

XSUNX INC
Form S-1/A
April 09, 2008

As filed with the Securities and Exchange Commission on April 8, 2008

File No. 333-148762

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

AMENDMENT NO. 4

TO

**FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

XSUNX, INC.

(Exact Name of Issuer in Its Charter)

Colorado
(State of Incorporation)

3081
(Primary Standard Classification
Code)

84-1384159
(IRS Employer ID No.)

65 Enterprise
Aliso Viejo, CA 92656
(949) 330-8060
(Address and Telephone Number of Registrant's Principal
Executive Offices and Principal Place of Business)

Tom Djokovich, President
65 Enterprise
Aliso Viejo, CA 92656
(949) 330-8060
(Name, Address and Telephone Number of Agent for Service)

Copies of Communications to:

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

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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, check the following box. x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to Be Registered⁽¹⁾	Proposed Maximum Offering Price Per Share⁽¹⁾⁽²⁾	Proposed Maximum Aggregate Offering Price⁽²⁾	Amount of Registration Fee⁽³⁾
Common Stock, no par value per share	48,650,000	\$ 0.48	\$ 23,352,000	\$ 917.73
Total:	48,650,000	\$ 0.48	\$ 23,352,000	\$ 917.73

(1) The shares of our Common Stock being registered hereunder are being registered for sale by the selling stockholders named in the Prospectus.

(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the closing price of \$0.48 on the Over-the Counter Bulletin Board on February 20, 2008.

(3) This fee has previously been paid.

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

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

XSUNX, INC.

48,650,000 Shares Of Common Stock

This Prospectus relates to the sale of up to 48,650,000 shares of our common stock of which (i) 40,000,000 shares may be sold by Fusion Capital Fund II, LLC and (ii) 8,650,000 shares may be sold by Cumorah Capital, Inc. Fusion Capital and Cumorah Capital are sometimes referred to in this Prospectus as the selling stockholders. The prices at which the selling stockholders may sell the shares will be determined by the prevailing market price for the shares or in negotiated transactions. We will not receive proceeds from the sale of our shares by Fusion Capital or Cumorah Capital.

Our common stock is registered under Section 12(g) of the Securities Exchange Act of 1934, as amended and quoted on the Over-the-Counter Bulletin Board under the symbol "XSNX". On February 20, 2008, the last reported sale price for our common stock as reported on the Over-the-Counter Bulletin Board was \$0.48 per share.

Investing in our common stock involves certain risks. See "Risk Factors" beginning on page 6 for a discussion of these risks.

Fusion Capital is an "underwriter" within the meaning of the Securities Act of 1933, as amended. Cumorah Capital may be deemed to be an "underwriter" within the meaning of the Securities Act of 1933, as amended.

Neither the U.S. 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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PROSPECTUS SUMMARY

Business

We are a Colorado corporation. Our principal executive offices are located at 65 Enterprise, Aliso Viejo, California 92656. Our telephone number is (949) 330-8060. The address of our website is www.xsunx.com. Information on our website is not part of this Prospectus.

XsunX is a development stage company with no significant sources of revenue to date. We are a thin-film photovoltaic (“TFPV”) company that intends to grow its business by manufacturing TFPV amorphous solar modules and selling them into what we believe is a high growth solar market opportunity. Our decision to pursue this strategy is based on our three years of research in the design and use of technologies for the manufacture of TFPV solar cells utilizing amorphous silicon. During this time we have developed the technical capabilities, qualified core staff, and market understanding that we believe will be necessary to establish product manufacturing infrastructure and take our product to market.

We have designed a TFPV solar module which we believe will deliver an average of 125 peak watts. To produce solar modules in commercial quantities we intend to process glass substrates within a proprietary semiconductor manufacturing system which employs the design of a high-throughput, automated, continuous process. We believe that the design of our TFPV module and manufacturing system can deliver per watt costs significantly less than those of traditional crystalline silicon solar module manufacturers, and allow us to market TFPV modules that will be highly competitive with other thin film offerings.

Currently, we do not have a manufacturing facility. Our plan for growth is to build and operate a TFPV solar module manufacturing facility in the state of Oregon. Employing a phased roll-out of manufacturing capacities, we anticipate completing the assembly and installation of a small scale production research and development system and initiating construction of our first full scale 25 MW system in 2008. Barring assembly delays, we anticipate completing the assembly of and commissioning our first 25MW line between December 2008 and February 2009. Near the end of the 2008 calendar year, we plan to launch the build-out of the first of three additional 25 MW systems necessary to eventually bring our capacity to 100 MW by early 2010.

The Offering

On November 1, 2007, we entered into a Purchase Agreement with Fusion Capital, an Illinois limited liability company. Under the Purchase Agreement, Fusion Capital is obligated, under certain conditions, to purchase shares from us in an aggregate amount of \$21 million from time to time over a twenty-five (25) month period. We have sold 3,333,332 shares of common stock to Fusion Capital (together with 3,333,332 shares issuable under an immediately exercisable common stock purchase warrant that is not part of this offering) under the Purchase Agreement for total proceeds of \$1,000,000. Under the terms of the Purchase Agreement, Fusion Capital has received a commitment fee consisting of 3,500,000 shares of our common stock. As of February 20, 2008, there were 173,403,188 shares outstanding (155,443,288 shares held by non-affiliates) excluding the shares offered by Fusion Capital pursuant to this Prospectus which it has not yet purchased from us. If all of such 40,000,000 shares offered hereby by Fusion Capital were issued and outstanding as of the date hereof, the 40,000,000 shares would represent approximately 23% of the total common stock outstanding or 26% of the non-affiliates shares outstanding as of the date hereof. The number of shares ultimately offered for sale by Fusion Capital is dependent upon the number of shares purchased by Fusion Capital under the Purchase Agreement.

