

ADVANCED PHOTONIX INC  
Form S-3  
May 05, 2014

As Filed with the Securities and Exchange Commission on May 5, 2014

Registration No. 333-

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

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FORM S-3

REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933

Advanced Photonix, Inc.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation or organization)

33-0325826  
(I.R.S. Employer Identification Number)

Advanced Photonix, Inc., 2925 Boardwalk, Ann Arbor, Michigan 48104, (734) 864-5600  
(Address, including zip code, and telephone number, including area code,  
of registrant's principal executive offices)

Richard D. Kurtz, President and Chief Executive Officer,  
Advanced Photonix, Inc., 2925 Boardwalk, Ann Arbor, Michigan 48104, (734) 864-5600  
(Name, address, including zip code, and telephone number, including  
area code, of agent for service)

The Commission is requested to send copies of all communications to:  
Landey Strongin, Esq.  
Dornbush Schaeffer Strongin & Venaglia, LLP  
747 Third Avenue, 11th Floor, New York, NY 10017, (212) 759-3300

From time to time after the effective date of this Registration Statement  
(Approximate date of commencement of proposed sale to the public)

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

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, 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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

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If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per unit(2)	Proposed maximum aggregate offering price(2)(3)	Amount of registration fee(4)
Class A common stock, par value \$0.001 per share	N/A(5)	N/A(5)	\$4,000,000	\$515.20
Total			\$4,000,000	\$515.20

(1)The registrant is registering under this registration statement an indeterminate aggregate principal amount and number of shares of Class A Common Stock, par value \$0.001 per share (“Class A Stock”). Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), such number of shares of Class A Stock registered hereby shall include an indeterminate number of shares of Class A Stock that may be issued in connection with a stock split, stock dividend, recapitalization or similar event.

(2)The registrant will determine the proposed maximum aggregate offering price of the Class A Stock registered hereunder from time to time in connection with the registrant’s issuance of the Class A Stock registered under this registration statement.

(3)Estimated solely for the purpose of calculating the registration fee required by Section 6(b) of the Securities Act. In no event will the (x) aggregate maximum offering price of all securities issued under this registration statement exceed \$4,000,000 or (y) aggregate market value of all securities issued in any given 12-calendar month period exceed the amount allowed for in General Instruction I.B.6 of Form S-3.

(4)Calculated pursuant to Rule 457(o) under the Securities Act by multiplying the estimated aggregate offering price of the shares of Class A Stock being registered by the registrant by 0.00012880.

(5) Omitted pursuant to Note 2 to the Calculation of Registration Fee Table of Form S-3 under the Securities Act.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT

SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

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The information in this 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 it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED May 5, 2014

P R O S P E C T U S

\$4,000,000

CLASS A COMMON STOCK

We may, from time to time, offer for sale in one or more issuances up to \$4,000,000 in the aggregate of shares of our Class A Common Stock, par value \$0.001 per share (“Class A Stock”) at prices and on terms that we determine at the time of the offering. We will provide the specific terms of these offerings in one or more supplements to this prospectus. The prospectus supplement(s) may also add, update or change information contained in this prospectus.

The securities being offered pursuant to this prospectus and the applicable prospectus supplement(s) may be sold by us to or through underwriters or dealers, directly to purchasers, through agents designated from time to time or through a combination of these methods. For additional information on the methods of sale, you should refer to the section entitled “Plan of Distribution” beginning on Page 25 of this prospectus. If any underwriters are involved in the sale of any securities with respect to which this prospectus is delivered, the names of such underwriters and any applicable discounts or commissions, and any over-allotment options, if any, will be set forth in the prospectus supplement(s).

This prospectus describes the general terms of these securities and the general manner in which we will offer them. We will provide the specific terms of these securities, and the manner in which they are being offered, in supplements to this prospectus. **THESE SECURITIES CANNOT BE SOLD UNLESS THIS PROSPECTUS IS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.** You should carefully read this prospectus, any post-effective amendment and any prospectus supplement, as well as any documents we have incorporated into this prospectus by reference, before you invest in any of these securities.

Our Class A Stock is traded on the NYSE MKT under the symbol “API.” On May 2, 2014, the last reported sale price of our Class A Stock on the NYSE MKT was \$0.57.

