

Seven Arts Entertainment Inc.
Form PRER14A
September 11, 2012

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

SCHEDULE 14A
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 Section 240.14a-12

SEVEN ARTS ENTERTAINMENT INC.
(Name of Registrant as Specified in Charter)

Not applicable
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - 1) Title of each class of securities to which transaction applies: N/A
 - 2) Aggregate number of securities to which transaction applies: N/A
 - 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined): N/A
 - 4) Proposed maximum aggregate value of transaction: N/A
 - 5) Total fee paid: N/A
- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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- 1) Amount Previously Paid: N/A
- 2) Form, Schedule or Registration Statement No.: N/A
- 3) Filing Party: N/A
- 4) Date Filed: N/A



SEVEN ARTS ENTERTAINMENT INC.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON SEPTEMBER 26, 2012

To the Stockholders of Seven Arts Entertainment Inc.:

Notice is hereby given that a special meeting of the stockholders of Seven Arts Entertainment Inc. ("Company") will be held on September 7, 2012 at 9:00 a.m., local time, at Company's principal offices at 8439 Sunset Boulevard, Suite 402, West Hollywood, CA 90069, for the following purposes:

1. Amendment to Articles. To approve an amendment to our Amended Articles of Incorporation to
 - (i) designate 1,000,000 shares of the Company's capital stock as one or more series of preferred shares and 249,000,000 shares of the Company's capital stock as common shares, and
 - (ii) authorize the Board of Directors to increase or decrease the number of shares of common stock of the Company and to reclassify unissued shares of common stock as other forms of capital stock, without stockholder approval.
2. Issuance of Up To 200,000 Shares of Amended Series B Preferred Stock. To re-authorize the Board of Directors to issue up to 200,000 shares of Amended Series B Preferred Stock and to ratify the issuance of 181,850 shares of Series B Preferred Stock.
3. Approval Of Revised 2012 Stock Incentive Plan. To authorize the Board to increase the number of shares of the Company's common stock issuable in the Company's 2012 Stock Incentive Plan from 500,000 to 10,000,000.
4. Issuance Of Up To 125,125 Shares of Series A Preferred Stock. To authorize the Board of Directors to issue up to 125,125 shares of Series A Preferred Stock and to ratify the issuance of 125,125 shares of Series A Preferred Stock.
5. Ratification and Approval Of Securities Purchase Agreement, including related transactions, With JMJ Financial. To ratify and approve the Securities Purchase Agreement, including related transactions, between the Company and JMJ Financial.
6. Ratification and Approval Of Securities Purchase Agreement, including related transactions, With Tonaquint, Inc. To ratify and approve the Securities Purchase Agreement, including related transactions, between the Company and Tonaquint, Inc.
7. Approval Of Issuance Of Up To 5,000,000 Shares Of Our Common Stock Potentially Below The Greater Of Our Common Stock's Book Value Per Share Or Market Value. To authorize the Board of Directors to issue up to 5,000,000 shares of common stock at a price potentially below the greater of each common share's book value or

market value on the date of issuance.

8. **Other Business.** To transact such other business as may properly come before the special meeting of stockholders or any adjournment thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this Notice.

Our board of directors has fixed the close of business on August 31, 2012 as the record date for determining the stockholders entitled to notice of and to vote at this special meeting of stockholders and at any adjournment thereof.

We have decided to take advantage of the rules of the Securities and Exchange Commission that allow issuers to furnish proxy materials to their stockholders on the Internet. We believe that the rules will allow us to provide our stockholders with the information they need, while lowering the costs of delivery. Whether or not you expect to attend the special meeting of stockholders in person, it is important that your shares are represented. Please vote as soon as possible.

By Order of the Board,

By: /s/ Peter M. Hoffman
Peter M. Hoffman
Chief Executive Officer
Los Angeles, California

September __, 2012

SEVEN ARTS ENTERTAINMENT INC.
8439 SUNSET BLVD., SUITE 402
WEST HOLLYWOOD, CA 90069

PROXY STATEMENT

GENERAL INFORMATION

Proxy Solicitation

This proxy statement is furnished to stockholders of Seven Arts Entertainment Inc., a Nevada corporation (the “Company”), in connection with our solicitation of proxies for use in voting at our special meeting of stockholders (the “Special Meeting”) to be held on September 26, 2012 at 9:00 a.m., local time, at 8439 Sunset Blvd., Suite 402, West Hollywood, CA 90069 or at any adjournment thereof. The purposes of the Special Meeting and the matters to be acted upon are set forth in the accompanying Notice relating to the Special Meeting. Our board of directors (the “Board”) is not currently aware of any other matters that will come before the Special Meeting.

