

SMART ONLINE INC
Form DEF 14C
April 27, 2012

UNITED STATES SECURITIES

AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 14C INFORMATION

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934 (Amendment No.)

Check the appropriate box:

- Preliminary Information Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14c- 5(d)(2))
- Definitive Information Statement

SMART ONLINE, INC.
(Name of Registrant as Specified in Its Charter)

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- No fee required
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SMART ONLINE, INC.
4505 Emperor Boulevard
Suite 320
Durham, North Carolina 27703

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD JUNE 13, 2012

You are cordially invited to attend the Annual Meeting of Stockholders of Smart Online, Inc., which will be held on Wednesday, June 13, 2012, at 9:00 a.m. local time, in the Board Room at the offices of the corporation at 4505 Emperor Boulevard, Suite 320, Durham, North Carolina 27703. Stockholders will be asked to consider and vote upon the following matters at the meeting, which are described in the accompanying information statement:

1. The election of four directors, each to serve for a term of one year or until his successor shall have been duly elected and qualified;
2. The ratification of the appointment of Cherry, Bekaert & Holland, L.L.P. as the independent registered public accounting firm of the Company for the fiscal year ending December 31, 2012; and
3. The transaction of such other business as may be properly brought before the meeting.

Stockholders of record at the close of business on April 27, 2012 are entitled to notice of and to vote at the annual meeting and any and all adjournments or postponements thereof.

We are not soliciting proxies for this annual meeting. However, all stockholders are welcome to attend the meeting and vote in person.

By Order of the Board of Directors

/s/ Dror Zoreff
Dror Zoreff
Chairman of the Board

Durham, North Carolina

SMART ONLINE, INC.

2012 ANNUAL MEETING OF STOCKHOLDERS

9:00A.M. EST, JUNE 13, 2012

INFORMATION STATEMENT

WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE
REQUESTED NOT TO SEND US A PROXY

This Information Statement contains information related to the Company's 2012 annual meeting of stockholders to be held at the Company's corporate offices, 4505 Emperor Boulevard Suite 320, Durham North Carolina 27703 at 9:00 A.M., Eastern Standard Time, on June 13, 2012 and at any adjournments or postponements thereof. The approximate date that this Information Statement, the preceding Notice of Annual Meeting and the Company's Annual Report to Stockholders for the fiscal year ended December 31, 2011, or the Annual Report are first being made available to stockholders is April 30, 2012. We are making this Information Statement available to our stockholders for use at the annual meeting. You should review this Information Statement in conjunction with the Company's Annual Report.

GENERAL INFORMATION

Meeting Information

The annual meeting of stockholders of Smart Online, Inc. or Smart Online, the Company, we, our or us will be held at the Company's corporate offices 4505 Emperor Boulevard, Suite 320, Durham, NC 27703 beginning at 9:00 A.M., Eastern Standard Time, on June 13, 2012.

The proposals scheduled to be voted on are (1) to elect four (4) directors for one-year terms; and (2) to ratify the appointment of Cherry, Bekaert & Holland, L.L.P., or Cherry Bekaert, as the independent registered public accountant for the fiscal year ending December 31, 2012. Our Board of Directors, or the Board, recommends that you vote "FOR" each of the nominees to the Board described in Proposal No. 1 and "FOR" the ratification of the selection of Cherry Bekaert as our independent registered public accounting firm for the fiscal year ended December 31, 2012, as described in Proposal No. 2.

Who May Vote

You are entitled to vote in person at the annual meeting if you owned shares of our common stock as of the close of business (5:00 p.m.) on April 27, 2012, the record date of the annual meeting. On the record date, 18,352,542 shares of our common stock were issued and outstanding and held by 198 holders of record. Holders on the record date of our common stock which is (1) held directly in your name as the stockholder of record or (2) held for you as the beneficial owner through a stockbroker, bank or other nominee, are entitled to one vote per share at the annual meeting. You may vote by ballot or grant a proxy to another person to vote in your place.

WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY

How To Vote

Holders of record may vote in person at the meeting by ballot or grant a proxy to another person to vote in your place. If your shares are not held of record in your name, you must obtain a proxy from the record holder, usually a broker or other nominee, in order to vote in person at the meeting.

