

XSUNX INC
Form 10-K/A
January 16, 2013

UNITED STATES

SECURITIES EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

ANNUAL REPORT PURSUANT TO

THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended September 30, 2012

Commission File Number 000-29621

XSUNX, INC.

(Exact Name of Registrant as Specified in Its Charter)

Colorado

84-1384159

(I.R.S. Employer
(State of Incorporation)
Identification No.)

65 Enterprise, Aliso Viejo, CA 92656

(Address of Principal Executive Offices) (Zip Code)

(949) 330-8060

(Registrant's Telephone Number)

Securities registered pursuant to Section 12(b) of the Act: Title of each class: **None**

Name of Each Exchange on which Registered: **N/A**

Securities registered pursuant to Section 12(g) of the Act:

Title of each class: **Common Stock, no par value per share**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes ☐ NO ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ NO ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, during the preceding twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

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Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months. Yes ☒ NO ☐

Check if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company.

(Check one)

☐ Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.)

(Check one): Yes ☐ NO ☒

As of March 31, 2012, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$7,843,978 million based on the closing price as reported on the OTCBB.

As of January 11, 2013, there were 297,270,080 shares of the registrant's company stock outstanding.

Explanatory Note

The purpose of this Amendment No. 1 (the “Amendment”) to the registrant’s Annual Report on Form 10-K for the year ended September 30, 2012, filed with the Securities and Exchange Commission on January 11, 2013 (the “Original Form 10-K Filing Date”), is solely to furnish the following disclosure which was inadvertently omitted on the cover page;

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, during the preceding twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No

In addition, in connection with the filing of this Amendment and pursuant to Rule 12b-15 of the Securities Exchange Act of 1934, as amended, the certifications of our principal executive officer and principal financial officer are attached as exhibits to this Amendment.

Except as set forth above, we have not modified or updated disclosures presented in the Original Form 10-K filing to reflect events or developments that have occurred after the date of the Original Filing. Among other things, forward-looking statements made in the Original Filing have not been revised to reflect events, results or developments that have occurred or facts that have become known to us after the date of the Original Filing (other than as discussed above), and such forward-looking statements should be read in their historical context. Accordingly, this Amendment should be read in conjunction with our filings made with the SEC subsequent to the filing of the Original Filing. This Amendment No. 1 to the Form 10-K speaks as of the original filing date of the Form 10-K and does not contain any other changes.

SIGNATURES

Pursuant to the requirements of Section 13 or 15 (d) 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: January 16, 2013 XSUNX, INC.

By: /s/ Tom Djokovich
Name: Tom Djokovich
Title: CEO and Principal Accounting Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ Tom Djokovich
Tom Djokovich, President, Chief Executive Officer,

January 16, 2013

Principal Financial and Accounting Officer, and Director

/s/ Joseph Grimes
Joseph Grimes, Director

January 16, 2013

/s/ Thomas Anderson
Thomas Anderson, Director

January 16, 2013

/s/ Oz Fundingsland
Oz Fundingsland, Director

January 16, 2013