Performant Financial Corp
Form S-1/A
April 16, 2013


**As filed with the Securities and Exchange Commission on April 16, 2013**

**Registration No. 333-187851**

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# Amendment No. 1

# to

## Form S-1

## REGISTRATION STATEMENT

***Under***

**THE SECURITIES ACT OF 1933**

# PERFORMANT FINANCIAL CORPORATION

**(Exact name of registrant as specified in its charter)**

| | | |
|---|---|---|
| **Delaware** | **7389** | **20-0484934** |
| **(State or other jurisdiction of incorporation or organization)** | **(Primary Standard Industrial Classification Code Number)** | **(I.R.S. Employer Identification No.)** |

**333 North Canyons Parkway**

**Livermore, California 94551**

**(925) 960-4800**

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

**Lisa Im**

**Chief Executive Officer**

**333 North Canyons Parkway**

**Livermore, California 94551**

**(925) 960-4800**

**(Name, address, including zip code, and telephone number, including area code, of agent for service)**

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

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, 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, please 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 post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a 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 x (Do not check if a smaller reporting company) Smaller reporting company ¨

**CALCULATION OF REGISTRATION FEE**

| Title of each class of securities to be registered | Amount to be Registered[(1)] | Proposed Maximum Offering Price Per Share[(2)] | Proposed maximum aggregate offering price[(2)] | Amount of registration fee |
|---|---|---|---|---|
| Common Stock, $.0001 par value per share | 1,475,000 | $12.24 | $18,054,000 | $2,463 |

(1) Represents only the additional number of securities being registered and it does not include the 6,000,000 shares that the Registrant previously registered on the Registration Statement on Form S-1 (File No. 333-187851).

(2) Estimated solely for purposes of calculating the amount of the registration fee pursuant to Rule 457(a) of the Securities Act of 1933, as amended. In accordance with Rule 457(c) of the Securities Act of 1933, as amended, the price shown is the average of the high and low selling prices of the Common Stock on April 15, 2013, as reported on the NASDAQ Global Select Market.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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

*PROSPECTUS (Subject to Completion)*

*Issued April 16, 2013*

# *6,500,000 Shares*

## *COMMON STOCK*

***The selling stockholders are offering 6,500,000 shares of common stock. We will not receive any proceeds from the sale of shares by the selling stockholders.***

***Our common stock is listed on The NASDAQ Global Select Market under the symbol PFMT. On April 15, 2013, the last sale of our common stock as reported on The NASDAQ Global Select Market was $12.25 per share.***

***Investing in our common stock involves risks. See Risk Factors beginning on page 12.***

*PRICE $ A SHARE*

| | Price to Public | Underwriting Discounts and Commissions | Proceeds to Selling Stockholders |
|---|---|---|---|
| Per Share | $ | $ | $ |
| Total | $ | $ | $ |

*See Underwriting for additional information regarding compensation.*

*The selling stockholders identified in this prospectus have granted the underwriters an option for a period of 30 days to purchase, on the same terms and conditions as set forth above, up to an additional 975,000 shares of our common stock. We will not receive any of the proceeds from the sale of shares by these selling stockholders if the underwriters exercise their option to purchase additional shares of common stock.*

*The Securities and Exchange Commission and state securities regulators have not approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.*

*The underwriters expect to deliver the shares of common stock to purchasers on , 2013.*

*GOLDMAN, SACHS & CO.* *MORGAN STANLEY*

*WELLS FARGO SECURITIES* *CREDIT SUISSE*

*WILLIAM BLAIR* *COMPASS POINT*

*, 2013*

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You should rely only on the information contained in this prospectus and any free writing prospectus we may specifically authorize to be delivered or made available to you. We have not, and the selling stockholders and the underwriters have not, authorized anyone to provide you with additional or different information. The information contained in this prospectus or any free writing prospectus is accurate only as of its date, regardless of its time of delivery or of any sale of shares of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

This prospectus is an offer to sell only the shares offered hereby but only under circumstances and in jurisdictions where it is lawful to do so.

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## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in this prospectus and does not contain all of the information you should consider before investing in our common stock. You should read this entire prospectus carefully, including our consolidated financial statements and the related notes and the information set forth under the headings Risk Factors and Management s Discussion and Analysis of Financial Condition and Results of Operations, in each case included elsewhere in this prospectus. Unless expressly indicated or the context otherwise requires, in this prospectus, Performant, we, us, our, and the Company refer to Performant Financial Corporation and, where appropriate, its subsidiaries.*

### Overview

We provide technology-enabled recovery and related analytics services in the United States. Our services help identify and recover delinquent or defaulted assets and improper payments for both government and private clients in a broad range of markets. Our clients typically operate in complex and regulated environments and outsource their recovery needs in order to reduce losses on billions of dollars of defaulted student loans, improper healthcare payments and delinquent state tax and federal treasury receivables. We generally provide our services on an outsourced basis, where we handle many or all aspects of our clients recovery processes.

