

Chefs' Warehouse, Inc.
Form S-4/A
May 20, 2013
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As filed with the Securities and Exchange Commission on May 20, 2013

Registration No. 333-187349

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-4

(Amendment No. 2)

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

THE CHEFS WAREHOUSE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

5141
(Primary Standard Industrial
Classification Code Number)
100 East Ridge Road

20-3031526
(I.R.S. Employer
Identification Number)

Ridgefield, Connecticut 06877

(203) 894-1345

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

Christopher Pappas

Chairman, President and Chief Executive Officer

The Chefs Warehouse, Inc.

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100 East Ridge Road

Ridgefield, Connecticut 06877

(203) 894-1345

(Name, address, including zip code, and telephone number,

including area code, of agent for service)

With a copy to:

F. Mitchell Walker, Jr., Esq.

Bass, Berry & Sims PLC

150 Third Avenue South

Suite 2800

Nashville, Tennessee 37201

(615) 742-6200

Approximate date of commencement of proposed sale of the securities to the public: From time to time after the effective date of this Registration Statement.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, 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, check the following box and list Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) 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. "

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

(Do not check if a smaller reporting company)

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issue Tender Offer) "

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer) "

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Unit(1)(2)	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Common Stock, par value \$.01 per share	4,000,000 shares	\$18.84	\$75,360,000	\$10,279.10(3)

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- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), the shares being registered hereunder include such indeterminate number of shares of common stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) of the Securities Act and based upon the average high and low prices of the Common Stock reported on the Nasdaq Global Select Market on March 15, 2013.
- (3) Previously 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 this Registration Statement shall become effective on such date as the Commission, 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 or supplemented. We may not sell any of the securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell the securities described herein and we are not soliciting offers to buy the securities described herein in any jurisdiction where the offer or sale is not permitted.

Subject To Completion, Dated May 20, 2013

PROSPECTUS

The Chefs Warehouse, Inc.

4,000,000 Shares of Common Stock

This prospectus relates to 4,000,000 shares of our common stock, par value \$0.01 per share, that we may offer and issue in acquisition transactions that we may make from time to time. These acquisitions of assets, businesses or securities, whether by purchase, merger, or any other form of business combination, will be made at negotiated prices. The consideration for any such acquisition may consist of shares of our common stock or a combination of common stock, preferred stock, cash, notes or assumption of liabilities. The total number of shares issued to consummate any of these acquisitions will be determined through arms length negotiations and we expect that the shares of common stock issued in connection with any of these transaction will be valued at a price reasonably related to the prevailing market price of our common stock at the time an acquisition agreement is entered into or at or about the time the acquisition is consummated or during some other negotiated period.

We do not expect to receive any cash proceeds when we issue common stock registered by this prospectus.

We expect to pay all expenses of any offerings under this prospectus. We do not expect to pay any underwriting discounts or commissions in connection with issuing these shares, although we may pay finder s fees in specific acquisitions. Any person receiving a finder s fee may be deemed an underwriter within the meaning of Section 2(a)(11) of the Securities Act of 1933, as amended.

The persons who receive securities pursuant to this prospectus also may offer and resell from time to time those securities pursuant to this prospectus, subject to certain conditions. We have not authorized any person to use this prospectus in connection with resales of securities without our prior consent.

Our common stock is listed on the NASDAQ Global Select Market under the symbol CHEF. On May 17, 2013, the closing price of our common stock on the NASDAQ Global Select Market was \$20.91 per share. You are urged to obtain current market quotations of the common stock.

The mailing address of our principal executive offices is 100 East Ridge Road, Ridgefield, Connecticut 06877. Our telephone number is (203) 894-1345.

Investing in our securities involves a high degree of risk. You should carefully consider all of the information set forth in the Risk Factors section beginning on page 3 of this prospectus and in the applicable prospectus supplement and in any of the documents we incorporate into this prospectus by reference before determining whether to accept our common stock as to all or part of the purchase price for our acquisition of your business, securities or other assets.

Neither the Securities and Exchange Commission nor any state securities commission or other regulatory body has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2013.

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You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or any prospectus supplement. Neither we nor any selling stockholder has, and neither we nor any selling stockholder has authorized anyone else, to provide you with different or additional information. This prospectus and any prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus and any prospectus supplement constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus or any prospectus supplement is accurate on any date subsequent to the date set forth on the front of such document or that any information we have incorporated by reference into this prospectus or any prospectus supplement is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus and any prospectus supplement is delivered or securities are sold on a later date. Our business, financial condition, results of operations and prospects may have changed since that date.

The prospectus incorporates important business and financial information about the company that is not included in or delivered with the prospectus. You may obtain documents incorporated by reference into this prospectus at no cost by writing or telephoning us at the following address:

The Chefs Warehouse, Inc.

100 East Ridge Road

Ridgefield, Connecticut 06877

Attn: Corporate Secretary

Telephone: (203) 894-1345

To obtain timely delivery, you must request information no later than five business days before the date you must make your investment decision. For a more detailed discussion about the information about us that is incorporated by reference into this prospectus, see Incorporation by Reference.

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ABOUT THIS PROSPECTUS

This prospectus is a part of a shelf registration statement on Form S-4 that we have filed with the United States Securities and Exchange Commission, or SEC. Under the shelf registration process, we may from time to time offer and sell up to 4,000,000 shares of our common stock, par value \$0.01 per share, in connection with the acquisition of assets, stock or businesses, whether by purchase, merger or any other form of business combination.

This prospectus provides you with a general description of the securities that we may offer. Each time we offer common stock under this prospectus, we will provide a prospectus supplement that will contain more specific information about the terms of that offering and those securities. The information in the prospectus supplement may add, update or change the information contained in this prospectus or in the documents that we have incorporated by reference into this prospectus. Before investing in our common stock being offered under this Registration Statement, you should read carefully this prospectus and any applicable prospectus supplement, together with the information incorporated herein and therein by reference as described under the heading **Incorporation by Reference**.

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 under the heading **Where You Can Find More Information**.

The shares of common stock to be issued in connection with an acquisition made pursuant to this prospectus will be registered under the Securities Act and will be freely transferable under the Securities Act, except for shares of common stock issued to any person who is deemed to be an affiliate of ours following the consummation of the applicable acquisition.

With our consent, persons who will receive common stock under this prospectus in connection with acquisitions may use this prospectus to sell such securities at a later date. We refer to these persons in the prospectus as selling stockholders. Please see the information described under the heading **Resales of Shares** to find out more information about resales of the securities by the selling stockholders.

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THE CHEFS WAREHOUSE, INC.

On July 27, 2011, we converted our company from a Delaware limited liability company, Chefs Warehouse Holdings, LLC, into a Delaware corporation, The Chefs Warehouse, Inc. Unless expressly stated or the context otherwise requires, the terms we, our, us, the Company and Chefs Warehouse refer to Chefs Warehouse Holdings, LLC and its subsidiaries prior to the conversion date and The Chefs Warehouse, Inc. and its subsidiaries on or after the conversion date.

We are a premier distributor of specialty food products. We are focused on serving the specific needs of chefs who own and/or operate some of the leading menu-driven independent restaurants, fine dining establishments, country clubs, hotels, caterers, culinary schools, bakeries, patisseries, chocolatiers, cruise lines and specialty food stores. We believe that we have a distinct competitive advantage in serving these customers as a result of our extensive selection of distinctive and hard-to-find specialty and center-of-the-plate food products, our product knowledge and our customer service.

We define specialty food products as gourmet foods and ingredients that are of the highest grade, quality or style as measured by their uniqueness, exotic origin or particular processing method. Our product portfolio includes over 23,200 SKUs and is comprised primarily of imported and domestic specialty food products, such as artisan charcuterie, specialty cheeses, unique oils and vinegars, hormone-free protein, truffles, caviar, pastries, dessert and chocolate. Our center-of-the-plate products include custom cut steaks, seafood and other protein. We also offer an extensive line of broadline food products, including cooking oils, butter, eggs, milk and flour. Our core customers are chefs, and we believe that, by offering a wide selection of both distinctive and hard-to-find products, together with staple broadline food products, we are able to differentiate ourselves from larger, traditional broadline foodservice distributors, while simultaneously enabling our customers to utilize us as their primary foodservice distributor.

Founded in 1985 as Dairyland USA Corporation, a distributor of butter, eggs and select specialty food products in the New York metropolitan area, we focus our sales efforts on developing relationships with the chefs who own or operate independent restaurants, fine dining establishments, country clubs, hotels, caterers, culinary schools, bakeries, patisseries, chocolatiers, cruise lines and specialty food stores in thirteen leading culinary markets, including New York, Washington, D.C., Los Angeles, San Francisco, Las Vegas, Miami, Portland, Columbus, Cincinnati, Chicago, Vancouver, Edmonton and Toronto. Our more than 17,500 customer locations include many of the leading independent restaurants in each of our markets. By leveraging an experienced and sophisticated sales force of approximately 255 sales professionals, we maintain collaborative relationships with thousands of chefs while also acting as a critical marketing arm and route-to-market for many of our suppliers. Operating out of eighteen distribution centers and providing service six days a week in many of our service areas, we utilize our fleet of delivery trucks to fill our customers' orders.

Our principal executive offices are located at 100 East Ridge Road, Ridgefield, Connecticut 06877, our telephone number is (203) 894-1345, and our website address is www.chefswarehouse.com. The reference to our website is provided as an inactive textual reference and does not constitute incorporation by reference into this prospectus of any of the information contained on our website.

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RISK FACTORS

Investing in our securities involves risks. You should carefully consider the risks described under Part I. Item 1A. Risk Factors in our most recent Annual Report on Form 10-K, under Part II. Item 1A. Risk Factors in our Quarterly Report on Form 10-Q filed with the SEC on May 7, 2013 and in the other documents incorporated by reference into this prospectus (which risk factors are incorporated by reference herein), including documents we file with the SEC after the date of this prospectus, as well as the other information contained or incorporated by reference in this prospectus or in any prospectus supplement, before making a decision to invest in our securities.

If any of these risks were to occur, our business, affairs, prospects, assets, financial condition, results of operations and cash flows could be materially and adversely affected. If this occurs, the trading price of our securities could decline, and you could lose all or part of your investment. For more information about our SEC filings, please see Where You Can Find More Information and Incorporation by Reference. See also Cautionary Note Regarding Forward-Looking Statements.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents we incorporate by reference in this prospectus contain forward-looking statements within the meaning of Section 27A of the United States Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the United States Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements provide our current expectations or forecasts of future events and are not statements of historical fact. These forward-looking statements include information about possible or assumed future events, including, among other things, discussion and analysis of our future financial condition, results of operations, our strategic plans and objectives, cost management, liquidity and ability to refinance our indebtedness as it matures, anticipated capital expenditures (and access to capital) required to complete projects, amounts of cash distributions to our stockholders in the future, if any, and other matters. Words such as anticipates, expects, intends, plans, believes, seeks, estimates and variations of these words and similar expressions are intended to identify forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and/or could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements.