Pursuant to the rules adopted by the Securities and Exchange Commission (the “SEC”), we have elected to provide access to our proxy materials over the Internet. Accordingly, we are sending a Notice of Internet Availability of Proxy Materials (the “Notice”) to our stockholders. All stockholders will have the ability to access the proxy materials on a website referenced in the Notice or request to receive a printed set of the proxy materials. Instructions regarding how to access the proxy materials over the Internet or to request a printed copy may be found on the Notice. In addition, stockholders may request to receive proxy materials in printed form by mail or electronically by email on an ongoing basis.

The Notice was mailed to stockholders, and the proxy materials were first given to stockholders via Internet access, on or about September __, 2012. On or before the time that the Notice was sent to stockholders, all materials identified in the Notice were publicly accessible, free of charge, at the website address specified in the Notice (<http://www.Shareholdermaterial.com/SAPX>) Such materials will remain available on that website for twelve months subsequent to the conclusion of the Special Meeting.

Our officers, agents and employees may communicate with stockholders, banks, brokerage houses and others by telephone, facsimile or in person to request that proxies be furnished. All expenses incurred in connection with this solicitation will be borne by us.

Voting and Proxy Revocability

If you are a stockholder of record, you may vote in person at the Special Meeting. We will give you a ballot when you arrive. If you are a record stockholder, but you do not wish to vote in person or if you will not be attending the Special Meeting, you may vote by proxy. You can vote by proxy over the Internet by following the instructions provided in the Notice. If you are a beneficial owner of shares held in street name, follow the voting instructions provided in the Notice and in any correspondence from the record stockholder.

You may revoke the authority granted by your execution and delivery of a proxy at any time before its effective exercise by delivering to the Company a written notice of revocation or a duly executed proxy bearing a later date, or by voting in person at the Special Meeting. If you deliver an executed proxy, and it is not subsequently revoked, your shares will be voted in the manner you direct on your proxy card. If no specifications are given, your shares will be

voted in favor of Proposals No. 1 through No. 5 and in the discretion of the proxy holders as to any other matters that may properly come before the Special Meeting.

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Record Date and Voting Rights

Only stockholders of record at the close of business on August 31, 2012 are entitled to notice of and to vote at the Special Meeting or any adjournment thereof. On August 31, 2012, there were 2,907,100 shares of our common stock outstanding, each of which is entitled to one vote on each of the matters to be presented at the Special Meeting. On August 31, 2012, there were outstanding 125,125 shares of our Series A Preferred Stock and 181,850 shares of our Series B Preferred Stock outstanding, which represent in total 208,569 (i.e., 119,166 and 89,403) votes on each of the matters to be presented at the Special Meeting. No Holder of the Series B Preferred Stock will be entitled to vote with respect to ratification of Proposal No. 2, which affects holders of Series B Preferred Stock.

A third of the outstanding shares entitled to vote must be present in person or represented by proxy at the Special Meeting in order to have a quorum for transaction of business. Abstentions and broker non-votes will be counted for purposes of determining the presence or absence of a quorum. "Broker non-votes" are shares held by brokers or nominees which are not voted on a particular matter because instructions have not been received from the beneficial owner. If there is a quorum:

Upon the approval of a majority of the votes cast, the amendment to our Amended Articles of Incorporation to (i) designate 1,000,000 shares of the Company's capital stock as one or more series of preferred shares and 249,000,000 shares of the Company's capital stock as common shares, and (ii) authorize the Board of Directors to increase or decrease the number of shares of common stock of the Company and to reclassify unissued shares of common stock as other forms of capital stock, without stockholder approval will be approved.

Upon the approval of a majority of the votes cast, excluding the votes of any Series B Preferred Stock, the Board will be re-authorized to issue up to 200,000 shares of Amended Series B Preferred Stock, and the issuance of 181,850 shares of Series B Preferred Stock by the Board will be ratified.

Upon the approval of a majority of the votes cast, the Board will be authorized to amend the Company's Revised 2012 Stock Incentive Plan to increase the number of common shares issuable from 500,000 to 10,000,000 shares.

