

WESTPORT INNOVATIONS INC
Form 40-F/A
June 03, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 40-F/A

(Amendment No. 1)

**REGISTRATION STATEMENT PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

OR

**ANNUAL REPORT PURSUANT TO SECTION 13(a) OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2012

Commission file number: 001-34152

WESTPORT INNOVATIONS INC.

(Exact Name of Registrant as Specified in its charter)

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Alberta
(Province or other jurisdiction of
incorporation or organization)

3537
(Primary Standard Industrial Classification
Code Number (if applicable))

N/A
(I.R.S. Employer Identification Number (if
applicable))

Suite 101, 1750 West 75th Avenue

Vancouver, British Columbia, Canada V6P 6G2

(604) 718-2000

(Address and telephone number of Registrant's principal executive offices)

C T Corporation System

111 Eighth Avenue

New York, NY 10011

(212) 590-9070

(Name, address (including zip code) and telephone number (including
area code) of agent for service in the United States)

Copies to:

Eva Davis

**Kirkland & Ellis LLP
333 South Hope Street**

**Los Angeles, California, 90071
(213) 680-8508**

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of Each Class:
Common Shares, no par value

Name of Each Exchange On Which Registered:
NASDAQ Global Select Market

Securities registered or to be registered pursuant to Section 12(g) of the Act: **N/A**

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: **N/A**

For annual reports, indicate by check mark the information filed with this form:

Annual Information Form

Audited Annual Financial Statements

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report: As at December 31, 2012, 55,294,091 common shares of the Registrant were issued and outstanding.

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing

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requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

EXPLANATORY NOTE

Westport Innovations Inc. (the **Company** or the **Registrant**) is a Canadian issuer eligible to file its annual report pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the **Exchange Act**), on Form 40-F pursuant to the multi-jurisdictional disclosure system of the Exchange Act. The Company is a foreign private issuer as defined in Rule 3b-4 under the Exchange Act. Equity securities of the Company are accordingly exempt from Sections 14(a), 14(b), 14(c), 14(f) and 16 of the Exchange Act pursuant to Rule 3a12-3.

This Amendment No. 1 to the Company's Annual Report on Form 40-F for the year ended December 31, 2012 originally filed on March 8, 2013 with the Securities and Exchange Commission (SEC) in the United States (the Original Form 40-F) is being filed (i) in response to comments the Company received from the SEC regarding the disclosure in the Company's audited consolidated financial statements that were filed as Exhibit 99.2 and the Company's Management's Discussion and Analysis that was filed as Exhibit 99.3 to the Original Form 40-F, and (ii) to make conforming changes to Exhibits 99.2 and 99.3 from those in the Original Form 40-F based on comments the Company received from the British Columbia Securities Commission in respect of the Company's preliminary short form base shelf prospectus. In addition, the Company has corrected certain typographical errors in, and made certain other conforming changes to, the information that was in Exhibits 99.2 and 99.3 in the Original Form 40-F. This Amendment No. 1 does not impact reported amounts of revenues, net loss attributable to the Company, loss per share or net cash flows for the year ended December 31, 2012, the nine month period ended December 31, 2011 and the year ended March 31, 2011.

The Company has included in this Amendment No. 1: (i) amended audited consolidated financial statements of the Company and notes thereto for the year ended December 31, 2012, nine months ended December 31, 2011 and year ended March 31, 2011 as Exhibit 99.2; (ii) amended Management's Discussion and Analysis for the twelve months ended December 31, 2012 as Exhibit 99.3; (iii) audited financial statements of Cummins Westport Inc. and notes thereto as at and for the years ended December 31, 2012 and December 31, 2011 and as at and for the years ended December 31, 2011 and December 31, 2010 as Exhibit 99.4; and (iv) new certifications of its Chief Executive Officer and Chief Financial Officer pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 as Exhibits 99.5, 99.6, 99.7 and 99.8. The impact that the amendments described above will have on the audited consolidated financial statements are discussed in note 2(a) to the amended audited consolidated financial statements of the Company.

