

Resonant Inc
Form S-3
May 13, 2016
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As filed with the Securities and Exchange Commission on May 13, 2016.

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-3

**REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

RESONANT INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of other jurisdiction of
incorporation or organization)

45-4320930
(I.R.S. Employer
Identification No.)

110 Castilian Drive, Suite 100

Goleta, California 93117

(805) 308-9803

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(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Terry Lingren

Chief Executive Officer

Resonant Inc.

110 Castilian Drive, Suite 100

Goleta, California 93117

(805) 308-9803

(Name, address, including zip code, and telephone number, including area code of agent for service)

Copy to:

John J. McIlvery, Esq.

Stubbs Alderton & Markiles, LLP

15260 Ventura Boulevard, 20th Floor

Sherman Oaks, California 91403

(818) 444-4500

Approximate date of commencement of proposed sale to the public: FROM TIME TO TIME AFTER THE EFFECTIVE DATE OF THIS REGISTRATION STATEMENT.

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

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered (1)	Amount to be Registered (2)(3)	Proposed maximum offering price per security (3)	Proposed maximum aggregate offering price (3)	Amount of registration fee
Common Stock, par value \$0.001 per share	1,996,880 shares	\$ 4.32	\$ 8,626,522	\$ 869
Common Stock, par value \$0.001 per share, underlying Warrants	1,996,880 shares	\$ 4.32	\$ 8,626,522	\$ 869
Total:	3,993,760 shares	\$	\$ 17,253,044	\$ 1,738

(1) The shares being registered hereunder consist of 1,996,880 shares of common stock and 1,996,880 shares of common stock that may be acquired upon exercise of warrants, in each case which shares of common stock may be sold from time to time by the selling stockholders.

(2) Pursuant to Rule 416 under the Securities Act of 1933, as amended, the shares being registered hereunder include such indeterminate number of shares of common stock and preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.

(3) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the average of the high and low per share prices of the registrant's common stock as report on The Nasdaq Capital Market on May 11, 2016.

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

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

SUBJECT TO COMPLETION, DATED MAY 13, 2016

PROSPECTUS

**3,993,760 Shares
Common Stock**

This prospectus relates solely to the offer and sale from time to time of up to an aggregate of 3,993,760 shares of our common stock by the selling stockholders identified in this prospectus or a supplement hereto. These shares consist of shares of our common stock that we issued to the selling stockholders pursuant to private placements of our common stock or upon the exercise of warrants to purchase our common stock.

This prospectus describes the general manner in which the shares of common stock may be offered and sold by the selling stockholders. If necessary, the specific manner in which shares of common stock may be offered and sold will be described in a supplement to this prospectus.

We are not offering any shares of common stock for sale under this prospectus, and we will not receive any of the proceeds from the sale or other disposition of the shares of common stock offered hereby.

Our common stock is listed on The Nasdaq Capital Market under the symbol RESN. On May 11, 2016, the last reported sale price of our common stock on The Nasdaq Capital Market was \$4.54.

Investing in our common stock involves risks. You should carefully consider the risks described under Risk Factors in Item 1A of our most recent Annual Report on Form 10-K and Item 1A of any subsequently filed Quarterly Reports on Form 10-Q (which documents are incorporated by reference herein), as well as the other information contained or incorporated by reference in this prospectus or in any prospectus supplement hereto before making a decision to invest in our common stock. See Where You Can Find More Information below.

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

The date of this prospectus is .

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You should rely only on the information that we have provided or incorporated by reference in this prospectus, any applicable prospectus supplement and any related free writing prospectus that we may authorize to be provided to you. We have not authorized anyone to provide you with different information. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus, any applicable prospectus supplement or any related free writing prospectus that we may authorize to be provided to you. You must not rely on any unauthorized information or representation. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information in this prospectus, any applicable prospectus supplement or any related free writing prospectus is accurate only as of the date on the front of the document and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus, any applicable prospectus supplement or any related free writing prospectus, or any sale of a security.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission utilizing a shelf registration process. Under this shelf registration process, the selling stockholders may offer from time to time up to an aggregate of 3,993,760 shares of common stock in one or more offerings.

