

GYRODYNE CO OF AMERICA INC

Form S-3/A

August 19, 2011

As filed with the Securities and Exchange Commission on August 18 , 2011

Registration No. 333- 175515

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 1
TO
FORM S-3
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

GYRODYNE COMPANY OF AMERICA, INC.
(Exact name of registrant as specified in its charter)

NEW YORK
(State or other jurisdiction of
incorporation or organization)

11-1688021
(I.R.S. Employer
Identification No.)

1 FLOWERFIELD, SUITE 24
ST. JAMES, NEW YORK 11780
(631) 584-5400
(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

Stephen V. Maroney
President and CEO
1 Flowerfield, Suite 24
St. James, New York 11780
(631) 584-5400
(Name, address, including zip code, and telephone number,
including area code, of agent for service)

Copies of all communications, including communications sent to agent for service, should be sent to:

Alon Y. Kapen, Esq.
Farrell Fritz, P.C.
1320 RXR Plaza
Uniondale, New York 11556
(516) 227-0633

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

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

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

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

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

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

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

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

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

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)	Amount to be Registered(1)(2)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(1)
Common Stock, par value \$1.00 per share	192,641	\$53.00	\$10,210,000(2)	\$1,185.38(3)
Subscription Rights to Purchase Common Stock	(4)	-	-	(5)

(1) This registration statement relates to: (a) non-transferable subscription rights to purchase common stock of the Registrant, which subscription rights are to be distributed to holders of the Registrant’s common stock; and (b) the shares of common stock deliverable upon the exercise of the non-transferable subscription rights pursuant to the rights offering.

(2) Represents the gross proceeds from the assumed exercise of all non-transferable subscription rights to be distributed and additional shares of common stock up to the maximum amount contemplated in this registration statement to the extent the Registrant exercises an over-allotment option. At no time will the aggregate maximum offering price of all securities issued in any given 12-month period exceed the amount allowed for in General Instruction I.B.6. of Form S-3.

(3) Previously paid.

- (4) Evidencing the rights to subscribe for 173,305 shares of common stock, par value \$1.00 per share.
- (5) The non-transferable subscription rights are being distributed without consideration. Pursuant to Rule 457(g), no separate registration fee is payable with respect to the subscription rights being offered hereby since the subscription rights are being registered in the same registration statement as the securities to be offered pursuant thereto.

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 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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

SUBJECT TO COMPLETION, DATED AUGUST 18 , 2011

PROSPECTUS

GYRODYNE COMPANY OF AMERICA, INC.

Subscription Rights to Purchase up to
173,305 Shares of Common Stock at \$53.00 per Share

We are distributing at no charge to holders of our common stock non-transferable subscription rights to purchase up to 173,305 shares of our common stock, subject to certain limitations. You will receive one subscription right for each share of common stock held of record as of 5:00 p.m., New York City time, on August 15, 2011.

In the rights offering, we are distributing subscription rights exercisable for up to 173,305 shares of our common stock. 7.5 subscription rights will entitle you to purchase one share of our common stock at a subscription price equal to \$53.00 per share, which we refer to as the basic subscription privilege. If all rights are exercised and all of the shares issuable upon exercise of the rights are sold in this offering, the total purchase price of the shares offered in the rights offering would be approximately \$9,210,000, subject to the over-allotment described below. If you fully exercise your basic subscription privilege, you will also be entitled to purchase shares not purchased by other subscription rights holders pursuant to the over-subscription privilege described in this prospectus. To the extent you properly exercise your basic subscription privilege and/or your over-subscription privilege for an amount of shares that exceeds the number of the unsubscribed shares available to you, any excess subscription payment received by the subscription agent will be returned promptly, without interest or penalty. Alternatively, if there are not enough shares to honor all over-subscription requests, we may, at our discretion, issue up to an additional 19,336 shares, which we refer to as "over-allotment shares," to honor over-subscription requests. If the rights offering is over-subscribed, and we issue all of the over-allotment shares, the total purchase price of the shares offered in the rights offering would be \$10,210,000.