Quorum

The presence at the annual meeting, in person or by proxy, of the holders of a majority of the shares of our common stock outstanding on the record date will constitute a quorum. Abstentions are counted as present for the purpose of determining the presence of a quorum. A broker who holds shares in nominee or "street name" for a customer who is the beneficial owner of those shares may be prohibited from voting those shares in person on any proposal to be voted on at the annual meeting without specific instructions from such customer with respect to such proposal.

Votes Needed

Proposal 1: Election of Directors. The affirmative vote of a plurality of the votes cast at the annual meeting is required for the election of each of the four director nominees. You may vote "for" one or more director nominees or you may withhold your vote as to one or more director nominees. A properly executed ballot or proxy marked "withhold" as to the election of one or more director nominees will not be counted with respect to the director or directors indicated, although it will be counted for purposes of determining whether there is a quorum. Stockholders do not have the right to cumulate their votes for directors. No New York Stock Exchange (NYSE) member broker who is the record holder of shares on behalf of a beneficial owner (the customer) can vote shares at the meeting for the election of

directors unless the broker receives instructions from the beneficial owner. These "broker non-votes" will not impact the results of the election, but will be counted for purposes of determining whether there is a quorum.

Proposal 2: Ratification of the Appointment of the Independent Registered Public Accounting Firm. The affirmative “FOR” vote of the holders of a majority of all shares casting votes in person or by proxy at the annual meeting is required to ratify the appointment of Cherry Bekaert, as our independent registered public accounting firm for the fiscal year ending December 31, 2012. A properly executed ballot marked “abstain” with respect to this proposal will not be counted, although it will be counted for purposes of determining whether there is a quorum. Abstentions will have the same effect as a vote against this proposal. NYSE member brokers have discretion to vote on behalf of beneficial owners with respect to this proposal; as a result, there will be no "broker non-votes" on this item.

As of the record date, our directors and executive officers and their affiliates owned and were entitled to vote approximately 18,352,542 shares of our common stock. All of these persons have indicated they and their affiliates will vote their shares in favor of the four director nominees and the ratification of the appointment of Cherry Bekaert.

Other Matters

The Board does not know of any other matter that will be presented for your consideration at the annual meeting other than the two proposals described herein.

PROPOSAL NO. 1

ELECTION OF DIRECTORS

At the annual meeting, four nominees will be elected as directors. Our Board currently consists of four members, all of whom are standing for re-election at the annual meeting. The directors elected at the annual meeting will serve until the next annual meeting of stockholders and until their respective successors are duly elected and qualified.

Our Board, based on the recommendation of the nominating and governance committee, has nominated each of Shlomo Elia, Amir Elbaz, Dror Zoreff and Robert M. Brinson, Jr. to stand for re-election at the annual meeting.

The bylaws of the Company provide that the number of directors on the Board will be no more than nine. We had three directors at the beginning of fiscal year 2011. In September 2011, we expanded the size of the Board to 4 directors and nominated our fourth director. We will also elect four directors for fiscal year 2012. The four nominees that receive the most votes will be appointed to serve on our Board for the next year. You cannot vote for a greater number of persons than the number of nominees named. All four of the persons nominated for election to the Board at the annual meeting are currently serving as directors of the Company. The Company is not aware of any nominee who will be unable or will decline to serve as a director. If a nominee becomes unable or declines to serve, votes may be cast for a substitute nominee, if any, designated by the Board. The term of office of each person elected as a director will continue until the later of the next annual meeting of stockholders or until such time as his or her successor has been duly elected and qualified, or until his prior death, resignation or removal.

The following table lists the nominees for election and information about each.