As of April 30, 2014, our public float, which is equal to the aggregate market value of our outstanding voting and non-voting common stock held by non-affiliates, was approximately \$15,786,000, based on 31,210,049 shares of outstanding Class A Stock, of which approximately 27,216,397 shares were held by non-affiliates, and a closing sale price of our Class A Stock of \$0.58 on that date. Pursuant to General Instruction I.B.6 of Form S-3, in no event will we sell securities in a public primary offering with a value exceeding more than one-third of our public float in any 12-month period so long as our public float remains below \$75.0 million. We have not offered any securities pursuant to General Instruction I.B.6 of Form S-3 during the 12 calendar months prior to and including the date of this prospectus.

Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading “Risk Factors” contained herein and in the applicable prospectus supplement(s) and under similar headings in the other documents that are incorporated by reference into this prospectus. See “Risk Factors” beginning on Page 4 of this prospectus.

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

The date of this prospectus is May 5, 2014

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CAUTIONARY STATEMENTS REGARDING  
FORWARD-LOOKING STATEMENTS

This prospectus and other publicly available documents, including the documents incorporated herein by reference, contain, and our officers and representatives may from time to time make, “forward-looking statements” within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995. These statements are based on our management’s current beliefs, expectations and assumptions about future events, conditions and results and on information currently available to us. Discussions containing these forward-looking statements may be found, among other places, in the Sections entitled “Business,” “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” incorporated by reference from our most recent Annual Report on Form 10-K and in our Quarterly Reports on Form 10-Q, as well as any amendments thereto, filed with the Securities and Exchange Commission (the “SEC”).

Any statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases such as “expect,” “believe,” “anticipate,” “outlook,” “could,” “target,” “goal,” “project,” “intend,” “plan,” “s,” “estimate,” “should,” “may,” “likely,” “potential,” “predict,” “future,” “continuing,” “will” and “assume,” and similar referen periods, but are not the exclusive means of identifying forward-looking statements in this prospectus. Examples of forward-looking statements include, among others, statements we make regarding:

our business and growth strategies;

our future results of operations, such as revenue growth and earnings;

anticipated trends in our business;

our liquidity and ability to finance our development activities and service our outstanding indebtedness;

our working capital requirements and availability; and

Current or future volatility in the credit markets and future market conditions.

Forward-looking statements are neither historical facts nor assurances of future performance. Instead, as noted above, they are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Because forward-looking statements relate to the future, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict and many of which are outside of our control. Our actual results and financial condition may differ materially from those indicated in the forward-looking statements. Therefore, you should not rely on any of these forward-looking statements. Important factors that could cause our actual results and financial condition to differ materially from those indicated in the forward-looking statements include, among others, the following:

our ability to negotiate an extension to our \$5 million line of credit with Silicon Valley Bank beyond the current July 31, 2014 maturity date;



the adequacy of our cash flow and earnings and other conditions which may affect our ability to service our outstanding indebtedness;

the failure to obtain sufficient financing to fund our operations;

a possible decrease in the capital spending budgets of our customers or purchases from us;

our ability to protect our intellectual property rights and successfully defend any challenges to the validity of our patents, and, when appropriate, protect license required technology;

the creditworthiness of our customers and our ability to reserve adequately for credit losses;

the possibility of goodwill or intangible asset impairment charges in the future;

changes in the industries in which we operate and/or rapid changes in product offerings;

strategic actions, including acquisitions and dispositions, and our success in integrating acquired businesses;

changes in the price of key materials and disruptions in supply chains for these materials; and

Such other factors as discussed throughout the “Risk Factors” section of this prospectus.

Any forward-looking statement made by us in this prospectus and the documents incorporated by reference into it is based only on information currently available to us and speaks only as of the date on which it is made. Accordingly, we caution you not to place undue reliance on forward-looking statements in light of the risks and uncertainties associated with them. Except as required by law, we assume no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

#### ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC, utilizing a “shelf” registration process. Under this shelf registration process, we may, from time to time, sell the securities described in this prospectus in one or more offerings up to a total dollar amount of \$4,000,000. Furthermore, in no event will we sell securities with a value exceeding more than one-third of our “public float” (the market value of our Class A Stock and any other equity securities that we may issue in the future that are held by non-affiliates) in any 12-calendar month period.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities under this shelf registration, we will provide a prospectus supplement that will contain specific information about the terms of the applicable offering. The prospectus supplement may include additional risk factors or other special considerations applicable to those securities. Any prospectus supplement may also add, update, or change information in this prospectus. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in that prospectus supplement. You should read carefully both this prospectus and any prospectus supplement together with any additional information described under the headings “Risk Factors” beginning on Page 4 of this prospectus and “Incorporation by Reference” on Page 32 of this prospectus to determine whether an investment in our securities is appropriate for you.