Upon the approval of a majority of the votes cast, excluding the votes of any Series A Preferred Stock, the Board will be authorized to issue up to 125,125 shares of Series A Preferred Stock will be satisfied.

Upon the approval of a majority of the votes cast, the Securities Purchase Agreement between the Company and JMJ Financial will be ratified and approved.

Upon the approval of a majority of the votes cast, the Securities Purchase Agreement between the Company and Tonaquint, Inc. will be ratified and approved.

Upon the approval of a majority of the votes cast, the Board will be authorized to issue up to 5,000,000 shares of common stock at a price potentially below the greater of the Company's common stock book value and market value.

If you are a beneficial holder and do not provide specific voting instructions to your broker, the organization that holds your shares will not be authorized to vote on the proposed reverse split of our common stock. Accordingly, we encourage you to vote promptly, even if you plan to attend the Special Meeting.

PROPOSAL NO. 1 – ADOPTION OF AMENDMENT TO AMENDED ARTICLES OF INCORPORATION TO (1) DESIGNATE 1,000,000 SHARES OF THE COMPANY’S CAPITAL STOCK AS ONE OR MORE SERIES OF PREFERRED SHARES AND 249,000,000 SHARES OF THE COMPANY’S CAPITAL STOCK AS COMMON SHARES, AND (2) AUTHORIZE THE BOARD OF DIRECTORS TO INCREASE OR DECREASE THE NUMBER OF SHARES OF COMMON STOCK OF THE COMPANY AND TO RECLASSIFY UNISSUED SHARES OF COMMON STOCK AS OTHER FORMS OF CAPITAL STOCK, WITHOUT STOCKHOLDER APPROVAL

Background. As originally filed, our Articles of Incorporation authorized 714 shares of capital stock. On March 25, 2012 at our 2012 Annual Meeting, our stockholders adopted an amendment to our then Amended Articles of Incorporation to increase the authorized shares of capital stock to 250,000,000. On August 20, 2012, the Board approved a reduction in the authorized shares of common stock of the Company to 35,667,839 in connection with the second phase of a reverse split of the Company’s shares of common stock, the first phase of which was authorized by the stockholders at the 2012 Annual Meeting. The Board proposes that the Amended Articles of Incorporation be further amended to (1) designate 1,000,000 shares of the Company’s capital stock as one or more series of preferred shares and 249,000,000 shares of the Company’s capital stock as common shares, and (2) authorize the Board of Directors to increase or decrease the number of shares of common stock of the Company and to reclassify unissued shares of common stock as other forms of capital stock, without stockholder approval.

On August 31, 2012, the Company effectuated a 1-for-70 reverse split of its common stock as of the close of the markets on that day. All of the share numbers and related share, conversion, or exercise prices referenced in this Proxy Statement have been adjusted to reflect the reverse split.

Purpose of Amendment

The Board believes that it is advisable and in our best interests and those of our stockholders to have available additional authorized but unissued shares of common stock in order to maintain our flexibility to use such shares for business and/or financing purposes in the future. The newly designated shares of common stock, if and when issued, will have the same rights and privileges as the shares of common stock currently authorized, issued and outstanding. The purposes of the designation of the number of shares of common and preferred stock and the authorization of the Board to reclassify common shares as other classes of capital stock or reduce or increase shares of common stock are:

- Raising capital,
- Expanding our business through acquisitions and other strategic transactions,
 - Paying stock dividends or effecting stock splits,
- Providing equity incentives to employees, officers and directors, and
 - Other general corporate purposes.

Our current plans, agreements, arrangements, or understandings for the issuance of additional shares relate solely to (i) the shares of our common stock underlying the convertible securities disclosed in the Company’s prior filings on Form 10-Q with the Securities and Exchange Commission, and (ii) in respect of any transactions potentially contemplated by Proposal No. 7 in this Proxy Statement, and (iii) the shares of common stock, if any, that may be issued pursuant to our filed, but not yet effective, registration statement.

Like the currently authorized but unissued shares of our common stock, any additional shares of common stock authorized by this proposal would be available for issuance without further action by our stockholders, unless further action is required by law. The authorization of additional shares of common stock will enable us, as the need may arise, to take advantage of market conditions and favourable opportunities without the delay and expense associated with the holding of a special meeting of our stockholders.