Name	Age	Principal Occupation and Background
Shlomo Elia	69	Director. Mr. Elia has served on the Company's Board since November 2006 and was originally recommended for appointment to the Board by Atlas Capital, SA, Atlas or Atlas Capital, one of the Company's stockholders and lenders. Mr. Elia is the founder and a Director of 3Pen Ltd., 3Pen, a private holding company focusing on business opportunities in Internet infrastructure and telecommunications. Prior to founding 3Pen in 1999, Mr. Elia held several senior positions in the Israeli Defense Forces, I.D.F., including the post of the Military Governor of the West-Bank (1982-1984) and Commander of the Liaison Unit for South Lebanon (1984-1985). During his service, among other activities, General Elia was engaged for a year as a Research Fellow in the Institute of International Strategic Affairs at U.C.L.A. Since his retirement from the I.D.F., he has been involved in communication projects in Nigeria and West Africa and construction projects in Romania. Among his civilian activities, Mr. Elia was Chairman of the National Tourist Board and currently is Chairman of 3Pen Technologies Ltd. and co-chairman of the Israeli Soldiers Welfare Association. Mr. Elia holds a B.A. degree in Modern History of the Middle-East from Tel Aviv University.

We believe Mr. Elia's international business expertise and significant management experience will provide constructive insight and perspective to our Board and management.

Amir Elbaz	35	Director. Mr. Elbaz has served on the Company's Board since January 2010. Mr. Elbaz currently serves as Chief Executive Officer of two companies in the technology and media sectors. Mr. Elbaz also advises technology and renewable energy companies on business strategy, restructuring and business development initiatives. Mr. Elbaz served as the
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Executive Vice President & Chief Financial Officer of Lithium Technology Corporation until November 2008. Mr. Elbaz joined LTC in 2006 to oversee finances and marketing, as well as business development. Prior to joining LTC, Mr. Elbaz served as a Senior Associate of Arch Hill Capital NV, a Dutch venture firm, from 2005-2006. During 2004 and most of 2005 Mr. Elbaz served as Vice President of Corporate Finance at Yorkville Advisors, where Mr. Elbaz sourced, structured and managed investments in more than a dozen public and private companies. Prior to joining Yorkville Advisors, Mr. Elbaz served for several years as an analyst with the Economic Department in the Procurement Mission of the Israeli Ministry of Defense in New York City. In that capacity, Mr. Elbaz co-headed multi-million dollar negotiations with first tier technology companies, and was in charge of the financial aspects of the day-to-day operations. Mr. Elbaz holds a B.A. degree from the University of Haifa, Israel, and an MBA in Finance & Investments from Bernard Baruch College, CUNY, New York. Following his MBA graduation, Mr. Elbaz was elected to the International Honorary Finance Society of Beta Gamma Sigma.

We believe Mr. Elbaz's significant experience in the technology sector, coupled with his extensive financial and economic background provide invaluable insight with respect to our business and technologies.

Dror Zoreff 66

Director. Mr. Zoreff has served on the Company’s Board since April 2008. Since May 2009, he has served as Chairman of the Board, and since November 2009, he has served as Interim President and Chief Executive Officer. Since 2008, he has served as the President and CEO of Donor Management Services, Inc., a New York-based company that provides major donors, corporations, and foundations a unique set of tools and services to ensure their charitable gifts are properly used and achieve the desired impact. From 1999 to 2008, Mr. Zoreff served as Consultant to the President and CEO of United Retail Group Inc., a specialty retailer of plus size women’s fashions. From 1997 to 1999, he was Vice President of International Operations at Russ Berrie, Inc., a designer, importer, marketer, and distributor of gift and infant and juvenile consumer products. Prior to 1997, Mr. Zoreff held positions with The College of Judea & Samaria, Glenoit Industries Ltd, and the Jewish Agency for Israel. Mr. Zoreff holds a B.A. degree in Business Administration from Manchester University and an M.A. degree in Business Administration from Tel Aviv University.

We believe Mr. Zoreff’s extensive marketing and management experience, in addition to his knowledge of the international marketplace, contributes to the strategic composition of the Board.

Robert M. Brinson, Jr. 48

Director. Mr. Brinson has served on the Company’s Board since September 14, 2011. From 2005 until 2007, Mr. Brinson was a board member and Chief Technology Officer of IntelliScience Corporation, a developer of intelligent multi-modal image analysis systems and software. In 2007, Mr. Brinson became a board member and Chief Technology Officer of IP Tank, LLC. Mr. Brinson is currently the Chief Visionary Officer of Apokalyyis, Inc., a developer of consultative technology solutions and serves as Chief Technology Officer of Concept Connections and Affirm ID, LLC. Mr. Brinson serves on the boards of directors of Apokalyyis, Inc. and iissee, LLC, a company specializing in local search solutions. He is also a self-employed technology consultant.