The subscription rights may be exercised at any time during the subscription period, which will commence on [•], 2011 and expire 5:00 p.m., New York City time, on [•], 2011, unless we extend the rights offering period. We reserve the right to extend the rights offering period at our sole discretion for a period not to exceed 30 days, although we do not presently intend to do so. We urge you to carefully consider whether to exercise your subscription rights before the expiration of the rights offering period. All exercises of subscription rights are irrevocable. However, if we make a fundamental change in the rights offering or extend the rights offering for a period of more than 30 days, you may cancel your subscription and receive a refund of any money you have advanced. Our board of directors is making no recommendation regarding your exercise of the subscription rights. The subscription rights may not be sold, transferred or assigned to anyone else and will not be listed for trading on the NASDAQ Capital Market or any other stock exchange or market or on the OTC Bulletin Board.

We may cancel the rights offering at any time prior to its expiration for any reason. If we cancel the rights offering, all subscription payments received by the subscription agent will be returned, without interest or penalty, as soon as practicable. The shares of common stock are being offered in the rights offering directly by us without the services of

a dealer manager, selling agent or standby purchaser.

Shares of our common stock are traded on the NASDAQ Capital Market under the symbol "GYRO". On August 16, 2011, the closing sale price for our common stock was \$60.00 per share. We urge you to obtain a current market price for the shares of our common stock before making any determination with respect to the exercise of your rights. The shares of common stock issued in the rights offering we expect will also be listed on the NASDAQ Capital Market under the same symbol.

The exercise of your subscription rights for shares of our common stock involves a high degree of risk. You should carefully consider all of the information set forth in this prospectus, including the section entitled "Risk Factors" beginning on page 10 of this prospectus as well as all information included or incorporated herein by reference in this prospectus in its entirety before you decide whether to exercise your subscription rights. See "Incorporation by Reference."

	Per Share	Aggregate
Subscription Price	\$53.00	\$9,210,000 (1)
Estimated Expenses	\$ 1.21	\$ 210,000
Net Proceeds to Us	\$51.93	\$9,000,000

(1) Assumes the rights offering is fully subscribed, but no over-allotment shares are issued.

Neither the Securities and Exchange Commission nor any state securities commission 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 August __, 2011

TABLE OF CONTENTS

ABOUT THIS PROSPECTUS	i
CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS	i
QUESTIONS AND ANSWERS RELATING TO THE RIGHTS OFFERING	iii
PROSPECTUS SUMMARY	1
RISK FACTORS	10
USE OF PROCEEDS	24
PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY	24
CAPITALIZATION	25
THE RIGHTS OFFERING	26
DESCRIPTION OF CAPITAL STOCK	36
CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS	40
PLAN OF DISTRIBUTION	42
LEGAL MATTERS	42
EXPERTS	42
INCORPORATION BY REFERENCE	43
WHERE YOU CAN FIND MORE INFORMATION	43

You should rely only on the information contained in or incorporated by reference into this prospectus. We have not authorized anyone to provide you with additional or different information. You should assume that the information contained in this prospectus is accurate only as of the date on the front cover of this prospectus and any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus or any exercise of the subscription rights. Our business, financial condition, results of operations and prospects may have changed since those dates.

ABOUT THIS PROSPECTUS

We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference into this prospectus, or in any related free writing prospectus that has been or will be filed by us or on our behalf with the SEC. You must not rely upon any information or representation not contained or incorporated by reference into this prospectus. This prospectus does 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 does this prospectus 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 is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus is delivered or securities are sold on a later date. Unless the context otherwise requires or as otherwise expressly stated, references in this prospectus to the “Company,” “Gyrodyne,” “we,” “us” and “our” and similar terms refer to Gyrodyne Company of America, Inc. and its subsidiaries and predecessors on a consolidated basis. References to our “common stock” refer to the common stock of Gyrodyne Company of America, Inc.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained in this prospectus constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. The forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements.