Possible Effects Of Increasing Our Authorized Capital Stock and Designating 249,000,000 Shares Thereof As Common Stock

The additional shares of common stock, by reason of their designation, would have the same rights and privileges as the shares of common stock currently authorized, issued, and outstanding. Any issuance of additional shares of common stock would increase the number of outstanding shares of common stock and (unless such issuance was pro-rata among existing stockholders) the percentage ownership of existing stockholders would be diluted accordingly.

Although an increase in the authorized shares of common stock could, under certain circumstances, also be construed as having an anti-takeover effect (for example, by permitting easier dilution of the stock ownership of a person seeking to effect a change in the composition of our Board or contemplating a tender offer or other transaction resulting in our acquisition by another company), the proposed increase in shares authorized is not in response to any effort by any person or group to accumulate our common stock or to obtain control of us by any means. In addition, the proposal is not part of any plan by our Board to recommend or implement a series of anti-takeover measures.

Resolution Adopting the Proposed Amendment

The following resolution, which will be presented at the Special Meeting, will adopt the proposed amendment to our Amended Articles of Incorporation to increase our authorized shares of capital stock.

RESOLVED, that Article III of the Articles of Incorporation, as amended, is hereby amended to read in its entirety as follows:

Article III

The aggregate number of shares which the corporation shall have the authority to issue is 250,000,000 shares of stock at \$0.01 per value. The number of shares of common stock is designated as 249,000,000 and the number of shares of one or more classes of preferred stock is 1,000,000. The Board of Directors shall have the authority to increase or decrease the number of shares of common stock and to reclassify any share of common stock as one or more classes of capital stock other than common stock.

The proposed increase of the authorized shares of capital stock would become effective immediately upon the filing of the Share Increase Amendment with the office of the Secretary of State of the State of Nevada. We expect to file the Share Increase Amendment with the Secretary of State of the State of Nevada promptly upon approval by our stockholders. However, the Board reserves its right to elect to abandon the Share Increase Amendment if it determines, in its sole discretion, that this proposal is no longer in our best interests or those of our stockholders.

Our Board recommends a vote FOR approval of the amendment of our Amended Articles of Incorporation to (1) designate 1,000,000 shares of the Company's capital stock as one or more classes of preferred shares and 249,000,000 shares of the Company's capital stock as common shares, and (2) authorize the Board of Directors to increase or decrease the number of shares of common stock of the Company and to reclassify unissued shares of common stock as other forms of capital stock, without stockholder approval.

PROPOSAL NO. 2 — RE-AUTHORIZE THE BOARD OF DIRECTORS TO ISSUE UP TO 200,000 SHARES OF AMENDED SERIES B PREFERRED STOCK
AND RATIFY THE ISSUANCE OF 181,850 SHARES OF SERIES B PREFERRED STOCK.

Background

At the Annual Meeting held on March 25, 2012 (“2012 Annual Meeting”), the Board of Directors sought approval from stockholders of the transaction with David Michery (as discussed in more detail below), which resulted in the issuance of 100,000 shares of the Company’s Series B preferred stock to Mr. Michery and the other individuals transferring ownership of certain music assets to the Company. The Board of Directors sought approval under the “Any Other Business” portion of the Annual Meeting. The stockholders granted such approval, both voting separately and voting with the votes of the holders of the “Series B preferred stock. ”

The Company failed to file with NASDAQ a copy of the Certificate of Designation of Rights and Preferences of the Series B Preferred Stock (“Certificate”) and the agreements for the issuance of 181,850 shares of Series B preferred stock at least 15 days prior to the issuance of such shares by the Company on February 23 , 2012. Upon review of the Certificate, in a letter dated July 3, 2012, NASDAQ determined that the Certificate violated NASDAQ Listing Rule 5640 in that: (1) the conversion price adjustment in Paragraph 6(H) of the Certificate could cause the conversion price to be reduced below the closing bid of the Company’s common stock immediately preceding the entering into of a binding agreement to issue any shares of Series B preferred stock, and (2) the right of the holder to vote as a class to elect two members of the Board of Directors of the Company did not take into account subsequent reductions in the holder’s “ownership position.”

The NASDAQ Staff also stated that they would not accept such stockholder approval at the 2012 Annual Meeting since (1) the requests for the approval and the terms of the Certificate were not included in the Company’s Proxy Statement and were approved as Other Business, and (2) the Series B stockholders were permitted to vote on such approval even though there were sufficient votes to approve the Certificate and the issuance of Series B preferred stock, without reference to the votes of any holder of Series B preferred stock, and without reference to any votes obtained by proxy (as well as assuming that all proxy votes opposed the motion).