Under the Purchase Agreement and the Registration Rights Agreement we are required to register 6,833,332 shares which have already been issued and at least 20,000,000 shares which we may issue to Fusion Capital after this registration statement is declared effective. We have chosen to register an additional 13,166,668 shares more than we

are obligated to under the Purchase Agreement with Fusion in order to have additional shares available to sell under the Purchase Agreement so that the Company can raise funds to further implement its business plan. We are registering under the Securities Act 40,000,000 shares of our common stock, 6,833,332 shares which have already been issued and 33,166,668 shares (13,166,668 shares more than we are required to register under the agreements) which we may issue to Fusion Capital after this registration statement is declared effective under the Securities Act. All 40,000,000 shares are being offered pursuant to this Prospectus. Under the Purchase Agreement, we have the right but not the obligation to sell more than the 40,000,000 shares to Fusion Capital. As of the date hereof, we do not have any plans or intent to sell to Fusion Capital any shares beyond the 40,000,000 shares offered hereby. However, if we elect to sell more than the 40,000,000 shares (which we have the right but not the obligation to do), we must first register under the Securities Act any additional shares we may elect to sell to Fusion Capital before we can sell such additional shares, which could cause substantial dilution to our shareholders.

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We do not have the right to commence any additional sales of our shares to Fusion Capital until the SEC has declared effective the registration statement of which this Prospectus is a part. After the SEC has declared effective such registration statement, generally we have the right but not the obligation from time to time to sell our shares to Fusion Capital in amounts between \$80,000 and \$1.0 million depending on certain conditions. We have the right to control the timing and amount of any sales of our shares to Fusion Capital. The purchase price of the shares will be determined based upon the market price of our shares without any fixed discount at the time of each sale. Fusion Capital shall not have the right or the obligation to purchase any shares of our common stock on any business day that the price of our common stock is below \$0.20. There are no negative covenants, restrictions on future fundings, penalties or liquidated damages in the Purchase Agreement or the Registration Rights Agreement. The Purchase Agreement may be terminated by us at any time at our discretion without any cost to us, however the agreement provides that neither party has the ability to amend the Purchase Agreement and the obligations of both parties are non-transferable.

We believe that, if we choose to sell up to all of the 33,166,668 shares offered hereby to Fusion Capital, we will have access to the remaining \$20 million of funding potentially available to us as payment for purchases of our shares pursuant to the Purchase Agreement. However, no assurance can be given as to what shares we will actually sell to Fusion Capital. The Company and Fusion Capital agreed to \$21 million because it was the maximum amount Fusion Capital would commit to the Company under the agreement and was based on arms-length negotiations between the parties. Based on the market price of our common stock as of February 20, 2008 (\$0.48), proceeds to us from the sale of the remaining 33,166,668 shares of common stock would only be approximately \$15,920,001. However, the market price of our common stock has been higher and lower than this amount during the past twelve months. We believe that as we execute on our business plan, the market price of our stock will increase and thereby allow us to realize the remaining \$20 million under the agreement by selling the 33,166,668 shares or possibly fewer shares. However, no assurance can be given that this will occur.

On January 16, 2008, Cumorah Capital purchased 8,650,000 shares of the Company's restricted common stock in a private transaction for total proceeds of \$2,500,000.00. The Company agreed to register the 8,650,000 shares purchased by Cumorah Capital in the accompanying registration statement. Cumorah Capital is a Nevada corporation and an "accredited investor" as such term is defined in Rule 501(a) of Regulation D as promulgated by the U.S. Securities and Exchange Commission ("SEC").

Common Stock Offered	48,650,000 shares by the selling stockholders
Offering Price	Market price
Common Stock Currently Outstanding	173,403,188 shares as of February 20, 2008
Use of Proceeds	We will not receive any proceeds of the shares offered by the selling stockholders. See "Use of Proceeds".
Risk Factors	The securities offered hereby involve a high degree of risk. See "Risk Factors".

Over-the-Counter Bulletin Board Symbol XSNX.OB

FORWARD-LOOKING STATEMENTS

This Prospectus contains forward-looking statements. Such forward-looking statements include statements regarding, among other things, (a) our projected sales and profitability, (b) our growth strategies, (c) anticipated trends in our industry, (d) our future financing plans and (e) our anticipated needs for working capital. Forward-looking statements, which involve assumptions and describe our future plans, strategies, and expectations, are generally identifiable by use of the words “may”, “will”, “should”, “expect”, “anticipate”, “estimate”, “believe”, “intend” or “project” or the negative words or other variations on these words or comparable terminology. This information may involve known and unknown risks, uncertainties, and other factors that may cause our actual results, performance, or achievements to be materially different from the future results, performance, or achievements expressed or implied by any forward-looking statements. These statements may be found under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business” as well as in this Prospectus generally. Actual events or results may differ materially from those discussed in forward-looking statements as a result of various factors, including, without limitation, the risks outlined under “Risk Factors” and matters described in this Prospectus generally. In light of these risks and uncertainties, there can be no assurance that the forward-looking statements contained in this filing will in fact occur. In addition to the information expressly required to be included in this filing, we will provide such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

SUMMARY FINANCIAL DATA

The following table below sets forth certain financial information derived from the Company's audited consolidated financial statements and interim unaudited financial statements for the periods and at the dates indicated.

In 2003, the Company completed a Plan of Reorganization and Asset Purchase Agreement and changed the name of the Company from Sun River Mining, Inc. to XsunX, Inc. Due to the Company's change in primary focus in October of 2003 and the developing nature of the business opportunities, these historical results may not necessarily be indicative of results to be expected for any future period. As such, future results of the Company may differ significantly from previous periods. The historical trends reflect this change of primary focus and the associated research and development period of the development stage company. This change in primary focus is the largest factor in the comparability of this information over time.

The information presented below should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes.