The registration statement of which this prospectus is a part is being filed in accordance with the registration rights agreement, dated as of April 25, 2016, by and among Resonant Inc. and the selling stockholders party thereto. Pursuant to the registration rights agreement, we have agreed to indemnify and hold harmless, to the extent permitted by law, each of the selling stockholders party to the registration rights agreement and each of such selling stockholder's officers, directors, members, managers, employees and agents, successors and assigns, and each other person, if any, who controls such selling stockholder within the meaning of the Securities Act of 1933, as amended (the Securities Act), from and against certain losses, claims, damages and liabilities, including certain liabilities under the Securities Act.

The information appearing in this prospectus, any applicable prospectus supplement or any related free writing prospectus is accurate only as of the date on the front of the document and any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus, any applicable prospectus supplement or any related free writing prospectus, or any sale of a security. Our business, financial condition, results of operations and prospects may have changed since those dates.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the heading **Where You Can Find More Information**.

This prospectus and the information incorporated herein by reference include trademarks, services marks and trade names owned by us or other companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus, any applicable prospectus supplement or any related free writing prospectuses are the property of their respective owners.

Unless the context otherwise requires, the terms **we**, **our**, **us**, **our company**, and **Resonant** refer to Resonant Inc. and its subsidiaries.

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RESONANT INC.

Resonant Inc. is a late-stage development company creating innovative filter designs for the RF front-end for the mobile device industry. The RF front-end, or RFFE, is the circuitry in a mobile device responsible for analog signal processing and is located between the device's antenna and its digital baseband. Filters are a critical component of the RFFE that selects the desired radio frequency signals and rejects unwanted signals.

Using a patented, fundamentally new technology called Infinite Synthesized Networks®, or ISN®, we have developed a new method of designing RF filters that can displace conventional filters by providing significant cost and size reductions, fewer components and improved performance. We plan to commercialize our technology by creating filter designs that address the problems created by the growing number of frequency bands in the RF front-end of mobile devices. We are developing a series of single-band surface acoustic wave, or SAW, filter designs for frequency bands presently dominated by larger and more expensive bulk acoustic wave, or BAW, filters. We are also developing multiplexer filter designs for 2 or more bands to address the carrier aggregation requirements of our customers. Finally, we are developing reconfigurable filter designs to replace multiple filters for multiple bands. In order to succeed, we must convince RF front-end suppliers that our filter designs can significantly reduce the size and cost of their products.

We were incorporated in Delaware in January 2012. Our principal executive offices are located at 110 Castilian Drive, Suite 100, Goleta, California 93117, and our telephone number at this location is (805) 308-9803. Our website address is www.resonant.com. The information contained on, or that can be accessed through, our website is not a part of this prospectus.

RISK FACTORS

Investing in our securities involves a high degree of risk. Before deciding whether to invest in our securities, you should consider carefully the risks and uncertainties discussed under the section titled "Risk Factors" contained in our most recent Annual Report on Form 10-K and in our most recent Quarterly Report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC, which are incorporated by reference into this prospectus in their entirety, together with other information in this prospectus, the documents incorporated by reference and any free writing prospectus that we may authorize for use in connection with a specific offering. The risks described in these documents are not the only ones we face, but those that we consider to be material. There may be other unknown or unpredictable economic, business, competitive, regulatory or other factors that could have material adverse effects on our future results. Past financial performance may not be a reliable indicator of future performance, and historical trends should not be used to anticipate results or trends in future periods. If any of these risks actually occurs, our business, financial condition, results of operations or cash flow could be seriously harmed. This could cause the trading price of our securities to decline, resulting in a loss of all or part of your investment. Please also read carefully the section below titled "Forward-Looking Statements."