Forward-looking statements involve inherent uncertainty and may ultimately prove to be incorrect or false. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including, but not limited to, the following:

our success depends to a significant extent upon general economic conditions, including disposable income levels and changes in consumer discretionary spending;

conditions beyond our control could materially affect the cost and/or availability of our specialty food products and/or interrupt our distribution network;

our business is a low-margin business and our profit margins may be sensitive to inflationary and deflationary pressures;

group purchasing organizations may become more active in our industry and increase their efforts to add our customers as members of these organizations;

because our foodservice distribution operations are concentrated principally in seven culinary markets, we are susceptible to economic and other developments, including adverse weather conditions, in these areas;

damage to our reputation or lack of acceptance of our specialty food products and/or the brands we carry in existing and new markets could materially and adversely impact our business, financial condition or results of operations;

our customers are generally not obligated to continue purchasing products from us;

we have experienced losses due to our inability to collect accounts receivable in the past and could experience increases in such losses in the future if our customers are unable to pay their debts to us in a timely manner or at all;

product liability claims could have a material adverse effect on our business, financial condition or results of operations;

increased fuel costs may have a material adverse effect on our business, financial condition or results of operations;

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new information or attitudes regarding diet and health or adverse opinions about the health effects of the specialty food products we distribute could result in changes in consumer eating habits, which could have a material adverse effect on our business, financial condition or results of operations;

we have significant competition from a variety of sources, and we may not be able to compete successfully;

a significant portion of our future growth is dependent upon our ability to expand our operations in our existing markets and to penetrate new markets through acquisitions;

our ability to consummate acquisitions is conditioned upon having sufficient availability under our senior secured credit facilities or alternatively the ability to obtain additional financing in amounts necessary to finance the purchase price for the businesses we may acquire;

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we may have difficulty managing and facilitating our future growth;

our substantial indebtedness may limit our ability to invest in the ongoing needs of our business;

we may be unable to obtain debt or other financing, including financing necessary to execute on our acquisition strategy, on favorable terms or at all;

information technology system failures or breaches of our network security could interrupt our operations and adversely affect our business;

our recent investments in information technology may not produce the benefits that we anticipate;

we may not be able to adequately protect our intellectual property, which, in turn, could harm the value of our brands and adversely affect our business;

our business operations and future development could be significantly disrupted if we lose key members of our management team;

our insurance policies may not provide adequate levels of coverage against all claims and fluctuating insurance requirements and costs could negatively impact our profitability, and if we fail to establish proper reserves and adequately estimate future medical expenses, our fully self-insured group medical plan may adversely affect our business, financial condition or results of operations;

increases in our labor costs, including as a result of labor shortages, the price or unavailability of insurance and changes in government regulation, could slow our growth or harm our business;

we are subject to significant governmental regulation;

compliance with Section 404 of the Sarbanes-Oxley Act of 2002 requires our management to devote substantial time to new compliance initiatives, and if our independent registered public accounting firm is unable to provide an unqualified attestation report on our internal controls, our stock price could be adversely affected;

federal, state and local tax rules may adversely impact our business, financial condition or results of operations;

we do not intend to pay dividends for the foreseeable future and our stock may not appreciate in value;

concentration of ownership among our existing executive officers, directors and their affiliates may prevent new investors from influencing significant corporate decisions;

our issuance of preferred stock could adversely affect holders of our common stock and discourage a takeover;

our ability to raise capital in the future may be limited;

future issuances of equity securities to raise capital, including, but not limited to, capital to finance the acquisition of businesses we identify as acquisition targets, will cause dilution to our then current stockholders; and

some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.

other risks referenced from time to time in our past and future filings with the SEC (copies of which may be obtained as described under [Where You Can Find More Information](#) below) and those factors listed in this prospectus under [Risk Factors](#) below.

You are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date of this prospectus. Except as otherwise may be required by law, we undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or actual operating results after the date hereof.

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USE OF PROCEEDS

We do not expect to receive any cash proceeds when we issue common stock registered by this prospectus. When this prospectus is used by a selling stockholder in a public reoffering or resale of common stock acquired pursuant to this prospectus, we will not receive any proceeds from such sale by the selling stockholder.

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DESCRIPTION OF COMMON STOCK

As of the date of this prospectus, our Certificate of Incorporation authorizes us to issue 100,000,000 shares of common stock, par value \$0.01 per share, and 5,000,000 shares of preferred stock, par value \$0.01 per share. As of May 16, 2013, 21,177,910 shares of common stock were outstanding and no shares of preferred stock were outstanding.

The following summary describes the material terms of our common stock. The description of common stock is qualified by reference to our Certificate of Incorporation and our Bylaws, which are incorporated by reference as exhibits into the registration statement of which this prospectus is a part.

General

Holders of our common stock, which has a par value of \$0.01, are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. Accordingly, holders of a majority of the shares of our common stock entitled to vote in any election of directors may elect all of the directors standing for election. Holders of our common stock are entitled to receive ratably such dividends, if any, as may be declared by our board of directors out of funds legally available therefor, subject to any preferential dividend rights of outstanding preferred stock. Upon our liquidation, dissolution or winding up, the holders of our common stock are entitled to receive ratably our net assets available after the payment of all debts and other liabilities and subject to the prior rights of any outstanding preferred stock. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. In the opinion of our counsel, the outstanding shares of our common stock are, and the shares offered by us pursuant to this prospectus will be, when issued and paid for, fully paid and nonassessable. The rights, preferences and privileges of holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which we may designate and issue in the future.

Certain Anti-Takeover Matters

Delaware Business Combination Statute

Under Section 203 of the General Corporation Law of the State of Delaware, or the DGCL, a corporation is prohibited from engaging in any business combination with a stockholder who, together with its affiliates or associates, owns (or who is an affiliate or associate of the corporation and within a three-year period did own) 15% or more of the corporation's outstanding voting stock, or an interested stockholder, for a three-year period following the time the stockholder became an interested stockholder, unless:

prior to the time the stockholder became an interested stockholder, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

the interested stockholder owned at least 85% of the voting stock of the corporation, excluding specified shares, upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder; or

at or subsequent to the time the stockholder became an interested stockholder, the business combination is approved by the board of directors of the corporation and authorized by the affirmative vote, at an annual or special meeting, and not by written consent, of at least two-thirds of the outstanding voting shares of the corporation, excluding shares held by that interested stockholder.

A business combination generally includes:

mergers and consolidations with or caused by an interested stockholder;

sales or other dispositions of 10% or more of the assets of a corporation to an interested stockholder;

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specified transactions resulting in the issuance or transfer to an interested stockholder of any capital stock of a corporation or its subsidiaries; and

other transactions resulting in a disproportionate financial benefit to an interested stockholder.

The provisions of Section 203 of the DGCL do not apply to a corporation if, subject to certain requirements, the certificate of incorporation or bylaws of the corporation contain a provision expressly electing not to be governed by

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the provisions of the statute or the corporation does not have voting stock listed on a national securities exchange or held of record by more than 2,000 stockholders.

Because we have opted out of Section 203 of the DGCL in our Certificate of Incorporation, the statute will not apply to business combinations involving us.

Provisions of our Certificate of Incorporation and Bylaws

Under our Certificate of Incorporation, any vacancy on our board of directors, however occurring, including a vacancy resulting from an enlargement of the board, may only be filled by vote of a majority of the directors then serving, or by the sole remaining director. The limitations on filling of vacancies could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from acquiring, control of us.

Our Certification of Incorporation also provides that any action required or permitted to be taken by our stockholders at an annual meeting or special meeting of stockholders may be taken only if it is properly brought before such meeting and may not be taken by written consent in lieu of a meeting. Our Bylaws provide that special meetings of the stockholders may only be called by the chairman of the board of directors, the chief executive officer, the secretary, or the board of directors. Under our Bylaws, in order for any matter to be considered properly brought before a meeting, a stockholder must comply with certain requirements regarding advance notice to the company. The foregoing provisions could have the effect of delaying until the next stockholders meeting stockholder actions which are favored by the holders of a majority of our outstanding voting securities. These provisions also may discourage another person or entity from making a tender offer for our common stock because such person or entity, even if it acquired a majority of our outstanding voting securities, would be able to take action as a stockholder (such as electing new directors or approving a merger) only at a duly called stockholders meeting and not by written consent.

The DGCL provides, generally, that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. Our Certificate of Incorporation does not require a greater percentage.

NASDAQ Global Select Market Listing Trading

Our common stock is listed on The NASDAQ Global Select Market under the symbol CHEF.

Transfer Agent and Registrar

We have appointed American Stock Transfer & Trust Company, LLC to be our transfer agent and registrar for our common stock.

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PLAN OF DISTRIBUTION

This prospectus is a part of a shelf registration statement on Form S-4 that we have filed with the SEC. Under the shelf registration process, we may from time to time offer and sell up to 4,000,000 shares of our common stock, par value \$0.01 per share, in connection with the acquisition of assets, stock or businesses, whether by purchase, merger or any other form of business combination. We are actively looking for acquisition opportunities complementary or additive to our business.

It is expected that the terms of these acquisitions will be determined by direct negotiations with the owners or controlling persons of the assets, businesses or securities to be acquired, and that the shares of common stock issued will be valued at prices reasonably related to the market price of our common stock at the time an agreement is entered into concerning the terms of the acquisition, at or about the time the shares are delivered or during some other negotiated period. Factors taken into account in acquisitions may include, among other factors, the quality and reputation of the business to be acquired and its management, the strategic market position of the business to be acquired and its proprietary assets, earning power, cash flow and growth potential. In addition to shares of our common stock, consideration for these acquisitions may consist of any consideration permitted by applicable law, including, without limitation, the payment of cash, the issuance of preferred stock, the issuance of a note or other form of indebtedness, the assumption of liabilities or any combination of these items. All expenses of this registration, other than the expenses of the selling stockholders, if any, will be paid by us. We do not expect to pay underwriting discounts or commissions, although we may pay finders' fees from time to time in connection with certain acquisitions. Any person receiving finders' fees may be deemed to be an underwriter within the meaning of the Securities Act, and any profit on the resale of securities purchased by them may be considered underwriting commissions or discounts under the Securities Act.

In addition, we may issue our common stock pursuant to this prospectus and applicable prospectus supplement, or post-effective amendment, to acquire the assets, stock or business of debtors in cases under the United States Bankruptcy Code, which may constitute all or a portion of the debtor's assets, stock or business. The common stock we issue in these transactions may be sold by the debtor or its stockholders for cash from time to time in market transactions or it may be transferred by the debtor in satisfaction of claims by creditors under a plan of reorganization approved by the applicable United States Bankruptcy Court or otherwise transferred in accordance with the Bankruptcy Code.

In an effort to maintain an orderly market in our securities or for other reasons, we may negotiate agreements with persons receiving common stock covered by this prospectus that will limit the number of shares that they may sell at specified intervals. These agreements may be more or less restrictive than restrictions on sales made under exemptions from the registration requirements of the Securities Act, including the requirements under Rule 144 or Rule 145(d), and the persons party to these agreements may not otherwise be subject to the Securities Act requirements. We anticipate that, in general, negotiated agreements will be of limited duration and will permit the recipients of securities issued in connection with acquisitions to sell up to a specified number of shares during a specified period of time. We may also determine to waive any such agreements without public notice.

This prospectus may be supplemented to furnish the information necessary for a particular negotiated transaction, and the registration statement of which this prospectus is a part will be amended or supplemented, as required, to supply information concerning an acquisition.

We may permit individuals or entities who will receive shares of our common stock in connection with the acquisitions described above, or their transferees or successors-in-interest, to use this prospectus to cover the resale of such shares. See Resales of Shares, as it may be amended or supplemented from time to time, for a list of those individuals or entities that are authorized to use this prospectus to sell their shares of our common stock.