NASDAQ Delist Letter

NASDAQ issued a letter dated July 30, 2012 stating its intension to delist the Company's common stock by reason of the violation or alleged violation of NASDAQ rules for the following reasons:-

1. Violation of Stockholder Approval Rules. NASDAQ stated that the Company entered into a binding agreement with the stockholders of Big Jake Music ("BJM") on September 29, 2011 for the purchase of BJM ("BJM Purchase Agreement") under which the Company could potentially issue up to 7.1 million shares of the Company's common stock on conversion of up to \$5,000,000 of a new issue of the Company's Series B preferred stock ("Series B Preferred"), which amounts on conversion would result in an issuance of 20% or more of the voting power of the Company outstanding common stock immediately prior to September 29, 2011, a purported violation of Listing Rule 5635(a)(1). Management believes that no binding agreement was entered into with the shareholders of BJM on September 29, 2011 or until February 23, 2012, since substantial closing conditions for such acquisition had not then been met and would never be met, which required substantial renegotiation of the material terms and conditions of the BJM Purchase Agreement with the shareholders of BJM. Until February 23, 2012, no Series B Preferred was authorized by the Board; no certificates of designation were filed with the State of Nevada; and no shares were issued to BJM's shareholders or into the escrow; hence, no shareholders of BJM had any voting or ownership rights with respect to the Company's common stock under Nevada law or otherwise until February 23, 2012. Notwithstanding the difference in opinion between the Company and the NASDAQ Staff concerning the effective date of the BJM Purchase Agreement (which date may be relevant for calculation of the above-referenced 20% voting power issue), the NASDAQ Staff stated that the Company violated its Rules because the conversion adjustment provisions of the Series B Preferred could result in the holders ultimately having more than 20% of the voting power or ownership rights with respect to the Company's common stock, as calculated in accordance with the Rules. The NASDAQ Staff also stated that the Company failed to respond to its requests for copies of the BJM Purchase Agreement.

NASDAQ also stated that the Company further violated Listing Rule 5635(a)(1) by acquiring certain music assets of David Michery ("Michery") in a binding agreement on December 19, 2011 ("Michery Acquisition Agreement") for up to \$10,000,000 of Series B Preferred, which could result on conversion in the issuance of up to 9 million shares of the Company's common stock, which would have been more than 20% of the voting power of the Company outstanding immediately prior to December 19, 2011. Management believes no binding agreement was entered into with Michery on December 19, 2011 or before February 23, 2012, since substantial closing conditions for such acquisition had not then been met and would never be met, which required substantial renegotiation of the material terms and conditions of the Michery Acquisition Agreement. Until February 23, 2012, no Series B Preferred was authorized by the Board; no certificate of designation was filed with the State of Nevada; and no shares were issued to Michery or to any person; hence, Michery did not have any voting or ownership rights with respect to the Company's common stock under Nevada law or otherwise until February 23, 2012.

On February 23, 2012, the shareholders of BJM received \$1,000,000 of Series B preferred stock with the balance of \$7,000,000 of Series B Preferred to be placed in escrow with our counsel. Management believes it is unlikely that such escrowed Series B Preferred will be ever delivered to the shareholders of BJM, and has not authorized counsel to vote such shares. On February 22, 2012, the holders of Series B Preferred by reason of the sale of BJM would own on conversion of such Series B Preferred less than 20% of the common stock of the Company issued and outstanding on February 22, 2012, including conversion of Series A preferred stock.

Management determined to seek approval of the Michery Acquisition Agreement at the 2012 Annual Meeting as Other Business, which, it believed, eliminated any potential violation of Listing Rule 5635(1)(i). Such approval was obtained at the 2012 Annual Meeting by (i) the common shares physically present at the Annual Meeting, (ii) the common shares present at the Annual Meeting by proxy, and (iii) by Michery. NASDAQ objected to this stockholder approval because that specific matter was not disclosed in the Proxy Statement and because Michery voted his Series B Preferred shares in favor of the transaction (as permitted under Nevada law). Further, the Proxy Statement included requested approval of a proposal for any financing transactions approved by the Board, even at a below market or

book value price, which could result in an issuance of 20% more of the voting rights or common stock to the issuee. This proposal was also adopted by the stockholders.