FORWARD-LOOKING STATEMENTS

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This prospectus and the documents incorporated by reference contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, or Exchange Act. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. These forward-looking statements include, but are not limited to, those concerning the following:

- the status of filter designs under development;
- the prospects for licensing filter designs upon completion of development;
- plans for other filter designs not currently in development;

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- potential customers for our designs;
- the timing and amount of future royalty streams;
- our plans regarding the use of proceeds from our equity financings and the expected duration of our capital resources;
- our plans regarding future financings;
- our hiring plans;
- the impact of our designs on the mobile device market;
- our business strategy;
- our intentions, expectations and beliefs regarding anticipated growth, market penetration and trends in our business;
- the timing and success of our plan of commercialization;
- our dependence on growth in our customers' businesses;
- the effects of market conditions on our stock price and operating results;
- our ability to maintain our competitive technological advantages against competitors in our industry and the related costs associated with defending intellectual property infringement and other claims;

- our ability to timely and effectively adapt our existing technology and have our technology solutions gain market acceptance;
- our ability to introduce new filter designs and bring them to market in a timely manner;
- our ability to maintain, protect and enhance our intellectual property;
- our expectations concerning our relationships with our customers and other third parties and our customers relationships with their manufacturers;
- the attraction and retention of qualified employees and key personnel;
- future acquisitions of or investments in complementary companies or technologies; and
- our ability to comply with evolving legal standards and regulations, particularly concerning requirements for being a public company and United States export regulations.

In some cases, you can identify forward-looking statements by terms such as anticipates, believes, could, estimates, expects, intends, may, potential, predicts, projects, should, will, would as well as similar expressions. Forward-looking statements reflect our current views with respect to future events, are based on assumptions and are subject to risks, uncertainties and other important factors. We discuss many of these risks, uncertainties and other important factors in greater detail under the heading Risk Factors contained in our most recent annual report on Form 10-K and in our most recent quarterly report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. Given these risks, uncertainties and other important factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date such forward-looking statements are made. Except as required by law, we assume no obligation to update any forward-looking statements publicly, or to reflect facts and circumstances after the date of this prospectus. Before deciding to purchase our securities, you should carefully read both this prospectus, any applicable prospectus supplement and any related free writing prospectus, together with the information incorporated herein by reference as described under the heading Incorporation of Certain Information by Reference, completely and with the understanding that our actual future results may be materially different from what we expect.

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USE OF PROCEEDS

We will not receive any proceeds from the sale of shares of common stock by the selling stockholders.

DESCRIPTION OF CAPITAL STOCK

Our authorized capital stock consists of 47,000,000 shares of common stock, \$0.001 par value, and 3,000,000 shares of preferred stock, \$0.001 par value. As of May 11, 2016, there were 9,411,894 shares of common stock outstanding and no shares of preferred stock outstanding.

The following summary description of our capital stock is based on the provisions of our certificate of incorporation and bylaws and the applicable provisions of the Delaware General Corporation Law. This information is qualified entirely by reference to the applicable provisions of our certificate of incorporation, bylaws and the Delaware General Corporation Law. For information on how to obtain copies of our certificate of incorporation and bylaws, which are exhibits to the registration statement of which this prospectus is a part, see [Where You Can Find More Information](#).

Common Stock

The holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders. Our stockholders do not have cumulative voting rights in the election of directors. Subject to preferences that may be applicable to any outstanding shares of preferred stock, the holders of common stock are entitled to receive ratably only those dividends as may be declared by our board of directors out of legally available funds. Upon our liquidation, dissolution or winding up, holders of our common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preferences of any outstanding shares of preferred stock. Holders of common stock have no preemptive or other subscription or conversion rights. There are no redemption or sinking fund provisions applicable to our common stock. Shares of our common stock outstanding, and to be issued, are, and will be, fully paid and non-assessable. Additional shares of authorized common stock may be issued, as authorized by our board of directors from time to time, without stockholder approval, except as may be required by applicable stock exchange requirements.

Preferred Stock

Pursuant to our certificate of incorporation, our board of directors has the authority, without further action by the stockholders (unless such stockholder action is required by applicable law or the rules of The Nasdaq Stock Market), to designate and issue up to 3,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the designations, powers, preferences and rights of the shares of each wholly unissued series, and any qualifications, limitations or restrictions thereon, and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding. Shares of our preferred stock, if issued, will be fully paid and non-assessable.