	Years Ended				Period Ended	
	Sept 30, 2007	Sept 30, 2006	Sept 30, 2005	Sept 30, 2004	Sept 30, 2003	Dec 31, 2007
<u>Statement of Operations Data:</u>						
Net Sales	6,880	8,000	-	-	-	0
Research and Development Expense	435,534	949,472	501,423	129,493	-	6,406
Loan Fees	-	628,834	115,000	-	-	-
Warrant Expenses	325,303	951,250	-	1,200,000	-	1,308,865
Income(Loss) from Continuing Operations	(1,289,497)	(3,441,940)	(1,400,839)	(1,509,068)	(145,868)	(1,914,928)
Income(Loss) from Continuing Operations per Common Share	\$ (0.01)	\$ (0.02)	\$ (0.02)	\$ (0.01)	\$ (0.02)	\$ (0.01)
<u>Cash Flow Data:</u>						
Net cash provided by (used in) operating activities	(843,416)	(1,942,278)	(1,049,650)	(236,630)	(27,372)	(392,623)
Net cash used in investing activities	(1,822,942)	(2,099,736)	(191,995)	(12,267)	(3)	(192,865)
Net cash provided by financing activities	135,000	8,171,250	1,380,170	1,483,895	29,721	1,000,000
<u>Balance Sheet Data:</u>						
Cash	1,773,748	4,305,105	175,869	37,344	2,346	2,188,260
Property Plant and Equipment, Net	543,993	397,626	165,831	2,270	-	604,410

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Note Receivable	1,500,000	-	-	-	-	1,500,000
Marketable Prototype	1,720,875	1,765,000	-	-	-	1,632,625
Total Assets	5,742,260	6,859,464	441,684	72,114	2,349	6,171,783
Accounts Payable	259,652	582,161	78,377	89,030	-	238,897
Note Payable	-	-	850,000	1,225	-	-
Total Liabilities	312,688	588,699	974,233	96,163	-	293,974
Total Stockholders Equity (Deficit)	5,429,572	6,270,765	(532,549)	(24,049)	2,349	5,877,809
Long Term Obligations	-	-	-	-	-	-
Cash Dividends Declared per Common Share	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

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SUPPLEMENTARY FINANCIAL INFORMATION

The following table presents the Company's condensed operating results for each of the ten (10) fiscal quarters through the period ended December 31, 2007. The information for each of these quarters is unaudited. In the opinion of management, all necessary adjustments, which consist only of normal and recurring accruals, have been included to fairly present the unaudited quarterly results. This data should be read together with the Company's consolidated financial statements and the notes thereto, and Management's Discussions and Analysis of Financial Condition and Results of Operations.

	Three (3) Months Ended (In Thousands)									
	Dec 31, 2007	Sept. 30, 2007	June 30, 2007	Mar. 31 2007	Dec. 31, 2006	Sept. 30, 2006	June 30, 2006	Mar. 31, 2006	Dec 31, 2005	Sept. 30, 2005
Net Sales	0	0	0	7	0	0	0	0	8	0
Research and Development Expense	6	102	15	109	210	67	369	238	275	143
Loan Fees	0	0	0	0	0	0	0	0	213	115
Income (loss) from Continuing Operations	(106)	239	(496)	(448)	(584)	(174)	(1,121)	(551)	(1,596)	(749)
Income (loss) from Continuing Operations per common share	\$ (0.01)	\$ 0.002	\$ (0.003)	\$ (0.01)	\$ (0.003)	\$ (0.001)	\$ (0.008)	\$ (0.01)	\$ (0.013)	\$ (0.006)

WHERE YOU CAN FIND US

Our principal executive offices are located at 65 Enterprise, Aliso Viejo, California 92656. Our telephone number is (949) 330-8060 and our website is www.xsunx.com.

RISK FACTORS

An investment in our common stock involves a high degree of risk. You should carefully consider the risks described below and the other information in this Prospectus before investing in our common stock. If any of the following risks occur, our business, operating results and financial condition could be seriously harmed. Please note that throughout this Prospectus, the words “we”, “our” or “us” refer to the Company and not to the selling stockholders.

We Have Not Generated Any Significant Revenues And May Never Achieve Profitability.

We are a development stage company and, to date, have not generated any significant revenues. From inception through December 31, 2007, we had an accumulated deficit of \$13,426,778. We cannot assure you that we can achieve or sustain profitability in the future. Our operations are subject to the risks and competition inherent in the establishment of a business enterprise. There can be no assurance that future operations will be profitable. Revenues and profits, if any, will depend upon various factors, including whether our product development can be completed, and if it will achieve market acceptance. We may not achieve our business objectives and the failure to achieve such goals would have an adverse impact on us.

We expect that we will need to obtain significant additional financing to continue to operate our business, including significant capital expenditures to install our initial 25MW per annum production capacity, and financing may be unavailable or available only on disadvantageous terms.

We have in the past experienced substantial losses and negative cash flow from operations and have required financing, including equity and debt financing, in order to pursue the commercialization of products based on our technologies. We expect that we will continue to need significant financing to operate our business, including capital expenditures to install our planned production capacity.

On November 1, 2007, XsunX signed a \$21 million Purchase Agreement with Fusion Capital. Upon signing the agreement, XsunX received \$1,000,000 from Fusion Capital as an initial purchase under the \$21 million commitment in exchange for 3,333,332 shares of our common stock. Concurrently with entering into the Purchase Agreement, we entered into a registration rights agreement with Fusion Capital and we are registering under the Securities Act 40,000,000 shares of our common stock, 6,833,332 shares which have already been issued and 33,166,668 shares which we may issue to Fusion Capital after this registration statement is declared effective under the Securities Act. All 40,000,000 shares are being offered pursuant to this Prospectus. Under the Purchase Agreement, we have the right but not the obligation to sell more than the 40,000,000 shares to Fusion Capital. As of the date hereof, we do not have any plans or intent to sell to Fusion Capital any shares beyond the 40,000,000 shares offered hereby. However, if we elect to sell more than the 40,000,000 shares (which we have the right but not the obligation to do), we must first register under the Securities Act any additional shares we may elect to sell to Fusion Capital before we can sell such additional shares, which could cause substantial dilution to our shareholders.