In addition to his service as a Board member, Mr. Brinson provided technology and management consulting services to the Company during 2011 and continues to provide those services during 2012.

We believe Mr. Brinson’s extensive technology, innovation and management experience contributes to the strategic composition of the Board.

Our Board unanimously recommends that you vote “FOR” the election of each of the director nominees named above.

Executive Officers

The names of the Company’s current executive officers are listed in our Annual Report on Form 10-K. The Company’s executive officers are appointed by its Board to hold office until their successors are appointed.

Name	Age	Position
Dror Zoreff	66	Chairman of the Board, Interim President and Chief Executive Officer
Thaddeus J. Shalek	62	Chief Financial Officer

Information regarding Mr. Zoreff is described above under “Nominees for Election as Directors”.

Thaddeus J. Shalek, Chief Financial Officer.

Chief Financial Officer since August 2009. Mr. Shalek was the CFO of Lindell Investments, Inc., a closely held national real estate development company in Tampa, Florida from June 2006 until April 2008, the CEO and CFO of Vertical Health Solutions, Inc., Oldsmar, Florida from October 2004 to June 2006 and the owner and president of Shalek & Associates, CPA's Inc., a Certified Public Accounting firm in Cleveland, Ohio providing accounting, tax and consulting services to small and medium sized businesses from 1984 through December 2004. Mr. Shalek worked as an auditor and tax manager with Coopers & Lybrand (now PricewaterhouseCoopers) and currently teaches accounting and entrepreneurial finance, on a part-time basis, at the University of North Carolina at Greensboro. He was an adjunct instructor of business, accounting and taxation at Cuyahoga Community College of Cleveland, Ohio. Mr. Shalek earned his BSBA from John Carroll University, Cleveland, Ohio and his MBA from The University of Tampa. Mr. Shalek has served on numerous charitable and business boards throughout his career.

Code of Ethics

The Company has adopted a Code of Ethics applicable to its executives, including the principal executive officer, principal financial officer, and principal accounting officer, as defined by applicable rules of the Securities and Exchange Commission, or SEC. It is publicly available on the Company's website at www.smartonline.com. If the Company makes any amendments to the Code of Ethics other than technical, administrative, or other non-substantive amendments, or grants any waivers, including implicit waivers, from a provision of the Code of Ethics to the Company's Chief Executive Officer, Chief Financial Officer, or certain other finance executives, the Company will disclose the nature of the amendment or waiver, its effective date, and to whom it applies on the Company's website at www.smartonline.com.

Board Composition and Independence of Directors

The size of the Board is currently fixed at four members. Four persons have been nominated for election at the annual meeting. The Board believes that the current number of directors is appropriate at this time.

The Company's stock is currently quoted on the OTC Bulletin Board, or OTCBB. The OTCBB does not have rules regarding director independence. Accordingly, we determined that the NASDAQ Stock Market, or Nasdaq, independence requirements are an appropriate standard to determine director independence because these requirements are stricter than the current OTCBB's requirements. Additionally, we adopted these stricter standards to strengthen our corporate governance and improve internal controls.

Nasdaq listing requirements mandate that a majority of the members of a listed company's board of directors be "independent directors" as defined under Nasdaq Stock Market Rule 5605. Although not currently required, the Board has determined that three of the present directors — Messrs. Elia, Elbaz and Brinson — are "independent directors" within the meaning of Nasdaq Marketplace Rules. Messrs. Elia, Elbaz and Brinson are standing for re-election. Therefore, assuming all four nominees are elected at the annual meeting, the Board will have a majority of "independent directors" after the annual meeting.

Dror Zoreff currently serves as both Interim President and Chief Executive Officer and Chairman of the Board. Mr. Zoreff was appointed Interim President and Chief Executive Officer of the Company in November 2009, and has been a director since April 2008. The Board believes that combining the positions of Chairman and CEO is the most appropriate for the Company at this time, given that Mr. Zoreff continues to serve as CEO in an interim capacity. Having one person as Chairman and CEO has provided unified leadership and direction to the Company and minimized disruption to the business over the past two fiscal years, which have been a time of frequent management turnover, and strengthens the ability of the CEO to develop and implement strategic initiatives and respond efficiently in crisis situations. The Company currently has no lead independent director.