We believe we have a leading position in our markets based on our proprietary technology-enabled services platform, long-standing client relationships and the large volume of funds we have recovered for our clients. Our clients include 11 of the 31 public sector participants in the student loan industry and these relationships average more than 10 years in length, including a 22-year relationship with the Department of Education. In the healthcare market, we are currently one of four prime Medicare Recovery Audit Contractors, or RACs, in the United States for the Centers for Medicare and Medicaid Services, or CMS.

We utilize our technology platform to efficiently provide recovery and analytics services in the markets we serve. We have continuously developed and refined our technology platform for almost two decades by using our extensive domain and data processing expertise. We believe our technology platform allows us to achieve higher workforce productivity versus more traditional labor-intensive outsourcing business models, as we generated in excess of $150,000 of revenues per employee during 2012, based on the average number of employees during the year. In addition, we believe that our platform is easily adaptable to new markets and processes. For example, we utilized the same basic platform previously used primarily for student loan recovery activities to enter the healthcare market.

Our revenue model is generally success-based as we earn fees based on a percentage of the aggregate amount of funds that we enable our clients to recover. Our services do not require any significant upfront investments by our clients and we offer our clients the opportunity to recover significant funds otherwise lost. Furthermore, our business model does not require significant capital expenditures for us and we do not purchase loans or obligations. We believe we benefit from a significant degree of revenue visibility due to reasonably predictable recovery outcomes in a substantial portion of our business. For the year ended December 31, 2012, we generated approximately $210.1 million in revenues, $23.0 million in net income, $69.6 million in adjusted EBITDA and $30.6 million in adjusted net income. See Adjusted EBITDA and Adjusted Net Income below for a definition of adjusted EBITDA and adjusted net income and reconciliations of adjusted EBITDA and adjusted net income to net income determined in accordance with generally accepted accounting principles.

### Our Markets

We operate in markets characterized by strong growth, a complex regulatory environment and a significant amount of delinquent, defaulted or improperly paid assets.

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### *Student Lending*

According to the Department of Education, total government-supported student loan originations were estimated to be approximately $115 billion in the year ended September 30, 2012, and the aggregate dollar amount of these loans has grown at a compound annual growth rate of 11% from 2002 through 2012. The cohort default rate, which is the measure utilized by the Department of Education to track the percentage of government-supported loan borrowers that enter repayment in a certain year ended September 30 and default by the end of the next year ended September 30, has risen from approximately 5% in 2006 to approximately 9% in 2010, the last year for which data is available.

### *Healthcare*

According to CMS, U.S. healthcare spending reached $2.7 trillion in 2011 and is forecast to grow at a 6% annual rate through 2021. CMS indicates that government-related healthcare spending for 2011 totaled approximately $1.2 trillion. This government-related spending included approximately $554 billion of payments under Medicare, of which $43 billion, or 8%, was estimated to be improper. Medicare improper payments generally involve incorrect coding, procedures performed which were not medically necessary, incomplete documentation or claims submitted based on outdated fee schedules, among other issues.

### *Other Markets*

We believe that the demand for recovery of delinquent state taxes will grow as state governments struggle with revenue generation and face significant budget deficits. According to the Center on Budget and Policy Priorities, an independent think tank, 43 U.S. states faced budget shortfalls totaling $107 billion in the year ended September 30, 2012, with at least 31 states anticipating deficits for fiscal year 2013. The federal agency market consists of government debt subrogated to the Department of the Treasury. For the year ended September 30, 2011, federal agency recoveries in this market totaled more than $6.2 billion, a significant portion of which were made by private firms on behalf of the Department of Financial Management Service, a bureau of the Department of the Treasury.

## Our Platform

Our technology-enabled services platform is based on over two decades of experience in recovering large amounts of funds on behalf of our clients across several markets. The components of our platform include our data management expertise, analytics capabilities and technology-based workflow processes. Our platform integrates these components to allow us to achieve optimized outcomes for our clients in the form of increased efficiency and productivity and high recovery rates. We believe our platform and workflow processes are also intuitive and easy to use for our recovery and claims specialists and allow us to increase our employee retention and productivity.