After the SEC has declared effective the registration statement related to the transaction we only have the right over a 25-month period to receive \$80,000 every two business days under the Purchase Agreement with Fusion Capital unless our stock price equals or exceeds \$0.30, in which case we can sell greater amounts to Fusion Capital as the price of our common stock increases. Fusion Capital shall not have the right or the obligation to purchase any shares of our common stock on any business day that the market price of our common stock is less than \$0.20. Assuming we sell only the 33,166,668 shares offered pursuant to this Prospectus (which Fusion Capital has not yet purchased from us), the selling price of these shares to Fusion Capital will have to average at least \$0.6030 per share for us to receive the maximum remaining proceeds of \$20.0 million. Assuming a purchase price of \$0.48 per share (the closing sale price of the common stock on February 20, 2008) and the purchase by Fusion Capital of 33,166,668 shares under the Purchase Agreement, proceeds to us would be approximately \$15,920,001.

Also, On January 16, 2008, Cumorah Capital purchased 8,650,000 shares of the Company's restricted common stock in a private transaction for total proceeds of \$2,500,000. The Company agreed to register the 8,650,000 shares purchased by Cumorah Capital. Cumorah Capital is a Nevada corporation and an Accredited Investor, as defined in Rule 501(a) of Regulation D as promulgated by the SEC.

The extent we rely on Fusion Capital as a source of funding will depend on a number of factors including, the prevailing market price of our common stock and the extent to which we are able to secure working capital from other sources. Specifically, Fusion Capital shall not have the right or the obligation to purchase any shares of our common stock on any business days that the market price of our common stock is less than \$0.20. If obtaining sufficient financing from Fusion Capital were to prove unavailable or prohibitively dilutive and if we are unable to commercialize and sell enough of our TFPV amorphous solar modules, we will need to secure another source of funding in order to satisfy our working capital needs. Even if we are able to access the full \$21.0 million under the Purchase Agreement with Fusion Capital, we may still need additional capital to fully implement our business, operating and development plans. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, the consequences could be a material adverse effect on our business, operating results, financial condition and prospects.

We are working to establish our manufacturing capacity for TFPV products in order to meet anticipated demand, and our revenues and profits will depend upon our ability to successfully complete our initial 25MW of manufacturing capacity and then to sell our TFPV products at volumes to match our available production capacity.

We do not currently have a manufacturing facility. We are working to establish initial manufacturing capacity of 25MW per annum and plan to expand manufacturing capacity to 100MW per annum by 2010. This plan includes establishing a new facility in Oregon. We will be installing and testing the equipment for this manufacturing facility internally and through third parties. We may experience delays, additional or unexpected costs and other adverse events in connection with our projects, including those associated with the equipment we purchase from third parties. Additionally, there can be no assurance that market demand will absorb our manufacturing capacity or that our marketing capabilities will be successful. As a result, we may not be able to realize revenues and profits based upon the expected capacity, or we may experience delays or reductions in these revenues and profits, and our business could be materially adversely affected.

Continued research and development efforts will be required to improve or maintain competitiveness of our products, and there can be no assurance that such efforts will be successful.

There can be no assurance that such research and development efforts will be successful or that we will be able to develop commercial applications for our products and technologies. Further, the areas in which we are developing technologies and products are characterized by rapid and significant technological change. Rapid technological development may result in our products becoming obsolete or noncompetitive. If future products based on our technologies cannot be developed for manufacture and sold commercially or our products become obsolete or noncompetitive, we may be unable to recover our investments or achieve profitability. In addition, the commercialization schedule may be delayed if we experience delays in meeting development goals, if products based on our technologies exhibit technical defects, or if we are unable to meet cost or performance goals. In this event, potential purchasers of products based on our technologies may choose alternative technologies and any delays could allow potential competitors to gain market advantages.

There is no assurance that the market will accept our products once commercial-scale manufacturing has been achieved.

There can be no assurance that products based on our technologies will be perceived as being superior to existing products or new products being developed by competing companies or that such products will otherwise be accepted by consumers. The market prices for products based on our technologies may exceed the prices of competitive products based on existing technologies or new products based on technologies currently under development by competitors. There can be no assurance that the prices of products based on our technologies will be perceived by consumers as cost-effective or that the prices of such products will be competitive with existing products or with other new products or technologies. If consumers do not accept products based on our technologies, we may be unable to recover our investments or achieve profitability.

Other companies, many of which have greater resources than we have, may develop competing products or technologies which cause products based on our technologies to become noncompetitive.

We will be competing with firms, both domestic and foreign, that perform research and development, as well as firms that manufacture and sell solar products. In addition, we expect additional potential competitors to enter the markets for solar products in the future. Some of these current and potential competitors are among the largest industrial companies in the world with longer operating histories, greater name recognition, access to larger customer bases, well-established business organizations and product lines and significantly greater resources and research and development staff and facilities. There can be no assurance that one or more such companies will not succeed in developing technologies or products that will become available for commercial sale prior to our products, that will

have performance superior to products based on our technologies or that would otherwise render our products noncompetitive. If we fail to compete successfully, our business would suffer and we may lose or be unable to gain market share.

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The loss of strategic relationships used in the development of our products and the systems and components to our planned 25MW manufacturing system could impede our ability to complete our product and/or our initial manufacturing system and result in a material adverse effect causing our business to suffer.