However, in light of NASDAQ's concern that the terms of the Series B Preferred violate its Rules, the Company has (a) amended the Series B Preferred ("Revised Series B Preferred") to remediate any such NASDAQ Listing Rule violations in respect of the Series B Preferred and (b) has called this Special Meeting to seek, among other purposes, the ratification of the Certificate of Designation of the Revised Series B Preferred and the approval of the issuance of up to 181,850 shares of Revised Series B Preferred pursuant to the BJM Purchase Agreement and Michery Acquisition Agreement, as discussed below.

2. Violating of Voting Rights Rules. NASDAQ stated that the terms of the Series B Preferred issued pursuant to the BJM Purchase Agreement and the Michery Acquisition Agreement violated Listing Rule 5640 because the conversion adjustment provisions of the Series B Preferred could result in the Series B Preferred voting on an as-if-converted basis based on a conversion price that could potentially be lower than \$.25, the closing bid price on February 22, 2012. This possibility has been eliminated in the Revised Series B Preferred.

The NASDAQ Staff also stated that the terms of the Series B Preferred, which provided those holders with the right to elect two of our directors, violated Listing Rule 5640, as such right does not “step down” after conversion of Series B Preferred to a proportionate number of directors to the remaining unconverted shares of Series B Preferred. The Revised Series B Preferred eliminates any voting by the holders of Series B Preferred when less than 100,000 shares of Revised Series B Preferred remain outstanding.

3. Failure To Timely Submit Notification And Respond To Staff Requests . The NASDAQ Staff stated that the Company did not timely submit listing applications for the BJM Purchase Agreement and the Michery Acquisition Agreement and did not timely respond to Staff requests for information relating to share issuances. The BJM deal began when we were still a foreign private issuer .At the time we believed that no listing application was required for the BJM Purchase Agreement by reason of our status as a foreign issuer. We have now filed appropriate listing applications for the BJM Purchase Agreement and Michery Acquisition Agreement.

4. Company’s Financial Condition. In issues not heretofore raised with us, the NASDAQ Staff questioned whether we are able to operate our business, pay our employees and suppliers and otherwise meet our obligations as a public company, even though we have done so for the twenty years we and our predecessors have been in business, and have no going concern qualification in any accounting statement. We had provided NASDAQ a cash flow projection for 18 months which showed positive and substantial cash flow. The NASDAQ Staff cited our “extremely low stock price” as a concern. We acknowledge that many factors could result in a low trading price. Further, the NASDAQ Staff cited our dispute with NASDAQ over the fee for the listing of additional shares which we contested for the reasons set forth above, but paid when our protests were unsuccessful. Lastly, NASDAQ cites our disclosure of the investigation of tax credits in New Orleans by the US Attorney’s Office, which tax credits have been re-audited and confirmed. No charges have been brought against any officer of the Company or any of its subsidiaries and none is pending. None of the foregoing in the opinion of management affects or will affect our on-going business.

Neither the Company nor any holder of Series B preferred stock intended that the Series B preferred stock would have voting rights that would exceed those of the common stockholders, as measured on the date of issuance of the Series B, at any point in time. However, to eliminate any doubt on the matter, the Company and the holders have agreed to amend the Certificate as set forth on the Correct Certificate of Designation of Series B Preferred Stock attached hereto as Annex B (“Amended Series B Preferred Stock”) to reflect the Company’s and such holders’ intent:

- A. That the Series B preferred stock shall not be entitled to vote on an as-if-converted into common shares basis at a conversion price of less than \$.2501 per common share (the closing bid price on February 22, 2012, the trading day immediately preceding the date of issuance of the Series B preferred stock). This limitation shall remain in effect so long as the Series B preferred stock remains outstanding and shall not be impacted by any vote of the stockholders to re-authorize the issuance of the Series B preferred stock or to ratify the Series B preferred stock currently outstanding
- B. To provide that the rights of the holders of Series B preferred stock to elect two directors of the Company will terminate if less than 100,000 shares of Series B preferred stock are outstanding.
- C. There will be no conversion of any shares of the Series B preferred stock until the earlier of September 30, 2012, or approval of the issuance of the Amended Series B Preferred Stock by the stockholders. If stockholder approval has not been obtained for the Series B preferred stock by September 30, 2012, then the holders of the Series B preferred stock shall have the right to convert the Series B preferred stock into 89,404 shares, which represents 19.99% of the total capital shares outstanding on February 22, 2012, which was the last trading day immediately prior to the execution of the binding, definitive agreement for the issuance of the 181,850 shares of Series B preferred stock currently outstanding, on a pro rata basis. Notwithstanding the foregoing, the holders of the Series B preferred stock are currently entitled to vote their shares on an as-if-converted basis up to 89,404, which represents 19.99% of the issued and outstanding capital stock on February 22, 2012, the last trading day immediately prior to the execution of the binding definitive agreement for the issuance of the Series B preferred stock, on a pro rata basis.