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RESALES OF SHARES

In general, the persons to whom we issue common stock under this prospectus will be able to resell our common stock in the public market without further registration and without being required to deliver a prospectus. However, certain persons who receive our common stock may want to resell those shares in distributions that would require the delivery of a prospectus. With our consent, this prospectus may be used by selling stockholders who may wish to sell shares of common stock. As used in this prospectus, selling stockholders may include donees and pledgees selling securities received from a named selling stockholder. We may limit our consent to a specified time period and subject our consent to certain limitations and conditions, which may vary by agreement.

We will receive none of the proceeds from any sales by selling stockholders. Any commissions paid or concessions allowed to any broker-dealer, and, if any broker-dealer purchases such shares as principal, any profits received on the resale of such shares, may be deemed to be underwriting discounts and commissions under the Securities Act. We may pay printing, certain legal, filing and other similar expenses of this offering. Selling stockholders will bear all other expenses of this offering, including any brokerage fees, underwriting discounts or commissions and their own legal expenses.

Selling stockholders may sell the shares of common stock offered by this prospectus:

through the Nasdaq Global Select Market or any other securities exchange or quotation service that lists or quotes our common stock for trading;

in the over-the-counter market;

in special offerings;

in privately negotiated transactions;

by or through brokers or dealers, in ordinary brokerage transactions or transactions in which the broker solicits purchases;

in transactions in which a broker or dealer will attempt to sell shares as an agent but may position and resell a portion of the shares as principal;

in transactions in which a broker or dealer purchases as principal for resale for its own account;

through underwriters or agents; or

in any combination of these methods.

Selling stockholders may sell their shares at market prices prevailing at the time of sale, at prices related to such prevailing market prices, at negotiated prices or at fixed prices. The transactions above may include block transactions.

Resales by selling stockholders may be made directly to investors or through securities firms acting as underwriters, brokers or dealers. When resales are to be made through a securities firm, the securities firm may be engaged to act as the selling stockholders' agent in the resale of the shares by the selling stockholders, or the securities firm may purchase securities from the selling stockholders as principal and thereafter resell the securities from time to time. The fees earned by or paid to the securities firm may be the normal stock exchange commission or negotiated

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commissions or underwriting discounts to the extent permissible. The securities firm may resell the securities through other securities dealers, and commissions or concessions to those other dealers may be allowed. We and the selling stockholders may indemnify any securities firm participating in such transactions against certain liabilities, including liabilities under the Securities Act, and may reimburse them for any expenses in connection with an offering or sale of securities. We may also agree to indemnify the selling stockholders against any such liabilities or reimburse them for expenses. Profits, commissions and discounts on sales by persons who may be deemed to be underwriters within the meaning of the Securities Act may be deemed underwriting compensation under the Securities Act.

Selling stockholders may also offer shares of common stock covered by this prospectus by means of prospectuses under other registration statements or pursuant to exemptions from the registration requirements of the Securities Act, including sales that meet the requirements of Rule 144 or Rule 145(d) under the Securities Act. Selling stockholders should seek the advice of their own counsel about the legal requirements for such sales.

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This prospectus will be amended or supplemented, if required by the Securities Act and the rules of the SEC, to disclose the name of the selling stockholder, the participating securities firm, if any, the number of shares of common stock involved and other information concerning the resale, including the terms of any distribution, including the names of any underwriters, brokers, dealers or agents and any discounts, commissions, concessions or other items constituting compensation. We may agree to keep the registration statement relating to the offering and sale by the selling stockholders of our securities continuously effective until a fixed date or the date on which the shares may be resold without registration under the Securities Act.

LEGAL MATTERS

The validity of the shares being offered hereby will be passed upon for us by Bass, Berry & Sims PLC, Nashville, Tennessee.

EXPERTS

The consolidated financial statements of the Company as of December 28, 2012 and December 30, 2011, and for each of the fiscal years in the three-year period ended December 28, 2012, and management's assessment of the effectiveness of internal control over financial reporting as of December 28, 2012, have been incorporated herein by reference to the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 2012 in reliance upon the reports of BDO USA, LLP, an independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The audited financial statements of Michael's Finer Meats, LLC as of December 25, 2011 and December 26, 2010, and for each of the fiscal years in the three-year period ended December 25, 2011 have been incorporated herein by reference to Exhibit 99.2 of the Company's Current Report on Form 8-K/A filed with the SEC on October 25, 2012 in reliance upon the report of GBQ Partners, LLC, an independent public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available over the Internet at the SEC's website at www.sec.gov. The SEC's website is included in this prospectus and any applicable prospectus supplement as an inactive textual reference only. The information contained on the SEC's website is not incorporated by reference into this prospectus or any applicable prospectus supplement and should not be considered to be part of this prospectus unless such information is otherwise specifically referenced elsewhere in this prospectus or any applicable prospectus supplement. You may also read and copy any document we file at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 to obtain information on the operation of the public reference room.

We also make available, free of charge, through our website our annual, quarterly and current reports, proxy statements and other information, including amendments thereto, as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC. Our website address is www.chefswarehouse.com. Our website address is provided as an inactive textual reference only. Information contained on or accessible through our website is not part of this prospectus or any applicable prospectus supplement and is therefore not incorporated by reference unless such information is otherwise specifically referenced elsewhere in this prospectus or any applicable prospectus supplement.

We have filed with the SEC a registration statement on Form S-4 with respect to the shares of common stock offered by this prospectus. Pursuant to SEC rules, this prospectus, which forms a part of the registration statement, does not contain all of the information in the registration statement and its exhibits and schedules. You may read or obtain a copy of the registration statement from the SEC in the manner described above.

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INCORPORATION BY REFERENCE

The SEC allows us to incorporate by reference the information we publicly file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below (except the information contained in such documents to the extent that it is furnished and not filed in accordance with SEC rules):

1. Annual Report on Form 10-K for the year ended December 28, 2012, filed with the SEC on March 13, 2013.
2. Quarterly Report on Form 10-Q for the quarter ended March 29, 2013, filed with the SEC on May 7, 2013, and Amendment No. 1 to Quarterly Report on Form 10-Q for the quarter ended September 28, 2012, filed with the SEC on March 13, 2013.
3. Our Definitive Proxy Statement on Schedule 14A filed with the SEC on April 3, 2013.
4. Current Reports on Form 8-K filed with the SEC on January 2, 2013, January 24, 2013, March 18, 2013, April 18, 2013 and May 1, 2013 and Current Report on Form 8-K/A filed with the SEC on October 25, 2012.
5. The description of our common stock set forth under the heading Description of Our Capital Stock in the prospectus included in the Registration Statement on Form S-1 (File No. 333-173445) initially filed with the SEC on April 12, 2011 (as amended from time to time).
6. All documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after the date that the registration statement of which this prospectus is a part was originally filed with the SEC and prior to the effectiveness of the registration statement.
7. All documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after the date hereof and prior to the termination of the offering.

Notwithstanding the foregoing, information that we furnish under Items 2.02 and 7.01 of any Current Report on Form 8-K, including the related exhibits under Item 9.01, is not incorporated by reference into this prospectus, the registration statement of which this prospectus is a part, or any prospectus supplement.

Any statement contained in a document that is incorporated by reference will be modified or superseded for all purposes to the extent that a statement contained in this prospectus or any accompanying prospectus supplement, or in any other document that is subsequently filed with the SEC and incorporated herein by reference, modifies, or is contrary to that previous statement. Any statement so modified or superseded will not be deemed a part of this prospectus or any accompanying prospectus supplement, except as so modified or superseded. Since information that we later file with the SEC will update and supersede previously incorporated information, you should look at all of the SEC filings that we incorporate by reference to determine if any of the statements in this prospectus or any accompanying prospectus supplement or in any documents previously incorporated herein by reference have been modified or superseded.

We will provide without charge to each person to whom this prospectus is delivered, upon written or oral request of such person, a copy of any or all of the documents incorporated by reference into this prospectus. Requests for documents should be submitted in writing to The Chefs Warehouse, Inc., 100 East Ridge Road, Ridgefield, Connecticut 06877, Attention: Corporate Secretary, or by telephone at (203) 894-1345. Our website is at www.chefswarehouse.com. Information available on our website does not constitute part of this prospectus.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. *Indemnification of Directors and Officers.*

Section 145(a) of the DGCL provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, because the person is or was a director or officer of the corporation. Such indemnity may be against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and if, with respect to any criminal action or proceeding, the person did not have reasonable cause to believe the person's conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director or officer of the corporation, against any expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to be indemnified for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145(g) of the DGCL provides, in general, that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation against any liability asserted against the person in any such capacity, or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of the law. Our Certificate of Incorporation provides that, to the fullest extent permitted by applicable law, a director will not be liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director. In addition, our Bylaws provide that we will indemnify each director and officer and may indemnify employees and agents, as determined by our board, to the fullest extent provided by the laws of the State of Delaware.

The foregoing statements are subject to the detailed provisions of section 145 of the Delaware General Corporation Law and provisions included in our Certificate of Incorporation and Bylaws.

Section 102 of the Delaware General Corporation Law permits the limitation of directors' personal liability to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director except for (i) any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) breaches under section 174 of the Delaware General Corporation Law, which relates to unlawful payments of dividends or unlawful stock repurchase or redemptions, and (iv) any transaction from which the director derived an improper personal benefit.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us under the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

We refer you to Item 22 for our undertakings with respect to indemnification for liabilities arising under the Securities Act. We maintain directors' and officers' liability insurance for our officers and directors.

We have entered into an indemnification agreement with each of our executive officers and directors that provides, in general, that we will indemnify them to the fullest extent permitted by law in connection with their service to us or on our behalf.

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Item 21. Exhibits.

See the Exhibit Index which follows the signature pages to this Registration Statement and is incorporated by reference herein.

Item 22. Undertakings.

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A of this chapter, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this Registration Statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

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- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

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- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (c) The undersigned registrant hereby undertakes that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.
- (d) The undersigned registrant hereby undertakes that every prospectus (i) that is filed pursuant to the immediately preceding paragraph, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (e) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.
- (f) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.
- (g) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

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SIGNATURES

Pursuant to the requirements of the Securities Act, The Chefs Warehouse, Inc. has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Ridgefield, State of Connecticut on May 20, 2013.

The Chefs Warehouse, Inc.

By: /s/ CHRISTOPHER PAPPAS
 Christopher Pappas
 Chairman of the Board of Directors, President and
 Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated. This document may be executed in counterparts that when so executed shall constitute one registration statement, notwithstanding that all of the undersigned are not signatories to the original of the same counterpart.