Forward-looking statements, which are based on certain assumptions and describe our current strategies, expectations and future plans, are generally identified by our use of words, such as “intend,” “plan,” “may,” “should,” “will,” “project,” “estimate,” “anticipate,” “believe,” “expect,” “continue,” “potential,” “opportunity,” and similar expressions, whether in the negative or affirmative, but the absence of these words does not necessarily mean that a statement is not forward-looking. You should read statements that contain these words carefully because they discuss our plans, strategies, prospects and expectations concerning our business, operating results, financial condition and other similar matters. We believe that it is important to communicate our future expectations to our investors. There will be events in the future, however, that we are not able to predict accurately or control. The factors listed under “Risk Factors” in this prospectus and in any documents incorporated by reference into this prospectus as well as any cautionary language in this prospectus, provide examples of risks, uncertainties and events that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. Such risks and uncertainties include, among other things, risks and uncertainties related to:

- our condemnation case with the State of New York in the New York Court of Claims;
- the level of our indebtedness and our ability to meet covenants in our debt agreements;
- our efforts to rezone and develop our Flowerfield property, including delays and cost overruns;
- national and local economic and business conditions, including the current economic weakness, that could affect occupancy rates at our medical and industrial parks;
- the health care industry, including competition, changes in Medicare and Medicaid reimbursement to medical professionals and hospitals alike, increases in utility and fuel costs and other operating costs;
-

the availability and terms of financing and capital and the general volatility of the securities markets, specifically, the impact of the current credit crisis which has severely constrained the availability of debt financing;

- management and performance of our medical parks and industrial park;
- supply and demand for medical office and industrial space in our current market areas;
- legislative/regulatory changes, including changes to laws governing taxation of real estate investment trusts and the application of our Private Letter Ruling;
- other factors, including those discussed in “Risk Factors” in this prospectus and incorporated by reference into this prospectus; and
- the board’s perception of the value of our assets including our case for just compensation in the condemnation trial when compared to the current market capitalization.

These risks and uncertainties should be considered in evaluating any forward-looking statement contained in this prospectus or incorporated by reference herein. All forward-looking statements speak only as of the date of this prospectus or, in the case of any document incorporated by reference, the date of that document. All subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are qualified by the cautionary statements in this section. We undertake no obligation to update or publicly release any revisions to forward-looking statements to reflect events, circumstances or changes in expectations after the date of this prospectus. In addition, our past results are not necessarily indicative of our future results.

QUESTIONS AND ANSWERS RELATING TO THE RIGHTS OFFERING

The following are examples of what we anticipate will be common questions about the rights offering. The answers are based on selected information from this prospectus and the documents incorporated by reference herein. The following questions and answers do not contain all of the information that may be important to you and may not address all of the questions that you may have about the rights offering. This prospectus and the documents incorporated by reference herein contain more detailed descriptions of the terms and conditions of the rights offering and provide additional information about us and our business, including potential risks related to the rights offering, our common stock, and our business.

What is the rights offering?

We are distributing at no charge non-transferable subscription rights to holders of our common stock. You will receive one subscription right for each share of common stock you owned, as of 5:00 p.m., New York City time, on August 15, 2011, the record date. The subscription rights will be evidenced by subscription rights certificates. 7.5 subscription rights will entitle you to purchase one share of our common stock at a subscription price equal to \$53.00 per share. You may exercise any number of your subscription rights, or you may choose not to exercise any subscription rights.

Why are we conducting the rights offering?

We are conducting the rights offering in order to raise additional equity capital to pursue our rights in the condemnation litigation, to fund the cost of pursuing development rights for the Flowerfield property, to make necessary capital improvements in our real estate portfolio and for general working capital. A rights offering provides eligible shareholders the opportunity to participate in a capital raise on a pro rata basis and, to the extent that they exercise the subscription rights, minimize the dilution of their ownership interest in our company. In authorizing the rights offering, our board of directors evaluated our need for additional liquidity and capital, primarily to enable us to achieve our corporate strategy to maximize the market value of our assets and diligently pursue our rights under our condemnation lawsuit. Our board of directors concluded that we should take steps to raise additional capital by means of this rights offering. In connection with our board's evaluation of our capital needs and of this rights offering, our board of directors also considered:

- current economic and financial market conditions;
- the size and timing of the rights offering;
- the potential dilution to our current shareholders if they choose not to participate in the offering or choose not to exercise their basic subscription privilege in full;
 - alternatives available for raising equity capital;
 - historical and current trading prices for our common stock;
 - the potential for the rights offering to increase the public float for our common stock; and
- the opportunity for our existing shareholders to participate on a pro rata basis and to have an over-subscription privilege.

