

ENERGY FOCUS, INC/DE  
Form PRE 14A  
June 05, 2014

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

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**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the**

**Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

**ENERGY FOCUS, INC.**

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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(1) Title of each class of securities to which transaction applies:

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

**DRAFT June 3, 2014**

**ENERGY FOCUS, INC.**

**32000 AURORA ROAD, SUITE B**

**SOLON, OHIO 44139**

June [ ], 2014

Dear Stockholder:

This year's Annual Meeting of Stockholders will be held on Tuesday, July 15, 2014, at 1:00 P.M., local time, at the principal executive offices of Energy Focus, Inc., 32000 Aurora Road, Suite B, Solon, Ohio 44139. You are cordially invited to attend.

The Notice of Annual Meeting of Stockholders and a Proxy Statement, which describe the formal business to be conducted at the meeting, have been made a part of this invitation.

Your vote is important. Whether or not you plan to attend the annual meeting, I hope that you will vote as soon as possible. Please review the instructions on each of your voting options described in the Proxy Statement and the Notice of Internet Availability of Proxy Materials you received in the mail.

Please also note that if you hold your shares in "street name" through a bank or broker, that custodian cannot vote your shares on the election of directors without your specific instructions.

The Proxy Statement and related proxy form are first being made available on or about June [ ], 2014.

Thank you for your ongoing support of, and continued interest in, Energy Focus.

Very truly yours,

James Tu  
Executive Chairman

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**ENERGY FOCUS, INC.**

**32000 AURORA ROAD, SUITE B**

**SOLON, OHIO 44139**

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**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD JULY 15, 2014**

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TO THE STOCKHOLDERS:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders (the “Annual Meeting”) of Energy Focus, Inc. (the “Company”) will be held on Tuesday, July 15, 2014, at 1:00 P.M., local time, at the principal executive offices of Energy Focus, Inc., 32000 Aurora Road, Suite B, Solon, Ohio, for the following purposes:

1. To elect eight directors to serve for the ensuing year or until their successors are elected and qualified, the nominees for which are as follows: Jennifer Cheng, Simon Cheng, William Cohen, John M. Davenport, Jiangang Luo, Michael R. Ramelot, Thomas W. Swidarski, and James Tu;
2. To vote on a proposal to approve the Company’s 2014 Stock Incentive Plan;
3. To vote on a proposal to approve a discretionary amendment to the certificate of incorporation to effect a reverse stock split of the Company’s common stock; and
4. To consider and act upon any other matters that may properly come before the meeting or any adjournment thereof.

The foregoing items of business are more fully described in the Proxy Statement accompanying this Notice.

Only stockholders of record at the close of business on May 16, 2014 are entitled to notice of and to vote at the Annual Meeting and any adjournments or postponements thereof.

**Most stockholders have a choice of voting over the Internet, by telephone or by using a traditional proxy card. Please refer to the attached proxy materials or the information forwarded by your bank, broker or other holder of record to see which voting methods are available to you.**

**Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be held on TUESDAY, JULY 15, 2014:**

**This proxy statement and our annual report on Form 10-K, as amended, are available at:**  
<http://www.proxyvote.com>.

BY ORDER OF  
THE BOARD  
OF  
DIRECTORS

Frank Lamanna  
Chief Financial  
Officer and  
Secretary  
Solon, Ohio

June [ ], 2014

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## **PROXY STATEMENT FOR ANNUAL MEETING OF STOCKHOLDERS**

**ENERGY FOCUS, INC.**

**32000 AURORA ROAD, SUITE B**

**SOLON, OHIO 44139**

## **INFORMATION CONCERNING SOLICITATION AND VOTING OF PROXIES**

### **General**

The enclosed proxy is solicited on behalf of the Board of Directors of Energy Focus, Inc., a Delaware corporation (“Energy Focus” or the “Company”), for use at the Annual Meeting of Stockholders (the “Annual Meeting”) to be held on Tuesday, July 15, 2014, at 1:00 P.M., local time, or at any adjournments or postponements thereof, for the purposes set forth herein and in the accompanying Notice of Annual Meeting of Stockholders. The Annual Meeting will be held at the principal executive offices of Energy Focus, Inc., 32000 Aurora Road, Suite B, Solon, Ohio.