SIGNATURE	TITLE	DATE
/s/ CHRISTOPHER PAPPAS Christopher Pappas	Chairman, President and Chief Executive Officer (Principal Executive Officer)	May 20, 2013
/s/ JOHN D. AUSTIN John D. Austin	Chief Financial Officer and Assistant Secretary (Principal Financial and Accounting Officer)	May 20, 2013
*	Director	May 20, 2013
John Pappas		
*	Director	May 20, 2013
Dominick Cerbone		
*	Director	May 20, 2013
John A. Couri		
*	Director	May 20, 2013
Joseph M. Cugine		
*	Director	May 20, 2013
Alan Guarino		
*	Director	May 20, 2013
Stephen Hanson		

*By: /s/ CHRISTOPHER PAPPAS
Christopher Pappas

Attorney-in-fact

May 20, 2013

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EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
3.1	Certificate of Incorporation of the Company, dated as of July 27, 2011 (incorporated by reference to Exhibit 3.1 to the Company's Form 8-K filed on August 2, 2011).
3.2	Bylaws of the Company, dated as of July 27, 2011 (incorporated by reference to Exhibit 3.2 to the Company's Form 8-K filed on August 2, 2011).
4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Company's S-1/A filed on July 1, 2011).
5.1**	Opinion of Bass, Berry & Sims PLC regarding the legality of the securities being registered.
23.1*	Consent of BDO USA, LLP, Independent Registered Public Accounting Firm.
23.2*	Consent of GBQ Partners, LLC, Independent Public Accounting Firm
23.3**	Consent of Bass, Berry & Sims (included in Exhibit 5.1 above).
24.1**	Power of Attorney (included on the signature page to this Registration Statement).

- * Filed herewith.
- ** Previously filed.

ons and footnote 10, Shareholders' Equity - Equity Line of Credit. In addition, effective July 11, 2001, the Company's common stock was delisted by The Nasdaq National Market due to a failure to pay overdue annual and additional listing fees in the amount of \$44,125 and the inability to meet the minimum bid price requirements for continued listing. Operating losses have had and continue to have a substantial negative effect on the Company's cash balance. The Company's goal of returning to profitability and developing a more dependable revenue base relies on the success of the VocalWare IP product line. To successfully penetrate the target markets, the Company expects that significant additional resources will need to be expended in order to expand its sales and marketing infrastructure and operation systems, and to finance inventory and receivables. The Company has historically funded operations with the proceeds from the sale of equity securities and has not generated positive cash flows from operations for the past three years. The Company will need to raise more money to continue to finance its operations and may not be able to obtain additional financing on acceptable terms, or at all. Any failure to raise additional financing will likely place the Company in significant financial jeopardy. During July 2001 (subsequent to the balance sheet date) the Company decreased its overhead through payroll reductions and related benefit costs (reducing its workforce from 77 employees to 6 employees). Management is also currently consolidating operations into one location thereby effecting savings on rent and associated facility costs. The Company believes 4) Accounts Receivable and Major Customers During fiscal 2001 aggregate revenues from shipments to three customers represented 85% of total revenues. Revenue from shipments to and fees from Sabratek (a significant customer) represented 65.2% and 50% of revenue from continuing operations for fiscal 2000 and 1999, respectively. Credit limits, ongoing credit evaluation, and account-monitoring procedures are used by the Company to minimize the risk of loss on accounts receivable. Generally, collateral is not required. Export revenues were 4% of total revenue for fiscal 1999. Export revenues were not significant during fiscal 2001 or fiscal 2000. 5) Inventory Inventory consists of the following: June 30, 2001 June 30, 2000 ----- Finished goods \$1,054,557 \$ 138,014 Work in progress 322,797 80,151 Raw materials 1,499,152 31,711 ----- Total net inventory \$2,876,506 \$ 249,876 ===== Inventory is valued at the lower of cost (principally standard cost which approximates first-in, first-out) or market (net

realizable value). Costs include materials, labor, overhead, and subcontract charges as applicable. If in the ordinary course of business, management determines that the utility of its inventory is no longer as great as its cost, due to obsolescence, physical deterioration, changes in price levels, etc., the Company will recognize a reduction in the value of its inventory and record a corresponding charge to income. 6) Property and Equipment Property and equipment consists of the following: June 30, 2001 June 30, 2000 ----- Leasehold improvements \$ -- \$ 1,560,385 Furniture, fixtures and equipment 3,103,959 2,345,925 2 - 5 yrs. ----- 3,103,959 3,906,310 Accumulated depreciation (2,429,161) (2,670,391) ----- Total property and equipment \$ 674,798 \$ 1,235,919 ===== Because the Company terminated the lease for the San Antonio, Texas facility after the close of its fiscal year 2001 (August, 2001), the Company elected to record an asset impairment for the San Antonio leasehold improvements resulting in a loss of \$778,278. The Company also wrote off \$402,700 in impaired assets relating to its inability to further proceed with the implementation of its new e-business integrated operating platform. The e-business platform was to internally unify the Company's sales, customer service, material resources planning (MRP) and accounting systems activities. The cost of this operating platform consisted of the cost to acquire servers, associate server software, applications software, initial training and external consultant implementation. Implementation of the system had to be abandoned during May of 2001 due to financial difficulties and the loss of key personnel responsible for implementing this system. The total impairment loss of \$1,180,978 is included in General and Administration expenses. 43 7) Accrued Expenses Accrued expenses consists of the following: June 30, 2001 June 30, 2000 ----- Deferred gain \$ -- \$334,788 Payroll 399,651 215,833 Accrued vacation 133,764 82,164 Other 104,752 327,561 ----- Total accrued expenses \$638,167 \$960,346 ===== Due to defaults upon the agreement between the Company and HT communications, the Company removed the unrecognized portion of the deferred gain in the amount of \$331,601 from its books along with the associated note receivable (see Note 2). 8) Income Taxes As a result of operating losses sustained, there was no income tax expense (benefit) for the fiscal years ended June 30, 2001, 2000 and 1999. The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities at June 30, 2001 and 2000 are presented below: June 30, ----- 2001 2000 ----- Deferred tax assets: Accounts receivable due to allowances for financial reporting purposes \$ 700 \$ 192 Inventory, principally due to write-down for financial reporting purposes 327,800 208,312 Property and equipment, due to difference in depreciation 67,300 223,007 Accrued expenses 168,500 128,240 Net operating loss carryforwards 24,396,100 19,514,286 Alternative minimum tax credit carryforwards 93,700 83,645 Research and experimentation credit carryforwards 881,600 678,176 Other, net -- 4,068 ----- Total gross deferred tax assets 25,935,700 20,839,926 Less valuation allowance (25,935,700) (20,839,926) ----- Net deferred tax asset \$ -- \$ -- ===== The valuation allowance related to deferred tax assets increased by approximately \$5,096,000 and \$3,040,000 during the years ended June 30, 2001 and 2000, respectively. In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Based upon the level of historical taxable income, management has provided a 100% valuation allowance for the Company's deferred tax assets at June 30, 2001. The amount of the deferred tax asset considered realizable, however, could fluctuate in the near term if estimates of future taxable income during the carryforward period are adjusted. Reconciliation of the U.S. Federal statutory rate to the Company's effective tax rate for each fiscal year is as follows: 2001 2000 1999 ----- U. S. Federal statutory rate 34.0% 34.0% 34.0% Increase (reduction) in income taxes resulting from: Provision for valuation allowance (34.0) (34.0) (34.0) ----- Net effective tax rate -- -- ===== 44 At June 30, 2001, the Company had net operating loss ("NOL") carryforwards for federal and state income tax purposes of approximately \$70,980,000, which expire beginning in 2008. The Company also has research and experimentation credit carryforwards for federal income tax purposes of approximately \$678,000, which began expiring in 2000, and alternative minimum tax credit carryforwards of approximately \$84,000. The Internal Revenue Code section 382

limits NOL and tax credit carryforwards when an ownership change of more than fifty percent of the value of stock in a loss corporation occurs within a three-year period. In fiscal 1999, 1998 and 1997 the Company issued preferred stock that has since been converted into common stock. Accordingly, the ability to utilize remaining NOL and tax credit carryforwards may be significantly restricted.

9) Convertible Debentures May 2001 Private Placement of Convertible Notes In May 2001 the Company issued two 10% secured convertible promissory notes with principal amounts, in the aggregate, of \$700,000, and 1,166,667 common stock purchase warrants. The notes mature one year from their date of issuance. The notes and warrants were issued pursuant to Section 4(2) of the Securities Act, as amended, in equal amounts to two accredited investors. The proceeds to the Company from the sale of the notes was \$700,000. The Company used the proceeds from the private placement primarily for general corporate purposes. The notes are convertible at any time at the holders option into common stock at \$0.30 per share. The warrants of which the total value are \$110,179, are exercisable at a price of \$0.30 per share through May 2006.

June 2001 Private Placement of Convertible Debentures On June 12, 2001 the Company signed an agreement to place up to \$1 million in 6% convertible debentures and warrants to two accredited investors. The parties amended the agreement on July 17, 2001 and October 18, 2001. The convertible debentures have an interest rate of 6% per annum and mature 3 years from their date of issuance. Under the terms of the convertible debentures, the holders can elect at any time prior to maturity to convert the balance outstanding on the debentures into shares of Company common stock at the lesser of a fixed price that represents a 10% premium to the closing bid price of common stock at the time the debentures were issued and 50% of the average of the 5 lowest closing bid prices of Company common stock during the 25 business days immediately preceding the conversion date. Under the agreements, as amended, and pursuant to Section 4(2) of the Securities Act of 1933, as amended, the Company issued to the investors \$500,000 principal amount of convertible debentures on June 18, 2001, \$240,000 principal amount of convertible debentures on July 30, 2001, \$130,000 principal amount of convertible debentures on September 6, 2001 and \$277,499 principal amount of convertible debentures on October 18, 2001. On June 18, 2001, the Company also issued to the investors common stock purchase warrants to purchase up to 1,000,000 shares of common stock at an exercise price of \$0.14. On October 18, 2001 the parties amended the agreement to increase the investment amount by \$147,499 and the Company granted to the investors a security interest in all of the assets of the Company covering all prior and future indebtedness of the Company to the investors. We have received proceeds from the sale of the convertible debentures equal to \$1,147,499 less \$80,000 to Hadrian Investments Limited for placement agent fees, or 8% of the proceeds received for the first \$1,000,000 principal amount of convertible debentures issued to the investors, and less \$25,000 to cover the legal expenses of the investors. We currently owe Hadrian Investments Limited an additional \$11,799.92 in connection with this financing, or 8% of the last \$147,499 convertible debentures issued to the investors. The Company used the proceeds from the private placement primarily for general corporate purposes. The Company is obligated to file a registration statement for the shares issuable upon conversion of the convertible debentures and warrants with the SEC. The Company was also obligated to cause the registration statement to be declared effective by 45 October 2, 2001 and is currently accruing liquidated damages at the rate of 2% of the outstanding principal amount of the convertible debentures per month. These penalties may be paid in cash or, at the investors' option, in common stock. In addition, if the Company issues additional shares of common stock, then antidilution provisions contained in the convertible debentures may reduce the conversion price of the shares issued to the investors so as to prevent dilution of the their investment in the Company.