We have not authorized any dealer, salesperson or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus and any accompanying supplement to this prospectus. You may rely only on the information contained or incorporated by reference in this prospectus or any accompanying prospectus supplement. This prospectus and any accompanying prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus and any accompanying prospectus supplement constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information in this prospectus and any accompanying prospectus supplement is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus and any accompanying prospectus supplement is delivered or securities are sold on a later date.

As used in this prospectus, and unless the context indicates otherwise, the terms “our company,” “we,” “our,” and “us” refer to Advanced Photonix, Inc., including its consolidated subsidiaries.

#### ABOUT THE COMPANY

We are a leading test and measurement company that packages optoelectronic semiconductors into high-speed optical receivers (“HSOR” products), custom optoelectronic subsystems (“Optosolutions” products) and Terahertz instrumentation (“THz” products), serving a variety of global markets. Our HSOR transmission products are deployed in the internet infrastructure to enable the high-speed bandwidth necessary to support video and data for your TV, computer, tablet or smart phone anytime and anywhere. Our communication test and measurement products (“Comtest”) are used to develop, manufacture and test optical communication equipment used in the telecom infrastructure. Our Optosolutions products are sold to a number of scientific instrumentation manufacturers for various applications such as metrology, currency validation, flame monitoring, solar panel quality, temperature sensing, particle detection, color sensing, infrared detection and many other applications that can only be done through optical sensing. Our T-Gauge® systems are used to measure and verify physical properties on-line and in real-time to reduce raw materials and rework costs in manufacturing processes as well as conduct quality control monitoring. Our established and growing patented Terahertz technology has allowed us to expand from the laboratory market into the 24/7 industrial process and quality control manufacturing, military/aerospace, and security markets.

We support the customer from the initial concept and design of the semiconductor, hybridization of support electronics, packaging and signal conditioning or processing from prototype through full-scale production and validation testing. The target markets served by us are Test and Measurement, Military/Aerospace, Telecom Transmission, Medical and Homeland Security.

We were incorporated under the laws of the State of Delaware in June 1988. Our principal executive offices are located at 2925 Boardwalk, Ann Arbor, Michigan 48104, and our telephone number is (734) 864-5600. Our website is [www.advancedphotonix.com](http://www.advancedphotonix.com). Information contained in or accessible through our website does not constitute part of this prospectus.

## RISK FACTORS

An investment in our securities involves a high degree of risk and uncertainty. You should carefully consider the risks described below and in any prospectus supplement or document incorporated by reference in this prospectus before deciding to invest in our securities. The risks described below are not the only ones facing our Company. Additional risks not presently known to us or that we presently consider immaterial may also adversely affect our Company. If any of the following risks occur, our business, financial condition, results of operations and prospects could be adversely affected. In that case, the trading price of our securities could decline, and you could lose all or part of your investment. In assessing these risks, you should also refer to the other information included or incorporated by reference in this prospectus.

## Risks Relating to Our Financial Condition and Performance

Our substantial debt obligations could impair our financial flexibility and restrict our business significantly.

We now have, and will continue to have, significant debt obligations, which are summarized in the table below:

	SVB Term Loan Agreement	SVB Revolving Loan Agreement	SVB Ex-Im Revolving Loan Agreement	PFG Loan Agreement	MSF & MEDC Loan Agreement
Interest Rate as of March 31, 2014	7.75%	7.25%	7.25%	11.75%	5.00%
Principal Outstanding at March 31, 2014	\$306,000	\$1,246,000	\$901,000	\$1,726,000	\$655,000
Maturity Date	March 1, 2015	July 31, 2014	July 31, 2014	August 2016	November and December 2014

On January 31, 2012, we entered into a Loan and Security Agreement dated January 31, 2012 with Silicon Valley Bank (“SVB” and such agreement as amended from time to time, the “SVB Loan Agreement”) and a related Loan and Security Agreement (Ex-IM Loan Facility) dated January 31, 2012 with SVB (as amended from time to time, the “SVB Ex-Im Loan Agreement”, and together with the SVB Loan Agreement, the “SVB Loan Agreements”) that provided for a three-year \$1 million term loan that expires in March 2015, and a \$5 million line of credit with a \$3 million export-import facility sublimit that currently expires on July 31, 2014. Subsequent to the execution of the original SVB Loan Agreements, there have been seven amendments that have modified the financial covenants, allowed for the acquisition of substantially all of the operating assets of Silonex, Inc. (“Silonex”), allowed us to enter into the PFG Loan Agreement (as described below), and extended the maturity date of the line of credit from January 2014 to July 31, 2014.