The cost of soliciting these proxies will be borne by the Company. Regular employees and directors of the Company may solicit proxies in person, by telephone, by mail, or by email. No additional compensation will be given to employees or directors for such solicitation. The Company will request brokers and nominees who hold shares of Common Stock, par value \$.0001 per share, of Energy Focus (“Common Stock”) in their names to furnish proxy material to the beneficial owners of such shares and will reimburse such brokers and nominees for their reasonable expenses incurred in forwarding solicitation material to such beneficial owners.

### **Revocability of Proxies**

Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before its use either by delivering to Energy Focus, Inc., Attention: Frank Lamanna, 32000 Aurora Road, Suite B, Solon, Ohio 44139, a written notice of revocation or a duly executed proxy bearing a later date, or by attending the Annual Meeting and voting in person. If a proxy is properly signed and not revoked, the shares it represents will be voted in accordance with the instructions of the stockholder. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to revoke your proxy or vote at the Annual Meeting, you must follow the instructions provided to you by the record holder and/or obtain from the record holder a proxy issued in your name. Attendance at



the Annual Meeting will not, by itself, revoke a proxy.

### **Record Date and Share Ownership**

Only stockholders of record at the close of business on May 16, 2014 (the “Record Date”), will be entitled to notice of and to vote at the Annual Meeting and any adjournments or postponements thereof. The Company had 78,154,330 shares of Common Stock issued and outstanding as of the Record Date.

### **Voting**

Each share of Common Stock held as of the Record Date entitles its holder to one vote on each matter to be acted upon at the Annual Meeting, including the election of directors. The presence at the Annual Meeting, either in person or by proxy, of the holders of a majority of the aggregate number of shares of Common Stock outstanding on the Record Date will represent a quorum permitting the conduct of business at the meeting. Proxies received by the Company marked as abstentions or broker non-votes will be included in the calculation of the number of shares considered to be present at the Annual Meeting. The eight nominees receiving the greatest number of votes “for” election will be elected as directors. If you do not vote for a particular director nominee, or if you indicate “withhold authority” for a particular nominee on your proxy form, your vote will not count either for or against the nominee. If your shares are held in “street” name by a broker or nominee indicating on a proxy that it does not have authority to vote on this proposal or any other proposal will result in a “broker non-vote,” which will not count as a vote for or against any of the nominees. The affirmative vote of a majority of votes cast is required for approval and adoption of the Company’s 2014 Stock Incentive Plan. Abstentions and broker non-votes will not be considered votes cast on the proposal and will not have a positive or negative effect on the outcome of this proposal. The affirmative vote of a majority of all of the shares of Common Stock issued and outstanding and entitled to vote at the Annual Meeting is required for approval of the discretionary amendment to the certificate of incorporation to effect a reverse stock split of the Common Stock. Abstentions and broker non-votes will have the same effect as a vote against the proposal.

The shares represented by the proxies received, properly marked, dated, signed and not revoked will be voted at the Annual Meeting. Where such proxies specify a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specifications made. Any proxy in the enclosed form which is returned but is not marked will be voted **FOR** the election of the eight nominees for director listed in this Proxy Statement, **FOR** the approval of the discretionary amendment to the certificate of incorporation to effect a reverse stock split of the common Stock, and **FOR** the approval of the Company's 2014 Stock Incentive Plan.