10) Shareholders' Equity Equity Line of Credit In July 2001, subsequent to the Balance Sheet data, the Company signed what is sometimes termed an equity line of credit or an equity draw down facility with an accredited investor, Grenville Finance Ltd. In general, Grenville has committed up to \$30 million to purchase our common stock over a 36 month period beginning after and during the period a resale registration statement registering the shares purchased pursuant to the equity line of credit is effective. During the periods the resale registration statement is effective, the Company may request a draw of up to \$1 million of that money, subject to a formula based on average stock prices and average trading volumes, setting the maximum amount of any request for any given draw. The amount of money that Grenville will provide and the number of shares to be issued to Grenville in return for that money is settled twice during a 22 day trading period following the draw down request based on the formula in the stock purchase agreement. Grenville receives a 17.5% discount to the market price of Company common stock during the 22-day period and the Company receives the settled amount of the draw down, less 8% of such amount to Hadrian Investments Limited for placement agent fees. Additionally, we issued to Hadrian 500,000 shares in lieu of a cash payment of \$25,000 for services rendered to the Company by Hadrian. In addition, the

Company issued a warrant to Grenville to purchase up to 16,366,612 shares of Company common stock at an exercise price of \$0.07027 and paid Grenville \$20,000 for its legal fees and expenses incurred in connection with the equity line of credit. The issuances of the securities to the accredited investors are made pursuant to Section 4(2) of the Securities Act. The Company will use the proceeds from the equity line for general corporate purposes. March 2001 Private Placement On March 2, 2001, the Company completed a Section 4(2) private placement of 3,047,620 shares of its common stock, and warrants to purchase 304,762 shares of common stock to three accredited investors, Protius Overseas Limited, Keyway Investments Ltd., and Lionhart Investments Ltd., for an aggregate price of \$2,000,000. The warrants are exercisable at a price of \$0.9875 per share through March 2, 2006. The Company used the proceeds from the private placement primarily for general corporate purposes. The Company has agreed to file a registration statement under the Securities Act of 1933, covering the resale of the common shares and the shares of common stock issuable upon exercise of the warrants. The Company has incurred, and continues to incur, certain penalties since the registration statement was not declared effective by May 31, 2001. These penalties may be paid in cash or, at the investors' option, in common stock. In addition, if the Company issues additional shares of common stock prior to the effective date of the registration statement, then antidilution provisions contained in the securities purchase agreement may require the Company to issue additional shares of common stock to the investors so as to prevent dilution of the investors' investment in the Company. In connection with the private placement, (i) the Company granted to the Investors a right of first refusal to purchase additional securities issued by the Company (subject to certain exceptions) prior to August 29, 2001 and (ii) agreed to reduce to \$0.9875 the exercise price of warrants to purchase an aggregate of 1,265,317 shares of the Company's Common Stock issued in connection with the Company's June 1999 and December 1999 private placements and to extend the term of these warrants for two years to December 10, 2003. 46 June 2000 Private Placement On June 13, 2000, the Company completed a private placement of 1,572,738 shares of its common stock and warrants to purchase 471,822 shares of common stock to six institutional investors including three investors from the Company's June 1999 and December 1999 private placements for an aggregate price of \$6,000,000. Each warrant entitles the holder to purchase one share of common stock at an exercise price of \$5.45 at any time through June 12, 2002. December 1999 Private Placement On December 10, 1999, the Company completed a private placement of 1,904,761 shares of its common stock and warrants to purchase 571,429 shares of common stock to three institutional investors for an aggregate price of \$4,000,000. Each warrant entitles the holder to purchase one share of common stock at an exercise price of \$3.00 through December 10, 2001. June 1999 Private Placement In June 1999, the Company completed a private placement of 2,132,955 shares of its common stock, and warrants to purchase 693,888 shares of common stock to three institutional investors for an aggregate price of \$6,000,000. Each investor purchased one-third of the securities issued in the private placement. Each warrant entitles the holder to purchase one share of common stock at an exercise price of \$4.02 through June 2001. November 1998 Private Placement In November 1998, the Company obtained a binding commitment for a private placement (the "November Private Placement") of its restricted common stock and common stock purchase warrants to up to five accredited investors, for an aggregate price of \$2,200,000. The purchase price for one share of common stock and one warrant was \$2.25. Each warrant entitles the holder to purchase one share of common stock at an exercise price of \$2.25 per share, at any time on or before the second anniversary of the closing date. The investors included the Company's former President and CEO and Liviakis Financial Communications Inc. ("LFC"). Series E & F Convertible Preferred Stock In July 1998, the Company completed the first closing of a private placement of its Series E Convertible Preferred Stock ("Series E Preferred Stock") and related Common Stock Purchase Warrants ("Class B Warrants") to First Capital Group of Texas L.P. (the "Class B Investor"), an investment firm managed by the Company's Chairman of the Board, at an aggregate price of \$750,000. In January 1999, the Company completed the second closing of the private placement of its Series F Convertible Preferred Stock (Series F Preferred Stock) and related Class B Warrants to the Class B Investor for an aggregate price of \$750,000. In June 2000 all of the 750 shares of Series E Preferred Stock and 750 shares of Series F Preferred Stock had been converted and all the Class B Warrants were exercised. Warrants In June 2001, the Company issued 1,000,000 warrants in conjunction with the 6% convertible debentures totaling \$1,000,000. The warrants are exercisable at a price of \$0.14 per share through June 2004. In May 2001, the Company issued 1,166,667 warrants in conjunction with 10% secured convertible promissory notes totaling \$700,000. The warrants are exercisable at a price of \$0.30 per share through May 2006. 47 In March 2001, the Company issued 304,762 warrants at \$0.9875 to acquire its common stock in conjunction with its private placement. Also, in connection with the private placement of common stock and warrants to acquire common stock for proceeds of \$2

million in March 2001, the Company agreed to modify the terms of pre-existing warrants to acquire an aggregate of 1,265,317 shares of the Company's common stock. The Company reduced the strike price of these warrants from a weighted-average amount of \$3.56 to \$0.98 per share, and extended the expiration date of the warrants from December 2001 to December 2003. The change in the fair value of these warrants as a result of the modifications is \$687,394, which has been recorded as a cost of the issuance of the common stock and related warrants. In September 2000, the Company issued 210,222 shares of its common stock in conjunction with the exercise of 210,222 warrants from the November 1998 private placement. In a cashless exercise, the Company issued 297,313 shares of its common stock as result of the exercise of 690,333 warrants. The remaining 56,110 warrants balance of the November 1998 private placement expired in November 2000. In November 2000, the remaining balance of Series C Warrants expired. In July 2000, remaining warrants for the class A and B first and second close expired. The following table shows the outstanding warrants for each of the fiscal years ending June 30, 2001, 2000 and 1999 respectively. Each warrant in the table is convertible to one share of the Company's common stock for the indicated price. Warrants outstanding as of June 30, 2001 2000 1999 Price Expiration -----

Warrant Description	2001	2000	1999	Price	Expiration
June 2001 6% convertible debentures	1,000,000			\$ 0.14	Jun. 2004
May 2006 March 2001 private placement	304,762			0.9875	Mar. 2006
June 2000 private placement	471,822			5.45	Jun. 2002
December 1999 private placement	571,429	571,429		0.9875	Dec. 2003
June 1999 private placement	693,888	693,888	693,888	0.9875	Dec. 2003
November 1998 private placement		956,655	1,001,109	2.25	Nov. 2000
Series C Warrants	53,977	53,977		6.435	Nov. 2000
Class A and B second close		24,968	249,383	0.6625	Jul. 2000
Class A and B first close		35,400	35,400	0.6625	Jul. 2000
Class A and B first and second close		281,250		0.80	Jul. 2000
Series A warrants		25,274		16.375	Jan. 2000
Total warrants outstanding	4,208,568	2,808,139	2,340,281		

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Stock Option Plans Under the Company's existing stock option plans (the "Plans"), stock options to purchase up to 4,680,842 shares of common stock were originally authorized to be granted to employees, directors, and certain other persons. As of June 30, 2001, 3,434,057 stock options covering shares of common stock were outstanding under the Plans and 1,246,785 shares were available for issuance upon exercise of options, which may be granted in the future under the Plans. 48 Options under the Plans may either be incentive stock options or non-qualified stock options (except in the case of the Company's non-qualified stock option plan which permits only the issuance of non-qualified stock options). Options under the Plans may be granted for a term not to exceed ten years (five years with respect to incentive stock options granted to any person having 10% or more voting power of the Company) and are not transferable other than by will or the laws of descent and distribution. Incentive stock options may be exercised within 90 days after the optionee's termination of employment (to the extent exercisable prior to such termination), and one year after the optionee's disability. The exercise price of the options under the Plans must be at least equal to the fair market value of the common stock on the date of grant, or 110% of such value for incentive stock options granted to any person having 10% or more of the voting power of the Company. The aggregate fair market value of the common stock for which any employee may be granted incentive stock options that first become exercisable in any one calendar year may not exceed \$100,000. Options may be exercised by payment of cash or by tender of shares of common stock (valued at their then current market value). The Compensation Committee of the Board of Directors administers the Plans. On December 10, 1998, the Compensation Committee and the Board of Directors authorized and granted the Board of Directors and the Chief Executive Officer of the Company the right to exchange up to 100% of their outstanding options, both vested and unvested, for replacement options at a rate of three replacement options for every four options surrendered. These replacement options are exercisable at a price of \$3.625 per share (the fair market value at the date of repricing). A total of 609,500 options were exchanged for 442,125 replacement options. The replacement options vest in two equal installments on June 10, 1999 and December 10, 1999. On September 12, 2000, the Company's Board of Directors adopted the Stock Option Plan, authorizing the grant of 1,250,000 incentive stock options and non-qualified stock options to employees, directors and certain other persons. On November 11, 2000, the shareholders approved the 2000 Stock option plan authorizing 1,250,000 options for future grants. On April 21, 1998, the Board of Directors authorized and granted the non-officer employees of the Company, the right to exchange up to 100% of their outstanding options, both vested and unvested, for replacement options at a rate of one replacement option for each option surrendered. These replacement options are exercisable at a price of \$1.7813 per share (the fair market value at the date of repricing). A total of 341,604 options were exchanged. Officers, other than the Chief Executive Officer, were authorized and granted the right to exchange up to 100% of their outstanding options; both

company's landlord. In fiscal 2001, the company received \$125,000 in rents from Teftec resulting in net rent expense of \$290,000 for fiscal 2001, for all leased facilities. The following is a schedule of future minimum lease payments under non-cancelable operating leases as of June 30, for each fiscal year shown below: Operating Fiscal year ending June 30, Leases ----- 2002..... \$ 387,000 2003..... 347,000 2004..... 229,000 2005..... 229,000 Thereafter..... 148,000 ----- \$ 1,340,000

