

ENERGY FOCUS, INC/DE
Form 10-K/A
April 30, 2014

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2013**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____**

Commission file number 0-24230

ENERGY FOCUS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE 94-3021850
(State of incorporation) (I.R.S. Employer Identification No.)

**32000 Aurora Road, Suite B
Solon, Ohio 44139**
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **440.715.1300**

Securities registered pursuant to Section 12(b) of the Act: None

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

Title of Each Class

Common Stock, Par Value \$0.0001

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined by Rule 405 of the Securities Act of 1933. Yes No

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

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

Large accelerated filer

Accelerated filer

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes
No

Approximate aggregate market value (on basis of closing bid price) of voting stock held by non-affiliates as of June 30, 2013: \$14.3 million

Number of the registrant's shares of common stock outstanding as of April 30, 2014: 78,154,330

Documents Incorporated by Reference

None.

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EXPLANATORY NOTE

This Amendment No.1 (this “Amendment”) to the Annual Report on Form 10-K for the year ended December 31, 2013 of Energy Focus Inc. (“Energy Focus” or the “Company”) is filed to include in the report the information required in Items 10, 11,12, 13 and 14 of Part III of Form 10-K.

Forward-Looking Statements

All references to “Energy Focus,” “we,” “us,” “our,” or “the Company” means Energy Focus, Inc. and its subsidiaries, except where it is made clear that the term means only the parent company.

Statements and information included in this Annual Report on Form 10-K that are not purely historical are forward-looking statements. When used in this report, the words “believes,” “expects,” “anticipates,” “intends,” “assumes,” “estimates,” “evaluates,” “opinions,” “forecasts,” “may,” “could,” “future,” “forward,” “plans”, “potential,” “probable,” and similar expressions are intended to identify forward-looking statements. Forward-looking statements in this Report on Form 10-K include statements regarding Energy Focus’ expectations, intentions, beliefs, and strategies regarding the future, including but not limited to; growth in the markets into which Energy Focus sells; conditions of the lighting industry and the economy in general; statements as to our competitive position; future operating results; net sales growth; expected operating expenses; gross product margin improvement; sources of net sales; anticipated revenue from government contracts; product development and enhancements; liquidity, ability to generate cash and cash reserves; our reliance upon a limited number of customers; our accounting policies; the effect of recent accounting announcements; the development and marketing of new products; relationships with customers and distributors; relationships with, dependence upon, and the ability to obtain components from suppliers; as well as our remarks concerning our ability to compete in certain markets; the evolution and future size of those markets; seasonal fluctuations; plans for and expected benefits of outsourcing and offshore manufacturing; trends in the price and performance of light-emitting diode (“LED”) lighting products; the benefits and performance of our lighting products; the adequacy of our current physical facilities; our strategy with regard to protecting our proprietary technology; and our ability to retain qualified employees.

These forward-looking statements involve risks and uncertainties. We may make other forward-looking statements from time to time, including in press releases and public conference calls and webcasts. All forward-looking statements made by Energy Focus are based on information available to us at the time the statements are made, and we assume no obligation to update any forward-looking statements. It is important to note that the forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from those included in such forward-looking statements.

Energy Focus® and Intellitube® are our registered trademarks. We may also refer to trademarks of other corporations and organizations in this document.

PART III**Item 10. Directors, Executive Officers, and Corporate Governance****Directors**

Biographical information concerning each of the Company's directors as of April 29, 2014 is set forth below:

Name	Age	Director Since	Background
Jennifer Cheng	47	2012	Ms. Cheng is the Co-founder and Chairperson for The X/Y Group since 1997, a marketing enterprise that markets and distributes global consumer brand products, including JanSport and Skechers, in the greater China region. From 1995 to 1998, Ms. Cheng was a marketing director for Molten Metal Technology, a Boston-based clean energy company that developed patented technologies and offered solutions for advanced treatment and energy recycling for hazardous radioactive waste. Ms. Cheng received a Master's degree in Business Administration from Fairleigh Dickinson and a Bachelor's degree in Economics and International Business from Rutgers University. Ms. Cheng is the sister of Simon Cheng.
Simon Cheng	40	2012	Mr. Cheng has been Supply Chain Director of the Company since December 2013, in charge of the Company's procurement and supply chain operations. From June 2013 to December 2013, he was the Company's Brand manager. Previously, he was Managing Director of Communal International Ltd., a group assisting clean energy companies gain market access and improve supply chain efficiencies in Asia from March 2012 to June 2013. He is a Board Director of ZW Group, a real estate and shopping center developer in China, and was the Market/Project Manager from October 2007 to March 2012. Mr. Cheng received a Bachelor's degree in Business Administration from New York University. Mr. Cheng is the brother of Jennifer Cheng.
John M. Davenport	69	2005	Mr. Davenport was President of the Company from May 2008 to July 2012, and remains an employee serving as the Company's Chief Scientist. He joined the Company in November 1999 as Vice President and Chief Technology Officer, was Chief Operating Officer from July

2003 to July 2005, and Chief Executive Officer from July 2005 until May 2008. Prior to joining Energy Focus, Mr. Davenport served as President of Unison Fiber Optic Lighting Systems, LLC, from 1998 to 1999. Mr. Davenport began his career at GE Lighting in 1972 as a research physicist and thereafter served 25 years in various capacities including GE Lighting's research and development manager and as development manager for high performance LED projects. He is a recognized expert in light sources, lighting systems and lighting applications, with special emphasis in low wattage discharge lamps, electronic ballast technology and distributed lighting systems. Mr. Davenport received a Master's degree in Physics and a Bachelor of Science degree in Physics from John Carroll University.

J. James Finnerty 63 2008

Mr. Finnerty is a retired Financial Services executive having served most recently as a Managing Director of European-American Equities, a New York City-based investment bank, from June 2009 to June 2011. Previously, he was Managing Director of Merriman Capital, Inc. from 2003 to 2009. Mr. Finnerty's career spanned more than 35 years in the institutional money management community and included positions at BankBoston, Kidder Peabody, Hambrecht and Quist, Deutsche Bank, and the American Institute for Economic Research. Mr. Finnerty received a Master's degree in Business Administration from Cornell University's Johnson School of Management and a Bachelor of Arts in Economics and Psychology from Boston College.

Jiangang Luo	46	2013	<p>Mr. Luo has been the Manager Partner of Prime Science & Technology, Inc. since February 2006, a company focusing on clean technology. He has also been Managing Partner of Faith Asset Management LLC since November 2011. Mr. Luo works with many non-profit organizations and is Chairman of the American United Chamber of Commerce, and former Chairman of Tsinghua Alumni Association of Greater New York. Mr. Luo received a Master's degree in Computational Mathematics and double Bachelor's degrees in Applied Mathematics and Computer Science from Tsinghua University. He was also awarded a Fellowship for his mathematical Ph.D. degree from Rutgers University.</p>
Michael R. Ramelot	68	2013	<p>Mr. Ramelot has been a consultant since 2002 on many projects, including project leader on BlackLine system implementations to enhance the financial close process of several multi-million dollar companies; project leader on due diligence, accounting valuations and appraisals related to acquisitions; researched and prepared position papers for companies on complex accounting issues; prepared various SEC filings; and assessed and implemented compliance with Section 404 of Sarbanes-Oxley at several companies. Prior to becoming a consultant, Mr. Ramelot was Chief Financial Officer of Compro Packaging LLC from 1991 to 1996 and President and Chief Financial Officer from 1996 to 2005. Mr. Ramelot received a Master's degree in Business Administration from the University of Santa Clara and a Bachelor of Science degree in accounting from St. Mary's College. He is a Certified Public Accountant.</p>
James Tu	45	2012	<p>Mr. Tu has been the Executive Chairman and Chief Executive Officer of the Company since May 2013. He was non-Executive Chairman of the Board from December 2012 to April 2013. He is also the Founder, Chief Executive Officer and Chief Investment Officer of 5 Elements Global Advisors, an investment advisory and management company focusing on investing in clean energy companies. Additionally, he is Co-Founder and Managing Partner of Communal International Ltd., a British Virgin Islands company dedicated to assisting clean energy solutions companies maximize their technology and product potential and gain access to global marketing, distribution licensing, manufacturing and financing resources. Previously he was the Director of Investment Management of Gerstein Fisher & Associates, and an equity analyst at Dolphin Asset Management Corp. Mr. Tu received a Master's degree in Business Administration in finance from Baruch College and a Bachelor of Science degree in electrical engineering from Tsinghua University.</p>