## Our Competitive Strengths

We believe that our business is difficult to replicate, as it incorporates a combination of several important and differentiated elements, including:

- ***Scalable and flexible technology-enabled services platform.*** We have built a proprietary technology platform that is highly flexible, intuitive and easy to use for our recovery and claims specialists. Our platform is easily configurable and deployable across multiple markets and processes.

- ***Advanced, technology-enabled workflow processes.*** Our technology-enabled workflow processes, developed over many years of operational experience in recovery services, disaggregate otherwise complex recovery processes into a series of simple, efficient and consistent steps that are easily configurable and applicable to different types of recovery-related applications.

***Enhanced data and analytics capabilities.*** Our data and analytics capabilities allow us to achieve strong recovery rates for our clients. We have collected recovery-related data for over two decades, which we combine with large volumes of client and third-party data to effectively analyze our clients delinquent or defaulted assets and improper payments. We have also developed a number of analytics tools that we use to score our clients recovery inventory, determine the optimal recovery process and allocation of resources, and achieve higher levels of recovery results for our clients.

***Long-standing client relationships.*** We believe our long-standing focus on achieving superior recovery performance for our clients and the significant value our clients derive from this focus have helped us achieve long-tenured client relationships, strong contract retention and better access to new clients and future growth opportunities.

***Extensive domain expertise in complex and regulated markets.*** We have extensive experience and domain expertise in providing recovery services for government and private institutions that generally operate in complex and regulated markets. We have demonstrated our ability to develop domain expertise in new markets such as healthcare and state tax and federal Treasury receivables.

***Proven and experienced management team.*** Our management team has significant industry experience and has successfully grown our revenue base and service offerings beyond the original student loan market into healthcare and delinquent state tax and private financial institutions receivables.

**Our Growth Strategy**

Key elements of our growth strategy include the following:

***Expand our student loan recovery volume.*** We have long-standing relationships with some of the largest participants in the government-supported student loan market, and we believe there are significant opportunities within this growing market to increase the volume of student loans placed with us by existing and new clients.

***Expand our recovery services in the healthcare market.*** As healthcare spending grows, we expect the need for recovery services to increase in the public and private healthcare markets. We intend to expand our recovery services for existing clients, such as CMS, and offer analytics services to potential clients in the private healthcare market.

***Pursue strategic alliances and acquisitions.*** We intend to selectively consider opportunities to grow through strategic alliances or acquisitions that are complementary to our business.

**Recent Developments (Unaudited)**

***Three-months ended March 31, 2013***

Our consolidated financial statements for the three-months ended March 31, 2013 are not yet available. Our expectations with respect to our unaudited results for the period discussed below are based upon management estimates. The preliminary financial results presented below are subject to the completion of our financial closing procedures and any adjustments that may result from the completion of the audit of our 2013 consolidated financial statements. Accordingly, these results may change and those changes may be material. This summary is not meant to be a comprehensive statement of our unaudited financial results for this period and our actual results may differ from these estimates. For additional information regarding the various risks and uncertainties inherent in estimates of this type, see Information Regarding Forward-Looking Statements elsewhere in this prospectus.

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We are providing the following preliminary estimates of our financial results and operating metrics for the three-months ended March 31, 2013:

***GAAP***

Revenues are expected to be between $47.5 million and $50.5 million, representing an increase of approximately 7% at the midpoint of the range compared to the three-months ended March 31, 2012. The estimated increase was primarily due to increased revenues from the student lending market. Revenues from the student lending market are estimated to be between $33.0 million and $33.5 million, representing an increase of approximately 14% at the midpoint of the range compared to the three months ended March 31, 2012. This estimated increase was due to the resolution of the Department of Education s technology system upgrade, which adversely affected our revenues in the 2012 period. Revenues from the healthcare market are estimated to be between $9.2 million and $11.2 million, representing a decrease of approximately 16% at the midpoint of the range compared to the three months ended March 31, 2012. This estimated decrease was primarily due to our inability to audit certain healthcare providers in the fourth quarter of 2012 following Hurricane Sandy, as well as a temporary interruption in our client s claim processing that delayed revenue recognition until after quarter end. We expect to recognize these revenues in the second quarter of 2013. Revenues from other markets are estimated to be between $5.3 million and $5.8 million.

Net income is estimated to be between $1.3 million and $1.9 million, representing a decrease of approximately 36% at the midpoint of the range compared to the three-months ended March 31, 2012. This estimated decrease was due to the delays in revenue recognition described above, as well as increased operating expenses consistent with the growth of our recovery activities under our RAC contract. In addition, we had expenses of approximately $1.6 million associated with our public offering completed in February 2013, and these expenses were not deductible for tax purposes. This resulted in an effective tax rate of approximately 50%; absent these expenses we believe that our effective tax rate would have been approximately 40%.