We have established a plan of operations under which a portion of our operations rely on strategic relationships with third parties, to provide systems design, assembly and support. The Company is not an affiliate of or to any of our strategic relationships and we anticipate the use of written contracts to govern the terms of each service agreement, and the vendor customer relationship. A loss of any of our third party relationships for any reason could cause us to experience difficulties in implementing our business strategy. The loss of any strategic relationship could severely impede our ability to complete the assembly of our planned manufacturing facility causing, at minimum, delays and the need to re-qualify suitable providers. There can be no assurance that we could establish other relationships of adequate expertise in a timely manner or at all.

The loss of existing vendor relationships or inability to locate vendors with the specific capabilities or capacities could significantly impede our ability to commercialize the Company's technology resulting in a material adverse effect causing the business to suffer

We rely on vendors to provide materials for use in our manufacturing process, component parts, and equipment for use in the assembly of our manufacturing system. We have selected a primary and secondary vendor for the supply of the various materials, component parts, and equipment employed in our manufacturing process. The Company is not affiliated with any of our vendors and we anticipate the use of written contracts to govern the terms of each purchase and supply commitment, and the vendor customer relationship. The market for the materials, components, and equipment employed by XsunX in the manufacture of our products are developing rapidly and we anticipate that continued growth in the demand for similar material and supplies may cause supplies to become limited or deliveries delayed until such time that vendors can adjust to growth in the demand for their products. There can be no assurance that vendors of sufficient capabilities and/or capacities can adjust in a timely manner or at all to meet any growth in demand for their products. A loss by the Company of any of these vendor relationships or an inability to locate vendors with capabilities and /or capacities necessary to meet our manufacturing system assembly requirements or provide materials in sufficient quantities to support our product production efforts could cause the Company to experience difficulties in implementing our business strategy. The loss of any vendor relationship could severely impede our ability to complete the assembly of our planned manufacturing facility and/or impede or prevent us from producing products thereby causing, at minimum, delays and the need to re-qualify vendors and materials. There can be no assurance that we could establish other relationships of adequate expertise or qualification in a timely manner or at all.

We cannot guarantee you that our patents are broad enough to provide any meaningful protection nor can we assure you that one of our competitors may not develop more effective technologies, designs or methods without infringing our intellectual property rights or that one of our competitors might not design around our technologies.

We have been granted, and exclusively own, three patents from the United States Patent and Trademark Office. We have also been granted a license to a patent and technology portfolio relating to photovoltaic technology design, manufacturing processes, and the development of technology. Under our current plans we intend to leverage the technical experience and knowhow we have developed while working to commercialize our patents and licensed technologies. However, our current TFPV solar module design leverages our experience and knowhow but independently is not the product of nor is it protected under any domestic or international patent rights. Our patents and licenses, and our proprietary TFPV solar module designs, may not protect us against our competitors, and patent litigation is very expensive. We may not have sufficient cash available to pursue any patent litigation to its conclusion because currently we do not generate revenues.

We cannot rely solely on our current patents or our proprietary TFPV solar module designs to be successful. The standards that the U.S. Patent and Trademark Office and foreign patent office's use to grant patents, and the standards that U.S. and foreign courts use to interpret patents are not the same and are not always applied predictably or uniformly and can change, particularly as new technologies develop. As such, the degree of patent protection obtained in the U.S. May differ substantially from that obtained in various foreign countries. In some instances, patents have been issued in the U.S. while substantially less or no protection has been obtained in Europe or other countries.

We cannot be certain of the level of protection, if any, that will be provided by our patents or our efforts to maintain the secrecy of our proprietary TFPV solar module designs. If we attempt to enforce them and they are challenged in court where our competitors may raise defenses such as invalidity, unenforceability or possession of a valid license. In addition, the type and extent of any patent claims that may be issued to us in the future are uncertain. Our patents may not contain claims that will permit us to stop competitors from using similar technology.

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We may suffer the loss of key personnel or may be unable to attract and retain qualified personnel to maintain and expand our business.

Our success is highly dependent on the continued services of a limited number of skilled managers, scientists and technicians. The loss of any of these individuals could have a material adverse effect on us. In addition, our success will depend upon, among other factors, the recruitment and retention of additional highly skilled and experienced management and technical personnel. There can be no assurance that we will be able to retain existing employees or to attract and retain additional personnel on acceptable terms given the competition for such personnel in industrial, academic and nonprofit research sectors.

Raw Material Costs Could Impact Our Cost Of Goods And Our Ability To Successfully Develop Our Products and Technologies.

Higher costs for certain raw materials and commodities, principally glass, resin-based polymers and industrial gases, as well as higher energy costs, could negatively impact our cost of operations. While we have developed strategies to mitigate or partially offset the impact of higher raw material, commodity and energy costs, there can be no assurances such measures will be successful. In addition, no assurances can be given that the magnitude and duration of these cost increases or any future cost increases will not have a larger adverse impact on our profitability and consolidated financial position than currently anticipated. As part of our planned research and development activities, we are attempting to reduce costs through improved automation and substitution strategies. There can be no assurances that we will succeed in these future cost-reduction efforts, which may be essential for the continued development of our competitive presence.

Due to our need to lease manufacturing facilities of suitable size we may encounter difficulties in locating and qualifying for the necessary manufacturing space we need to effectuate our plan.

Our current commercial research and development facilities, located in Golden Colorado, are not sufficient in size to allow for our commercial TFPV module production plans. We will need to secure at least 65,000 sq. ft. of additional commercial space. There can be no assurance that we can locate facilities that are appropriate for our operations, or that we can negotiate reasonable lease terms, qualify, or find access to sufficient utility infrastructure. Our failure to secure suitable manufacturing facilities will have a material adverse effect limiting and potentially prohibit our ability to successfully complete our plan to build and operate 25 MW of TFPV solar module manufacturing capabilities.