Subsequent to the Original Form 40-F, Management has identified a material weakness in the Company's internal control over financial reporting as of December 31, 2012, which is that the Company did not employ accounting staff with an appropriate level of technical accounting knowledge, experience and training in the application of recognition, measurement and disclosure requirements of U.S. GAAP and experience with regulatory requirements. This control deficiency specifically resulted in the Company changing its determination of whether a primary beneficiary existed in connection with the application of Accounting Standards Update 2009-17, Consolidation (Topic 810): Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities, (ASU 2009-17) for the Company's interest in Cummins Westport Inc. As a result, it was determined in the preparation of the 2012 audited consolidated financial statements that no primary beneficiary existed and material adjustments were made to the consolidated financial statements as at December 31, 2011 and for the nine month period ended December 31, 2011 and the year ended March 31, 2011 to account for the interest under the equity method.

This control deficiency also resulted in reclassifications of foreign exchange loss (gain) to income from investment accounted for by the equity method for the nine month period ended December 31, 2011 and the year ended March 31, 2011 to ensure consistency to other presentations of CWI equity income in the filing, deferred income taxes from non-current to current for balances as at December 31, 2011 and within the segmented information note related to long-lived assets information allocated by geographic areas as at December 31, 2012 and December 31, 2011. We have also adjusted the disclosure of consolidated pro forma revenue in the financial statement notes to remove CWI revenue for the nine month period ended December 31, 2011 and the year ended March 31, 2011.

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As a result of the material weakness that has been determined to exist as described in Management's Report on Internal Control over Financial Reporting, our CEO and CFO have concluded that our disclosure control and procedures were not effective as of December 31, 2012. This control deficiency cannot be considered to be remediated until the applicable remedial controls operate for a sufficient period of time and management has concluded, through testing, that the controls are operating effectively. See Management's Report on Internal Control over Financial Reporting in the MD&A in this Form 40-F/A (Amendment No. 1).

Except as set forth above, this Amendment No. 1 does not modify or update the disclosure in the Original Form 40-F and, therefore, it is not included herein. Except as may be specifically indicated herein, the Original Form 40-F continues to describe conditions as of the date of the Original Form 40-F and the Company has not modified or updated other disclosures presented in the Original Form 40-F. The Form 40-F/A does not reflect events occurring after the date of the Original Form 40-F nor does it modify or update disclosures affected by subsequent events. Accordingly, the Form 40-F/A should be read in conjunction with the Original Form 40-F.

FORWARD-LOOKING STATEMENTS

This annual report on Form 40-F and the exhibits attached hereto contain forward-looking statements or information within the meaning of the United States Private Securities Litigation Reform Act of 1995. When used in this annual report on Form 40-F, the words "may", "would", "could", "will", "intend", "plan", "anticipate", "believe", "estimate", "expect", "project" and similar expressions, as they relate to the Company or the Company's management, are intended to identify forward-looking statements. In particular, this annual report on Form 40-F and the documents incorporated by reference herein contain forward-looking statements pertaining to the following:

- the future demand for Cummins Westport Inc. (**CWI**) products and Company products, including Westport Light Duty Inc. (**WLD**), products;
- increasing penetration within our existing markets and expansion of those markets geographically;
- continuing growth in the transportation sector and in the natural gas engine market;
- the timing of and our ability to successfully launch new technology initiatives, including in light-, medium-, and heavy-duty markets;
- our ability to exploit and protect our intellectual property;
- our capital expenditure and investment programs;
- the future desirability and use of natural gas as an alternative fuel;

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- commodity prices and the fuel price differential between natural gas and diesel;
- ongoing relationships between us and our business and partners and the results of our development programs with such partners;
- our ability to continue to compete with our competitors and their technologies;
- the capital and operating costs of vehicles using our technologies relative to alternative technologies;
- profit margins and production costs of engines incorporating our technologies;
- the further development of infrastructure supporting the application of natural gas as an alternative fuel;
- increasingly stringent environmental and emissions regulations in the future;

- ongoing availability of government incentives and mandates for our technology;
- our ability to attract and retain employees;
- demand for engines incorporating our technologies;
- the timing of commissioning of liquefied natural gas (LNG) refueling stations;
- production capacity methods for our methods for our LNG system;
- increasing commercialization of our technologies;
- expansion of our product offerings and markets;
- our estimates and assumptions used in our accounting policies, and accruals, including warranty accruals, and financial condition;
- our adoption, timing and ability to meet certain accounting standards;
- the ability of our products to adapt to the use of biogas, renewable natural gas and manufactured fuels, including hydrogen, as fuels;
- our compliance with environmental regulations; and
- the alignment of our business segments.

