

DAIS ANALYTIC CORP

Form S-1/A

November 02, 2011

As filed with the Securities and Exchange Commission on November 2, 2011

Registration No. 333-176894

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

PRE-EFFECTIVE AMENDMENT NO. 2 To

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

DAIS ANALYTIC CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

New York
(State or other jurisdiction
of
incorporation or
organization)

3990
(Primary Standard
Industrial
Classification Code
Number)

14-1760865
(I.R.S. Employer
Identification Number)

11552 Prosperous Drive
Odessa, FL 33556
Telephone: (727) 375-8484
Facsimile: (727) 375-8485
(Address, Including Zip Code, and
Telephone Number,
Including Area Code, of Principal
Executive Offices)

State of New York – Secretary of State
Department of State
One Commerce Plaza
99 Washington Avenue, 6th Floor
Albany, New York 12231
Telephone: (518) 473-2492
Facsimile: (518) 474-1418
(Name, Address, Including Zip Code
and Telephone Number,
Including Area Code, of Agent for
Service)

Copies to:
Erick Richardson, Esq.
Peter DiChiara, Esq.
Edgar D. Park, Esq.
Richardson & Patel LLP
10900 Wilshire Boulevard, Suite 500
Los Angeles, California 90024

(310) 208-1182

APPROXIMATE DATE OF PROPOSED SALE TO THE PUBLIC: From time to time after the effective date of this Registration Statement.

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, as amended (the "Securities Act"), 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, 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 definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered		Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(6)
Common stock, \$0.01 par value per share(2)	4,312,500	\$	21,562,500	\$ 2,503.41
Underwriter Warrant(3)(4)(5)	1 warrant	\$	100	—
Shares of Common Stock underlying Underwriter's Warrant	431,250	\$	2,587,500	\$ 300.41
Amount Due (6)				\$ 2,803.82

- (1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
- (2) Includes 562,500 shares of our common stock that the underwriter has the option to purchase to cover over-allotments, if any.
- (3) No registration fee required pursuant to Rule 457(g) under the Securities Act of 1933.
- (4) Pursuant to Rule 416 under the Securities Act of 1933, this registration statement shall be deemed to cover the additional securities (i) to be offered or issued in connection with any provision of any securities purported to be registered hereby to be offered pursuant to terms which provide for a change in the amount of securities being offered or issued to prevent dilution resulting from stock splits, stock dividends, or similar transactions and (ii) of the same class as the securities covered by this registration statement issued or issuable prior to completion of the distribution of the securities covered by this registration statement as a result of a split of, or a stock dividend on, the registered securities.
- (5) Represents a warrant granted to the underwriter to purchase up to 431,250 shares of common stock (assuming full exercise of the over-allotment option).
- (6) Previously paid \$2,803.82

THE COMPANY HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE COMPANY 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, AS AMENDED, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE SECURITIES AND EXCHANGE 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 UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND WE ARE NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

SUBJECT TO COMPLETION, DATED November 2, 2011

PRELIMINARY PROSPECTUS

3,750,000 Shares of Common Stock

This is a firm commitment public offering of 3,750,000 shares of our common stock.

The public offering price for the common stock offered hereby is estimated to be between \$3.00 and \$5.00 per share. Our common stock is quoted on the OTC Bulletin Board under the symbol "DLYT.OB". On November 1, 2011, the last reported sale price for our common stock was \$0.44 per share. Immediately after the effectiveness of the registration statement of which this prospectus is a part, and prior to closing of this offering, we will effect a reverse stock split anticipated to be on a 10-for-1 basis. The proposed aggregate price of the shares offered hereby assuming a midpoint price of \$4.00 per share and excluding shares that may be sold on exercise of the underwriter's over-allotment option, is \$15,000,000.

We have applied for listing of our common stock on the NYSE Amex Equities ("AMEX", formerly known as the American Stock Exchange) under the symbol "DLYT", which we expect to occur on or immediately prior to the date of this prospectus. No assurance can be given that our application will be approved. If the application is not approved, we will not complete this offering, we will not effect the 10-for-1 reverse stock split and the shares of our common stock will continue to be quoted on the OTC Bulletin Board.

Investing in our securities involves certain risks, including those set forth in the "Risk Factors" section beginning on page 10 of this prospectus as well as those set forth in any prospectus supplement that should be considered in connection with an investment in our securities.

	Per Share	Total
Public Offering Price	\$	\$
Underwriting discounts and commission (1)	\$	\$
Offering Proceeds to Dais, before expenses(2)	\$	\$

(1) Excludes underwriter expenses of up to \$125,000 which would be reimbursable according to the underwriting agreement.

(2) We estimate that the total expenses of this offering, excluding the underwriter's discount and commission will be approximately \$. We have granted to the underwriter a 45-day option to purchase up to 562,500 additional shares of common stock solely to cover over-allotments, if any. We have also agreed to issue to the underwriter a warrant to purchase up to a total of 431,250 shares of common stock (assuming full exercise of the over-allotment option) at an exercise price of \$ (120% of the public offering price). The underwriter warrant is exercisable at any time, in whole or in part, for five years from the date of effectiveness of the registration statement of which this prospectus is a part, subject to a one year lock-up.

The underwriter expects to deliver our shares to purchasers in the offering on or about , 2011.

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 THE PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

MDB Capital Group LLC

The date of this prospectus is _____, 2011

TABLE OF CONTENTS

	Page No.
<u>Cautionary Statement Regarding Forward-Looking Statements</u>	1
<u>Prospectus Summary</u>	2
<u>Summary Financial Data</u>	9
<u>Risk Factors</u>	10
<u>Determination of Offering Price</u>	27
<u>Use of Proceeds</u>	27
<u>Description of Business</u>	29
<u>Properties</u>	40
<u>Legal Proceedings</u>	41
<u>Directors, Executive Officers, Promoters and Control Persons</u>	41
<u>Director Compensation</u>	44
<u>Executive Compensation</u>	45
<u>Security Ownership of Management and Certain Beneficial Owners</u>	50
<u>Certain Relationships and Related Transactions</u>	54
<u>Management's Discussion and Analysis of Financial Condition and Results of Operation</u>	63
<u>Market for Common Equity</u>	76
<u>Dilution</u>	78
<u>Capitalization</u>	80
<u>Description of Capital Stock</u>	80
<u>Underwriting</u>	81
<u>Indemnification, Limitation of Liability and Disclosure of Commission Position on Indemnification for Securities Act Liabilities</u>	84
<u>Legal Matters</u>	85

<u>Interests of Named Experts and Counsel</u>	85
<u>Where You Can Find Further Information</u>	86
<u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	87
<u>Index to Financial Statements</u>	88

Unless otherwise stated or the context otherwise requires, the terms “Dais Analytic,” “we,” “us,” “our” and the “Company” refer to Dais Analytic Corporation.

You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with additional or different information. The information contained in this prospectus is accurate only as of the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock.

No dealer, salesperson or any other person is authorized in connection with this offering to give any information or make any representations about us, the securities offered hereby or any matter discussed in this prospectus, other than those contained in this prospectus and, if given or made, the information or representations must not be relied upon as having been authorized by us. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any security other than the securities offered by this prospectus, or an offer to sell or a solicitation of an offer to buy any securities by anyone in any circumstance in which the offer or solicitation is not authorized or is unlawful.

CAUTIONARY STATEMENT REGARDING
FORWARD-LOOKING STATEMENTS

This prospectus, including the sections titled “Prospectus Summary”, “Management’s Discussion and Analysis of Financial Condition and Results of Operations”, “Description of Business”, “Risk Factors” and other sections generally, contains certain statements that constitute “forward-looking statements”. These forward-looking statements include certain statements regarding intent, belief or current expectations about matters (including statements as to “beliefs,” “expectations,” “anticipations,” “intentions” or similar words). Forward-looking statements are also statements that are not statements of historical fact. Because these statements are based on factors that involve risks and uncertainties, actual results may differ materially from those expressed or implied by the forward-looking statements. These factors include, among others:

- our ability to achieve and maintain profitability;
- the price volatility of the Common Stock;
- the historically low trading volume of the Common Stock;
- our ability to manage and fund our growth;
- our ability to attract and retain qualified personnel;
- litigation;
- our ability to compete with current and future competitors;
- our ability to obtain additional financing;
- general economic and business conditions;
- our ability to continue as a going concern;
- our ability to do business overseas;
- other risks and uncertainties included in the section of this document titled “Risk Factors”; and
- other factors discussed in our other filings made with the Commission.

The subsequent forward-looking statements relating to the matters described in this document and attributable to us or to persons acting on our behalf are expressly qualified in their entirety by such factors. Actual events or results may differ materially from those discussed in forward-looking statements as a result of various factors, including, without limitation, the risks outlined under “Risk Factors” and matters described in this prospectus generally. In light of these risks and uncertainties, there can be no assurance that the forward-looking statements contained in this prospectus will in fact occur. We have no obligation to publicly update or revise these forward-looking statements to reflect new information, future events, or otherwise, except as required by applicable laws, and we caution you not to place undue reliance on these forward looking statements.

Third Party Data

This prospectus also contains estimates, statistical, industry-related and market-related data, and other information concerning our industry, including market size and growth rates, which are based on industry publications, surveys and forecasts, based on or derived from third party sources which we believe are reliable. This information involves a number of limitations and assumptions which may or may not be or become true, and for the foregoing reasons you are cautioned not to give undue weight to the estimates presented in these third party materials. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in

“Risk Factors”.