On filing of the Amended Series B Preferred Stock as shown on Annex B, the Certificate has no further force or effect and the rights of the holders shall be as set forth on Annex B.

Need for Stockholder Approval

The Company is amending the Certificate and seeking stockholder approval for the re-authorization of the Series B preferred stock and the ratification of the issuance of the Series B preferred stock currently outstanding in response to concerns that have been raised by NASDAQ regarding the Company's compliance with the NASDAQ shareholder approval and voting rights rules, as set forth in NASDAQ Listing Rules 5635 and 5640, respectively. Notwithstanding, the Company is not able to provide any assurances that these actions will be accepted by NASDAQ or that the Company's common shares will not be delisted from The NASDAQ Capital Market in the future.

In connection with the issuance of 100,000 shares of Series B preferred stock, we also became obligated to issue an additional 1,850 shares such that the total number of shares of Series B preferred stock that are included in this Proposal 2 is 181,850.

Furthermore, stockholder approval does not obviate the need for compliance with the requirements of the Securities Exchange Act of 1934 (the "Exchange Act") or other NASDAQ CM requirements.

Increased Dilution

By the way of example if we assume a conversion price of \$35.00, we would have an additional approximately 514,286 shares of common stock outstanding if all the Amended Series B Preferred Stock is converted into common stock. You should, therefore, consider the potential dilution in determining whether to approve this proposal.

Potential Negative Effect On Our Stock Price

If Proposal No. 2 receives the necessary approval and we are authorized to issue additional shares of our common stock upon the conversion of the Amended Series B Preferred Stock, all of those shares will become eligible for sale in the public markets, after expiration of the six-month holding period (from the initial issuance of the Series B Preferred Stock, or, under certain circumstances, the expiration of any relevant escrow period) required under Rule 144 of the Securities Act of 1933. These shares could become eligible for resale in the public markets earlier if we file a registration statement with the SEC covering the resale of the shares and such registration statement is declared effective. Any such sales, or the anticipation of the possibility of such sales, would represent an overhang on the market and could depress the market price of our common stock.

Vote Required; Board of Directors' Recommendation

The approval of our proposal to re-authorize the Board to issue of the Amended Series B Preferred Stock and to ratify the issuance 180,000 shares of Amended Series B Preferred Stock will require the affirmative vote of at least a majority of the votes cast by the holders of shares of common stock present or represented at the Special Meeting and entitled to vote.

Resolution Granting Board Authority

The following resolution will be presented at the Special Meeting to grant authority to the Board to re-authorize the issuance of up to 200,000 shares of Amended Series B Preferred Stock and to ratify the issuance of 181,850 of Series B preferred stock currently outstanding.

RESOLVED, the Board of Directors of the Company shall have the authority to issue up to 200,000 shares of Amended Series B Preferred Stock and the issuance of the 181,850 shares of Series B Preferred Stock currently outstanding is hereby ratified.

Our Board recommends a vote FOR the grant of authority to the Board of Directors to issue up to 200,000 shares of Amended Series B Preferred Stock and to ratify the issuance of 181,850 shares of Series B Preferred Stock .

PROPOSAL NO. 3 – APPROVAL OF REVISED 2012 STOCK INCENTIVE PLAN

The Plan

Our Board of Directors unanimously approved the 2012 Stock Incentive Plan (the “2012 Plan”) on January 11, 2012, subject to stockholder approval at the 2012 Annual Meeting, which occurred on March 25, 2012. Our Board of Directors is requesting that our stockholders approve a revision to the 2012 plan because of its belief that an increase in the number of shares of common stock of the Company available under the Revised 2012 Plan is in the Company’s interest and that of our stockholders (“Revised 2012 Plan”). The following summary of certain features of the Revised 2012 Plan is qualified in its entirety by reference to the actual text of the Revised 2012 Plan, which is attached as Annex C to this Proxy Statement. If approved by the stockholders, the Compensation Committee or our Board of Directors may suspend or terminate the 2012 Plan at any time.