===== During fiscal year 2001, the company entered into three capital leases for capital equipment. A summary is presented below for all capital leases including provisions for interest. Each lease may be bought out at the end of its term for \$1.00 Capital Fiscal year ending June 30, Leases ----- 2002..... \$ 141,000 2003..... 42,000 2004..... 21,000 ----- Total future payments for capital leased 204,000 Less interest under capital lease obligations (32,000) ----- Net present value of capital leases \$ 172,000 51 Each leased asset is depreciated over the life of the lease. The maximum lease term is 36 months. Prior to June 30, 2001 the Company recorded asset impairment for these leases since completing the original lease obligation will be dependent upon additional cash being generated by the Company. The company is also responsible for all property taxes that may be assessed from time to time per the agreement. 12) Related Party Transactions Certain outside directors also receive consulting fees for services rendered from time to time to the Company. In fiscal 1999, no such person received in excess of \$60,000 for such services. In fiscal 2001 and fiscal 2000, First Capital Group of Texas II, L.P., an investment firm managed by Jeffery P. Blanchard, the Company's Chairman of the Board, respectively received \$74,000 and \$71,000 in consulting fees. In February 2001, the Company received a 30-day loan from First Capital Group of Texas II, L.P in the amount of \$150,000 that the Company repaid in March including a nominal amount of interest. In May 2001 First Capital Group of Texas II, L.P., as part of the Company's May private placement, invested \$350,000 in the form of a convertible promissory note (see Note 9.) In July 1998, and January 1999, the Company completed the first and second closings respectively, of a Private Placement (see Note 9) involving, among other things, the sale of its Series E and F Preferred Stock and related Common Stock Purchase Warrants to First Capital Group of Texas II, L.P., an investment firm managed by Jeffery P. Blanchard, the Company's Chairman of the Board, at an aggregate amount of \$750,000 for each closing. In fiscal 2000, two officers resigned their positions with the Company. The total severance and retirement package was approximately \$480,000 and was recorded as an expense in fiscal 2000. 13) Employee Benefit Plans Effective March 1, 1992, the Company adopted the DATA RACE, Inc. 401(k) Plan under section 401(k) of the Internal Revenue Code of 1986, as amended. Under the Plan, substantially all employees eligible to participate may elect to contribute up to the lesser of 15% of their salary or the maximum allowed under the Code. All full time employees with at least one year of continuous service and who have completed 1,000 work hours are eligible for the Plan. The Company may elect to make contributions to the Plan at the discretion of the Board of Directors. The Company made contributions of approximately \$76,000 in fiscal 2001, \$65,000 in fiscal 2000, and \$68,000 in fiscal 1999. Subsequent to the close of its fiscal year on June 30, 2001, the Company terminated its 401k plan through board of director resolution on July 13, 2001. For the quarter ending June 30, 2001, the company opted not to match employee contributions. In December 1993, the Company adopted the DATA RACE, Inc. Employee Stock Purchase Plan ("ESPP") pursuant to which eligible employees may purchase up to an aggregate of 200,000 shares of the Company's common stock at 85% of the fair market value of the common stock through payroll deductions. In 1997, the ESPP was amended to offer two consecutive six-month plan periods, beginning February 1 and August 1, respectively. Of the 200,000 shares available in this Plan, approximately 194,000 shares have been purchased as of June 30, 2001. 52 14) Legal Matters On May 18, 2001, the Company, executive officers, Michael McDonnell, previously the President and Chief Executive Officer (resigned in July 2001), James Scogin, Acting President and Chief Financial Officer, and John Liviakis, one of our significant shareholders, were sued in the United States District Court for the Northern District of Illinois, Eastern Division, by Robert Plotkin, a Chicago-based attorney, and several of Mr. Plotkin's relatives and family trusts, who are all shareholders of the Company. The amount of the monetary damages being sought is \$20,000,000. The complaint alleges that the plaintiffs were induced to purchase shares of our common stock based upon alleged misrepresentations and omissions of material fact. The proceeding has been moved to the United States District Court for the Eastern District of Texas, Sherman Division in October 11, 2001. Discovery has not commenced, but we believe the lawsuit is without merit and intend to vigorously defend the Company against these allegations. The Company is not aware of any other legal matters. ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE On November 20, 2000, KPMG, the

Company's auditors who performed audit work on the Company's financial statements for the fiscal years ending June 30, 2000 and June 30, 1999 contained herein, resigned. The resignation was the result of an initial dispute concerning revenue recognition for the quarter ending September 30, 2000. In filing the Company's 10-Q for the quarter ending September 30, 2000, the Company resolved the dispute by reporting revenue as recommended by KPMG. Deloitte & Touche LLP was previously the principal accountants for the Company for the period from January 10, 2001 through October 4, 2001. Deloitte & Touche LLP had issued no reports with respect to the Company during this period. On October 4, 2001, Deloitte & Touche LLP resigned. During the Company's interim quarterly periods ended December 31, 2000 and March 31, 2001, there were no disagreements between the Company and Deloitte & Touche LLP on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedures, which disagreements if not resolved to their satisfaction would have caused them to make reference in connection with their review to the subject matter of the disagreement. On October 12, 2001, the Company appointed and engaged Lazar Levine & Felix LLP ("Lazar") as the Company's principal independent public accountant. The Company has not directly or indirectly during its two most recent fiscal years or during the subsequent interim period prior to appointing Lazar consulted Lazar regarding (a) either the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company's financial statements, or (b) any matter that was either the subject of a disagreement with the Company's prior principal independent auditors KPMG, LLP, or Deloitte & Touche LLP, or a reportable event. All changes in accountants were approved by the Company's Board of Directors. The Company has no disputes resolved or unresolved with its current or previous auditors.

53 PART III* ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT The following table sets forth certain information concerning the current directors and executive officers of the Company:

Name	Age	Position with Company	----	-----	-----
James G. Scogin	40	Acting President, Chief Financial Officer, Secretary and Treasurer	-----	-----	-----
Michael A. McDonnell	46	President, Chief Executive Officer and Director	-----	-----	-----
Jeffrey C. Kissell	46	Senior Vice President of Product and Business Development	-----	-----	-----
Bradley Frohman	40	Vice President of Engineering	-----	-----	-----
Jeffrey P. Blanchard	48	Chairman of the Board of Directors	-----	-----	-----
General Harold "Buck" Adams	-----	Director	-----	-----	-----
Thomas Bishop	47	Director	-----	-----	-----
George R. Grumbles	67	Director	-----	-----	-----
Matthew A. Kenny	68	Director	-----	-----	-----
Byron Smith	46	Director	-----	-----	-----

Michael A. McDonnell had served as President, Chief Executive Officer and Director since April 2000 and as Chief Operating Officer since joining the Company in November 1999. Prior to joining the Company, Mr. McDonnell served as a vice president and general manager of GTE Communications Corporation ("GTE") for three years. While employed by GTE, Mr. McDonnell was a member of a business unit development team instrumental in creating a billion-dollar division focused on the delivery of integrated communication services available across GTE's strategic business units. From 1993 to 1996 Mr. McDonnell was a national director with NEC America, where he assisted in the creation and launch of NEC's Computer Telephony Integration initiative, along with growing the Video Sales unit, and Data Communications group. He holds a BA degree from San Diego State University. Mr. McDonnell resigned from the Company and his Board position in July 2001. James G. Scogin has served as Acting President and Chief Financial Officer since July 2001 and Senior Vice President-Finance, Chief Financial Officer, Secretary and Treasurer since January 2000. The Company has employed Mr. Scogin since 1997 when he joined the Company as Controller. Prior to joining the Company, Mr. Scogin was Vice President-Controller, Treasurer, Secretary and Chief Accounting Officer of 50-OFF Stores, Inc. in San Antonio, Texas from 1992 to 1997. He holds a BBA from Baylor University and is a CPA. Jeffrey C. Kissell joined the Company as Senior Vice President, Product and Business Development in July 2000. Prior to joining the Company, Mr. Kissell served as Vice President of National Marketing for GTE Service Corporation ("GTES"). Mr. Kissell held various senior management positions with GTES during his 22-year career there. Mr. Kissell's responsibilities included the development of marketing programs, product design, pricing and distribution for GTES's domestic operations. He holds a BA degree from St. Francis College, a MBA from Indiana University and is a CPA. Mr. Kissell resigned from the Company in June 2001. Bradley L. Frohman joined the Company as Vice President of Engineering in July 2000. Prior to joining the Company, Mr. Frohman served as director of advanced wireless infrastructure products for Motorola, Inc. ("Motorola"). Mr. Frohman's responsibilities at Motorola during his 10-year career were exploring and delivering prototypes for cellular VoIP, distributed processing environments and multi-RF technologies on IP networks. He holds a BS degree in computer science and mathematical science from Vanderbilt University and a MS 54 degree in computer science from Johns Hopkins University. Mr. Frohman resigned from the Company in July 2001. Jeffrey P. Blanchard has served as a Director of

the Company since August 1985 and as Chairman of the Board of Directors since October 1996. Mr. Blanchard has been the Managing Director of First Capital Group of Texas, Ltd., since January 1984. Since September 1995, Mr. Blanchard has been the Managing Director of First Capital Group of Texas II, L.P., an investment firm which provides private equity to middle-market companies throughout the Southwest United States. From January 1989 to December 1994, Mr. Blanchard served as Vice President and Investment Manager of Victoria Capital Corporation, a venture capital investment company. General Harold "Buck" Adams was appointed to the Board of Directors in February 2001. General Adams is a retired Brigadier General of the Air Force. Thomas Bishop was appointed to the Board of Directors in January 2000. Mr. Bishop is the Chief Executive Officer of Compu-Care Management Systems, Inc., an Internet-based application service provider. Prior to joining Compu-Care, Mr. Bishop served as Vice President of Development and Chief Technology Officer for Tivoli Systems. Matthew A. Kenny was elected to the Board of Directors in February 1995. From 1984 until 1989, Mr. Kenny was President and CEO of RACAL-MILGO. Mr. Kenny joined MILGO in 1968. From 1989 to 1993, Mr. Kenny was Chairman of the Board and CEO of Physical Health Devices, Inc. From 1989 to the present, he has been a managing partner in Venture Solutions, and since 1994 he has been President and CEO of Core Technology Development, Inc., Fort Lauderdale, Florida. George R. Grumbles was appointed to the Board of Directors in February 1995. From 1985 until his retirement in 1993, Mr. Grumbles served as a Vice President of Motorola and the President and CEO of Universal Data Systems, which he joined in 1972. Byron Smith was appointed to the Board of Directors in January 2000. Mr. Smith was the Executive Vice President, Consumer Broadband Services and Chief Marketing Officer at Excite@Home. Mr. Smith oversaw the @Home Service, media sales, engineering and operations, Excite Studios, @Home Solutions, affiliate marketing with cable partner, Customer Care, and all marketing for Excite@Home.

55 ITEM 11. EXECUTIVE COMPENSATION

Summary Compensation Table The Summary Compensation Table shows certain compensation information for the fiscal years ended June 30, 2001, 2000 and 1999, for the Chief Executive Officer and of the three most highly compensated executive officers (hereinafter referred to as the "named executive officers").

Summary Compensation Table	Annual Compensation	Long-Term	-----	Compensation Awards	-----	Securities Base Salary
Underlying	All Other	Year (\$)	Bonus (\$)	Options (#)	Compensation (\$)	-----
Michael A. McDonnell.....	2001	\$330,000(2)	\$37,337	184,536	\$5,250(1)	President and CEO 2000 207,019(3) --
250,000 Jeffery Kissell.....	2001	116,875(4)	13,184	70,405	--	Senior Vice President of Product and Business Development
Bradley Frohman.....	2001	134,262(5)	11,984	55,959	2,102(1)	Vice President of Engineering
James G. Scogin.....	2001	132,500	11,583	67,928	27,414(6)	Senior Vice President, Chief 2000 103,030 --
145,000	3,017(1)	Operating and Financial Officer, 1999	80,500	--	15,000	1,946(1) Secretary and Treasurer -----

(1) Represents contributions made by the Company under the Company's 401(k) plan. (2) Mr. McDonnell resigned from the Company in July 2001. (3) Represents compensation from commencement of employment on November 23, 1999. (4) Represents compensation from commencement of employment on July 17, 2000 until his resignation from the Company on June 14, 2001. (5) Represents compensation from commencement of employment on July 3, 2000 until his resignation from the Company in July 2001. (6) Represents a \$25,000 relocation payment and \$2,414 in contributions made by the Company under the Company's 401(k) plan. Perquisites and other personal benefits did not exceed the lesser of either \$50,000 or 10% of the total annual salary and bonus reported for any named executive officer. Director Compensation Outside directors each receive compensation of \$1,000 for each Board of Directors meeting attended. Outside directors are eligible to receive options under the Company's stock option plans and are automatically granted options under the Company's 1999 stock option plan. Outside directors are reimbursed for their out-of-pocket expenses involved in connection with their services as directors. Certain outside directors also receive consulting fees for services rendered from time to time to the Company. In fiscal 2001, no such person received in excess of \$60,000 for such services, except for First Capital Group of Texas Ltd., of which Mr. Blanchard is the Managing Director, received approximately \$74,000 for consulting services.