1

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus and does not contain all the information that you need to consider in making your investment decision. You should carefully read this entire prospectus before deciding whether to invest in the common stock. You should pay special attention to the “Risk Factors” section of this prospectus to determine whether an investment in the common stock is appropriate for you.

This registration statement, including the exhibits and schedules thereto, contains additional relevant information about us and our capital stock. We file annual, quarterly, and current reports, proxy statements, and other information with the SEC. You may read and copy any document we file at the SEC’s public reference room at 100 F Street, N.E., Washington, D.C. 20549. You can also request copies of the documents, upon payment of a duplicating fee, by writing the Public Reference Section of the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. These SEC filings are also available to the public from the SEC’s web site at www.sec.gov.

About Dais Analytic Corporation

We have developed and are commercializing specialty nano-structured polymer materials (Aqualyte™). Using Aqualyte™ materials we are creating value added products which are designed to: (i) improve the energy efficiency in Heating, Ventilation and Air Conditioning (HVAC) equipment, (ii) replace the chemical refrigerants used in today’s HVAC systems as well as most all forms of refrigeration systems; (iii) remove impurities in contaminated water (such as waste water and seawater); and (iv) allow the storage of electrical energy in a device called an “ultracapacitor.”

Dais’ first commercial product, ConsERV™, is a fixed plate energy recovery ventilator unit that attaches to most all forms of HVAC equipment. Through use of the Aqualyte™ materials, ConsERV™ assists building and home-owners to increase ventilation thereby improving indoor air quality while saving energy, lowering CO2 emissions, and allowing for smaller HVAC systems to be installed through the management of moisture and temperature content in the air.

Several applications that use the Aqualyte™ platform are under development. These potential applications include:

NanoAir™, a water based packaged HVAC system that is potentially capable of achieving improvements in energy efficiency over traditional AC and refrigeration systems,

NanoClear™, a water clean-up process that has been demonstrated to provide parts per billion potable water from most forms of contaminated water, including salt, brackish or wastewater, and

NanoCap™, an energy storage device (ultracapacitor) we are currently researching and developing that uses the attributes of the Aqualyte™ material to potentially provide significantly greater energy density and power than conventional capacitors or batteries.

We are a New York corporation established on April 8, 1993 as Dais Corporation. We subsequently changed our name to Dais Analytic Corporation on December 13, 1999. Our principal executive offices are located at 11552 Prosperous Drive, Odessa, FL 33556. Our telephone number is (727) 375-8484. Our website can be accessed at www.daisanalytic.com and www.conserv.com. Information contained in our website is not a part of this prospectus and the inclusion of our website address in this prospectus is an inactive textual reference only.

Our Proprietary Technologies

We have multiple pending and issued patents in the U.S., China, Hong Kong and Europe, and under the Patent Cooperation Treaty (PCT). In addition, we co-own two PCT applications with Aegis Biosciences LLC, a biomaterials drug delivery technology company. These patents relate to, or are applications of, our nano-structured polymer materials that perform functions such as ion exchange and modification of surface properties. The polymers are selectively permeable to polar materials, such as water, in molecular form. Selective permeability allows these materials to function as a nano-filter in various transfer applications. These materials are made from base polymer resins available from commercial firms worldwide and possess what we believe to be some unique and controllable properties, such as:

Selectivity: Based on our research, we believe that when the polymer is made there are small channels created that are 5 to 30 nanometers in diameter. There are two types of these channels: hydrophilic (water permeable), and hydrophobic (water impermeable). The channels can be chemically tuned to be selective for the ions or molecules they transfer. The selectivity of the polymer can be adjusted to efficiently transfer water molecules from one face to the other using these channels.

1 Testing performed by the Pasco County Water District as reported 3/8/10, and Constellation Technology laboratory as reported 1/5/10 and 1/7/10

High transfer rate: Based on in-house testing protocols and related results, we have found that the channels created when casting the materials into a nano-structured membrane have a transfer rate of water molecules, or flux, greater than 90% of an equivalent area of an open tube. This feature is fundamental to the material's ability to transfer moisture at the molecular level while substantially allowing or disallowing the transfer of certain other substances at a molecular level.

Unique surface characteristics: The materials offer a surface characteristics that we believe inhibit the growth of bacteria, fungus and algae and prevent adhesives from attaching.

The molecular selectivity, transfer rate and surface coating properties, coupled with our ability to produce the nano-structured materials at what we believe is an affordable price, distinguishes our technology and value-added products. By incorporating our nano-structured materials into our products, we strive to address current real-world market needs by offering what we believe to be higher efficiencies and improved price performance, compared to, for example, other energy recovery mechanisms available for HVAC that use coated paper or desiccant materials instead of our nano-structured polymer materials. For further details about our technology, please refer to our "Description of Business" in this prospectus.

Our Target Markets

We are currently focusing our efforts on applications of our nano-structure polymer technology materials in the following areas:

Energy Recovery Ventilators

ConsERV™ is a heating, ventilation and air conditioning (HVAC) energy conservation product which after reviewing the results of various third party tests, we believe will save an average of up to 30% on HVAC ventilation air operating costs and allow HVAC equipment to be up to 30% smaller, reducing peak energy usage by up to 20% while simultaneously improving indoor air quality by increasing the level of fresh air ventilation. This product makes HVAC systems operate more efficiently, and in many cases results in energy and cost savings. ConsERV™ may be added to most existing HVAC systems, typically in commercial buildings, to provide ventilation within the structure. It pre-conditions the incoming air by passing the air through our nano-technology polymer which has been formed into a filter, known in the market as a fixed plate core. The nano-technology core uses the stale building air that is simultaneously exhausted to transfer heat and moisture into or out of the incoming air. For summer air conditioning, the core removes some of the heat and humidity from the incoming air, transferring it to the exhaust air stream thereby, under certain conditions, saving energy. For winter heating, the core transfers a portion of the heat and humidity into the incoming air from the exhaust air stream thereby often saving energy.

We believe that there is significant demand for energy recovery ventilators in the U.S. and international markets. As reported by Frost and Sullivan in 2007, the North American market for energy recovery ventilators (ERVs) was estimated to be approximately \$1.1 billion. Projections made at that time were for 200% growth from that level by 2012. Market drivers behind this growth include higher ventilation standards, greater end user awareness, LEED (Leadership in Energy Efficiency and Design) certification points or incentives, and integration into the products of original equipment manufacturers (OEMs). Sales of ConsERV™ in 2010 increased to \$2,949,814 from \$1,439,041 in 2009. We believe the combination of high efficiency and low maintenance requirement as well as rapid ERV market expansion is driving this sales growth.

Our ConsERV™ product is the primary focus of our resources and commercialization efforts. When compared to similar competitive products and based on test results conducted by the Air-Conditioning, Heating and Refrigeration Institute (AHRI), a leading industry association in 2008, we believe ConsERV™ is twice as effective in managing a combination of latent and sensible heat as other fixed plate cores. This study is publicly available and was not prepared for our benefit or funded by us.

Residential and Commercial Heating, Air-Conditioning and Refrigeration

Our water-based packaged HVAC system, NanoAir™, which is in the early beta stage of development, dehumidifies and cools air in warm weather, or humidifies and heats air in cold weather. NanoAir™ may be capable of replacing a traditional refrigerant loop-based heating, cooling, and refrigeration system. We have a number of small prototype units showing fundamental heating, cooling, humidification, and dehumidification operations of this evolving application.

Based on our lab results to date, NanoAir™ may have the potential to reduce energy consumption by up to 50%, and is projected to be up to 3 times more energy efficient than current refrigerant gas-based technologies on the market today. Since heating and cooling costs account for approximately 19% of all energy consumed in the U.S. (second only to transportation), as stated by Dr. Steven Chu of the U.S. Department of Energy in 2010, we believe NanoAir™ may have the ability to provide significant energy savings. Further, since NanoAir™ uses no ozone-depleting refrigerants such as CFCs and HCFCs, the use of our nano-structured polymer technology may provide additional environmental and health benefits. We believe that there is a substantial market for HVAC systems that conserve energy without the use of conventional refrigerants.

*projected

Projected NanoAir™ Benefit Comparison

NanoAir™ is being partially funded by a \$681,322 grant from the U.S. Department of Energy's Advanced Research Projects Agency – Energy (ARPA-E) awarded to us in September of 2010, and a \$254,500 grant from Pasco County, Florida in December of 2010. The grant from Pasco County requires us to pay the county 2% of the gross sales of products using a certain unique pump assembly for 5 years, or a total of \$1,000,000 whichever occurs first.

Water Clean-Up

According to water quality evaluated by the Pasco County Technical Services in March 2010, and the China Academy of Environmental Science in December 2010, our NanoClear™ prototype system has demonstrated the ability to remove salt and other impurities from water to produce potable water using what we believe is an environmentally friendly design projected to be more energy efficient, reduce capital costs, and lower operating expenditures up to 50% over the market leading technology in use today (Reverse Osmosis). We have developed a number of functional demonstration units of various sizes, which highlight the basics of how this system works to produce potable water. These demonstration units are being used as the basis for the application's next planned inflection point: the construction and operation of a 10 cubic meter (approximately 26,500 gallons per day) pilot plant to be located near our office outside of Tampa, Florida at a Pasco County off-line waste water treatment facility where the local municipal government has granted Dais permission to construct and operate the pilot NanoClear™ facility. The NanoClear™ application is currently in the early stages of beta development.