## **PROPOSAL NO. 1: ELECTION OF DIRECTORS**

### **Nominees**

Unless otherwise instructed, the proxy holders will vote the proxies received by them for the eight nominees named below, regardless of whether any other names are placed in nomination by anyone other than one of the proxy holders. If the candidacy of any one or more of such nominees should, for any reason, be withdrawn, the proxy holders will vote in favor of the remainder of those nominated and for such substituted nominees, if any, as shall be designated by the Board of Directors. Please note that if the candidacy of one or more nominees should be withdrawn, the Board may reduce the number of directors to be elected at this time. The Board of Directors has no reason to believe that any of the persons named will be unable or unwilling to serve as a nominee or as a director if elected.

If a quorum is present in person or by proxy at the Annual Meeting, the eight nominees receiving the highest number of votes will be elected as directors at the Annual Meeting to serve until the next annual meeting or until their respective successors are duly elected or appointed.

The Company's Bylaws provide that the number of directors of the Company shall be no less than five and no more than nine, with the exact number within such range to be fixed by the Board of Directors. The Board of Directors has fixed the current number at eight. The Board of Directors has recommended and nominated the eight nominees listed below. James Finnerty, who has served as a director since 2008, has elected not to stand for reelection. The Board has nominated William Cohen to fill Mr. Finnerty's seat.

Biographical information concerning each nominee is set forth below:

<b>Name</b>	<b>Age</b>	<b>Director Since</b>	<b>Background</b>
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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 served as the 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.

William Cohen	60n/a	Mr. Cohen has served as the Chief Executive Officer of Dillon Yarn Corporation since February 2011, and President from October 1996 to February 2011. Dillon Yarn Corporation manufactures and globally distributes filament yarns, fabrics, flake, chip, staple fiber and non-woven fabric to many segments of the textile industry, including medical, technical, industrial, automotive, home furnishing and apparel. Mr. Cohen is also Chairman and Chief Executive Officer of Atlas Oral Health Care LLC, Chairman and Chief Executive Officer of GAWI, LLC d/b/a Arctic Ease, a Partner in Fabricated Metals and Commodore Factors, and President of Morristown Helicopter Services Inc. He is a member of the Tel Aviv University Board of Governors and Chairman Emeritus of American Friends of Tel Aviv University. Mr. Cohen attended C.W. Post of Long Island University. He is also a commercial helicopter and airplane pilot.
John M. Davenport	692005	Mr. Davenport served as the 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, served as the Chief Operating Officer from July 2003 to July 2005, and the 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.
Jiangang Luo	462013	Mr. Luo served as the Manager Partner of Prime Science & Technology, Inc. since February 2006, a company focusing on clean technology. He served as the Managing Partner of Faith Asset Management LLC since November 2011. Mr. Luo works with many non-profit organizations and is currently Chairman of the American United Chamber of Commerce, and is the 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.
Michael R. Ramelot	682013	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 Securities and Exchange Commission ("SEC") filings; and assessed and implemented compliance with Section 404 of Sarbanes-Oxley at several companies. Prior to becoming a consultant, Mr. Ramelot served as the 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.



Thomas W. Swidarski 552014  
Mr. Swidarski has served as the non-executive chairman of Asurint, a privately held company in the background verification industry since January 2014. He also serves on the Board of Directors of Altra Industrial Motion Corp., a publically traded \$700 million leading global designer, producer and marketer of a wide range of electromechanical power transmission products. Mr. Swidarski previously served as the Chief Executive Officer and President of Diebold Incorporated, a \$3 billion global leader in designing, manufacturing and distributing self service ATMs in over 100 countries, from December 2005 to January 2013. Prior to becoming Chief Executive Officer and President, Mr. Swidarski served in various capacities including Chief Operating Officer, Senior Vice President of Financial Self-Service Group, and held various strategic development and marketing positions at Diebold since joining the company in 1996. He holds a Master's degree in Business Administration from Cleveland State University and a Bachelor of Arts degree in marketing from the University of Dayton.

James Tu 452012  
Mr. Tu has served as the Executive Chairman and Chief Executive Officer of the Company since May 2013. He served as the 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 served as 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.

n/a – date is not applicable.