56 Employment Agreements The Company does not have written employee agreements with the officers of the Company. The officers of the Company are employed on an "at will basis". Consultant and Advisor Stock Plan In April 1999, the Company established a Consultant and Advisor Stock Plan for the purpose of providing incentives to and compensating consultants and advisors for their contributions to the Company. In June 2001 the Company amended the plan by increasing the number of shares issuable under the plan from 500,000 shares to 1,000,000 shares of the Company's common stock. Under the Consultant and Advisor Stock Plan, the Company may issue up to an aggregate of 1,000,000 shares of Common Stock to consultants and advisors who are natural persons providing bona fide services to the Company.

Shares may not be issued under the Consultant and Advisor Stock Plan to directors or officers of the Company, or for services rendered in promoting or maintaining a market in the Company's securities. The number and type of shares issuable under the Consultant and Advisor Stock Plan are subject to appropriate adjustment for stock splits, stock dividends, mergers, reorganizations and other similar capital changes. The Consultant and Advisor Stock Plan is administered by the Company's Compensation Committee (or the full Board of Directors), which has the exclusive power to construe and prescribe rules under the plan. The Board of Directors may at any time modify, amend or terminate the Consultant and Advisor Stock Plan. As of December 1, 2001, approximately 790,000, shares of common stock had been issued under the Consultant and Advisor Stock Plan.

Employee Stock Purchase Plan The Company has an Employee Stock Purchase Plan structured to qualify under Section 423 of the Internal Revenue Code of 1986. Under the Employee Stock Purchase Plan, all full-time employees of the Company possessing less than 5% of the voting power of the Company may elect to participate in the Purchase Plan through a payroll deduction program. Under the Employee Stock Purchase Plan, options to purchase up to 200,000 shares of Company common stock may be granted to participants. In June 2001, this plan was terminated and no additional shares were issues since February 1, 2001. As of December 1, 2001, approximately 194,000 shares of common stock had been issued under the Employee Stock Purchase Plan. The Compensation Committee, which administers the Employee Stock Purchase Plan, establishes offering periods for the Employee Stock Purchase Plan, which may last up to 24 months. Prior to each offering period, participants may authorize payroll deductions of up to 20% of their annual compensation. At the beginning of the offering period, participants are granted an option to purchase the number of shares of common stock that may be purchased with the total amount of the participant's payroll deductions taken over the offering period at an exercise price equal to the lesser of 85% of the fair market value of the common stock on the first day of the offering period or the last day of the offering period. Unless the participant has withdrawn from participation, the participant's option will be exercised automatically on the last day of the offering period. A participant may withdraw from the Purchase Plan at any time during an offering period. If a participant's employment with the Company terminates for any reason other than death, disability, or retirement, his or her option to purchase common stock under the Purchase Plan will immediately terminate, and the amount of such participant's payroll deductions will be paid to him or her in cash. If a participant's employment with the Company terminates due to death, disability, or retirement, such participant (or his or her legal representative) will have the right to continue participation in the Purchase Plan with respect to the offering period. No option granted under the Purchase Plan may be transferred except by will or the laws of descent and distribution.

57 1997 Nonqualified Employee Stock Option Plan Permit NASD grants to non-officer employees and to officers as an inducement to employment. **Stock Option Plans** Under the Company's existing stock option plans, as of December 10, 2001, stock options covering an aggregate of 1,439,270, shares of Common Stock were outstanding with a weighted average exercise price of \$3.67 per share, and an aggregate of 3,241,572 shares of Common Stock were available for issuance upon exercise of options that may be granted in the future. Options under the option plans may either be incentive stock options or non-qualified stock options. Options under the option plans may be granted for a term not to exceed ten years (five years with respect to incentive stock options granted to any person having 10% or more voting power of the Company) and are not transferable other than by will or the laws of descent and distribution. The exercise price of the options under the plans must be at least equal to the fair market value of the Common Stock on the date of grant, or 110% of such value for incentive stock options granted to any person having 10% or more of the voting power of the Company. The aggregate fair market value of the Common Stock for which any employee may be granted incentive stock options, which first become exercisable in any one calendar year may not exceed \$100,000. Options may be exercised by payment of cash or by tender of shares of common stock (valued at their then current market value). In the event of a change of control, all unvested options vest and become exercisable. The Compensation Committee of the Board of Directors administers the Plans, except that the full Board administers the stock option grants to members of the Compensation Committee.

Stock Option Grant Table The following table sets forth certain information concerning options granted to the named executive officers during the Company's fiscal year ended June 30, 2001:

Option Grants in Last Fiscal Year	Percent of Potential Realizable Number of Total Value at Assumed Shares	Options Annual Rates of Stock Underlying	Granted to Exercise or Price Appreciation for Options	Employees in Base Price Expiration	Option Term(1)	Name	Granted Fiscal Year	
(\$/Sh)	Date	5%(\$)	10%(\$)	-----	-----	-----	-----	
						Michael A. McDonnell.....	125,000(2) 8.03%	
\$5.09	10/02/2010	400,838	1,011,638	59,536(3)	3.83%	0.01 01/02/2011 375 947	Jeffery C. Kissell..... 50,000(2)	
3.21%	5.09	10/02/2010	160,500	404,500	20,405(3)	1.31%	0.01 01/02/2011 129 324	Bradley Frohman.....

37,500(2) 2.8% 5.09 10/02/2010 120,375 303,491 33,062(2) 2.13% 7.38 10/02/2010 153,718 387,956 18,459(3)
 1.19% 0.01 01/02/2011 120 293 James G. Scogin..... 50,000(2) 3.21% 5.09 10/02/2010 160,500 404,500
 17,928(3) 1.5% 0.01 01/02/2011 113 285 ----- (1) As required by rules of the SEC, potential values stated
 are based on the assumption that the Company's Common Stock will appreciate in value from the date of the grant to
 the end of the option term (ten years from the date of grant) at annualized rates of 5% and 10% (total appreciation of
 approximately 63% and 159%), respectively, and therefore are not intended to forecast possible future appreciation, if
 any, in the price of the Common Stock. The exercise price of each option equals the fair market value of the Common
 Stock on the grant date. (2) Options vest 10% on October 2, 2000, 40% on October 2, 2001 and remaining 50% in
 twelve monthly installments starting November 1, 2001 to October 1, 2002. (3) Options vested 100% on January 2,
 2001. 58 Stock Option Exercises and Holdings Table The following table shows stock options exercised by the named
 executive officers during the fiscal year ended June 30, 2001, including the aggregate value of gains on the date of
 exercise. In addition, the table includes the number of shares covered by both exercisable and non-exercisable stock
 options as of June 30, 2001. Also reported are the values of "in-the-money", "in-the-money" options, which represent
 the positive spread between the exercise price of any such existing stock options and the market price of the Common
 Stock price as of June 30, 2001. Aggregated Option Exercises in Last Fiscal Year and Fiscal Year End Option Value
 Number of Unexercised Value of Unexercised Shares Options at Fiscal In-the-Money Options at Acquired on Value
 Year-End (#) Fiscal Year-End (\$) Name Exercise (#) Realized (\$) Exercisable/Unexercisable
 Exercisable/Unexercisable(1) ---- ----- ----- Michael A.
 McDonnell... -- -- 184,536/450,000 5,358/0 Jeffery C. Kissell..... -- -- 70,405/100,000 1841/0 Bradley Frohman..... --
 -- 89,021/75,000 1661/0 James G. Scogin..... -- -- 67,928/171,500 1614/0 ----- (1) Values stated are based on
 the last sale price of \$.10 per share of the Company's common stock on June 30, 2001 the last trading day of the fiscal
 year, and equal the aggregate amount by which the market value of the option shares exceeds the exercise price of
 such options at the end of the fiscal year. ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL
 OWNERS AND MANAGEMENT The following table sets forth certain information regarding the ownership of
 Common Stock as of December 1, 2001 by (i) each person known by the Company to be the beneficial owner of more
 than 5% of the outstanding Common Stock; (ii) each director and director nominee; (iii) each named executive officer
 and (iv) all executive officers, directors and nominees as a group. Unless otherwise noted, each shareholder listed
 below has sole voting and investment power with respect to the shares beneficially owned. Options included in the
 following table represent options currently exercisable or exercisable within 60 days of December 1, 2001. Number
 Percent of Name of Shares Class ---- ----- Michael A. McDonnell 3,000 * Jeffrey P.
 Blanchard..... 1,377,325(1) 3.89% General Harold "Buck" Adams..... 0 * Tom
 Bishop..... 80,000(2) * George R. Grumbles..... 133,125(3) * Matthew A.
 Kenny..... 133,125(4) * Byron Smith 80,000(5) * James G. Scogin
 190,858(6) * Jeffrey Kissell 3,000 * Bradley Frohman
 1,500 * All Directors and Executive Officers as a Group (10 persons).....
 1,994,433(7) 5.53.% Cranshire Capital L.P. (8)..... 3,618,453(9) 9.7% (10) Alpha Capital
 A.G..... 3,262,257(11) 9.9% (12) Stonestreet L. P..... 2,995,616(13) 9.9% 59 *
 Indicates less than 1%. (1) Includes 49,375 shares subject to options held by Mr. Blanchard and approximately
 1,275,000 shares held by First Capital Group of Texas II, L.P., an investment fund managed by Mr. Blanchard.
 Excludes 4,666,666 shares that are issuable upon conversion of a secured convertible promissory note; and 583,333
 shares of common stock issuable upon the exercise of a warrant. First capital agree not to convert any portion of its
 note or exercise any portion of its warrant unless and until our shareholders approve the increase of the number of
 shares of common stock which we are authorized to issue to 130,000,000 shares. (2) Includes 80,000 shares subject to
 options held by Mr. Bishop. (3) 7Includes 133,125 shares subject to options held by Mr. Grumbles. (4) Includes
 133,125 shares subject to options held by Mr. Kenny. (5) Includes 80,000 shares subject to options held by Mr. Smith.
 (6) 189,511 shares subject to options held by Mr. Scogin. (7) Includes 665,136 shares subject to options held by such
 persons. (8) Information with respect to the beneficial ownership of such shareholder and certain affiliated persons
 was derived from Schedule 13G filed, January 22, 2001 by Cranshire Capital L.P., EURAM CAP STRAT. "A" FUND
 LIMITED, Downsview Capital, Inc., JMJ Capital, Inc. and Mitchell P. Kopin. The address of such shareholders is 666
 Dundee Road, Suite 1901, Northbrook, IL 60062. (9) Includes 1,713,690, shares of common stock obligated to be
 issued by the Company that have not been issued as of December 10, 2001, and excludes warrants to purchase