We believe significant market opportunities for the NanoClear™ process exist in water cleanup including waste water (e.g. pharmaceutical, electronics, and other industrial uses as well as municipal applications), water desalination (salt and brackish water clean-up), and an array of consumer applications. Unlike other water desalination technologies, we believe the NanoClear™ process may have the ability to handle high concentrations of salt with no lasting damage to the base membrane materials. The benefit of such a technological advancement in the water desalination industry may mean higher outputs of clean water per volume of contaminated water, and we believe the ability to produce a near zero discharge of contaminants from the process. The world market for water and wastewater amounted to \$346.9 billion in 2008. According to 360 Consultancy/Acon AG, World-Wide water market profile dated May 2009, the market is expected to expand further with high growth rates to \$374.4 billion by 2009, and \$412 billion by 2010. The Central Government of China, on January 30, 2011 announced a \$608 billion government-mandated program citing that it is a 'national priority' for China to improve water conservation in the next decade. As a part of this initiative the Chinese government also said that it would increase its efforts to improve water quality and irrigation, and that it aims to eradicate the problem of unsafe drinking water in rural areas by 2015.

Further, based on our projections, we believe certain facility and mechanical layouts of the NanoClear™ process for water clean-up may be able to accomplish 90-95% water capture vs. 40-60% for traditional Reverse Osmosis (RO) systems clean water using NanoClear™ has a projected energy/water cost of \$0.25 to \$0.33 per cubic meters, (desalination) vs. \$0.50-\$1 per cubic meters for Reverse Osmosis.²

Energy Storage

Based on initial material tests conducted by General Electric's Global Research and Development Center in 2008, and the University of Florida in 2010 and 2011, we believe that by applying a combination of our nano-material in a process which exercises key attributes of the material's properties, we may be able to construct an energy storage device akin to an ultracapacitor. An ultracapacitor is a device which stores energy similar to a battery but in this case with projected increases in energy density and lifetimes. We call this application NanoCap™. We believe the key application for NanoCap™ would be in transportation. We signed a research agreement with the University of Florida to conduct materials testing for the time period from July 2010 through September 2011. Although very early in the development path, preliminary results obtained in research by both GE and the University of Florida suggest that a NanoCap™ ultracapacitor, if fully developed, may possess an energy density comparable to that of gasoline.

² Produced internally by Dais using test results of the materials, and the materials in application in laboratory settings.

The market size for ultracapacitors, worldwide, is projected to be \$500 million by 2012 as estimated by Greentech Media in January 2010 and includes electric vehicles, various electronics, smart grid and other applications.

Other

We have identified other potential products for our nano-materials and processes. Some have basic data to support additional functionality and market differentiation of a product based on our nano-technology inventions. These other products are based, in part, upon the known functionality of our materials and processes. Management anticipates that many of these other applications will be developed in the future with partners already in a given sales channel or line of business with us, as we grow and are able to internally fund such activities, development, manufacturing, and sales.

We expect ConSERV™ to continue to be the focus of our commercial product sales through 2011 with a growing emphasis on moving the development of the NanoClear™ and NanoAir™ technologies towards commercialization. However, we cannot provide assurance that any of the ongoing projects under development will ultimately be successful or commercially viable.

Proposed Reverse Stock Split and Conversion of Debt

Immediately following the effectiveness of the registration statement which this prospectus is a part of, and prior to closing of this offering, we will effect a 10-for-1 reverse stock split.

In connection with the closing of this offering, we intend to have all convertible notes outstanding in the aggregate principal amount of \$2,500,000 plus accrued interest, discharged by conversion or repayment using proceeds from the offering. As of November 1, 2011 we estimate that approximately \$1.53 million of net proceeds from the offering will be used to repay convertible notes, and that approximately 481,800 shares of common stock will be issued in the conversion of notes.

We have entered into an agreement with our CEO, Tim Tangredi, that provides that upon closing of the offering Mr. Tangredi's accrued compensation through the closing date in the approximate amount of \$1.05 million shall be paid with a combination of (a) cash, which we estimate at this time to be approximately \$380,000, which is intended to cover payment of income and other taxes due from the payment of such accrued compensation, and (b) shares of restricted common stock at a price equal to the price per share paid by investors in the public offering, for the remainder (which is assumed for purposes of this calculation to be \$4.00 per share after giving effect to the anticipated 10-for-1 reverse stock split, and based on this assumption would consist of approximately 166,971 shares of common stock). In addition, net proceeds from the offering will be used to pay approximately \$358,000 in accrued compensation to two employees, Patricia Tangredi and David Longacre.

For additional details regarding the above, see "Use of Proceeds" below in this prospectus.

Risk Factors

An investment in our common stock involves a high degree of risk. You should carefully consider the risks described under "Risk Factors" beginning on page 10 of this prospectus, as well as other information included in this prospectus, including our financial statements and the notes thereto, before making an investment decision.

The Offering

The following summary contains basic information about the offering and our common stock and is not intended to be complete. It does not contain all the information that is important to you. For a more complete understanding of our common stock, please refer to the section of this prospectus entitled “Description of Capital Stock.”

Issuer	Dais Analytic Corporation, a New York corporation.
Common stock offered by us	3,750,000 shares of common stock, par value \$0.01 per share. (1)
Over-allotment option	We have granted the underwriter an option to purchase up to an additional 562,500 shares of common stock within 45 days of the date of this prospectus in order to cover over-allotments, if any.
Common Stock outstanding before this offering	3,751,760 shares of common stock (1)(2)(3)
Common stock outstanding after this offering	7,501,760 shares of common stock (1)(2)(3)
Use of Proceeds	We intend to use the net proceeds from the sale of our common stock in this offering for working capital, to pay certain outstanding note obligations, to pay accrued salaries, and for general corporate purposes. For additional details concerning the use of proceeds see the section below in the prospectus titled “Use of Proceeds.”
Market and trading symbol for the common stock	Our common stock is quoted on the Over-the-Counter Bulletin Board under the symbol “DLYT,” and we have applied to list on AMEX.
Proposed AMEX listing symbol for our common stock	“DLYT”

Underwriter common stock
purchase warrant

In connection with this offering, we have also agreed to grant MDB Capital Group LLC a warrant to purchase up to a number of the shares of common stock equal to 10% of the shares sold in this offering. If this warrant is exercised, each share may be purchased by MDB Capital Group LLC at \$ _____ per share (equal to 120% of the price of the shares sold in this offering.)

7

Lockup Agreements

We intend to have each of our officers and directors agree that for a period of 180 days from the date of the underwriting agreement, they will be subject to a lock up prohibiting any sales, transfers or hedging transactions in our securities that are held by them. See section titled "Lockup Agreements" in this prospectus.

- (1) We have, for purposes of disclosure in this prospectus, assumed consummation of a 10-for-1 reverse stock split immediately following the effectiveness of the registration statement of which this prospectus is a part, and have assumed an offering price of \$4.00 per share (which is the midpoint of our expected offering range of \$3.00 to \$5.00 per share).
- (2) The number of shares of our common stock outstanding before and after this offering is based on the number of shares outstanding as of November 1, 2011, after giving effect to the anticipated 10-for-1 reverse stock split, and excludes:
 - 1,763,609 shares of our common stock issuable upon exercise of stock options under our stock plans,
 - 2,657,533 shares of our common stock reserved for issuance under various outstanding warrant agreements,
 - Shares of our common stock issuable upon conversion of our convertible promissory notes in the aggregate principal amount of \$2,500,000 plus accrued interest as of the closing date of the offering, which (as of November 1, 2011) if fully converted into shares would result in the issuance of approximately 1,068,493 shares. The conversion of these notes are subject to limitations on conversion, and because of these limitations we estimate that as of November 1, 2011 approximately \$1.53 million of net proceeds from the offering will be used to repay principal and interest under these notes, and that approximately 481,800 shares of common stock will be issued in the conversion of the notes (see sections titled Use of Proceeds and Capitalization below in this prospectus);
 - 921,500 shares of our common stock reserved for future issuance under our stock plans; and,
 - Shares of our common stock issuable upon conversion of a portion of the accrued salary of our CEO to common stock; as of November 1, 2011 the CEO's total accrued unpaid compensation was \$1,047,884, which would be converted at the closing date of the offering into approximately 166,971 shares of common stock (based on an assumed public offering price of \$4.00 per share, and assuming \$380,000 of such accrued compensation will be paid to the CEO in cash).

Unless otherwise specifically stated, information throughout this prospectus assumes that none of our outstanding options or warrants to purchase shares of our common stock have been exercised, and that none of our convertible securities have been converted.

- (3) Unless otherwise indicated, the number of shares of common stock presented in this prospectus excludes shares issuable pursuant to the exercise of the underwriter's over-allotment option and underwriter's warrant.

Edgar Filing: DAIS ANALYTIC CORP - Form S-1/A

SUMMARY FINANCIAL DATA

The table below includes historical selected financial data for each of the years ended December 31, 2010 and 2009 (as restated), derived from our audited financial statements included elsewhere in this prospectus. The table below also includes historical financial data for the three and six month periods ending June 30, 2010 (as restated) and 2011, derived from our unaudited financial statements included elsewhere in this prospectus.

You should read the historical selected financial information presented below in conjunction with the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section and our financial statements and the notes to those financial statements included elsewhere in this prospectus. Historical results are not necessarily indicative of the results that may be expected for any future period.