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We will fix the designations, powers, preferences and rights of the preferred stock of each series, as well as the qualifications, limitations or restrictions thereon, in the certificate of designation relating to that series, including:

- the title and stated value;

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- the number of shares of such series;
- the liquidation preference per share;
- the purchase price;
- the dividend rate, period and payment date and method of calculation for dividends;
- whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;
- the provisions for a sinking fund, if any;
- the provisions for redemption or repurchase, if applicable, and any restrictions on our ability to exercise those redemption and repurchase rights;
- whether the preferred stock will be convertible into our common stock, and, if applicable, the conversion price, or how it will be calculated, and the conversion period;
- whether the preferred stock will be exchangeable into debt securities, and, if applicable, the exchange price, or how it will be calculated, and the exchange period;
- voting rights, if any, of the preferred stock;
- preemptive rights, if any;

- restrictions on transfer, sale or other assignment, if any;
- the relative ranking and preferences of the preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs;
- any limitations on the issuance of any class or series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividend rights and rights if we liquidate, dissolve or wind up our affairs; and
- any other specific terms, preferences, rights or limitations of, or restrictions on, the preferred stock.

The General Corporation Law of the State of Delaware, or DGCL, the state of our incorporation, provides that the holders of preferred stock will have the right to vote separately as a class (or, in some cases, as a series) on an amendment to our certificate of incorporation if the amendment would change the par value or, unless the certificate of incorporation provided otherwise, the number of authorized shares of the class or change the powers, preferences or special rights of the class or series so as to adversely affect the class or series, as the case may be. This right is in addition to any voting rights that may be provided for in the applicable certificate of designation.

Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. Preferred stock could be issued quickly with terms designed to delay or prevent a change in control of our company or make removal of management more difficult. Additionally, the issuance of preferred stock may have the effect of decreasing the market price of our common stock.

Anti-takeover Effects of Provisions of Charter Documents and Delaware Law

Charter Documents. Our certificate of incorporation and bylaws contain provisions that could discourage potential takeover attempts and make it more difficult for stockholders to change management, which could adversely affect the market place of our common stock.

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Our certificate of incorporation limits the personal liability for monetary damages for breach of fiduciary duty of our directors to Resonant and our stockholders to the fullest extent permitted by the Delaware General Corporation Law. The inclusion of this provision in our certificate of incorporation may reduce the likelihood of derivative litigation against directors and may discourage or deter stockholders or management from bringing a lawsuit against directors for breach of their fiduciary duty.

Our certificate of incorporation provides that all stockholder action must be effected at a meeting of stockholders and not by a consent in writing. In addition, our certificate of incorporation and bylaws provide that, except as otherwise expressly provided by the terms of any series of preferred stock permitting the holders of such series of preferred stock to call a special meeting of the holders of such series, special meetings of stockholders of Resonant may be called only by the board of directors, the chairperson of the board of directors, the chief executive officer or the president (in the absence of a chief executive officer). Finally, our bylaws establish procedures, including advance notice procedures, with regard to the nomination of candidates for election as directors and stockholder proposals.

Delaware Law. We are subject to Section 203 of DGCL, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested holder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;

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- any sale, lease, transfer, pledge or other disposition of 10% or more of the assets of the corporation to or with the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines interested stockholder as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation or any entity or person affiliated with or controlling or controlled by such entity or person.

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Although Section 203 permits us to elect not to be governed by its provisions, we have not made this election. As a result of the application of Section 203, potential acquirers of Resonant may be discouraged from attempting to effect an acquisition transaction with us, thereby possibly depriving holders of our securities of certain opportunities to sell or otherwise dispose of such securities at above-market prices pursuant to such transactions.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Limited, P.O. Box 30170, College Station, TX 77842, and its telephone number is (800) 368-5948. The transfer agent for any series of preferred stock that we may offer under this prospectus will be named and described in the prospectus supplement for that series.

Listing on The NASDAQ Capital Market

Our common stock is listed on The NASDAQ Capital Market under the symbol RESN.

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SELLING STOCKHOLDERS

April 2016 Financing

On April 20, 2016, we entered into a securities purchase agreement with investors that provided for the sale of 1,996,880 units at a price of \$2.985 per unit for gross proceeds to us of approximately \$5,960,000 before placement agent fees and transaction expenses. Each unit consists of one share of our common stock and one warrant to purchase one share of our common stock at an exercise price of \$2.86 for a period commencing 6 months and ending 36 months after the closing of the offering. The investors include seven of our directors and officers, each of whom purchased units on the same terms and conditions as the other investors. We consummated the private placement on April 25, 2016. Each of the investors in the private placement is a selling stockholder.