### **Vote Required and Board of Directors Recommendation**

The eight nominees receiving the highest number of votes at the Annual Meeting will be elected as directors of the Company.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE **FOR** EACH OF THE NOMINEES LISTED ABOVE.

### **Corporate Governance**

*Director Independence*

The Board of Directors has determined that each of the following current directors and director nominees is independent within the meaning of the listing standards of The NASDAQ Stock Market:

Jennifer Cheng  
William Cohen  
J. James Finnerty  
Jiangang Luo  
Michael R. Ramelot  
Thomas W. Swidarski

In this Proxy Statement these six directors and director nominees are referred to individually as an “Independent Director” and collectively as the “Independent Directors.” The shares of the Company’s Common Stock are traded on the OTCQB Marketplace and the Board has selected the independence requirements in the listing standards of the NASDAQ Stock Market as the applicable standard for assessing the independence of its directors.

*Board Meetings and Committees; Annual Meeting Attendance*

The Board of Directors held a total of nine meetings during the fiscal year ended December 31, 2013, including six regular meetings and three special meetings. All directors attended at least 75% of the aggregate number of meetings of the Board of Directors and of the committees on which such directors' serve. In addition, the Board acted numerous times by written consent as permitted under Delaware law. The Board of Directors has established a Compensation Committee and an Audit and Finance Committee. The Board has determined that each director who serves on these committees is an Independent Director. The Board has approved a charter for the Compensation Committee, and the Audit and Finance Committee, and has adopted Corporate Governance Guidelines. In October 2013, the Board dissolved the Nominating and Corporate Governance Committee, which did not meet in 2013, and the full Board has assumed the responsibilities of that committee.

The Company does not have a policy regarding attendance by the directors at the Company's Annual Meeting. Mr. Tu, Mr. Cheng, Mr. Davenport, Mr. Finnerty, Mr. Luo and Mr. Ramelot were present at the last Annual Meeting held September 26, 2013.

*Compensation Committee*

The Company has a standing Compensation Committee of the Board of Directors, currently consisting of Mr. Finnerty, as chairman, Ms. Cheng and Mr. Ramelot. Mr. Finnerty is not standing for re-election to the Board of Directors at the Annual Meeting. It is expected that the Board will appoint Mr. Swidarski as chairman of the Compensation Committee and Mr. Luo will take the place of Ms. Cheng after the Annual Meeting. The Compensation Committee held five meetings in 2013. The Board has approved a charter for the Compensation Committee. A copy of this charter can be found on the Company's website at <http://www.energyfocusinc.com>.

The Compensation Committee reviews and recommends to the Board corporate goals and objectives relevant to compensation of the Chief Executive Officer, evaluates his performance in light of such goals and objectives, and sets his compensation level based on this evaluation; develops and recommends to the Board compensation arrangements for other executive officers of the Company, reviews and recommends to the Board incentive compensation plans and equity-based plans, and administers such plans; reviews and recommends to the Board all other employee benefit plans for the Company; and reviews and makes recommendations to the Board regarding compensation of the Board of Directors. The authority of the Compensation Committee may be delegated to a subcommittee of the Compensation Committee, consisting of one or more directors. The Chief Executive Officer may provide recommendations regarding compensation of other executive officers. The Compensation Committee is empowered to retain consultants for advice on compensation matters. During 2013, the Compensation Committee retained Findley Davies to provide consulting services in connection with Mr. Tu's compensation program, which included providing a market analysis for base salary, variable and long term compensation.



No director currently serving on the Compensation Committee is or has been an officer or employee of the Company or any of the Company's subsidiaries. No interlocking relationships exist between our Board of Directors or Compensation Committee and the board of directors or compensation committee of any other entity, nor has any interlocking relationship existed in the past.