	For the Years Ended		For the Three Months		For the Six Months Ended	
	December 31,		Ended		June 30,	
	2010	2009	2011	2010	2011	2010
	as restated		as restated			
STATEMENT OF OPERATIONS:						
Revenues	\$ 3,342,468	\$ 1,531,215	\$ 1,124,079	\$ 1,010,142	\$ 1,982,773	\$ 1,417,454
Cost of goods sold	(2,290,041)	(1,071,098)	(806,674)	(550,196)	(1,507,564)	(871,522)
Operating expenses	(2,931,274)	(3,224,592)	(803,725)	(1,029,394)	(1,728,058)	(1,588,914)
Loss from operations	(1,878,847)	(2,764,475)	(486,320)	(569,448)	(1,252,849)	(1,042,982)
Change in fair value of warrant liability	618,801	(3,731,694)	1,694,170	1,835,094	(657,937)	327,066
Interest and other expense	(173,547)	(620,907)	(416,265)	(55,233)	(579,774)	(101,736)
Net loss	\$ (1,433,593)	\$ (7,117,076)	\$ 791,585	\$ 1,210,413	\$ (2,490,560)	\$ (817,652)
Net loss per common share, basic	\$ (0.05)	\$ (0.36)	\$ 0.02	\$ 0.04	\$ (0.07)	\$ (0.03)
Net loss per common share, diluted	\$ (0.05)	\$ (0.36)	\$ 0.02	\$ 0.03	\$ (0.07)	\$ (0.03)
Weighted average common shares outstanding, basic	29,985,632	19,960,150	35,089,169	29,800,194	34,335,348	29,577,797
Weighted average common shares outstanding, diluted	29,985,632	19,960,150	56,239,845	40,245,491	34,335,348	29,577,797
PROFORMA: *						
Proforma net loss per common share, basic	\$ (0.48)	\$ (3.57)	\$ 0.23	\$ 0.41	\$ (0.73)	\$ (0.28)
Proforma net loss per common share, diluted	\$ (0.48)	\$ (3.57)	\$ 0.14	\$ 0.30	\$ (0.73)	\$ (0.28)
Proforma weighted average common shares outstanding, basic	2,998,563	1,996,015	3,508,917	2,980,019	3,433,535	2,957,780
Proforma weighted average common	2,998,563	1,996,015	5,623,985	4,024,549	3,433,535	2,957,780

shares outstanding,
diluted

* The impact of a 10-for-1 reverse stock split to be effected immediately after the effectiveness of the registration statement, of which this prospectus is a part, has been applied retroactively in the above proforma calculations.

STATEMENT OF FINANCIAL
CONDITION:

	December 31		June 30	
	2010	2009 as restated	2011	2010 as restated
Working capital	\$ (2,861,488)	\$ (2,265,370)	\$ (1,846,593)	\$ (3,028,616)
Total assets	\$ 1,970,573	\$ 1,620,746	\$ 2,972,862	\$ 2,070,061
Total long-term notes payable, related party, less current installments	\$ —	\$ 300,000	\$ —	\$ —
Total shareholders' deficit	\$ (6,722,092)	\$ (7,256,058)	\$ (6,323,185)	\$ (7,345,051)

RISK FACTORS

You should carefully consider the risks described below before making an investment decision. Our business, financial condition, results of operations or cash flows could be materially adversely affected by any of the events or circumstances described in these risk factors. The valuation for the Company could also decline due to any of the events or circumstances, and you may lose all or part of your investment. This document also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of several factors, including the risks faced by us described below and elsewhere in this prospectus. In assessing these risks, you should also refer to the other information contained in this prospectus, including our financial statements and related notes.

Risks Related to Our Business

Our independent registered public accounting firm has issued an unqualified opinion with an explanatory paragraph to the effect that there is substantial doubt about our ability to continue as a going concern.

Our independent registered public accounting firm has issued an unqualified opinion with an explanatory paragraph to the effect that there is substantial doubt about our ability to continue as a going concern. This unqualified opinion with an explanatory paragraph could have a material adverse effect on our business, financial condition, results of operations and cash flows. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources” and Footnotes to our financial statements for the fiscal year ended December 31, 2010, included elsewhere in this prospectus.

We have no committed sources of capital and do not know whether additional financing will be available when needed on terms that are acceptable, if at all. This going concern statement from our independent registered public accounting firm may discourage some investors from purchasing our stock or providing alternative capital financing. The failure to satisfy our capital requirements will adversely affect our business, financial condition, results of operations and prospects.

Unless we raise additional funds, either through the sale of our securities or one or more collaborative arrangements, we will not have sufficient funds to continue operations. Even if we take these actions, they may be insufficient, particularly if our costs are higher than projected or unforeseen expenses arise.

We intend to use proceeds from the offering to repay secured and unsecured convertible promissory notes in the aggregate principal amount of \$2,500,000. However, if we do not complete the offering, we may be unable to convert, repay or secure an extension of these notes. If we do not complete the offering, and if we are unable to reach an agreement with our note holders regarding conversion, repayment and/or extension of the maturity date of these notes, the note holders could foreclose on our assets, which ultimately could require us to curtail or cease our operations and could ultimately result in the loss of our patent and patent applications.

We intend to use proceeds from the offering to repay secured and unsecured convertible promissory notes in the aggregate principal amount of \$2,500,000. However, if we do not complete the offering, we may be unable to convert, repay or secure an extension of these notes. Apart from proceeds from the contemplated offering, we do not currently have, and do not expect to attain, adequate funds for repayment of the above-mentioned notes from our current operations. Although we intend to continue to finance our operations, including the repayment of these notes, primarily through private sales of debt and equity securities, we may not be able to secure additional financing to repay the notes on acceptable terms, if at all. Further, our outstanding secured \$1.5 million convertible promissory note and the \$1.0 million unsecured convertible promissory note contain limitations on the amount of debt we can incur prior to repayment of these notes. Hence, absent completion of the contemplated offering, unless the note holder waives the debt limit we may not be able to avail ourselves of sufficient financing should it be available. Further, the unsecured promissory note and the secured convertible promissory note provide for conversion of the principal and interest into shares of our common stock, upon certain conditions and subject to certain limitations. Any conversion of either of these notes could substantially dilute existing shareholders. Absent completion of the contemplated offering, if we are unable to secure additional financing to repay the notes we will seek to renegotiate the notes. However, there is no guarantee that the note holders will accept any offer we may make and may request additional concessions from us for any accommodation we do secure. Any terms we may be able to secure may not be favorable to us. Unfavorable terms would adversely impact our business, financial condition and/or results of operations. In the event we are unable to secure such additional financing sufficient to pay the notes prior to their respective maturity dates and we are not able to renegotiate the terms of the note, the note holders will have the option to either convert the principal and interest into shares of our common stock or foreclose on the notes, which would have material adverse consequences on our business operations, financial condition, results of operations and cash flows and possibly result in the loss of all of our patent rights and the failure of our business.

If we do not repay or convert the principal and interest on the above mentioned \$1.5 million 10% interest secured convertible note when due, we may lose all our patents and patent applications.

If we do not repay the \$1,500,000 10% secured convertible note currently outstanding when due we could suffer the loss of our patents and patent applications, which secure our payment obligations under this note. Our success depends, to a significant extent, on the technology that is incorporated in our product and the underlying patents and patent applications securing this note. We intend to continue to finance our operations, including the repayment of this note, primarily through sales of debt and equity securities. If the contemplated offering is not completed, we will have to seek alternative financing and may not be able to secure such additional financing to repay the note on acceptable terms, if at all. If we are not able to repay this note there is no guarantee that the note holder will accept any offer we may make with regard to extending or converting this note. Further, the note holder may request additional concessions from us in return for extending or converting the note. Any re-negotiated terms we may be able to secure may not be favorable to us. Unfavorable terms, in either a financing transaction or debt renegotiation, would adversely impact our business, financial condition and/or results of operations. In the event (i) the contemplated offering is not completed and we are unable to secure additional financing sufficient to pay this note, (ii) this note is not converted into shares of our common stock, or (iii) we are not able to renegotiate the terms of this convertible note, the note holder will have the option to foreclose on all of our patents and patent applications securing the notes, which would likely result in the failure of our business.

We have a history of operating losses, and we expect our operating losses to continue for the foreseeable future. If we fail to obtain additional financing we will be unable to execute our business plan and/or we may not be able to continue as a going concern.

We have incurred substantial losses since we were funded in 1993 and have not achieved profitability in any year to date. We have developed a family of nano-structured polymers and processes and are now marketing our first product application, ConsERV™. We anticipate the other listed applications in this document may take at least 6 to 48 months to develop. We expect our operating losses to continue for the foreseeable future as we continue to expend substantial resources to expand the ConsERV™ business while working to bring the identified applications to the market including research and development, design and testing, obtaining third party validations, identifying and securing collaborative partnerships, executing to enter into strategic relationships, or selling materials or value-added components. Furthermore, even if we achieve our projection of selling a greater number of ConsERV™ units in 2011, we anticipate that we will continue to incur losses until we can cost-effectively produce and sell our products to a wider market. Our accumulated deficit was \$38,128,522 as of June 30, 2011. It is possible that we will never generate sufficient revenue to achieve and sustain profitability. Even if we achieve profitability, we may not be able to sustain or increase profitability.

We financed our operations since inception primarily through private sales of our common stock and preferred stock, issuance of convertible promissory notes; issuance of unsecured promissory notes, cash received in connection with exercise of warrants, license fees and the sale of certain fuel cell assets in 2002. As of June 30, 2011, we had \$2,746,359 in current assets.