Risk Oversight

While our management is responsible for assessing and managing risks to the Company, the Board takes an active role, as a whole and also at the committee level, in overseeing the material risks facing the Company, including operational, financial, legal and regulatory and strategic and reputational risks. Risks are considered in virtually every business decision and as part of the Company's overall business strategy. Our board committees also regularly engage in risk assessment as a part of their regular function. The Audit Committee discusses with management the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The Compensation Committee is responsible for overseeing the management of risks relating to the Company's executive compensation plans and arrangements. The Corporate Governance and Nominating Committee manages risks associated with corporate governance, including risks associated with the independence of the board and reviews risks

associated with potential conflicts of interest affecting directors and executive officers of the Company. While each committee is responsible for evaluating certain risks and overseeing the management of such risks, our entire Board is regularly informed through committee reports about such risks. The Board regularly engages in discussion of financial, legal, technological, economic and other risks. Because overseeing risk is an ongoing process that is inherent in the Company's strategic decisions, our Board discusses risk throughout the year at other meetings in relation to specific proposed actions. Additionally, our Board exercises its risk oversight function in approving new product research and development projects, large marketing engagements, the annual budget and quarterly forecasts and in reviewing the Company's long-range strategic and financial plans with management.

Attendance at Meetings

The Board held five meetings during the fiscal year ended December 31, 2011. Each incumbent director attended or participated in at least 75% of the aggregate of (1) the number of meetings of the Board held in fiscal year 2011 during the period he served as a director and (2) the number of meetings of committees on which he served that were held during the period of his service.

The Company expects all directors to attend each annual meeting of stockholders, absent good reason. Three directors attended the annual meeting of stockholders in 2011.

Standing Committees

The Company's Board has three standing committees: the Audit Committee, the Compensation Committee, and the Corporate Governance and Nominating Committee. Copies of the charters of these committees, as they may be amended from time to time, are available on the Company's website at www.smartonline.com.

Audit Committee. The Audit Committee is composed of Mr. Elbaz and Mr. Elia. Mr. Elbaz serves as Chairman of the Audit Committee. The Company's Board has determined that Mr. Elbaz and Mr. Elia are each an "independent director" as that term is defined by Nasdaq Stock Market Rule 5605 and SEC rules, and they each meet the special independence requirements applicable to audit committee members. All members have past financial experience resulting in their financial sophistication as would be required by Nasdaq Marketplace Rules and SEC rules. The Board has determined that Mr. Elbaz meets the definition of "audit committee financial expert" as that term is defined in Item 407(d)(5)(ii) of Regulation S-K. The Company's securities are quoted on the OTCBB and are not listed on a national securities exchange. Therefore, neither the SEC rules nor the Nasdaq Marketplace Rules regarding audit committees are applicable to the Company's Board.

The Audit Committee was established by the Board for the purpose of assisting it in fulfilling its responsibilities with respect to its oversight of (1) the quality and integrity of the Company's financial statements, (2) compliance with legal and regulatory requirements, (3) the independent registered public accounting firm's qualifications and independence, and (4) the performance of the Company's internal audit function and independent registered public accounting firm. The Audit Committee is also responsible for the preparation of reports required to be included in the Company's annual proxy or information statement or other documents from time to time required with respect to the Audit Committee's functions. The Audit Committee met four times during 2011.

Compensation Committee. The Compensation Committee is composed of Mr. Elia and Mr. Elbaz. Mr. Elia serves as Chairman of the Compensation Committee. The Company's Board has determined that Mr. Elia and Mr. Elbaz are "independent directors" within the meaning of the Nasdaq Marketplace Rules.

The Compensation Committee was established by the Company's Board for the purpose of assisting it in discharging its duties with respect to (1) the formulation, implementation, review, and modification of the compensation of the Company's officers and directors and (2) the preparation of the annual report on executive compensation for inclusion in the Company's annual proxy or information statement, if required. The Compensation Committee's duties include, among other things, setting the compensation for officers and directors, making recommendations to the Board with respect to incentive compensation plans and equity-based compensation plans, approving grants of stock options and other awards under the Company's 2004 Equity Compensation Plan, and administering the Company's defined benefit and defined contribution plans, if any.