*Audit and Finance Committee*

The Company's Audit and Finance Committee acts as the standing audit committee of the Board of Directors. The Audit and Finance Committee of the Board of Directors, which currently consists of Mr. Ramelot as chairman, Mr. Finnerty and Mr. Luo, held four meetings in 2013. Mr. Finnerty is not standing for re-election to the Board of Directors at the Company's Annual Meeting. It is expected that the Board will appoint Mr. Swidarski to fill the vacancy, and that Ms. Cheng will take the place of Mr. Luo after the Annual Meeting. The Board of Directors has determined that Mr. Ramelot is an "audit committee financial expert," as defined under the rules of the SEC, and that each Audit and Finance Committee member is independent within the meaning of the listing standards of The NASDAQ Stock Market. The Board has approved a charter for the Audit and Finance Committee. A copy of this charter can be found on the Company's website at <http://www.energyfocusinc.com>.

The Audit and Finance Committee's primary functions are to assist the Board of Directors in its oversight of the integrity of the Company's financial statements and other financial information, the Company's compliance with legal and regulatory requirements, the qualifications, independence and performance of the Company's independent registered public accounting firm. Other specific duties and responsibilities of the Audit and Finance Committee are to: appoint, compensate, evaluate and, when appropriate, replace the Company's independent registered public accounting firm; review and pre-approve audit and permissible non-audit services; review the scope of the annual audit; monitor the independent registered public accounting firm's relationship with the Company; and meet with the independent registered public accounting firm and management to discuss and review the Company's financial statements, internal controls, and auditing, accounting and financial reporting processes.

*Director Nominations*

The Board of Directors sets the size of the Board and nominates directors for election at each annual meeting and elects new directors to fill vacancies when they arise. The Board of Directors has as an objective that its membership be composed of experienced and dedicated individuals with diversity of backgrounds, perspectives and skills. The Board selects candidates for directors based on their character, judgment, diversity of experience, business acumen, and ability to act on behalf of all stockholders. They believe that nominees for director should have experience, such as experience in management or accounting and finance, or industry and technology knowledge, that may be useful to the Company and the Board, high personal and professional ethics, and the willingness and ability to devote sufficient time to effectively carry out his or her duties as a director. The Board of Directors believes it appropriate for a majority of the members of the Board to meet the definition of “Independent Director” under the rules of the NASDAQ Stock Market.

In the event that a director does not wish to continue in service, a vacancy is created on the Board as a result of a resignation, the Board increases the size of the Board or certain other events affecting the composition of the Board, the Board will consider various candidates for Board membership, including those suggested by other Board members, by any executive search firm engaged by the Board, and by stockholders. Mr. Swidarski, who joined the Board in May 2014, was identified as a candidate for director by Mr. Tu and Mr. Cohen, who is a nominee for election at the Annual Meeting, is a stockholder of the Company. A stockholder who wishes to suggest a prospective nominee for the Board should notify the Secretary of the Company or any member of the Board in writing, with any supporting material the stockholder considers appropriate, at the following address: Energy Focus, Inc., 32000 Aurora Road, Suite B, Solon, Ohio 44139.

## **PROPOSAL NO. 2: APPROVAL OF THE 2014 STOCK INCENTIVE PLAN**

On May 6, 2014, the Board of Directors, upon the recommendation of the Compensation Committee, approved the Energy Focus, Inc. 2014 Stock Incentive Plan (the “2014 Plan”), subject to stockholder approval.

### **Background**

As of March 31, 2014, the Company had outstanding 4,533,372 options to purchase Common Stock with a weighted average exercise price of \$1.03 and a weighted average remaining term of 8.2 years, 319,591 shares of restricted stock and 12,195 restricted stock units granted under the Energy Focus, Inc. 2008 Incentive Stock Plan (the “2008 Plan”) and 2004 Stock Incentive Plan (the “2004 Plan” and, together with the 2004 Plan, the “Prior Plans”).

The Company currently has the ability under the 2008 Plan to award stock options, restricted stock awards, stock units and stock appreciation rights and, as of March 31, 2014, had a total of 732,733 shares available for future awards. Based on the current average annual rate at which the Company has issued stock options and restricted stock awards to participants under the 2008 Plan, we estimate that the shares available for future awards under the 2008 Plan will be insufficient to support future awards beginning with grants anticipated for 2015.