Even if we are successful in raising additional equity capital to fund our operations, we will still be required to raise an additional substantial amount of capital in the future to fund our development initiatives and to achieve profitability. Our ability to fund our future operating requirements will depend on many factors, including the following:

- ability to obtain funding from third parties;
- progress on research and development programs;
- time and cost required to gain third party approvals;
- cost of manufacturing, marketing and distributing our products;
- cost of filing, prosecuting and enforcing patents, patent applications, patent claims and trademarks;
- status of competing products; and
- market acceptance and third-party reimbursement of our products, if successfully developed.

There are no assurances that future funding will be available on favorable terms or at all. If additional funding is not obtained, we will need to reduce, defer or cancel development programs and planned initiatives, to the extent necessary. The failure to fund our capital requirements would have a material adverse effect on our business, financial condition and results of operations.

Failure to achieve and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act of 2002 could have a material adverse effect on our business and operating results. In addition, current and potential stockholders could lose confidence in our financial reporting, which could have a material adverse effect on our stock price.

Effective internal controls are necessary for us to provide reliable financial reports and effectively prevent fraud. If we cannot provide reliable financial reports or prevent fraud, our operating results could be harmed. We are required to document and test our internal control procedures in order to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act, which requires annual management assessments of the effectiveness of our internal controls over financial reporting. During the course of our testing, we may identify deficiencies which we may not be able to remediate in time for compliance with the requirements of Section 404. In addition, if we fail to maintain the adequacy of our internal controls, as such standards are modified, supplemented or amended from time to time; we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act. Failure to achieve and maintain an effective internal control environment could also cause investors to lose confidence in our reported financial information, which could have a material adverse effect on our stock price.

Our CEO and CFO identified a material weakness in our internal controls over financial reporting relating to the accounting and disclosure for complex and non-standard common stock warrant transactions, which required us to restate our financial statements for the year ended December 31, 2009 as provided herein. To address our material weakness related to the accounting and disclosure for complex financial instruments, we have enhanced our internal control processes in order to be able to comprehensively review the accounting and disclosure implications of such transactions on a timely basis.

We cannot provide assurance as to the result of these efforts. We cannot be certain that any measures we take will ensure that we implement and maintain adequate internal controls in the future. Any failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our operating results or cause us to fail to meet our reporting obligations.

In the event the lease on our corporate office and production space is terminated, we may not be able to acquire a lease on another suitable property, or a lease on a suitable property at a comparable cost.

Ethos Business Ventures, LLC is our landlord. Our CEO, Mr. Tangredi, is a principal owner of this entity. We note that under the terms of our lease agreement for our corporate office and production space, the lease may be terminated upon 30 days prior written notice by landlord and 90 days prior written notice by us. If this lease is terminated, or if for any reason Mr. Tangredi should become unable to continue to lease this space to us, we may not be able to acquire another lease for another suitable property or a lease on a suitable property at a comparable cost in a timely manner, which could materially disrupt our operations. Even if we are able to relocate into another suitable property at a comparable cost in a timely manner, we would incur significant moving expenses.

Our future indebtedness could adversely affect our financial health.

We have and may continue to incur a significant amount of indebtedness to finance our operations and growth. Any such indebtedness could result in negative consequences to us, including:

- increasing our vulnerability to general adverse economic and industry conditions;
- requiring a portion of our cash flow from operations be used for the payment of interest on our debt, thereby reducing our ability to use our cash flow to fund working capital, capital expenditures and general corporate requirements;
- limiting our ability to obtain additional financing to fund future working capital, capital expenditures and general corporate requirements;
- limiting our flexibility in planning for, or reacting to, changes in our business;
- placing us at a competitive disadvantage to competitors who have less indebtedness; and
- as the majority of our assets are pledged under a significant portion of our outstanding debt, the failure to meet the terms and conditions of the debt instruments, or a failure to timely rearrange the current terms and conditions of the notes, if so required, will result in us having no access to our technology.

The recent economic downturn has affected, and is likely to continue to adversely affect, our operations and financial condition potentially impacting our ability to continue as a going concern.

The recent economic downturn has resulted in a reduction in new construction and less than favorable credit markets, both of which may adversely affect us. Certain vendors from which we currently secure parts for our ConsERV™ product have and may continue to either reduce or eliminate payment terms. Hence, more capital is required to secure parts necessary to produce our products. In addition, our products are often incorporated in new construction which has experienced a marked down turn in project starts over the past year and such trend is expected for 2011. Although the portion of new construction most affected is home sales, which represents a minority of our sales, commercial construction has also experienced a reduction in starts with some projects being delayed and possibly eliminated. If the commercial construction market stagnates or decreases in volume or project size, our operations and financial condition could be negatively impacted. Various economic stimulus measures by the federal and state governments appear to have targeted energy products. ConsERV™ may qualify under said programs and we may potentially benefit. However, when and if we will experience any increase in sales or investment due to these programs is uncertain. As noted above, we intend to continue to finance operations, including the repayment of all outstanding debt, such as the secured convertible note and unsecured promissory note, primarily through private sales of debt and equity securities. In light of the recent economic downturn we may not be able to secure additional financing on acceptable terms, if at all. Unfavorable terms for a financing transaction would adversely impact our business, financial condition and/or results of operations. In the event we are unable to secure additional financing our business may fail.

If we fail to successfully address the challenges, risks and uncertainties associated with operating as a public company, our business, results of operations and financial condition would be materially harmed.

We have and will continue to incur a significant increase in costs as a result of operating as a public company, and our management has and will be required to devote substantial time to new compliance initiatives. Until November of 2008 we had never operated as a public company. In preparation for and since reporting as a public company, we have and expect to continue to incur significant legal, accounting and other expenses that we did not incur as a non-reporting company. In addition, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as well as new rules subsequently implemented by the Securities and Exchange Commission (the "SEC") and various stock exchanges, has imposed many new requirements on public companies, including requiring changes in corporate governance practices. Our management and other personnel have and will continue to devote a substantial amount of time to these new compliance procedures.

As a public company, we are now subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), the Sarbanes-Oxley Act and the rules promulgated by the SEC and AMEX, if and when accepted, in response to the Sarbanes-Oxley Act. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and financial condition. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal controls for financial reporting.

If we or our independent registered public accounting firm identifies deficiencies in our internal controls that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by SEC or other regulatory authorities, which would entail expenditure of additional financial and management resources.

These rules and regulations could also make it more difficult for us to attract and retain qualified independent members of our Board of Directors. Additionally, we have found these rules and regulations make it more difficult and more expensive for us to obtain director and officer liability insurance. We have, and may be required once again, to accept reduced policy limits and/or coverage or incur substantially higher costs to obtain the same or similar coverage.

Our ConsERV™ product is in small volume production, we have no long term experience manufacturing our products on a commercial basis and may not be able to achieve cost effective large volume production.

Our ConsERV™ product is built in growing volumes. Our ability to expand commercial production of that product is subject to significant uncertainties, including: completion of necessary product automation, developing experience in manufacturing and assembly on a large commercial scale; assuring the availability of raw materials and key component parts from third party suppliers; and developing effective means of marketing and selling our product.

We are in the process of assembling our ConsERV™ product at our facility in Odessa, Florida with overflow being produced by outsourced firms, which limits our capital outlay. Initial production costs of this product line are high with no or a lower than desired profit margin. As a result, we believe we will need to reduce unit production costs, including the nano-structured materials themselves made to our specifications by third parties, over time in order to offer our products at a profitable basis on a commercial scale. Our ability to achieve cost reductions in all areas of nano-structured materials and value added products depends on entering into suitable manufacturing relationships with component suppliers, as well as increasing sales volumes so that we can achieve economies of scale. A failure to achieve a lower cost structure through economies of scale and improvements in engineering and manufacturing in a timely manner would have a material adverse effect on our business and financial results. There can be no assurance that we will obtain higher production levels or that the anticipated sales prices of our products will ever allow an adequate profit margin.

We may not be able to meet our product development and commercialization milestones.

We have established internal product and commercialization milestones and dates for achieving development goals related to technology and design improvements of our products. To achieve these milestones we must complete substantial additional research, development and testing of our products and technologies. Except for our ConsERV™ product, we anticipate that it will take at least 6 to 36 months to develop and ready our other products for scaled production. Product development and testing are subject to unanticipated and significant delays, expenses and technical or other problems. We cannot guarantee that we will successfully achieve our milestones. Our business strategy depends on acceptance of our products by key market participants and end-users.

Our plans and ability to achieve profitability depend on acceptance by key market participants, such as vendors and marketing partners, and potential end-users of our products. We continue to educate designers and manufacturers of HVAC equipment with respect to our ConsERV™ product. More generally, the commercialization of our products may also be adversely affected by many factors that are out of our control, including:

- willingness of market participants to try a new product and the perceptions of these market participants of the safety, reliability and functionality of our products;
- emergence of newer, possibly more effective technologies;
- future cost and availability of the raw materials and components needed to manufacture and use our products;
- cost competitiveness of our products; and
- adoption of new regulatory or industry standards which may adversely affect the use or cost of our products.

Accordingly, we cannot predict with any certainty that there will be acceptance of our products on a scale sufficient to support development of mass markets for those products.

We are dependent on third party suppliers and vendors for the supply of key components for our products. We are dependent on third parties to manufacture the key components needed for our nano-structured based materials and value added products made with these materials. Accordingly, a supplier's failure to supply components in a timely manner, or to supply components that meet our quality, quantity and cost requirements, technical specifications, or the inability to obtain alternative sources of these components on a timely basis or on terms acceptable to us, would create delays in production of our products or increase unit costs of production. Certain of the components contain proprietary products of our suppliers, or the processes used by our suppliers to manufacture these components are proprietary. If we are required to replace any of our suppliers, while we should be able to obtain comparable components from alternative suppliers at comparable costs, this would create a delay in production. If we experience such delays or our third party suppliers and vendors fail to supply us with components that meet our quality, quantity, or cost standards, we may lose our customers or be subject to product liability claims. Our applications require extensive commercial testing and will take long periods of time to commercialize.