***Non-GAAP***

Adjusted EBITDA is expected to be between $10.3 million and $11.8 million, representing a decrease of approximately 19% at the midpoint of the range compared to the three months ended March 31, 2012, primarily due to the increase in operating expenses and our inability to recognize certain revenues as described above.

Adjusted net income is estimated to be between $2.7 million and $3.4 million, representing a decrease of approximately 46% at the midpoint of the range compared to the three months ended March 31, 2012, primarily due to the increase in our operating expenses and our inability to recognize certain revenues as described above.

See Summary Consolidated Financial Data Adjusted EBITDA and Adjusted Net Income for a definition of adjusted EBITDA and adjusted net income, the reasons for providing these financial measures and the limitations of these measures, which do not reflect all items of income and expense as reported under generally accepted accounting principles in the United States, or GAAP. Also, see below for reconciliations of the estimated and actual adjusted EBITDA and adjusted net income amounts set forth above to estimated or actual net income determined in accordance with GAAP.

***Operating Metrics***

Student Loan Placement Volume is estimated to be between $1.5 billion and $1.8 billion and Placement Revenue as a Percentage of Placement Volume is estimated to be between 1.8% and 2.0%.

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Healthcare Net Claim Recovery Volume is estimated to be between $80.0 million and $95.0 million and Claim Recovery Fee Rate is estimated to be approximately 11.3%.

See Management s Discussion and Analysis of Financial Condition and Results of Operations Operating Metrics for the definition of the operating metrics used above and the purposes for which management uses these metrics.

***Reconciliation of Non-GAAP Financial Information***

The following tables present a reconciliation of estimated adjusted EBITDA and estimated adjusted net income for the three-months ended March 31, 2013 to estimated net income for this period and adjusted EBITDA and adjusted net income for the three-months ended March 31, 2012, to actual net income for this period:

| | Three Months Ended March 31, 2013 | Three Months Ended March 31, 2012 |
|---|---|---|
| | (in thousands) | |
| **Reconciliation of Adjusted EBITDA:** | | |
| Net income | $ 1,270 to 1,935 | $ 2,516 |
| Provision for income taxes | 1,264 to 2,099 | 1,742 |
| Interest expense | 2,966 | 3,190 |
| Interest income | | (31) |
| Debt extinguishment costs(1) | | 3,679 |
| Depreciation and amortization | 2,509 | 2,214 |
| Non-core operating expenses(2) | | 29 |
| Advisory fee(3) | | 309 |
| Deal expenses(4) | 1,579 | |
| Stock based compensation | 712 | 52 |
| Adjusted EBITDA | $ 10,300 to 11,800 | $ 13,700 |

| | Three Months Ended March 31, 2013 | Three Months Ended March 31, 2012 |
|---|---|---|
| | (in thousands) | |
| **Reconciliation of Adjusted Net Income:** | | |
| Net income | $ 1,270 to 1,935 | $ 2,516 |
| Debt extinguishment costs(1) | | 3,679 |
| Non core operating expenses(2) | | 29 |
| Advisory fee(3) | | 309 |
| Deal expenses(4) | 1,579 | |
| Stock based compensation | 712 | 52 |
| Amortization of intangibles(5) | 933 | 875 |
| Deferred financing amortization costs(6) | 285 | 282 |
| Tax adjustments(7) | (2,061) | (2,090) |
| Adjusted net income | $ 2,717 to 3,382 | $ 5,652 |

(1) Represents debt extinguishment costs comprised of approximately $3.3 million of fees paid to lenders in connection with our new credit facility and approximately $0.3 million of unamortized debt issuance costs in connection with our old credit facility.

(2) Represents professional fees and settlement costs related to strategic corporate development activities and a $1.2 million legal settlement in 2011.

(3) Represents expenses incurred under an advisory services agreement with Parthenon Capital Partners, which was terminated in April 2012. See Note 11 Related Party Transactions to our consolidated financial statements included elsewhere in this prospectus.

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(4) Represents costs associated with our public offering completed in February 2013.
(5) Represents amortization of capitalized expenses related to the acquisition of Performant by Parthenon Capital Partners in 2004 and an acquisition in the first quarter of 2012 to enhance our analytics capabilities.
(6) Represents amortization of capitalized financing costs related to debt offerings conducted in 2009, 2010 and 2012.
(7) Represents tax adjustments assuming a marginal tax rate of 40%.