2,921,749 shares of common stock due to exercise limitations and restrictions. (10) Information with respect to the beneficial ownership of such shareholder and certain affiliated individuals was derived from Schedule 13G filed on July 12, 2001 by Alpha. The address of such shareholder is Lettstrasse 32, Furstentum 9490, Vaduz, Liechtenstein. (11) Includes shares of common stock, shares of common stock underlying the 6% convertible debentures and shares of common stock underlying warrants. Both the 6% convertible debentures and the warrants preclude the shareholder from converting or exercising into a number of shares of common stock to the extent the shareholder's beneficial ownership at any time exceeds 9.9% of the then issued and outstanding shares of common stock. (12) Information with respect to the beneficial ownership of such shareholder and certain affiliated individuals was derived from Schedule 13G/A filed on August 29, 2001 by Stonestreet. The address of such shareholder is 260 Town Centre Blvd., Suite 201, Markham, ON L3R 8h8 Canada. (13) Includes shares of common stock, shares of common stock underlying the 6% convertible debentures and shares of common stock underlying warrants. Both the 6% convertible debentures and the warrants preclude the shareholder from converting or exercising into a number of shares of common stock to the extent the shareholder's beneficial ownership at any time exceeds 9.9% of the then issued and outstanding shares of common stock.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS
 Certain outside directors also receive consulting fees for services rendered from time to time to the Company. In fiscal 1999, no such person received in excess of \$60,000 for such services. In fiscal 2001 and fiscal 2000, First Capital Group of Texas II, L.P., an investment firm managed by Jeffery P. Blanchard, the Company's Chairman of the Board, respectively received \$74,000 and \$71,000 in consulting fees. In February 2001, the Company received a 30 day loan from First Capital Group of Texas II, L.P. in the amount of \$150,000 which the Company repaid in March including a nominal amount of interest. In May 2001 First Capital Group of Texas II, L.P., as part of the Company's May 2001 private placement, invested approximately \$350,000 in the form of a convertible promissory note (see Note 9 to the financial statements.) In July 1998, and January 1999, the Company completed the first and second closings respectively, of a Private Placement (see Note 10 to the financial statements) involving, among other things, the sale of its Series E and F Preferred Stock and related Common Stock Purchase Warrants to First Capital Group of Texas II, L.P., an investment firm managed by Jeffery P. Blanchard, the Company's Chairman of the Board, at an aggregate amount of \$750,000 for each closing.

60 PART IV. ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K (a) 1. Financial Statements Independent Auditors' Reports Balance Sheets as of June 30, 2001 and 2000 Statements of Operations for the fiscal years ended June 30, 2001, 2000, and 1999 Statements of Shareholders' Equity for the fiscal years ended June 30, 2001, 2000, and 1999 Statements of Cash Flows for the fiscal years ended June 30, 2001, 2000, and 1999 Notes to Financial Statements 2. Financial Statement Schedules Schedules are either not required or the necessary information is included in the financial statements or notes thereto. 3. Exhibits 3.1 Articles of Amendment to and Restatement of the Articles of Incorporation of the Company, filed December 27, 1991. (a) 3.2 Articles of Correction to Articles of Amendment to and Restatement of the Articles of Incorporation of the Company, filed August 13, 1992. (a) 3.3 Articles of Amendment to the Articles of Incorporation of the Company, filed August 21, 1992. (a) 3.4 Bylaws of the Company and Amendment to Bylaws. (a)(b) 3.5 Statement of Resolution Establishing Series B Participating Cumulative Preferred Stock. (f) 3.6 Articles of Amendment to the Articles of Incorporation of the Company, filed January 21, 1999 (i) 4.1 Specimen Common Stock Certificate. (a) 10.1 *401(k) Profit Sharing Plan, effective March 1, 1992. (a) 10.2 Form of Indemnification Agreement between the Company and each director. (c) 10.3 *Amended and Restated Employee Stock Purchase Plan adopted in February 1996. (e) 10.4 *1994 Stock Option Plan. (d) 61 10.5 *1995 Stock Option Plan. (e) 10.6 *1997 Stock Option Plan. (g) 10.7 *1998 Stock Option Plan. (h) 10.8 *1999 Stock Option Plan (i) 10.9 *2000 Stock Option Plan (j) 10.10 Securities Purchase Agreement dated June 25, 1999, by and among DATA RACE, Inc. and Cranshire Capital, L.P., Keyway Investments Ltd., and Lionhart Investments Ltd., as the Investors. (k) 10.11 Registration Rights Agreement dated June 25, 1999, by and among DATA RACE, Inc. and Cranshire Capital, L.P., Keyway Investments Ltd., and Lionhart Investments Ltd., as the Investors. (k) 10.12 Warrant Agreements dated June 25, 1999, issued to Cranshire Capital, L.P., Keyway Investments Ltd., and Lionhart Investments Ltd. (k) 10.13 Securities Purchase Agreement, dated December 10, 1999, between the Company, Cranshire Capital, L.P., Keyway Investments Ltd., and Lionhart Investments Ltd. (l) 10.14 Registration Rights Agreement, dated December 10, 1999, between the Company, Cranshire Capital, L.P., Keyway Investments Ltd., and Lionhart Investments Ltd. (l) 10.15 Warrant Agreement dated December 10, 1999 issued to Cranshire Capital, L.P., Keyway Investments Ltd., and Lionhart Investments Ltd. (l) 10.16 Securities Purchase Agreement dated June 12, 2000, between the Company, Cranshire Capital, L.P., Keyway

Investments Ltd., Lionhart Investments Ltd., EURAM Cap Strat. "A" Fund Limited, ICN Capital Ltd., and G-Bar Limited Partnership (m) 10.17 Registration Rights Agreement dated June 12, 2000, between the Company, Cranshire Capital, L.P., Keyway Investments Ltd., Lionhart Investments Ltd., EURAM Cap Strat. "A" Fund Limited, ICN Capital Ltd., and G-Bar Limited Partnership (m) 10.18 Warrant Agreement, dated June 12, 2000, between the Company, Cranshire Capital, L.P., Keyway Investments Ltd., Lionhart Investments Ltd., EURAM Cap Strat. "A" Fund Limited, ICN Capital Ltd., and G-Bar Limited Partnership (m) 10.19 Securities Purchase Agreement dated March 2, 2001, between the Company, Protius Overseas Limited, Keyway Investments Ltd., and Lionhart Investments Ltd (n) 10.20 Registration Rights Agreement dated March 2, 2001, between the Company, Protius Overseas Limited, Keyway Investments Ltd., and Lionhart Investments Ltd (n) 10.21 Warrant Agreement, dated March 2, 2001, between the Company, Protius Overseas Limited, Keyway Investments Ltd., and Lionhart Investments Ltd. (n) 10.22 Consultant and Advisor Stock Plan (l) 10.23 *Description of Transaction Bonus Plan (l) 10.24 Convertible Debentures and Warrants Purchase Agreement, dated June 12, 2001, between the Company, Alpha Capital AG and Stonestreet, L.P. (r) 62 10.25 Registration Rights Agreement, dated June 12, 2001, between the Company, Alpha Capital AG and Stonestreet, L.P. (r) 10.26 Form of 6% Convertible Debentures issued to Alpha Capital and Stonestreet (r) 10.27 Form of Warrants issued to Alpha Capital and Stonestreet (r) 10.28 Letter Agreement between the Company, Alpha Capital and Stonestreet, dated July 19, 2001 (r) 10.29 Letter Agreement between the Company, Alpha Capital and Stonestreet, dated October 18, 2001 (q) 10.30 Security Agreement between the Company, Alpha Capital and Stonestreet, dated October 18, 2001 (q) 10.31 Common Stock Purchase Agreement between the Company and Grenville Finance Ltd. dated July 26, 2001 (q) 10.32 Registration Rights Agreement between the Company and Grenville Finance Ltd. dated June 13, 2001 (q) 10.33 Stock Purchase Warrant issued to Grenville Finance Ltd. (q) 16 Change in certifying accountant (p) 23.1 Consent of KPMG LLP (q) 23.2 Consent of Lazar, Levine & Felix, LLP (q) 24 Powers of Attorney to sign amendments to this report. Reference is made to the Signature page of this report. ----- (a) Filed as an exhibit to Form S-1 Registration Statement No. 33-51170, effective October 7, 1992. (b) Filed as an exhibit to Form 10-Q for the quarter ended December 31, 1996. (c) Filed as an exhibit to Form 10-K Annual Report for fiscal year ended June 30, 1993. (d) Filed as an exhibit to Form 10-K Annual Report for fiscal year ended June 30, 1995. (e) Filed as an exhibit to Form 10-K Annual Report for fiscal year ended June 30, 1996. (f) Filed as an exhibit to Form 10-K Annual Report for fiscal year ended June 30, 1997. (g) Incorporated by reference to appendix A of the Company's Definitive Proxy Statement dated December 12, 1997. (h) Incorporated by reference to appendix A of the Company's Definitive Proxy Statement dated October 14, 1998. (i) Incorporated by reference to appendix A of the Company's Definitive Proxy Statement dated October 12, 1999. 63 (j) Incorporated by reference to appendix A of the Company's Definitive Proxy Statement dated September 20, 2000. (k) Filed as an exhibit to Form 8-K filed on June 25, 1999. (l) Filed as an exhibit to Form 8-K filed on December 17, 1999. (m) Filed as an exhibit to Form 8-K filed on June 21, 2000. (n) Filed as an exhibit to Form 8-K on March 7, 2001. (o) Filed as an exhibit to Form 8-K on December 4, 2001. (p) Filed as an exhibit on Form 8-K on November 20, 2000. (q) Filed herewith. (r) Filed as an exhibit on Form 8-K on July 24, 2001. * Management contract or compensatory plan, contract or arrangement (b) Reports on Form 8-K A report on Form 8-K was filed on July 24, 2001 to report the completion of a private placement. 64 SIGNATURES Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended the Registrant has duly caused this report to be signed on behalf of the undersigned, thereunto duly authorized. DATA RACE, INC., DBA IP AXESS By: /s/ JAMES G. SCOGIN ----- James G. Scogin President, Chief Financial Officer and Principal Accounting Officer Date: February 12, 2001 Each person whose signature appears below authorizes and, or either of them, each of whom may action without joinder of the other, to execute in the name of each such person who is then an officer or director of the Registrant and to file any amendments to this annual report on Form 10-K necessary or advisable to enable the Registrant to comply with the Securities Exchange Act of 1934, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission in respect thereof, which amendments may make such changes in such report as such attorney-in-fact may deem appropriate. Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated. Name Title Date /s/JAMES G. SCOGIN President, Chief Financial Officer February 12, 2002 ----- Officer and Principal James G. Scogin Accounting Officer /s/JEFFREY P. BLANCHARD Chairman of the Board February 12, 2002 ----- of Directors Jeffrey P. Blanchard /s/THOMAS BISHOP Director February 12, 2002 ----- Thomas Bishop /s/GEORGE R. GRUMBLES Director

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February 12, 2002 ----- George R. Grumbles /s/MATTHEW A. KENNY Director February 12,
2002 ----- Matthew A. Kenny /s/BYRON SMITH Director February 12, 2002
----- Byron Smith /s/GENERAL HAROLD "BUCK" ADAMS Director February 12, 2002
----- General Harold "Buck" Adams 65