Our nano-structured materials and associated applications need to undergo extensive testing before becoming commercial products. Consequently, the commercialization of our products could be delayed significantly or rendered impractical. Moreover, much of the commercial process testing will be dependent on the efforts of others. Any failure in a manufacturing step or an assembly process may render a given application or our nano-structured materials unsuitable or impractical for commercialization. Testing and required development of the manufacturing process will require the expenditure of funds and take time and effort.

We have not devoted any significant resources towards the marketing and sale of our products, we expect to face intense competition in the markets in which we do business, and expect to rely, to a significant extent, on the marketing and sales efforts of third parties that we do not control.

To date, we primarily focused on the sale of ConsERV™ products and, while we have sold increasing quantities of our products, even by adding staff experienced in the industry we continue to experience a learning curve in the marketing and sale of products on a commercial basis. We expect that the marketing and sale of the ConsERV product will continue to be conducted by a combination of independent manufactures representatives, third-party strategic partners, distributors, or OEMs. Consequently, commercial success of our products will depend to a great extent on the efforts of others. We intend to enter into additional strategic marketing and distribution agreements or other collaborative relationships to market and sell our nano-structured materials and value added product. However, we may not be able to identify or establish appropriate relationships in the future. Even if we enter into these types of relationships, we cannot assure you that the distributors or OEMs with which we form relationships will focus adequate resources on selling our products or will be successful in selling them. In addition, our chosen third-party distributors or OEMs may require us to provide volume price discounts and other allowances, customize our products or provide other concessions which could reduce the potential profitability of these relationships. To the extent any strategic relationships that we establish are exclusive, we may not be able to enter into other arrangements at a time when the distributor with which we form a relationship is not successful in selling our products or has reduced its commitment to marketing our products. Failure to develop sufficient distribution and marketing relationships in our target markets will adversely affect our commercialization schedule and, to the extent we enter into such relationships, the failure of our distributors and other third parties in assisting us with the marketing and distribution of our products may adversely affect our financial condition and results of operations.

We will face intense competition in the markets of our product applications for our nano-structured materials and value-added products. We will compete directly with currently available products, some of which may be less expensive. The companies that make these other products may have established sales relationships and more name-brand recognition in the market than we do. In addition, some of those companies may have significantly greater financial, marketing, manufacturing and other resources.

Our future results could be harmed by economic, political, regulatory and other risks associated with international sales and operations.

We intend to market, distribute and service our products on an international basis and expect to derive a significant portion of our revenue in coming years from international sales. If we fail to successfully sell our products internationally, our ability to increase our future revenue and grow our business would be impaired. We have limited experience developing, and no experience manufacturing, our products to comply with the commercial, regulatory and legal requirements of international markets. Our success in those markets will depend on our ability to secure relationships with foreign resellers and our ability to manufacture products that meet foreign regulatory and commercial requirements. In addition, our planned international operations could be harmed by a variety of factors, including but not limited to:

- increased costs associated with maintaining international marketing efforts;
- compliance with potential United States Department of Commerce export controls;
- increases in duty rates or other adverse changes in tax laws;
- trade protection measures and import or export licensing requirements;
- fluctuations in currency exchange rates;
- political and economic instability in foreign countries; and
- difficulties in securing and enforcing intellectual property rights, foreign (where filed and obtained) or domestic, and time and complexities of vetting and establishing relations with foreign resellers or licensees including but not limited to designing, validating and marketing a product geared specifically to a particular market segment.

We depend on our intellectual property and failure to protect it could enable competitors to market products with similar features that may reduce demand for our products.

We currently have eight United States patents, nine patent applications and co-own six patent applications, some of which apply to the composition and structure of a family of ion conducting polymers and membranes. These patents and patent applications often make reference to applications for, and in some instances, are application patents relating to materials we are developing. Our patent applications may or may not mature into issued patents.

Our success depends, to a significant extent, on the technology that is incorporated in our product. Although some of the inventions which we have obtained or applied for patent protection are no longer suitable for use with our planned products, we believe that some of the other inventions covered by the patents and patent applications are important to the success of our products. If we are unable to protect our intellectual property, competitors could use our intellectual property to market products similar to our products, which could reduce demand for our products. We may be unable to prevent unauthorized parties from attempting to copy or otherwise obtain and use our products or technology. Policing unauthorized use of our technology is difficult, and we may not be able to prevent misappropriation of our technology, particularly in foreign countries where the laws may not protect our intellectual property as fully as those in the United States. Others may circumvent trade secrets, trademarks and copyrights that we own or may own. Any such infringements, or any alleged infringements, could have a material adverse effect on our business, results of operations, and financial condition.

Any of the United States patents or foreign patents owned by us or subsequently issued to us may be invalidated, circumvented, challenged or rendered unenforceable. We may not be issued any patents as a result of our pending and future patent applications and any patents we are issued may not have the claim coverage sought by us or necessary to prevent others from introducing similar products. Any litigation surrounding our patent rights could force us to divert significant financial and other important resources away from our business operations.

Some of our intellectual property is not covered by any patent or patent application. We seek to protect this proprietary intellectual property, which includes intellectual property that may not be patented or patentable, in part by confidentiality agreements with our distributors and employees. These agreements afford only limited protection and may not provide us with adequate remedies for any breach or prevent other persons or institutions from asserting rights to intellectual property arising out of these relationships. In addition, we cannot assure you that these agreements will not be breached, that we will have adequate remedies for any such breach or that the parties to such agreements will not assert rights to intellectual property arising out of these relationships.

Members of any scientific advisory board we had in the past or may have in the future have been or may be employed by entities other than us, some of which may compete with us. While we intend to enter into non-competition agreements with our scientific advisors, if any of them were to consult with or become employed by any of our competitors, our business could be negatively affected.

We have entered into agreements with various third parties that may affect our intellectual property rights.

We have entered into agreements with various third parties in connection with the development of various applications for our technology. In some instances such agreements provide that a third party will own any resulting intellectual property rights and for the grant of a license to us relating to those rights. We cannot assure you that the terms of any such licenses will not limit our ability to apply such rights to specific applications in competition with the relevant third party, which may adversely affect our business.

Our products employ technology that may unknowingly infringe on the proprietary rights of others, and, as a result, we could become liable for significant damages and suffer other harm.

We cannot assure you that our technologies and products do not or will not infringe on the proprietary rights of third parties or that third parties will not assert infringement claims against us in the future. We are aware of some patents in the nano-materials field held by potential competitors and other third parties. We cannot assure you that a third party will not claim infringement by us with respect to these patents, other patents or proprietary rights, or that we would prevail in any such proceeding. Any such infringement claim, whether meritorious or not, could:

- be time-consuming;
- result in costly litigation or arbitration and the diversion of technical and management personnel, as well as the diversion of financial resources from business operations;
- require us to develop non-infringing technology or seek to enter into royalty or licensing agreements; or
- require us to cease use of any infringing technology.

We may not be successful in developing non-infringing technologies. Royalty or licensing agreements, if required, may not be available on terms acceptable to us, or at all, and could significantly harm our business and operating results. A successful claim of infringement arising from the existence of a 'submarine patent' or another existing patent against us or our failure or inability to license the infringed or similar technology could require us to pay substantial damages and could harm our business. In addition, to the extent we agree to indemnify customers or other third parties against infringement of the intellectual property rights of others, a claim of infringement could disrupt or terminate their ability to use, market or sell our products and we may be liable for the related losses that may incur.

We may not be able to control our warranty exposure, which could increase our expenses.

We currently offer and expect to continue to offer a warranty with respect to our ConsERV™ product and we expect to offer a warranty with each of our future product applications. If the cost of warranty claims exceeds any reserves we may establish for such claims, our results of operations and financial condition could be adversely affected.

We may be exposed to lawsuits and other claims if our products malfunction, which could increase our expenses, harm our reputation and prevent us from growing our business.

Any liability for damages resulting from malfunctions of our products could be substantial, increase our expenses and prevent us from growing or continuing our business. Potential customers may rely on our products for critical needs, such as backup power. A malfunction of our products could result in warranty claims or other product liability. In addition, a well-publicized actual or perceived problem could adversely affect the market's perception of our products. This could result in a decline in demand for our products, which would reduce revenue and harm our business. Further, since our products are used in devices that are manufactured by other manufacturers, we may be subject to product liability claims even if our products do not malfunction.

Our key employees are critical to our success and the loss of any key employees could impair our ability to execute our strategy and grow our business.

Our future success depends, to a significant extent, on the continued service of our executive officers and other key technical, sales and senior management personnel and their ability to execute our growth strategy. All of our personnel have non-compete agreements with us however such agreements may not withstand court review if litigation were to occur. The loss of the services of any of our senior level management or other key employees could harm our business. Our future performance will depend, in part, on our ability to retain management personnel and for our executive officers to work together effectively. Our executive officers may not be successful in carrying out their duties or running our business. Any dissent among executive officers could impair our ability to make strategic decisions.

We have, when required, reduced the salaries of our employees. Such salary reductions may have an adverse effect on our ability to retain key employees.

If we fail to attract, retain and motivate qualified employees, we may be unable to execute our business strategy.