**Risks Associated With Our Business**

Our business is subject to numerous risks and uncertainties including those highlighted in the section titled Risk Factors immediately following the prospectus summary. Some of these risks include, among others, that:

- Revenues generated from our five largest clients represented 81% of our revenues for the year ended December 31, 2012, and any termination of or deterioration in our relationship with any of these clients would result in a decline in our revenues;
- Many of our contracts with our clients for the recovery of student loans and other receivables are subject to periodic renewal or re-bidding processes, are not exclusive and do not commit our clients to provide specified volumes of business. In addition, the terms of these contracts may be changed unilaterally and on short notice by our clients. As a consequence, there is no assurance that we will be able to maintain our revenues and operating results;
- We face significant competition in connection with obtaining, retaining and performing under our existing client contracts, including our contracts with the Department of Education and CMS, and an inability to compete effectively in the future could harm our relationships with our clients, which would impact our ability to maintain our revenues and operating results;
- The U.S. federal government accounts for a significant portion of our revenues, and any loss of business from, or change in our relationship with, the U.S. federal government would result in a significant decrease in our revenues and operating results;
- Future legislative or regulatory changes affecting the markets in which we operate could impair our business and operations;
- Our business relationship with the Department of Education has accounted for a significant portion of our revenues and will take on increasing importance as a result of the Student Aid and Fiscal Responsibility Act of 2010, or SAFRA. Our failure to maintain this relationship would significantly decrease our revenues;
- We could lose clients as a result of consolidation among the Guaranty Agencies, or GAs, which would decrease our revenues;
- Our ability to derive revenues under our RAC contract will depend in part on the number and types of potentially improper claims that we are allowed to pursue by CMS, and our results of operations may be harmed if the scope of claims that we are allowed to pursue and be compensated for is limited;
- A failure of our operating systems or technology infrastructure, or those of our third-party vendors and subcontractors, could disrupt the operation of our business;
- If our security measures are breached or fail and unauthorized access is obtained to our clients confidential data, our services may be perceived as insecure, the attractiveness of our recovery services to current or potential clients may be reduced, and we may incur significant liabilities;

We are subject to extensive regulations regarding our recovery practices and the use and disclosure of confidential personal and healthcare information and failure to comply with these regulations could cause us to incur liabilities and expenses; and

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Our recovery business is subject to extensive regulation and consumer protection laws and our failure to comply with those regulations and laws may subject us to liability and result in significant costs.

**Corporate Information**

We commenced our operations in 1976 under the corporate name Diversified Collection Services, Inc., or DCS. We were incorporated in Delaware on October 8, 2003 under the name DCS Holdings, Inc. and subsequently changed our name to Performant Financial Corporation in 2005. Our principal executive offices are located at 333 North Canyons Parkway, Livermore, California 94551 and our telephone number is (925) 960-4800. Our website address is *www.performantcorp.com*. **The information on or accessible through our website is not part of this prospectus.**

**Our Principal Stockholder**

Our principal stockholder, an affiliate of Parthenon Capital Partners, which we refer to as Parthenon Capital Partners, acquired its interest in us in 2004 and prior to this offering beneficially owned approximately 48.6% of our outstanding common stock as of March 31, 2013. Parthenon Capital Partners is a private equity investment firm with approximately $2 billion of capital under management. Parthenon Capital Partners was founded in March of 1998 and focuses on investing in select middle-market companies. The firm invests in a variety of industry sectors with particular expertise in business and financial services, healthcare, distribution/logistics, and technology-enabled services.

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## THE OFFERING

| | |
|---|---|
| Common stock offered by the selling stockholders | 6,500,000 shares |
| Common stock to be outstanding after this offering | 46,720,569 shares |
| Option to purchase additional shares offered by the selling stockholders | 975,000 shares |
| Use of proceeds | We will not receive any of the proceeds from the sale of shares in this offering. See Use of Proceeds and Principal and Selling Stockholders. |
| NASDAQ Global Select Market symbol | PFMT |

The number of shares of common stock that will be outstanding after this offering is based on the number of shares outstanding as of March 31, 2013, and excludes:

- 6,590,530 shares of common stock issuable upon the exercise of options outstanding as of March 31, 2013, at a weighted-average exercise price of approximately $4.54 per share; and

- 1,870,850 shares of common stock reserved for future issuance under our 2012 Stock Incentive Plan.

Unless expressly indicated or the context otherwise requires, all information in this prospectus assumes:

- no exercise by the underwriters of their right to purchase up to an additional 975,000 shares of common stock from the selling stockholders to cover over-allotments; and

- no exercise of options outstanding as of March 31, 2013.