On February 8, 2013, we entered into a \$2.5 million secured Loan and Security Agreement with Partners for Growth III, L.P. (“PFG” and such agreement, as amended, the “PFG Loan Agreement”) that is subordinated to the SVB Loan Agreements and expires in August 2016. As part of the consideration for and as a closing condition to the PFG Loan Agreement, the Company agreed to grant PFG and certain of its affiliates warrants to purchase up to 1,195,000 shares of the Company’s Class A Stock (the “Warrants”) in a private placement pursuant to Section 4(a)(2) of the Securities Act. 995,000 of the shares issuable under the Warrants were granted at an initial strike price equal to \$0.50 per share (the “Tier 1 Warrants”), and the remaining 200,000 shares issuable under the Warrants were granted at an initial strike price equal to \$1.00 per share (“\$1.00 Warrants”). In the event that the Company achieves at least \$32,600,000 in Revenues and \$412,000 in EBITDA during the fiscal year ended March 31, 2014, the warrant agreements pursuant to which the Warrants are issued (the “PFG Warrant Agreements”) provide that an aggregate of 100,000 of the Tier 1 Warrants and an aggregate of 100,000 of the \$1.00 Warrants will be cancelled (the “Contingent Warrants”). Based on

our unaudited results for the nine months ended December 27, 2013, the Company does not expect that the Contingent Warrants will be cancelled.

The Warrants contain full-ratchet anti-dilution provisions that will result in proportional adjustments to the exercise price and the number of shares issuable under the PFG Warrant Agreements in the event that the Company conducts a stock split, subdivision, stock dividend or combination, or similar transaction. The PFG Warrant Agreements also include a net exercise provision pursuant to which warrant holders will receive the number of shares equal to (x) the product of (A) the number of Warrants exercised multiplied by (B) the difference between (1) the fair market value of a share of Class A Stock (with fair value generally being equal to the highest closing price of the Company's Class A Stock during the 45 consecutive trading days prior to the date of exercise) and (2) the strike price of the Warrant, (y) divided by the fair market value of a share of Class A Stock. In addition, in the event the Company is acquired, liquidates, conducts a public offering, or the Warrants expire, each warrant holder will have the right to "put" its Warrants to the Company in exchange for a per share cash payment that varies with the number of shares issuable under each Warrant, but in the aggregate will not exceed \$250,000.

In fiscal years 2005 and 2006, we entered into two unsecured loan agreements that are currently held by the Michigan Economic Development Corporation ("MEDC" and such agreement the "MEDC Loan Agreement") and a MEDC affiliate, the Michigan Strategic Fund ("MSF" and such agreement the "MSF Loan Agreement") pursuant to which we borrowed an aggregate of amount of \$2.2 million. As amended, payments on the approximately \$327,000 in principal outstanding under each of the MEDC Loan Agreement and MSF Loan Agreement are deferred until they mature on December 1, 2014 and November 1, 2014, respectively, at which time the entire remaining balance under each loan agreement become due and payable.

The obligations and restrictions under the SVB Loan Agreements, the PFG Loan Agreement, the MEDC Loan Agreement, the MSF Loan Agreement, and our other debt obligations could have important consequences for us, including:

- limiting our ability to obtain necessary financing in the future; and

- requiring us to dedicate a substantial portion of our cash flow to payments on our debt obligations, thereby reducing the availability of our cash flow to fund working capital, capital expenditures and other corporate requirements or expansion of our business.

If we are unable to meet our debt obligations, we could be forced to restructure or refinance our obligations, to seek additional equity financing or to sell assets, which we may not be able to do on satisfactory terms or at all. As a result, we could default on those obligations and in the event of such default, our lenders could accelerate our debt or take other actions that could restrict our operations. Please also see the "We will need to amend the SVB Loan Agreements to extend the maturity date of our line of credit" risk factor set forth below.