Our future success will depend in part on our ability to attract and retain highly qualified individuals, including researchers, engineers, sales and marketing personnel and management. Competition for these individuals may become intense, and it may become increasingly difficult to attract, assimilate and retain these highly qualified persons. Competitors and others may attempt to recruit our employees. Should we experience attrition or need to augment our staff, the cost of securing personnel may be significantly higher than currently experienced and thus negatively impact our financial position.

Our failure to manage our growth could harm our business.

We may grow in the number of our employees, the size of our physical facilities and the scope of our operations. In addition, we intend to focus greater resource on ConsERVTM margins, sales/marketing activities and channel expansion, and marketplace education. Any expansion would likely place a significant strain on our senior management team and other internal and external resources. Furthermore, we may be required to hire additional senior management personnel. Our ability to manage growth will depend in part on our ability to continue to enhance our operating, financial and management information systems. Our personnel, systems and controls may be unable to support any growth we may experience and as a result, our financial results would suffer.

Any acquisitions we make could disrupt our business and harm our financial condition.

As part of our growth strategy we may review opportunities to acquire other businesses or technologies that would complement our products, expand the breadth of our target markets or enhance our technical capabilities. Acquisitions entail a number of risks that could materially and adversely affect our business and operating results, including but not limited to:

- problems integrating the acquired operations, technologies or products with our existing businesses and products;
- constraints arising from increased expenses and working capital requirements;
- constraints on our ability to incur debt;
- dilution of our stock if we issue additional securities;
- disruption of our ongoing business, diversion of capital and distraction of our management;
- difficulties in retaining business relationships with suppliers and customers of acquired companies;
- difficulties in coordinating and integrating overall business strategies, sales, marketing, research and development efforts;

- potential liabilities in businesses and facilities acquired;
- difficulties in maintaining corporate cultures, controls, procedures and policies;
- difficulties evaluating risks associated with entering markets in which we lack prior experience; and
- potential loss of key employees.

Our revenue and operating results may fluctuate significantly as a result of factors outside of our control, which could cause the value of our business to decline.

Unless and until we establish a predictable sales record for our products, we expect our revenue and operating results to vary significantly from quarter to quarter. As a result, quarterly comparisons of our financial results are not necessarily meaningful and you should not rely on them as an indication, in any manner, of our future performance. In addition, due to our stage of development, we cannot predict our future revenue or results of operations accurately. As a consequence, our operating results may fall below the expectations of investors, which could cause the valuation of our company to decline.

We expect to make significant investments in all areas of our business, particularly in research and product development and in expanding in-house or outsourced manufacturing capability. Because the investments associated with these activities are relatively fixed in the short-term, we may be unable to adjust our spending quickly enough to offset any unexpected shortfall in our revenue growth. In addition, because we are in the early stages of commercializing the ConsERV™ application and anticipate that it will take at least an additional 12 to 36 months to develop our other products for commercial sales, we expect our order flow to be uneven from period to period.

Risks Related to Our Industry

If our products fail to meet certain technical standards, we could be subject to claims, fines or other penalties and we may be curtailed from conducting our business operations.

Our nano-structured membrane products are designed for specific applications with specific technical objectives and standards. If these membranes, or the hardware device(s) used to make the membranes work, fail to meet those technical objectives and/or standards, we could be liable for potential personal injury, loss of life and damages (including consequential damages). Depending on the nature of the claim, our current insurance policies may not adequately reimburse us for costs incurred by reason of said claims, including, but not limited to, environmental damage claims, and in certain instances, we may not be reimbursed at all. Our business may be or become subject to numerous federal, state and local laws, regulations and policies that govern environmental protection. These laws and regulations have changed frequently in the past and may continue to do so in the future. Our operations may not comply with such changes and we may be required to make significant unanticipated capital and operating expenditures to comply with such changes. If we fail to comply with any such applicable environmental laws and regulations, governmental authorities may seek to impose fines or other penalties on us or to revoke or deny the issuance or renewal of certain permits issued to us. Accordingly, we might be subject to damage claims or penalties, and we may be curtailed from conducting our business operations.

We could become liable for environmental damages resulting from our research, development and manufacturing operations.

Our business may expose us to the potential risk of harmful substances escaping into the environment, resulting in potential personal injury or loss of life, damage to or destruction of property, and natural resource damage. Depending on the nature of the claim, our current insurance policies may not adequately reimburse us for costs incurred in settling environmental damage claims, and in certain instances, we may not be reimbursed at all.

Future government regulation may impair our ability to market and sell our products.

Our current and planned products are potentially subject to federal, state, local and foreign laws and regulations governing, among other things, emissions to air as well as laws relating to occupational health and safety. As these products are introduced commercially, it is possible that governmental authorities will adopt new regulations that will limit or curtail our ability to market and sell such products. We may also incur substantial costs or liabilities in complying with such new governmental regulations. Our potential customers and distributors, some of which operate in highly regulated industries, may also be required to comply with new laws and regulations applicable to products such as ours, which could adversely affect their interest in our products.

Alternatives to our technology could render our systems obsolete prior to commercialization.

Our nano-structured materials and their identified uses are one of a number of products being developed today as potential answers to perceived market needs such as additional water sources, energy and emissions savings with regard to HVAC operation, alternative energy storage and “clean” power sources. Improvements are also being made to existing products. Technological advances in all fields and improvements in key targeted application areas with existing or different new technology may render our nano-structured material approach obsolete before or during commercialization.

Risks Related to This Offering and an Investment in Our Securities

Our common stock has traded only sporadically and is expected to experience significant price and volume volatility in the future which substantially increases the risk of loss to persons owning our common stock.

We cannot predict the extent to which an active public market for our common stock will develop or be sustained. We have applied for listing of our common stock on AMEX, but no assurance can be given that our application will be approved. If the application is not approved, we will not complete this offering or the reverse stock split, and the shares of our common stock will continue to be traded on the OTC Bulletin Board.

Our common stock has been quoted on OTC Market Group Inc.'s OTC Pink Market since November 15, 2005 and the Over the Counter Bulletin Board since November 24, 2008. The market price of our common stock has been and will likely continue to be subject to fluctuations. In addition, the stock market in general and the market for technology companies in particular, have from time to time experienced significant price and volume fluctuations that have been often unrelated or disproportionate to the operating performance of such companies. These broad market and industry factors may cause our common stock to materially decline, regardless of our operating performance. Because of the limited trading market for our common stock, meaning that the number of persons interested in purchasing our common shares at or near bid prices at any given time may be relatively small or non-existent, and the possible price volatility given our status as a relatively small company with a small and thinly traded “float”, you may not be able to sell your shares of common stock when you desire to do so. The inability to sell your shares in a rapidly declining market may substantially increase your risk of loss because of such illiquidity and because the price for our common stock may suffer greater declines because of its price volatility.

Volatility in our common share price may subject us to securities litigation.

The market for our common stock is characterized by significant price volatility, and we expect that our share price will continue to be volatile for the indefinite future. In the past, following periods of volatility in the stock market and the market price of a particular company’s securities, securities litigation has often been instituted against that company. Litigation of this type could result in substantial legal fees and other costs, potential liabilities and a diversion of management’s attention and resources.

We have not and do not intend to pay dividends on our common stock.

The payment of dividends upon our capital stock is solely within the discretion of our board of directors and dependent upon our financial condition, results of operations, capital requirements, restrictions contained in our future financing instruments and any other factors our board of directors may deem relevant. We have never declared or paid a dividend on our common stock and, because we have very limited resources, we do not anticipate declaring or paying any dividends on our common stock in the foreseeable future. Rather, we intend to retain any future

earnings for the continued operation and expansion of our business. It is unlikely, therefore, that the holders of our common stock will have an opportunity to profit from anything other than potential appreciation in the value of our common shares held by them.

Our executive officers and directors have significant shareholdings, which may lead to conflicts with other shareholders over corporate governance matters.

As of November 1, 2011, our directors and officers, as a group, beneficially own approximately 31.8% of our outstanding common stock, including shares of common stock issuable upon exercise of warrants and options they hold. Acting together, these shareholders would be able to significantly influence all matters that our shareholders vote upon, including the election of directors, mergers or other business combinations.

The consummation of the offering under this prospectus is contingent upon the approval of our application to list our shares on AMEX.

We are applying for listing of our common stock on AMEX. We believe that we will satisfy the listing requirements of AMEX. The approval of such listing, however, is not guaranteed. If the application is not approved, we will not complete this offering or the 10-for-1 reverse stock split, and the shares of our common stock will continue to be traded on the OTC Bulletin Board. Even if such listing is approved, we may not be able to meet the requirements for continued listing, and there may not be any broker interested in making a market for our stock. Therefore, it may be difficult to sell your shares of common stock if you desire or need to sell them. It is possible that an active and liquid trading market in our securities may never develop or, if one does develop, that the market will continue.

Unless an active trading market develops for our securities, shareholders may have difficulty or be unable to sell their shares of common stock.

We cannot predict the extent to which an active public market for our common stock will develop or be sustained. It is a condition to the closing of this offering that we be listed on the AMEX but we cannot assure you that we will be able to meet the requirements for continued listing going forward.

Our common stock is currently quoted on the OTC Bulletin Board under the symbol "DLYT." However, currently there is not an active trading market for our common stock, meaning that the number of persons interested in purchasing shares of our common stock at or near ask prices at any given time may be relatively small or non-existent, and there can be no assurance that an active trading market may ever develop or, if developed, that it will be maintained. There are a number of factors that contribute to this situation, including, without limitation, the fact that we are a small development-stage company that is relatively unknown to stock analysts, stock brokers, institutional investors and others in the investment community that generate or influence sales volume, and even if we came to the attention of such persons, they tend to be risk-averse and would be reluctant to follow an unproven, development-stage company such as ours or purchase or recommend the purchase of shares of our common stock until such time we become more seasoned and viable.