In fulfilling its responsibilities, the Compensation Committee is entitled to delegate any or all of its responsibilities to a subcommittee of the Compensation Committee, to the extent consistent with applicable law, the Company's certificate of incorporation, bylaws, corporate governance guidelines, and rules of any exchange or market on which the securities of the Company are then traded if compliance with such rules is required to begin or continue trading.

As part of its review and establishment of the performance criteria and compensation of officers and directors of the Company, the Compensation Committee must separately meet at least annually with the Company's Chief Executive Officer, the principal human resources executive and compliance officer, and with any other corporate officers as the Compensation Committee deems appropriate. However, the Compensation Committee must also meet regularly without such officers present, and in all cases such officers must not be present at the meetings at which their performance and compensation is being discussed and determined. The Compensation Committee must consult with the Chief Executive Officer regarding compensation of the other officers of the Company. The Compensation

Committee has not engaged any compensation consultant to determine or recommend the amount or form of executive and director compensation. The Compensation Committee met one time during 2011.

Corporate Governance and Nominating Committee and Procedures for Director Nominations. The Corporate Governance and Nominating Committee is composed of Mr. Elbaz and Mr. Zoreff. Mr. Zoreff serves as Chairman of the Corporate Governance and Nominating Committee. The Company's Board has determined that Mr. Elbaz is an "independent director" within the meaning of the Nasdaq Marketplace Rules. Mr. Zoreff is not an "independent director" within the meaning of the Nasdaq Marketplace Rules

The Corporate Governance and Nominating Committee was established by the Board for the purpose of assisting it in discharging its duties with respect to (1) the identification of individuals qualified to become directors and the selection or recommendation of candidates for directorships to be filled by the Board or the stockholders, and (2) the development, maintenance, and recommendation of a set of corporate governance principles applicable to the Company, and the periodic review of such principles. The Corporate Governance and Nominating Committee met one time during 2011.

The Corporate Governance and Nominating Committee is responsible for identifying and selecting or recommending qualified candidates for membership on the Board. In identifying candidates, the Committee takes into account such factors as it considers appropriate, which may include (a) knowledge in the technology industry generally, and Software-as-a-Service specifically, (b) experience in the areas of accounting and finance, (c) mature business judgment, (d) the candidate's management, leadership, and business strategy experience, (e) the candidate's ability to manage a crisis, and (f) the candidate's knowledge of proper corporate governance.

The Corporate Governance and Nominating Committee is responsible for evaluating suggestions concerning possible candidates for election to the Board submitted to the Company, including those submitted by Board members (including self-nominations) and stockholders. All candidates, including those submitted by stockholders, will be evaluated by the Corporate Governance and Nominating Committee on the same basis as other candidates using the Board membership criteria described above and in accordance with applicable procedures. The Corporate Governance and Nominating Committee believes that the minimum qualifications for serving as a Company director are that a candidate demonstrate, by significant accomplishment in his or her field, an ability to make a meaningful contribution to the Board's oversight of the Company's business and affairs and have an impeccable record and reputation for honest and ethical conduct in his or her professional and personal activities. Qualifications for consideration as a director nominee may vary according to the particular areas of expertise being sought as a complement to the existing Board composition.

Once candidates have been identified, the Corporate Governance and Nominating Committee will determine whether such candidates meet the minimum qualifications for director nominees and will recommend qualified nominees to the Board. In accordance with the Company's bylaws, proposed nominees must tender, prior to nomination, an irrevocable, conditional letter of resignation that would be effective upon such person being charged with a felony or equivalent offense under the laws of any jurisdiction. The full Board will then approve qualified nominees for appointment or election to the Board.

While the Corporate Governance and Nominating Committee currently has no policy with respect to which it considers diversity in identifying nominees for director, one of our directors has a strong technical background that is relevant to our industry; another of our directors has a background in accounting, finance, and management. We believe that the backgrounds and skills of our directors bring a diverse range of experience, opinion and perspectives to the Board. Details of each nominee's strengths are identified in the biographical presentation under PROPOSAL NO.1, ELECTION OF DIRECTORS, above.