The foregoing risks would be intensified to the extent we borrow additional money or incur additional debt.

We have previously violated certain covenants under the SVB Loan Agreements and the PFG Loan Agreement.

The SVB Loan Agreements and PFG Loan Agreement, each as amended through December 31, 2013, contained financial covenants that required the Company to maintain a minimum liquidity ratio of 2.25 to 1.00 and a minimum rolling three month adjusted EBITDA, measured monthly of (1) a negative \$300,000 for each fiscal month during the period July through October 2013; and (2) \$1 for each fiscal month during the period November 2013 through February 2014.

As of December 27, 2013 and January 31, 2014, the Company was not in compliance with then existing adjusted EBITDA covenant of \$1 for the three months ended December 27, 2013 and January 31, 2014, respectively, and as of January 31, 2014, the Company was also not in compliance with the then existing minimum liquidity ratio of 2.25 to 1.00. In addition, the foregoing defaults triggered the cross-default provisions under each of the SVB Loan Agreements and PFG Loan Agreement. Consequently, under the terms of each agreement, SVB and PFG were both entitled to proceed against the collateral provided as security for the loans issued thereunder upon an event of default subject, in PFG's case, to any rights that SVB may have in that same collateral.

On February 10, 2014, the Company entered into separate Forbearance Agreements with SVB and PFG pursuant to which and subject to certain exceptions, each of SVB and PFG agreed not to proceed against the collateral securing their respective loans until February 28, 2014. On March 5, 2014, the Company entered into separate amendment agreements with SVB and PFG where, among other things, (i) SVB agreed to extend the maturity date of the Company's \$5 million line of credit to May 31, 2014; (ii) the trailing three month adjusted EBITDA covenant was reset to a negative \$1.2 million for the fiscal month ended February 28, 2014, a negative \$800,000 for the fiscal month ended March 31, 2014, a negative \$600,000 for the fiscal month ended April 30, 2014 and a positive \$1 for the fiscal month ending May 31, 2014; (iii) the existing liquidity ratio covenant was reset to 1.30 to 1.00 as of February 28, 2014, and 2.25 to 1.00 for each month thereafter through May 2014; and (iv) each of SVB and PFG waived the existing defaults. In addition to the payment of an amendment fee, the Company agreed to pay each of SVB and PFG additional fees of up to \$50,000 and \$75,000, respectively, no later than May 31, 2014 (the "Tail Fees").

On April 30, 2014, the Company entered into separate amendment agreements with SVB and PFG where, among other things, (i) SVB agreed to extend the maturity date of the Company's \$5 million line of credit to July 31, 2014; (ii) the trailing three month adjusted EBITDA covenant was reset to a negative \$800,000 for the fiscal month ended March 31, 2014, a negative \$600,000 for the fiscal month ended April 30, 2014, a negative \$250,000 for the fiscal months ending May 31, 2014 and June 30, 2014 and a positive \$1 for the fiscal month ending July 31, 2014; and (iii) the existing liquidity ratio covenant was reset to 1.30 to 1.00 as of March 31, 2014 through May 31, 2014, and 2.00 to 1.00 for each month thereafter through July 2014. In addition to the payment of an amendment fee, the Company agreed to pay each of SVB and PFG their respective Tail Fee and, commencing with the month ended May 31, 2014, an additional fee of \$15,000 and \$20,000, respectively, for each month that the liquidity ratio is less than 2.00 to 1.00 as of the last day of the month under measurement.

The SVB Tail Fee becomes due and payable upon the earliest to occur of (A) the date the liquidity ratio is greater than 2.00 to 1.00; (B) the date that all amounts outstanding under the SVB Loan Agreements become due; and (C) July 31, 2014 (such date, the "SVB Tail Fee Payment Date") and the additional \$15,000 fee, to the extent incurred, becomes initially payable on the SVB Tail Fee Payment Date and is also payable following each month that the minimum liquidity ratio is not achieved. The PFG Tail Fee becomes due and payable upon the earliest to occur of the date the liquidity ratio is greater than 2.00 to 1.00 or July 31, 2014 (such date, the "PFG Tail Fee Payment Date") and the additional \$20,000 fee, to the extent incurred, becomes initially payable on the PFG Tail Fee Payment Date and is also payable following each month that the minimum liquidity ratio is not achieved.

As a result of the amendments described above, the Company is now required to maintain (i) a minimum liquidity ratio of 1.30