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934 requires the Company's officers, directors, and persons who own more than 10% of a registered class of the Company's equity securities to file certain reports regarding ownership of,

and transactions in, the Company's securities with the Securities and Exchange Commission (the "SEC"). Such officers, directors, and 10% stockholders are also required by SEC rules to furnish the Company with copies of all those reports that they file.

Based solely on its review of such reports filed with the SEC and written representations from the reporting persons, the Company believes that all filing requirements applicable to the Company's executive officers and directors were complied with for 2013. With regard to the beneficial holders owning more than 10% of the Company's common stock as listed under the "Security Ownership of Principal Shareholders and Management" section of this Proxy Statement, Bright Horizon Partners, Bi Cheng, 5 Elements Energy Efficiencies (BVI) Ltd. and Jag International, Ltd. were late in filing their respective Forms 3. Brilliant Start Enterprise, Inc., Gina Huang and Prime Science & Technology, Inc., have not filed the reports required under Section 16(a) of the Exchange Act.

Audit Committee

The Company's Audit and Finance Committee acts as the standing audit committee of the Board of Directors, and currently consists of Messrs. Ramelot (Chairman), Finnerty and Luo. The Board of Directors has determined that Mr. Ramelot is an "audit committee financial expert," as defined by SEC rules, and that each Committee member is independent within the meaning of the listing standards of The NASDAQ Stock Market LLC. The Board has approved a charter for the Audit and Finance Committee. A copy of this charter can be found under the Investors section on the Company's website at <http://www.energyfocusinc.com>.

Code of Ethics

We have adopted a Code of Ethics and Business Conduct (the “Code of Ethics”), which applies to all of our directors, officers and employees. A copy of this charter can be found under the Investors section on the Company’s website at <http://www.energyfocusinc.com>. Any person may receive a copy free of charge by writing to us at Energy Focus, Inc., 32000 Aurora Road, Suite B, Solon, Ohio 44139, attention: Secretary.

We intend to disclose on our website any amendment to, or waiver from, a provision of our Code of Ethics that applies to our directors and executive officers, including our principal executive officer, principal financial officer, principal accounting officer or controller, or any person performing similar functions, and that is required to be publicly disclosed pursuant to the rules of the Securities and Exchange Commission.

Item 11. Executive Compensation

Summary Compensation Table

The following table sets forth information with respect to the compensation of those persons serving as our Chief Executive Officer during the year, our other two most highly compensated executive officers, and two other individuals that would have been included in the table had they still been serving as executive officers at December 31, 2013 (our “Named Executive Officers”):

Name and Principal Position	Year	Salary	Bonus	Option Awards	All Other Compensation	Total
		(\$)	(\$)	(\$) (1)	(\$) (2)	(\$)
James Tu (3) Executive Chairman and Chief Executive Officer	2013	88,495	80,000	69,603	594	238,692
	2012	1,071	-	-	-	1,071
Eric W. Hilliard (4) President and Chief Operating Officer	2013	196,538	-	38,299	874	235,711
	2012	181,962	-	-	1,195	183,157
Frank Lamanna (5) Chief Financial Officer	2013	133,846	20,000	19,451	619	173,916
Joseph G. Kaveski (6) Former Chief Executive Officer	2013	79,615	-	23,406	269,930	372,951
	2012	225,000	-	-	1,222	226,222

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Roger F. Buelow (7)	2013	162,885	-	15,047	180,148	358,080
Former Chief Technology Officer	2012	181,962	-	-	1,195	183,157
Mark J. Plush (8)	2013	94,904	-	20,898	61,019	176,821
Former Chief Financial Officer						

Under SEC rules, the values reported reflect the aggregate grant date fair values computed in accordance with (1) Financial Accounting Standards Board Accounting Standards Codification Topic 718 (“FASB ASC Topic 718”), to each of the named executive officers in the years shown.