As a consequence, our stock may be characterized by a lack of liquidity, sporadic trading, larger spreads between bid and ask quotations, and other conditions that may affect shareholders' ability to re-sell our securities. Moreover, there may be periods of several days or more when trading activity in our shares is minimal or non-existent, as compared to a seasoned issuer which has a large and steady volume of trading activity that will generally support continuous sales without an adverse effect on share price. Unless an active trading market for our common stock is developed and maintained, shareholders may be unable to sell their common stock and any attempted sale of such shares may have the effect of lowering the market price of our common stock and a shareholder's investment could be a partial or complete loss.

Since our common stock is thinly traded, it is more susceptible to extreme rises or declines in price and shareholders may not be able to sell their shares at or above the price paid.

Since our common stock is thinly traded, its trading price is likely to be highly volatile and could be subject to extreme fluctuations in response to various factors, many of which are beyond our control, including:

- the trading volume of our shares whether large or small;
- the number of securities analysts, market-makers and brokers following our common stock;
- new products or services introduced or announced by us or our competitors;
- actual or anticipated variations in quarterly operating results;
- conditions or trends in our business industries;
- announcements by us of significant contracts, acquisitions, strategic partnerships, joint ventures or capital commitments;
- additions or departures of key personnel;
- sales of our common stock;
- general stock market price and volume fluctuations of publicly-quoted, and particularly microcap, companies that tend to have products or services in development or have yet to be tested in the market;
- the effect of our 10-for-1 reverse stock split; and
- material legal action.

Shareholders, including but not limited to those who hold shares as a result of the exercise or conversion of our convertible securities and warrants, may have difficulty reselling shares of our common stock, either at or above the price paid, or even at fair market value. The stock markets often experience significant price and volume changes that are not related to the operating performance of individual companies, and because our common stock is thinly traded it is particularly susceptible to such changes. These broad market changes may cause the market price of our common stock to decline regardless of how well we perform as a company. Price fluctuations in such shares are particularly volatile and subject to manipulation by market-makers, short-sellers and option traders.

Our common stock is currently and may in the future be subject to the “penny stock” regulations, which are likely to make it more difficult to sell.

The trading price of our common stock is currently below \$5 per share. Following the completion of our 10-for-1 reverse stock split we anticipate that the trading price of our stock will be adjusted by a factor of ten. If at any time the per-share price of our stock trades below \$5.00 per share, our common stock will be subject to the “penny stock” rules. We anticipate that after the reverse stock split has been effected and our common stock has been listed on a national exchange we will not be subject to the “penny stock” rules, however there is no guarantee we will continue to meet such listing requirements or share prices. The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. These rules generally have the result of reducing trading in such stocks, restricting the pool of potential investors for such stocks, and making it more difficult for investors to sell their shares once acquired. Prior to a transaction in a penny stock, a broker-dealer is required to:

- deliver to a prospective investor a standardized risk disclosure document that provides information about penny stocks and the nature and level of risks in the

penny stock market;

- provide the prospective investor with current bid and ask quotations for the penny stock;
- explain to the prospective investor the compensation of the broker-dealer and its salesperson in the transaction;
- provide investors monthly account statements showing the market value of each penny stock held in their account; and
- make a special written determination that the penny stock is a suitable investment for the purchaser and receive the purchaser's written agreement to the transaction.

Edgar Filing: DAIS ANALYTIC CORP - Form S-1/A

These requirements may have the effect of reducing the level of trading activity in the secondary market for a stock that is subject to the penny stock rules. Since our common stock is subject to the penny stock rules, investors in our common stock may find it more difficult to sell their shares.

Shares eligible for future sale may adversely affect the market.

From time to time, certain of our stockholders may be eligible to sell all or some of their shares of common stock by means of ordinary brokerage transactions in the open market pursuant to Rule 144, promulgated under the Securities Act, subject to certain limitations. In general, pursuant to Rule 144, non-affiliate stockholders may sell freely after six months subject only to the current public information requirement (which disappears after one year). Affiliates may sell after six months subject to the Rule 144 volume, manner of sale (for equity securities), current public information and notice requirements. Of the 37,517,604 shares (3,751,760 shares upon giving effect to the anticipated 10-for-1 reverse stock split) of our common stock outstanding as of November 1, 2011, approximately 28,689,278 shares (approximately 2,868,928 shares upon giving effect to the anticipated 10-for-1 reverse split) are held by non-affiliates and are, or will be, freely tradable without restriction, and the remaining shares are held by our affiliates, as of such date. Any substantial sale of our common stock pursuant to Rule 144 or pursuant to any resale prospectus (including sales by investors of securities acquired in connection with this offering) may have a material adverse effect on the market price of our common stock.

As of November 1, 2011, the Company has issued options, warrants and convertible securities which could result in the issuance of up to 54,896,354 shares of common stock (approximately 5,489,635 shares upon giving effect to the 10-for-1 reverse stock split) from time to time, consisting of:

- 17,636,090 shares under options (1,763,609 shares after the anticipated 10-for-1 reverse stock split);
- 26,575,332 shares under warrants (2,657,533 shares after the anticipated 10-for-1 reverse stock split); and
- 10,684,932 shares under convertible securities (1,068,493 shares after the anticipated 10-for-1 reverse stock split).

Of these securities, a substantial number of the shares are obtainable at exercise and conversion prices at less than the public offering price of shares offered by this prospectus, including by means of cashless exercise provisions. Accordingly, a substantial number of the shares issuable on exercise or conversion of the securities could be sold by the holders of these securities immediately or promptly after the offering. If these shares are issued and available for sale or actually sold in the public market, the market could be adversely impacted and the market price depressed.

You will experience immediate dilution in the book value per share of the common stock you purchase.

Because the price per share of our common stock being offered is substantially higher than the book value per share of our common stock, you will suffer substantial dilution in the net tangible book value of the common stock you purchase in this offering. Based on an assumed offering price of \$4.00 per share, if you purchase shares of common stock in this offering, you will suffer immediate and substantial dilution of \$2.94 per share in the net tangible book value of the common stock at June 30, 2011. See the section entitled "Dilution" below for a more detailed discussion of the dilution you will incur if you purchase common stock in this offering.

A large number of shares may be sold in the market following this offering, which may depress the market price of our common stock.

A large number of shares may be sold in the market following this offering, which may depress the market price of our common stock. Sales of a substantial number of shares of our common stock in the public market following this offering could cause the market price of our common stock to decline. If there are more shares of common stock offered for sale than buyers are willing to purchase, then the market price of our common stock may decline to a market price at which buyers are willing to purchase the offered shares.

Upon completion of this offering and assuming the sale of all 3,750,000 shares of our common stock offered pursuant to this prospectus, the issuance of approximately 481,800 shares of common stock for the conversion of the outstanding convertible notes and the issuance of an estimated 166,971 shares of common stock to our CEO as partial payment of his accrued salary, we will have approximately 8,150,531 shares of

our common stock outstanding after giving effect to the anticipated 10-for-1 reverse stock split.

DETERMINATION OF OFFERING PRICE

Although our common stock is currently quoted on the OTC Bulletin Board, we are applying to have our common stock listed for trading on AMEX which we expect to occur prior to the closing of the offering. Our underwriter, MDB Capital Group LLC, is not obligated to make a market in our securities. Neither we nor the underwriter can provide any assurance that an active and liquid trading market in our securities will develop or, if developed, that the market will continue.

The public offering price of the shares offered by this prospectus has been determined by negotiation between us and the underwriter. Among the factors considered in determining the public offering price of the shares were:

- our history and our prospects;
- the industry in which we operate including industry comparable information;
- our past and present operating results;
- our outstanding debt, and the value of the various option grants and warrants at the time of pricing;
- our anticipated 10-for-1 reverse stock split;
- the previous experience of our executive officers; and
- the general condition of the securities markets at the time of this offering.

The offering price stated on the cover page of this prospectus should not be considered an indication of the actual value of the shares. That price is subject to change as a result of market conditions and other factors, and we cannot assure you that the shares can be resold at or above the public offering price.

USE OF PROCEEDS

Based on an assumed offering price of \$4.00 per share (which is the midpoint of our expected offering range of \$3.00 to \$5.00), we estimate the gross proceeds from the sale of 3,750,000 shares of common stock, prior to deducting underwriting discounts and commissions and the estimated offering expenses payable by us, will be approximately \$15.0 million (approximately \$17.3 million if the over-allotment option granted to the underwriter is exercised in full).

We estimate that we will receive net proceeds of \$13.1 million, after deducting underwriting discounts and commissions and estimated expenses of approximately \$1.9 million, which includes legal, accounting, printing costs and various fees associated with the registration and listing of our shares. If the underwriter exercises its right to purchase an additional 562,500 shares of common stock to cover over-allotments, we will receive an additional \$2,025,000, after deducting \$225,000 for underwriting discounts and commissions.

We currently intend to use the net proceeds of this offering as shown below:

	Application of Net Proceeds	Application of Net Proceeds
Working Capital and General Corporate Purposes	\$ 3,805,000	29.0%
Marketing, Research and Development (1)	\$ 7,032,000	53.8%
Repayment of Convertible Notes (2)	\$ 1,525,000	11.6%
Payment of Employee Accrued Salaries(3)	\$ 358,000	2.7