Colorado Law Provides Indemnification For Officers, Directors, Employees and Agents of The Company, Which Could Result in Substantial Expenditures By and Have An Adverse Effect On Our Company.

The Colorado Business Corporation Act provides for the indemnification of its directors, officers, employees, and agents, under certain circumstances, against attorney's fees and other expenses incurred by them in any litigation to which they become a party arising from their association with or activities on behalf of the Company. The Company will also bear the expenses of such litigation for any of its directors, officers, employees, or agents, upon such person's promise to repay the Company therefore if it is ultimately determined that any such person shall not have been entitled to indemnification. This indemnification policy could result in substantial expenditures by the Company which it may be unable to recoup and such expenditures could have an adverse effect on our Company.

Colorado Law Excludes Personal Liability of Our Directors To The Company Which Could Limit Our Right To Recover Damages And Have An Adverse Effect On Our Company.

The Colorado Business Corporation Act excludes personal liability of its directors to the Company and its stockholders for monetary damages for breach of fiduciary duty except in certain specified circumstances. Accordingly, the Company will have a much more limited right of action against its directors than otherwise would be

the case, which could have an adverse effect on our Company. This provision does not affect the liability of any director under federal or applicable state securities laws.

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Compliance With Sarbanes-Oxley Could Be Time Consuming and Costly, Which Could Cause Our Independent Registered Public Accounting Firm To Conclude That Our Internal Control Over Financial Reporting Is Not Effective.

As a public company, we are required to document and test our internal control procedures in order to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act, which will require annual management assessments of the effectiveness of our internal control over financial reporting and a report by our independent registered public accounting firm that both addresses management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting. During the course of our testing, we may identify deficiencies which we may not be able to remediate in time to meet our deadline for compliance with Section 404. Testing and maintaining internal controls can divert our management's attention from other matters that are important to our business. We also expect the new regulations to increase our legal and financial compliance cost, make it more difficult to attract and retain qualified officers and members of our Board of Directors (particularly to serve on an audit committee) and make some activities more difficult, time consuming and costly. We may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting in accordance with Section 404. Our independent registered public accounting firm may not be able or willing to issue an unqualified report on the effectiveness of our internal control over financial reporting. If we conclude that our internal control over financial reporting is not effective, we cannot be certain as to the timing of completion of our evaluation, testing and remediation actions or their effect on our operations since there is presently no precedent available by which to measure compliance adequacy. If we are unable to conclude that we have effective internal control over financial reporting or our independent auditors are unable to provide us with an unqualified report as required by Section 404, then we may be unable to continue to have our common stock traded on the Over-the-Counter Bulletin Board and investors could lose confidence in our reported financial information, which could have a negative effect on the trading price of our stock.

Our Common Stock is deemed a low-priced "penny" stock, therefore an investment in our common stock should be considered high risk and subject to marketability restrictions.

Since our common stock is a penny stock, as defined in Rule 3a51-1 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), it will be more difficult for investors to liquidate their investment. Until the trading price of the common stock rises above \$5.00 per share, if ever, trading in our common stock is subject to the penny stock rules of the Exchange Act specified in rules 15g-1 through 15g-10. Those rules require broker-dealers, before effecting transactions in any penny stock, to:

- Deliver to the customer, and obtain a written receipt for, a disclosure document;
- Disclose certain price information about the stock;
- Disclose the amount of compensation received by the broker-dealer or any associated person of the broker-dealer;
- Send monthly statements to customers with market and price information about the penny stock; and
- In some circumstances, approve the purchaser's account under certain standards and deliver written statements to the customer with information specified in the rules.

Consequently, the penny stock rules may restrict the ability or willingness of broker-dealers to sell our common stock and may affect the ability of holders to sell their common stock in the secondary market and the price at which such holders can sell any such securities. These additional procedures could also limit our ability to raise additional capital in the future.

We Do Not Anticipate Paying Any Cash Dividends, Which Could Reduce The Value Of Your Stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends in the foreseeable future. The payment of dividends on our common stock will depend on earnings, financial condition and other business and economic factors affecting it at such time as our Board of Directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if our stock price appreciates.

There Is A Limited Public Market For Our Common Stock, Which Could Prevent You From Liquidating Your Investment.

There is only a limited public market for the Company's common stock, and no assurance can be given that a market will continue or that a stockholder ever will be able to liquidate his investment without considerable delay, if at all. If a market should continue, the price may be highly volatile. Factors such as those discussed in this "Risk Factors" section may have a significant impact upon the market price of our common stock. Due to the low price of the securities, many brokerage firms may not be willing to effect transactions in our common stock. Even if a purchaser finds a broker willing to effect a transaction in our common stock, the combination of brokerage commissions, state transfer taxes, if any, and any other selling costs may exceed the selling price. Further, many lending institutions will not permit the use of our common stock as collateral for any loans.

The sale of our Common Stock to Fusion Capital may cause dilution and the sale of the shares of Common Stock acquired by Fusion Capital could cause the price of our Common Stock to decline.

In connection with entering into the Purchase Agreement, we are registering under the Securities Act 40,000,000 shares of our common stock, 6,833,332 shares which have already been issued and 33,166,668 shares which we may issue to Fusion Capital after this registration statement is declared effective under the Securities Act. All 40,000,000 shares are being offered pursuant to this Prospectus. Under the Purchase Agreement, we have the right but not the obligation to sell more than the 40,000,000 shares to Fusion Capital. As of the date hereof, we do not have any plans or intent to sell to Fusion Capital any shares beyond the 40,000,000 shares offered hereby. However, if we elect to sell more than the 40,000,000 shares (which we have the right but not the obligation to do), we must first register under the Securities Act any additional shares we may elect to sell to Fusion Capital before we can sell such additional shares, which could cause substantial dilution to our shareholders.