The Revised 2012 Plan provides for the grant to employees, including executive officers, of restricted stock, as well as cash or other stock-based awards and other benefits. The purpose of the Revised 2012 Plan is to enable us to attract and retain qualified persons as employees, officers and directors and others, whose services are required by us, and to motivate such persons by providing them with equity participation in us.

A maximum of 10,000,000 shares of common stock may be issued and awarded under the Revised 2012 Plan . The maximum number of shares of common stock that may be subject to stock awards granted to any one participant during any single year period is 5,000,000.

The Revised 2012 Plan is administered by the Compensation Committee, which has, subject to specified limitations, the full authority to grant equity awards and establish the terms and conditions for vesting and exercise thereof. Awards of restricted stock under the Revised 2012 Plan may qualify for the “performance-based compensation” exception under Internal Revenue Code Section (the “IRC”) Section 162 (m) pursuant to their expected terms. Cash-based awards and awards of restricted stock, performance units and stock may qualify under Section 162(m) of the IRC if the terms of the award of the state, in terms of an objective formula or standard, the method of computing the amount of compensation payable under the award and preclude discretion to increase the amount of compensation payable under the terms of the award.

Unless the Compensation Committee determines otherwise, if a recipient of restricted stock ceases to have a relationship with our Company, non-vested shares of restricted stock shall be forfeited. The Compensation Committee may grant cash awards at such times and in such amounts as it deems appropriate. The Compensation Committee may grant has the right to grant other stock-based awards, which may include the grant of Common Stock based on certain conditions, the payment of cash based on the market performance of our Common Stock and the grant of certain securities convertible into Common Stock.

With respect to awards of restricted stock, if no election is made under Section 83(b) of the IRC and repurchase rights of the shares are retained by us, a taxable event will occur on each date the participant's ownership rights vest as to the number of shares that vest on that date, and the holding period for capital gains purposes will not commence until the date the shares vest. Any dividends received with respect to shares subject to the restrictions will be treated as additional compensation income and not as dividend income. The participant will recognize ordinary income on each date shares vest in an amount equal to the excess of the fair market value of such shares on that date over the amount paid for such shares. Any income recognized by a participant, who is an employee, will be subject to employment taxes and income tax withholding by us out of the participant's current compensation. If such compensation is insufficient to cover the amount to be withheld, the participant will be required to make a direct payment to us for the balance of the tax withholding obligation. We are entitled to a tax deduction in an amount equal to the ordinary income recognized by the participant. The participant's basis in the shares will be equal to the purchase price, if any, increased by the amount of ordinary income recognized. If instead a Section 83(b) election is made not later than 30 days after the date of transfer, then the participant will recognize ordinary income on the date of purchase in an amount equal to the excess of the fair market value of such shares on the date of purchase over the purchase price paid for such shares. Any change in the value of the shares after the date of grant will be taxed as a capital gain or capital loss only if and when the shares are disposed of by the participant. If the Section 83(b) election is made, the participant's holding period for capital gains begins on the date of grant. The Section 83(b) election is irrevocable. If a section 83(b) election is made and the participant then forfeits the restricted stock, the participant may not deduct as a loss the amount previously included in gross income. We will be entitled to a deduction at the same time, and in an amount equal to, the ordinary income recognized by the participant with respect to shares of restricted stock.

The foregoing is only a summary of certain federal income tax consequences of the Revised 2012 Plan and is based on our understanding of present federal tax laws and regulations.

In the event of a stock dividend, recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, spin-off, combination, repurchase, or other distribution of our stock or property, or other change in our corporate structure, the Compensation Committee may, in its sole discretion, in order to prevent diminution or enlargement of a participant's benefits under the Revised 2012 Plan, substitute or adjust the number and class of shares that may be delivered under the Revised 2012 Plan and/or the number, class and price of shares covered by an outstanding award.

If a change in control of the Company occurs, then, to the extent permitted by applicable law, the surviving corporation may assume all awards then-outstanding under the Revised 2012 Plan or substitute similar awards in lieu of awards granted under the Revised 2012 Plan. If a change in control occurs, the compensation committee may, among other things, provide for acceleration of benefits, lapsing of restrictions and vesting of benefits for any award that has been outstanding for at least six months, or provide for cash payments to be made to holders of certain awards and