In connection with the private placement, we entered into a registration rights agreement, dated April 25, 2016, with the investors, pursuant to which we agreed to register for resale by the investors the shares of common stock, and the shares of common stock issuable upon exercise of the warrants, purchased by the investors pursuant to the securities purchase agreement. We committed to file the registration statement no later than May 25, 2016 and to cause the registration statement to become effective no later than August 23, 2016. The registration rights agreement provides for liquidated damages upon the occurrence of certain events, including our failure to file the registration statement on or before May 25, 2016 or cause it to become effective on or before August 23, 2016. The amount of liquidated damages payable to an investor would be 1.0% of the aggregate amount invested by such Investor for each 30-day period, or pro rata portion thereof, during which the default continues. We filed the registration statement of which this prospectus is a part with the SEC pursuant to the registration rights agreement.

National Securities Corporation, a wholly owned subsidiary of National Holdings, Inc., and Drexel Hamilton, LLC acted as co-placement agents in the financing. For their services as placement agents, we paid each of National Securities Corporation and Drexel Hamilton, LLC a cash fee of \$298,800 (or an aggregate of \$597,600, representing approximately 10% of the gross proceeds raised in the financing), and paid for the out-of-pocket expenses incurred by National Securities Corporation of approximately \$47,000. In addition, we issued to each of National Securities Corporation and Drexel Hamilton, LLC a warrant to purchase 49,922 shares of our common stock (or warrants for an aggregate of 99,844 shares of common stock, representing 5% of the number of shares of common stock issued to the investors in the financing) at an exercise price equal to \$2.86. These warrants are exercisable for a period commencing 6 months and ending 36 months after the closing of the financing. The investors in the private placement include Daniel Landry, Robert Clifford, Ankur Desai and Kevin Blair (or their affiliated entities), each of whom is associated person of National Securities Corporation and acquired units for their own account.

Selling Stockholder Table

The following table sets forth for each selling stockholder, the name, the number and percentage of shares of common stock beneficially owned as of May 11, 2016, the maximum number of shares of common stock that may be offered pursuant to this prospectus and the number and percentage of shares of common stock that would be beneficially owned after the sale of the maximum number of shares of common stock, and is based upon information provided to us by each selling stockholder for use in this prospectus. The information presented in the table is based on 9,411,894 shares of our common stock outstanding on May 11, 2016.

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Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and investment power with respect to all shares beneficially owned, subject to community property laws where applicable. For purposes of the table below, shares of common stock issuable pursuant to options and restricted stock units held by a selling stockholder that can be acquired within 60 days of May 11, 2016, and shares of common stock issuable pursuant to warrants held by a selling stockholder without regard to restrictions on exercise, are deemed to be outstanding and to be beneficially owned by the selling stockholder holding the securities but are not treated as outstanding for the purpose of computing the percentage ownership of any other selling stockholder.

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Pursuant to the terms of warrants held by certain selling stockholders, the maximum number of shares that may be acquired by any such selling stockholder upon any exercise of the warrants is limited to the extent necessary to ensure that, following such exercise, the total number of shares of common stock then beneficially owned by such selling stockholder and his affiliates and any other persons whose beneficial ownership of common stock would be aggregated with the selling stockholder for purposes of Section 13(d) of the Exchange Act, does not exceed a stated percentage of our common stock specified in the selling stockholder's warrant (either 4.99%, 9.99% or 19.99%). In addition, the warrants held by the selling stockholders are not exercisable until October 25, 2016. The shares of common stock and percentage ownership listed in the following table do not reflect these contractual limitations on a selling stockholder's ability to purchase shares of common stock upon exercise of warrants.

