common stock to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our common stock;
 - a limited amount of news and analyst coverage for our company; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

We intend to actively monitor the bid price for our common stock through March 27, 2012, and will consider all available options, including a reverse stock split, to resolve the deficiency and regain compliance with the NASDAQ minimum bid price requirements.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. (Removed and Reserved)

Item 5. Other Information

None.

Item 6. Exhibits

See the Exhibit Index following the signature page to this Quarterly Report on Form 10-Q for a list of exhibits filed or furnished with this report, which Exhibit Index is incorporated herein by reference.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 8, 2011

SMARTHEAT INC.
(Registrant)
By: /s/ Jun Wang
Jun Wang
Chief Executive Officer
(Principal Executive Officer)

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EXHIBIT INDEX

Exhibit No. Document Description

31.1 †	<u>Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>
31.2 †	<u>Certification of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>
32.1 ‡	<u>Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as signed by the Chief Executive Officer</u>
32.2 ‡	<u>Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as signed by the Chief Financial Officer</u>
101.INS†	XBRL Instance Document
101.SCH†	XBRL Schema Document
101.CAL†	XBRL Calculation Linkbase Document
101.DEF†	XBRL Definition Linkbase Document
101.LAB†	XBRL Label Linkbase Document
101.PRE†	XBRL Presentation Linkbase Document

† Filed herewith

‡ Furnished herewith

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