The number of shares ultimately offered for sale by Fusion Capital is dependent upon the number of shares purchased by Fusion Capital under the Purchase Agreement. The purchase price for the common stock to be sold to Fusion Capital pursuant to the Purchase Agreement will fluctuate based on the price of our common stock. All 40,000,000 shares being registered hereunder are expected to be freely tradable. It is anticipated that shares registered under such Registration Statement will be sold over a period of up to twenty-five (25) months from the date of such Prospectus. Depending upon market liquidity at the time, a sale of shares under such offering at any given time could cause the trading price of our common stock to decline. Fusion Capital may ultimately purchase all, some or none of the 33,166,668 shares of common stock being registered herewith which have not already been purchased by Fusion Capital. After it has acquired such shares, it may sell all, some or none of such shares. Therefore, sales to Fusion Capital by us under the Purchase Agreement may result in substantial dilution to the interests of other holders of our common stock. The sale of a substantial number of shares of our common stock under this offering, or anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales. However, we have the right to control the timing and amount of any sales of our shares to Fusion Capital and the Purchase Agreement may be terminated by us at any time at our discretion without any cost to us.

The Market Price Of Our Common Stock Is Highly Volatile, Which Could Adversely Affect The Market Price Of Your Stock.

The market price of our common stock is likely to be highly volatile and could fluctuate widely in price in response to various factors, many of which are beyond our control, including:

- technological innovations or new products and services by us or our competitors;
- additions or departures of key personnel;
- sales of our common stock;
- our ability to integrate operations, technology, products and services;
- our ability to execute our business plan;
- operating results below expectations;
- loss of any strategic relationship;
- industry developments;

· economic and other external factors; and

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period-to-period fluctuations in our financial results.

Because we have a limited operating history with limited revenues to date, you may consider any one of these factors to be material. Our stock price may fluctuate widely as a result of any of the above listed factors.

In addition, the securities markets have from time to time experienced significant price and volume fluctuations that are unrelated to the operating performance of particular companies. These market fluctuations may also materially and adversely affect the market price of our common stock.

An Adverse Ruling in the Wharton Capital Litigation Could Reduce The Proceeds Available To Us From Sales of Common Stock to Fusion Capital.

On January 3, 2008, Wharton Capital Partners, Ltd, and Wharton Capital Markets LLC, filed an action in the U.S. District Court for the Southern District of New York against the Company pursuant to which plaintiffs seek fees in an amount equal to seven percent (7%) of the gross proceeds received by the Company under the Purchase Agreement. Although the Company asserts that no fees are owed to Wharton Capital Partners, Ltd, Wharton Capital Markets LLC or Capitoline Financial Group LLC, an adverse ruling in favor of plaintiffs could reduce the amount of gross proceeds the Company would otherwise receive under the Purchase Agreement by up to seven percent (7%).

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USE OF PROCEEDS

This Prospectus relates to shares of our common stock that may be offered and sold from time to time by the selling stockholders. We will receive no proceeds from the sale of shares of common stock in this offering. However, we have received (a) \$1,000,000 from Fusion Capital in connection with the initial sale of shares under the Purchase Agreement and we may receive up to an additional \$20 million in proceeds from the sale of our common stock to Fusion Capital under the Purchase Agreement and (b) \$2.5 million in proceeds from the prior sale of our common stock to Cumorah Capital. Any proceeds from Fusion Capital we receive under the Purchase Agreement will be used for working capital and general corporate purposes.

The proceeds received by the Company under the Purchase Agreement are expected to be used to build an initial base production system delivering full size commercial quality solar modules, and initiate the manufacture of the first of four (4) planned twenty-five (25) megawatt systems under the Company's planned one hundred (100) megawatt thin film solar module production facility. Proceeds may also be used to lease and prepare manufacturing facilities with the necessary support systems for the manufacturing line, inventory, staff, and general working capital. We have provided the table below which reflects the receipt by the Company of an aggregate of \$23,500,000 in proceeds from the completed sales to both Fusion Capital and Cumorah Capital and which also assumes the future sale to Fusion Capital of up to an additional \$20,000,000 (the maximum possible) in shares of our common stock under the Purchase Agreement. Please also note that if we are unsuccessful in defending the Wharton Action described in the "Legal Proceedings" section of this Prospectus, each of the figures set forth herein below would be reduced by up to seven percent (7%):

Aggregate Proceeds To Be Received by the Company (Fusion Capital and Cumorah Capital)

Manufacturing Equipment and Sub Systems	\$ 12,773,974
Working Capital and General and Administrative	6,998,279
Lease Payments and Manufacturing Leasehold Improvements	2,725,098
New Manufacturing Devices, Techniques and R&D	1,002,649
Total:	\$ 23,500,000

The table below reflects our use of proceeds based on the issuance of 33,166,668 shares to Fusion Capital at the market price of our shares as of February 20, 2008 (\$0.48 per share) and also the floor price as set forth in the Purchase Agreement (\$0.20 per share). The table also includes \$1,000,000 in proceeds already received by the Company for the sale of 3,333,332 shares to Fusion under the Purchase Agreement, and \$2,500,000 in proceeds received by the Company from the sale of 8,650,000 shares to Cumorah Capital. Please also note that if we are unsuccessful in defending the Wharton Action described in the "Legal Proceedings" section of this Prospectus, each of the figures set forth herein below could be reduced by up to seven percent (7%):

Use Proceeds From Sale of Common Stock To Fusion Capital Only (Including Previous Sales to Fusion Capital and Cumorah Capital)	Market Price at February	
	20, 2007 (\$0.48)	Floor Price (\$0.20)
Manufacturing Equipment and Sub Systems	\$ 11,300,000	\$ 5,900,000
Working Capital and General and Administrative	5,020,001	2,608,334

Lease Payments and Manufacturing Leasehold Improvements	2,300,000	1,400,000
New Manufacturing Devices, Techniques and R&D	800,000	225,000
Total:	\$ 19,420,001	\$ 10,133,334

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SELLING STOCKHOLDERS

The following table presents information regarding the selling stockholders. Neither the selling stockholders nor any of their affiliates has held a position or office, or had any other material relationship, with us.