Is the rights offering consistent with our previously announced corporate strategy?

In December 2005, we announced our corporate strategy to position our company so that we are best able to achieve one or more shareholder liquidity events in a reasonable period of time that would put the maximum amount of cash or marketable securities in the hands of our shareholders in a tax efficient manner. The rights offering is intended to raise sufficient funds to enable us to pursue our rights in the condemnation litigation, to fund the cost of pursuing development rights for our Flowerfield property, to make necessary capital improvements in our real estate portfolio and for general working capital. Our board of directors believes the rights offering is consistent with, and will help us

implement, our existing corporate strategy.

iii

How was the subscription price determined?

Our board of directors determined the terms of the rights offering. In determining the subscription price, our board of directors considered a number of factors, including:

- our need for additional capital, liquidity and financial flexibility;
- current economic and financial market conditions;
- alternatives available for raising equity capital;
- the size and timing of the rights offering and the price at which our shareholders might be willing to participate in a rights offering on a pro rata basis to all shareholders with an over-subscription privilege;
- historical and current trading prices for our common stock;
- potential costs associated with the condemnation litigation, pursuing our development rights for the Flowerfield property, necessary capital improvements in our real estate portfolio and general working capital needs;
- subscription price discounts in similar rights offerings; and
- the board's perception of the value of our assets, including our case for just compensation in the condemnation trial when compared to the current market capitalization.

The subscription price was established by our board of directors at a price of \$53.00 per share. The subscription price is not necessarily related to our book value, results of operations, cash flows, financial condition or net worth or any other established criteria of value and may or may not be considered the fair value of our common stock at the time the rights offering was approved by our board of directors or during the rights offering period. We cannot assure you that the trading price of our common stock will not decline during or after the rights offering. We also cannot assure you that you will be able to sell shares purchased in this offering at a price equal to or greater than the subscription price. We do not intend to change the subscription price in response to changes in the trading price of our common stock prior to the closing of the rights offering.

What is the basic subscription privilege?

For each group of 7.5 rights you own, we will give you a basic subscription privilege to buy from us one share of our common stock at the subscription price, subject to certain limitations described below. You may exercise your basic subscription privilege for some or all of your subscription rights, or you may choose not to exercise any subscription rights.

No fractional shares of common stock will be issued. Any fractional rights resulting from the exercise of the basic subscription privilege will be eliminated by rounding up to the nearest whole number. For example, if you owned 100 shares of our common stock as of 5:00 p.m., New York City time, on the record date, you would receive the same number of subscription rights and would have the right to purchase 14 shares of common stock for \$53.00 per share with your basic subscription privilege.

What is the over-subscription privilege?

If you purchase all of the shares of common stock available to you pursuant to your basic subscription privilege, you may also choose to purchase any portion of our shares of common stock that are not purchased by our other shareholders through the exercise of their respective basic subscription privileges. You should indicate on your rights certificate how many additional shares you would like to purchase pursuant to your over-subscription privilege.

If sufficient shares of common stock are available, we will seek to honor your over-subscription request in full. If, however, over-subscription requests exceed the number of shares of common stock that remain available for sale in the rights offering, we will allocate the available shares of common stock pro rata among each shareholder properly exercising the over-subscription privilege. "Pro rata" means in proportion to the number of shares of our common stock

that you and the other shareholders have subscribed for under the over-subscription privilege, so that the number of shares that would be allocated to you would equal the number of shares you have subscribed for in your over-subscription request multiplied by a fraction, the numerator of which is the number of available shares and the denominator of which is the aggregate number of over-subscription shares requested by all shareholders.

iv

If there are not enough unsubscribed shares to honor all requests pursuant to the over-subscription privilege, we may, in our discretion, issue up to an additional 19,336 shares to honor requests under the over-subscription privilege, subject to the same terms and conditions of the rights offering. We refer to such additional shares as the “over-allotment shares”. For more information, see the section entitled “The Rights Offering — Over-Subscription Privilege and Over-Allotment Option.”