Such statements reflect our current views with respect to future events and are subject to certain risks, uncertainties and assumptions. Actual results may differ materially from those expressed in these forward-looking statements due to a number of uncertainties and risks, including the risks described in this annual report on Form 40-F and in the documents incorporated by reference herein and other unforeseen risks, including,

without limitation:

- market acceptance of our products;
- product development delays;
- delays in contractual commitments;
- changing environmental regulations;
- the ability to attract and retain business partners;
- the success of our business partners and original equipment manufacturers (**OEMs**), with whom we partner;
- future levels of government funding and incentives;
- competition from other technologies;
- price differential between compressed natural gas (**CNG**), LNG and liquefied petroleum gas (**LPG**) relative to petroleum-based fuels;
- limitations on our ability to protect our intellectual property;
- potential claims or disputes in respect of our intellectual property;
- limitations in our ability to successfully integrate acquired businesses;

- limitations in the development of natural gas refueling infrastructure;
- the ability to provide the capital required for research, product development, operations and marketing;
- unforeseen claims made against us;
- exposure to factors beyond our control through our international business operations, such as currency exchange rates, changes in governmental policy, trade barriers, trade embargoes and delays in the development of international markets for our products;
- those risks discussed under the heading "Risk Factors" in the Annual Information Form ("AIF") of the Company filed as Exhibit 99.1 to this annual report on Form 40-F.

You should not rely on any forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, after the date of this annual report on Form 40-F, except as otherwise required by law.

AUDITED ANNUAL FINANCIAL STATEMENTS

The amended audited consolidated financial statements of the Company for the twelve months ended December 31, 2012, nine months ended December 31, 2011 and twelve months ended March 31, 2011, including the report of the independent auditor with respect thereto, are filed as Exhibit 99.2 and incorporated by reference in this annual report on Form 40-F.

MANAGEMENT'S DISCUSSION AND ANALYSIS

The Company's amended management's discussion and analysis ("MD&A") is filed as Exhibit 99.3 and incorporated by reference in this annual report on Form 40-F.

MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

See Management's Discussion and Analysis of Financial Condition and Results of Operations for the twelve months ended December 31, 2012, included as Exhibit 99.3 to this annual report, under the heading "Disclosure Controls and Procedures and Internal Controls Over Financial

Reporting .

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

See amended audited consolidated financial statements of the Company and notes thereto for the twelve months ended December 31, 2012, nine months ended December 31, 2011 and twelve months ended March 31, 2011, including the report of the independent auditor with respect thereto, are filed as [Exhibit 99.2](#) to this annual report, under the heading Report of Independent Registered Public Accounting Firm .

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

See amended Management's Discussion and Analysis of Financial Condition and Results of Operations for the twelve months ended December 31, 2012, included as [Exhibit 99.3](#) to this annual report, under the heading Disclosure Controls and Procedures and Internal Controls Over Financial Reporting Changes in Internal Control Over Financial Reporting .

EXHIBIT INDEX

The following exhibits have been filed as part of this annual report:

| Exhibit | Description |
|---------------------------|--|
| Annual Information | |
| 99.1* | Annual Information Form of the Company for the twelve months ended December 31, 2012 |
| 99.2 | Audited consolidated financial statements of the Company and notes thereto for the twelve months ended December 31, 2012, nine months ended December 31, 2011 and twelve months ended March 31, 2011 together with the report of the auditors thereon (as amended) |
| 99.3 | Management's Discussion and Analysis for the twelve months ended December 31, 2012 (as amended) |
| 99.4 | Audited financial statements of Cummins Westport Inc. and notes thereto as at and for the years ended December 31, 2012 and December 31, 2011 and as at and for the years ended December 31, 2011 and December 31, 2010 together with the report of the auditors thereon |
| Certifications | |
| 99.5 | Certificate of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 99.6 | Certificate of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 99.7 | Certificate of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 99.8 | Certificate of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| Consents | |
| 99.9 | Consent of KPMG LLP regarding the financial statements of the Company |
| 99.10 | Consent of KPMG LLP regarding the financial statements of Cummins Westport Inc. |
| Exhibits | |
| 101.1 | XBRL Interactive Data File |

* Previously filed with our Annual Report on Form 40-F on March 8, 2013

SIGNATURES

Pursuant to the requirements of the Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40-F and has duly caused this annual report to be signed on its behalf by the undersigned, thereto duly authorized.

WESTPORT INNOVATIONS INC.

| | |
|--------|-------------------------|
| By: | /s/ David R. Demers |
| Name: | David R. Demers |
| Title: | Chief Executive Officer |

Date: May 31, 2013