Name of Selling Stockholder	Shares Beneficially Owned Number	Percentage	Maximum Number of Shares to be Sold Hereunder	Shares Beneficially Owned After the Sale of the Maximum Number of Shares	Percentage
Executive Officers and Directors:					
Neal Fenzi (1)	452,762	4.8%	10,000	442,762	4.7%
The Kingdom Trust Company Cust FBO Michael J Fox SEP IRA (2)	1,391,400	14.3%	21,400	1,370,000	14.1%
Robert Bruce Hammond (3)	452,762	4.8%	10,000	442,762	4.7%
The Kingdom Trust Company Cust FBO George Holmes IRA (4)	86,434	*	16,600	69,834	*
Richard Kornfeld (5)	70,297	*	40,000	30,297	*
Terrance Dale Lingren & Constance Marie Lingren JT TEN (6)	454,858	4.8%	10,000	444,858	4.7%
John Major (7)	100,561	1.1%	67,000	33,561	*
5% Stockholders:					
Peter A Appel (8)	1,930,094	19.8%	670,000	1,260,094	12.9%
Park City Capital Offshore Master Ltd. (9)	1,370,000	14.1%	670,000	700,000	7.2%
Other Selling Stockholders:					
Christopher Achar (10)	16,000	*	16,000	0	
Matthew R Antoun (11)	24,000	*	24,000	0	
Benjamin L Padnos & Joseph M Sweeney TR UA DATED 03/25/2010 Jeffrey & Margaret Padnos 2010 Generation Trust FBO Benjamin Padnos (12)	29,372	*	7,960	21,412	*
Benjamin L Padnos & Joseph M Sweeney TR UA DATED 03/25/2010 Jeffrey & Margaret Padnos 2010 Generation Trust FBO Joshua Padnos (13)	27,256	*	13,000	14,256	*
Benjamin L Padnos & Joseph M Sweeney TR UA DATED 03/25/2010 Jeffrey & Margaret Padnos 2010 Generation Trust FBO Rebecca Padnos Altamirano (14)	23,256	*	13,000	10,256	*

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Name of Selling Stockholder	Shares Beneficially Owned		Maximum Number of Shares to be Sold Hereunder	Shares Beneficially Owned After the Sale of the Maximum Number of Shares	
	Number	Percentage		Number	Percentage
Benjamin L Padnos & Joseph M Sweeney TR UA DATED 03/25/2010 Jeffrey & Margaret Padnos 2010 Generation Trust FBO Samuel Padnos (15)	27,256	*	13,000	14,256	*
Bessemer Trust Cust FBO Murray Markiles Roth IRA (16)	66,000	*	66,000	0	
Blue Earth Fund LP (17)	240,000	2.5%	240,000	0	
Brad Handler TR UA DATED 04/08/1999 The Handler Revocable Trust (18)	50,912	*	30,000	20,912	*
Michael Sean Browning (19)	27,456	*	20,000	7,456	*
Cameron Broumand TR UA DATED 06/08/2010 Broumand Family Trust (20)	19,956	*	16,000	13,956	*
Causeway Bay Capital LLC (21)	28,410	*	20,000	8,410	*
Michael J Cavalier Jr (22)	118,000	1.3%	68,000	50,000	*
Jason Robert Cavalier (23)	73,000	*	68,000	5,000	*
Connective Capital Emerging Energy QP LP (24)	63,800	*	63,800	0	
Connective Capital I Master Fund Ltd (25)	116,200	1.2	116,200	0	
Cynthia Padnos TR UA DATED 05/09/1991 Cynthia B Padnos Separate Property Trust (26)	23,000	*	16,000	7,000	*
David S Nagelberg TR UA DATED 07/02/2003 David S Nagelberg 2003 Revocable Trust (27)	120,000	1.3%	120,000	0	
Edmund N Purcell & Michelle M Purcell TR UA DATED 09/19/2007 Purcell Trust (28)	18,000	*	18,000	0	
David V Fox (29)	29,625	*	16,000	13,625	*
James A Fuchs (30)	57,500	*	50,000	7,500	*
Peter C Gerlach (31)	16,000	*	16,000	0	
Gregory Harding-Brown (32)	16,000	*	16,000	0	
Harvey Bibicoff TR UA DATED 5/16/2000 Bibicoff Family Trust (33)	24,000	*	16,000	8,000	*
Matthew Hayden (34)	30,000	*	30,000	0	*
HJ Solutions LLC (35)	21,800	*	20,000	1,800	*
James P Huggins TR UA DATED 09/27/2001 James P Huggins Revocable Trust (36)	118,500	1.3%	60,000	58,500	*
Christopher D Jennings & Karen W Jennings (37)	24,000	*	24,000	0	