In order to properly exercise your over-subscription privilege, you must deliver the subscription payment related to your over-subscription privilege prior to the expiration of the rights offering. Because we will not know the total number of unsubscribed shares prior to the expiration of the rights offering, if you wish to maximize the number of shares you purchase pursuant to your over-subscription privilege, you will need to deliver payment in an amount equal to the aggregate subscription price for the maximum number of shares of our common stock that may be available to you (i.e., for the maximum number of shares of our common stock available to you, assuming you exercise all of your basic subscription privilege and are allotted the full amount of your over-subscription as elected by you). For more information, see the section entitled “The Rights Offering — Over-Subscription Privilege and Over-Allotment Option.”

Are there any limits on the number of shares I may purchase in the rights offering or own as a result of the rights offering?

Yes. To avoid triggering our shareholder rights plan, in no event may a shareholder exercise subscription and over-subscription privileges to the extent that any such exercise would result in the shareholder, without the approval of our board of directors, owning 20% or more of our issued and outstanding common stock after giving effect to such shareholder’s purchase under the basic subscription privilege and the over-subscription privilege. See “Description of Capital Stock--Shareholder Rights Plan.”

Also, our ability to satisfy your exercise of the basic subscription privilege and the over-subscription privilege will be subject to a limitation under relevant SEC rules that limits the number of shares of common stock that we may sell under a Form S-3 registration statement to a maximum aggregate market value of not more than one-third of our public float, i.e., one-third of the market value of shares of our common stock held by non-affiliates, when combined with shares we sold in the prior twelve-month period. We have not sold any shares pursuant to a registration statement on Form S-3 during the twelve months immediately prior to the date of this prospectus. As of August 12, 2011, our public float was approximately \$41.9 million, which would mean that we would be permitted to sell shares of our common stock with a market value of up to \$14.0 over a 12-month period.

In addition, to ensure compliance with the so-called “5/50 rule” of the Internal Revenue Code, which generally prohibits five or fewer shareholders from owning in the aggregate in excess of 50% of the value of the shares of a real estate investment trust (or “REIT”) during the last half of any of the REIT’s taxable years (starting with the REIT’s second taxable year), subscription and over-subscription privileges will be subject to proportionate cutbacks to the extent that any such exercises would result in five or fewer shareholders owning in the aggregate in excess of 50% of the value of our shares.

We will be able to satisfy your exercise of the over-subscription privilege only to the extent that other subscription rights holders do not elect to purchase all of the shares offered under their basic subscription privilege. We will honor over-subscription requests in full to the extent sufficient shares are available following the exercise of rights under the basic subscription privilege.

If over-subscription requests exceed the number of shares available, we will allocate the available shares of common stock pro rata among the shareholders that properly exercise such privilege in proportion to the total number of shares requested by shareholders in the over-subscription privilege.

If there are not enough unsubscribed shares to honor all requests under the over-subscription privilege, we may, in our discretion, issue up to an additional 19,336 over-allotment shares to honor requests under the over-subscription privilege, subject to the same terms and conditions of the rights offering.

v

No fractional shares of common stock will be issued. Any fractional rights resulting from the share allocation process described in this prospectus will be eliminated by rounding up to the nearest whole number.

Am I required to exercise the rights I receive in the rights offering?

No. You may exercise any number of your subscription rights, or you may choose not to exercise any subscription rights. However, if you choose not to fully exercise your basic subscription privilege and other subscription rights holders fully exercise their basic subscription privilege, the percentage of our common stock owned by other shareholders will increase, the relative percentage of our common stock that you own will decrease, and your voting and other rights will be diluted. In addition, if you do not exercise your basic subscription privilege in full, you will not be entitled to participate in the over-subscription privilege.

How soon must I act to exercise my subscription rights?

If you received a rights certificate and elect to exercise any or all of your subscription rights, the subscription agent must receive your completed and signed rights certificate and payment prior to the expiration of the rights offering, which is [•], 2011, at 5:00 p.m., New York City time. If your shares of common stock are held in the name of a custodian bank, broker, dealer or other nominee, your custodian bank, broker, dealer or other nominee may establish a deadline prior to 5:00 p.m. New York City time, on [•], 2011 by which you must provide it with your instructions to exercise your subscription rights and pay for your shares.