Any stockholder desiring to present a nomination for consideration by the Corporate Governance and Nominating Committee prior to the 2013 Annual Meeting of Stockholders must do so in accordance with the Company's bylaws. See "Stockholder Proposals for the 2013 Annual Meeting" below.

Section 16(a) Beneficial Ownership Reporting Compliance

The members of the Company's Board, its executive officers, and persons who hold more than 10% of its outstanding common stock are subject to the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which requires them to file reports with respect to their ownership of the Company's common stock and their transactions in such common stock. Based upon the Company's review of the Section 16(a) reports in its records for fiscal year 2011 transactions in the Company's common stock, the Company believes that all reporting requirements under Section 16(a) for fiscal year 2011 were met in a timely manner by its directors, executive officers, and greater than 10% beneficial owners.

Certain Relationships and Related Transactions

On December 6, 2010, the Company entered into (i) a \$6,500,000 Promissory Note, or the IDB Note, as borrower, and (ii) a Letter Agreement for the \$6,500,000 Term Loan Facility, or the Letter Agreement, each with Israel Discount Bank of New York, or IDB as lender ((i) and (ii), the IDB Credit Facility.

The IDB Credit Facility is secured by two irrevocable standby letters of credit issued by UBS Switzerland in favor of IDB in the aggregate amount of \$6,500,000, or collectively, the SBLC, each issued with Atlas as account party. Atlas and the Company anticipate finalizing in the near future the terms of the Company's reimbursement of Atlas for any future drawdowns on the SBLC. The advances drawn on the IDB Credit Facility must be repaid on the earlier of (a) May 31, 2012 or (b) 180 days prior to the expiration date of the SBLC. Interest on each advance under the IDB Credit Facility accrues, at the Company's election, at either LIBOR plus 300 basis points or IDB's prime rate plus 100 basis points, provided that the rate of interest for each advance shall never be less than four percent. Interest accrued on each advance is due quarterly and payable in arrears on the last day of each of February, May, August and November during the term of the IDB Credit Facility, commencing on the last day of February 2011. All required interest payments were made on a timely basis during 2011. As of December 31, 2011, the Company drew \$5,000,000 of the total Term Loan Facility. All interest payments have been made on a timely basis. We are currently working with IDB to extend our IDB Credit Facility for an additional one-year period with terms similar to those currently in place. We believe that we will be successful in our efforts.

Atlas is a beneficial owner of 10% or more of the common stock of the Company, and the holder of a majority of the aggregate outstanding principal amount of the convertible secured subordinated notes, as amended, or the Notes under the Convertible Secured Subordinated Note Purchase Agreement, dated November 14, 2007, as amended, or the Note Purchase Agreement, between the Company and the convertible noteholders, under which the Company is entitled to elect to sell to the convertible noteholders, and the convertible noteholders are obligated to buy, Notes. The terms of the Note Purchase Agreement and the Notes are described in "Sale of Convertible Notes to Certain Affiliates" below.

Sale Leaseback of Company Equipment with Noteholders. On September 4, 2009, the Company entered into a sale-leaseback agreement with the current holders of the Notes. The noteholders paid a market rate cost of \$200,000 through the reduction of current outstanding debt under such Notes in exchange for all of the Company's office furniture, equipment and computers. The noteholders then leased all furniture, equipment and computers back to the Company over a ten (10) year period. The purchase price of \$200,000 represented the fair market value of the equipment based on an independent appraisal of the equipment by Dynamic Office Services and Coastal Computers, which are not affiliated with the Company.

Sale of Convertible Notes to Certain Affiliates. As of April 27, 2012, the Company had \$16.9 million aggregate principal amount of Notes due November 14, 2013 outstanding, after the \$200,000 reduction of such current outstanding debt on account of the sale-leaseback described in above. As of such date, Atlas held Notes in the aggregate principal amount of \$13.575 million. The Notes sold to Atlas during 2011 are as follows:

Date of Purchase	Amount of Convertible Note	Interest Rate	Original Maturity Date
February 7, 2011	\$ 250,000	8	% 11/14/2013
March 4, 2011	\$		