The Compensation Committee and the Board believe that our provision of equity compensation has been a key factor in aligning the interests of our employees, officers and directors with those of our stockholders by providing an incentive to increase stockholder value. Moreover, equity awards have been, and will continue to be, an important factor contributing to our ability to provide incentive-based compensation, compete for and retain talented executives and other personnel.

In recommending the number of shares issuable under the 2014 Plan, the Compensation Committee considered the important role that equity compensation has played over the past several years in providing flexibility in the manner in which employees have been compensated and its ability to incentivize achievement of the Company’s goals. Due to the Company’s cash position, the Company has used its equity award program to attract and retain its Chief Executive Officer and other employees who have been central to its efforts to restructure the organization to focus on growing its LED lighting retrofit business. Given the management changes that have occurred over the past few years, we anticipate that we will continue to utilize equity awards as a significant element of the compensation packages to our management team.

The 2014 Plan would make 6,000,000 shares available for new awards. Shares subject to awards that are outstanding under the Prior Plans will not become available for future grants under the 2014 Plan if they are cancelled, forfeited or expire prior to being exercised and any shares that remain available for grant under the Prior Plans as of the effective date of the 2014 Plan will not become part of the pool of shares available under the 2014 Plan. The awards outstanding under the Prior Plans include options that have a weighted average exercise price of \$1.03 as of March 31, 2014, which exceeds the current market price for the Company's Common Stock of \$0.57 as of June 4, 2014. As of March 31, 2014, approximately 1.5 million of these option shares had an exercise price that was at or above the June 4<sup>th</sup> market price.

The Compensation Committee also considered historical amounts of equity awards the Company has granted over the past three years. The following table sets forth the number of stock options and time-based restricted shares or units granted by the Company in the years ended December 31, 2013, 2012 and 2011. In addition, the table provides the weighted average number of shares of Common Stock outstanding in the year indicated.

<i>Fiscal Year</i>	<i>Number of Stock Options Granted</i>	<i>Number of Time-Based Restricted Stock Awards Granted</i>	<i>Weighted Average Shares of Common Stock Outstanding</i>
2013	2,079,500	51,219	47,792,000
2012	120,000	--	41,322,000
2011	1,040,000	--	24,669,000

If our stockholders approve the 2014 Plan, we believe that, based on our past practices, the shares authorized for issuance under the 2014 Plan will support awards for the next three to four years. In addition, following stockholder approval, no further awards will be made under the Prior Plans.

We also are seeking stockholder approval of the 2014 Plan so that compensation attributable to grants under the 2014 Plan may qualify for an exemption from the \$1 million deduction limit under Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"). See "Overview of the 2014 Plan – Performance – Based Compensation Awards" herein.

## Overview of the 2014 Plan

The purpose of the 2014 Plan is to enhance stockholder value by linking the compensation of our officers, non-employee directors and key employees to increases in the price of our Common Stock and the achievement of other performance objectives, and to encourage ownership in our Common Stock by key personnel whose long-term employment is considered essential to our continued progress and success. The 2014 Plan is also intended to assist us in recruiting new directors and employees and to motivate, retain and encourage such directors and employees to act in the stockholders' interest and share in our success.

The 2014 Plan is an "omnibus" plan that provides for several different kinds of awards, including stock options, stock appreciation rights ("SARs"), stock awards and other stock-based awards. The 2014 Plan generally permits the same types of awards as could be granted under the 2008 Plan, but also specifically provides for performance-based cash awards and permits more flexible terms than the 2008 Plan, which will provide us with greater discretion in structuring award programs. The 2014 Plan does not have an "evergreen" feature, so that any increase in the number of authorized shares other than as specifically set forth in the 2014 Plan will require stockholder approval.

The following summary of the material terms of the 2014 Plan is qualified in its entirety by reference to the full text of the 2014 Plan, a copy of which is attached as Appendix A to this Proxy Statement.