Selling Stockholder	Shares Beneficially Owned Before Offering	Percentage of Outstanding Shares Beneficially Owned Before Offering ⁽¹⁾	Shares to be Sold in the Offering Assuming The Company Issues All 33,166,668 Number of Shares Offered Hereby	Percentage of Outstanding Shares Beneficially Owned After Offering⁽¹⁾
Fusion Capital Fund II, LLC ⁽²⁾	8,496,707 ⁽³⁾	4.9% ⁽⁴⁾	40,000,000 ⁽³⁾	0.02% ⁽⁶⁾
Cumorah Capital, Inc. ⁽⁵⁾	8,650,000	4.99%	8,650,000	0%
Total:	17,146,707	9.89%	48,650,000	0.02%

(1) Applicable percentage of ownership is based on 173,403,188 shares of our common stock outstanding as of February 20, 2008, together with securities exercisable or convertible into shares of Common Stock within sixty (60) days of February 20, 2008 for each selling stockholder. Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Shares of common stock are deemed to be beneficially owned by the person holding such securities for the purpose of computing the percentage of ownership of such person, but are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Note that affiliates are subject to Rule 144 and insider trading regulations, percentage computation is for form purposes only.

(2) Steven G. Martin and Joshua B. Scheinfeld, the principals of Fusion Capital, are deemed to be beneficial owners of all of the shares of common stock owned by Fusion Capital. Messrs. Martin and Scheinfeld have shared voting and disposition power over the shares being offered under this Prospectus.

(3) Of the 8,496,707 shares beneficially held by Fusion Capital, (a) 6,833,332 shares of our common stock have been acquired by Fusion Capital under the Purchase Agreement, consisting of (i) 3,333,332 shares purchased by Fusion Capital for \$1,000,000 and (ii) 3,500,000 shares we issued to Fusion Capital as a commitment fee and (b) up to 1,663,375 shares may be currently issued to Fusion Capital upon the exercise of up to 4.9% of 3,333,332 shares underlying two (2) identical warrants (except for strike price, one at \$0.50 and the other at \$0.75 per share) in accordance with the terms of the warrants (1,666,666 shares underlie each warrant). Both warrants have a provision stating that in no event shall Fusion Capital be entitled to exercise the warrant for a number of shares in excess of that number of shares which, upon giving effect to such exercise, would cause the aggregate number of shares of common stock beneficially owned by Fusion Capital to exceed 4.9% of the then outstanding shares of common stock following such exercise. The shares underlying the warrants are not part of this offering. Without giving effect to the 4.9% ownership cap in the warrants, Fusion Capital would beneficially own 10,166,664 shares, which would constitute approximately 5.86% of the total number of shares outstanding as of the date of this Prospectus. The Company may elect in its sole discretion to sell to Fusion Capital up to an additional 33,166,668 shares under the Purchase Agreement but Fusion Capital does not presently beneficially own those shares as determined in accordance with the rules of the SEC. If, as of the date of this Prospectus, Fusion Capital had purchased and held all of the 33,166,668 shares potentially available under the Purchase Agreement then, as of the date of this Prospectus, Fusion Capital could beneficially own 40,000,000 shares, which would constitute

approximately 23% of the total number of shares of common stock outstanding as of the date of this Prospectus. Under these circumstances, Fusion Capital would be unable to exercise the warrants because of the 4.9% ownership cap in such warrants.

- (4) Fusion Capital beneficially owns 3.94% of the outstanding shares not including 3,333,332 shares which may be issued to Fusion Capital upon the exercise of two (2) identical warrants (except for strike price, one at \$0.50 and the other at \$0.75 per share) of 1,666,666 shares each, and 4.9% of the outstanding shares including such warrant shares as a result of a 4.9% ownership cap in accordance with the terms of the warrants (and as summarized in footnote (3) herein above).
- (5) Mr. William E. Beifuss, President of Cumorah Capital, is deemed to be the beneficial owner of all of the shares of common stock owned by Cumorah Capital. Mr. William E. Beifuss has voting and disposition power over the shares being offered under this Prospectus. Cumorah Capital is not a broker dealer or an affiliate of a broker dealer.
- (6) Outstanding shares beneficially owned after offering is based on 209,903,188 shares (which includes the 33,166,668 shares to be sold in the offering and the 3,333,332 shares which may be issued to Fusion Capital upon the exercise of two (2) identical warrants (except for strike price, one at \$0.50 and the other at \$0.75 per share) of 1,666,666 shares each). This percentage represents Fusion Capital's beneficial ownership of the 3,333,332 shares underlying such warrants only.

THE FUSION TRANSACTION

General

On November 1, 2007, we entered into a Purchase Agreement with Fusion Capital, an Illinois limited liability company. Under the Purchase Agreement, Fusion Capital is obligated, under certain conditions, to purchase shares from us in an aggregate amount of \$21 million from time to time over a twenty-five (25) month period. We have sold 3,333,332 shares of common stock to Fusion Capital (together with 3,333,332 shares issuable under an immediately exercisable common stock purchase warrant that is not part of this offering) under the Purchase Agreement for total proceeds of \$1,000,000. Under the terms of the Purchase Agreement, Fusion Capital has received a commitment fee consisting of 3,500,000 shares of our common stock. As of February 20, 2008, there were 173,403,188 shares outstanding (155,443,288 shares held by non-affiliates) excluding the 33,166,668 shares offered by Fusion Capital pursuant to this Prospectus which it has not yet purchased from us. If all of such 33,166,668 share