Although we will make reasonable attempts to provide this prospectus to holders of subscription rights, the rights offering and all subscription rights will expire at 5:00 p.m., New York City time on [•], 2011 (unless extended as described below), whether or not we have been able to locate each shareholder entitled to subscription rights. Although we have the option of extending the expiration of the rights offering, we currently do not intend to do so.

May I transfer my subscription rights?

No. You may not sell, transfer or assign your subscription rights to anyone else.

Are we requiring a minimum subscription to complete the rights offering?

There is no minimum subscription requirement in the rights offering. However, our board of directors reserves the right to cancel the rights offering for any reason, including if our board of directors believes that there is insufficient participation by our subscription rights holders. If the rights offering is canceled, all subscription proceeds received by the subscription agent will be returned, without interest or penalty.

Have any shareholders committed to exercise their subscription rights?

We have no commitments from any shareholder to participate in the rights offering at this time. However, subsequent to our announcement on August 5, 2011 of the terms of the rights offering, Bulldog Investors and Leap Tide Capital Management, Inc. and affiliates, which own 17.9% and 7.3%, respectively, of our outstanding shares, have each indicated their intention to participate fully in the rights offering and to subscribe for additional shares pursuant to the over-subscription privilege.

Are there any other conditions to the completion of the rights offering?

Yes. The completion of the rights offering is subject to the conditions described under "The Rights Offering - Conditions, Withdrawal and Termination."

Can the board of directors cancel, change or extend the rights offering?

Yes. We may cancel the rights offering at any time prior to the expiration date for any reason. If the rights offering is canceled, all subscription payments received by the subscription agent will be returned, without interest or penalty, as soon as practicable to those persons who subscribed for shares in the rights offering.

vi

Our board of directors also reserves the right to change the terms of the rights offering. If we should make any fundamental changes to the terms set forth in this prospectus, we will file a post-effective amendment to the registration statement in which this prospectus is included, offer potential purchasers who have subscribed for shares the opportunity to cancel such subscriptions and issue a refund of any money advanced by such shareholder and recirculate an updated prospectus after the post-effective amendment is declared effective by the SEC. In addition, upon such event, we may extend the expiration date of this rights offering to allow holders of rights ample time to make new investment decisions and for us to recirculate updated documentation. Promptly following any such occurrence, we will issue a press release announcing any changes with respect to this rights offering and the new expiration date. The terms of the rights offering cannot be changed after the expiration date of the rights offering. Although we do not presently intend to do so, we may choose to change the terms of the rights offering for any reason, including, without limitation, in order to increase participation in the rights offering. Such changes may include a change in the subscription price although no such change is presently contemplated.

We also have the option to extend the rights offering for a period not to exceed 30 days, although we do not presently intend to do so. If we elect to extend the expiration of the rights offering, we will issue a press release announcing such extension no later than 9:00 a.m., New York City time, on the next business day after the most recently announced expiration of the rights offering. We will extend the duration of the rights offering as required by applicable law or regulation and may choose to extend it if we decide to give investors more time to exercise their subscription rights in this rights offering. If we extend the rights offering by more than 30 days or if we make any fundamental change to the rights offering, you may cancel your subscription and receive a refund of any money you have advanced.

When will I receive my subscription rights certificate?

As soon as practicable after the date of this prospectus, the subscription agent will send a subscription rights certificate to each registered holder of our common stock as of the close of business on the record date, based on our shareholder registry maintained at the transfer agent for our common stock. If you hold your shares of common stock through a brokerage account, bank, or other nominee, you will not receive an actual subscription rights certificate. Instead, as described in this prospectus, you must instruct your broker, bank or nominee whether or not to exercise rights on your behalf. If you wish to obtain a separate subscription rights certificate, you should promptly contact your broker, bank or other nominee and request a separate subscription rights certificate. It is not necessary to have a physical subscription rights certificate to elect to exercise your rights.