

Sincere Pharmaceutical Group

Form 6-K

March 09, 2011

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 6-K

**REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE 13A-16 OR 15D-16
OF THE SECURITIES EXCHANGE ACT OF 1934**

For the month of March 2011

Commission Filing Number: 001-33398

**Simcere Pharmaceutical Group
(Translation of registrant's name into English)**

**No. 699-18 Xuan Wu Avenue,
Xuan Wu District, Nanjing
Jiangsu Province 210042
People's Republic of China
(Address of principal executive offices)**

Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F.

Form 20-F Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Indicate by check mark whether by furnishing the information contained in this Form, the registrant is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes No

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): N/A

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Simcere Pharmaceutical Group

By: /s/ Yushan Wan

Name: Yushan Wan

Title: Acting Chief Financial Officer

DATE: March 8, 2011

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Exhibit 99.1

SIMCERE PHARMACEUTICAL GROUP REPORTS UNAUDITED FOURTH QUARTER AND FISCAL YEAR 2010 RESULTS

NANJING, CHINA, March 8, 2011 Simcere Pharmaceutical Group (Simcere or the Company) (NYSE: SCR), a leading pharmaceutical company specializing in the development, manufacturing, and marketing of branded and proprietary pharmaceuticals in China, today reported unaudited financial results for the fourth quarter and fiscal year ended December 31, 2010.

Highlights

Total revenue was RMB587.7 million (US\$89.1 million) for the fourth quarter of 2010, which represented an increase of 7.6% from RMB546.5 million for the same period in 2009. For the full year of 2010, total revenue was RMB2,141.1 million (US\$324.4 million), which represented an increase of 15.3% from RMB1,857.1 million for the full year of 2009.

Income from operations was RMB62.8 million (US\$9.5 million) for the fourth quarter of 2010, compared to a loss of RMB25.8 million for the same period in 2009*. For the full year of 2010, operating income was RMB217.9 million (US\$33.0 million), which represented an increase of 113.2% from RMB102.2 million for the same period in 2009.

Net income attributable to Simcere was RMB58.7 million (US\$8.9 million) for the fourth quarter of 2010, compared to a loss of RMB75.4 million for the same period in 2009*. For the full year of 2010, net income was RMB172.4 million (US\$26.1 million), which represented an increase of 552.4% from RMB26.4 million for the same period in 2009.

Gross margin for the fourth quarter of 2010 was 84.1%, compared to 83.6% for the same period in 2009. For the full year of 2010, gross margin was 84.0%, increasing from 82.7% for the full year of 2009.

*In fiscal year 2009 after the fourth quarter press release on March 16, 2010, the Company recognized a goodwill impairment charge of RMB76.4 million and an equity loss of RMB55.6 million associated with the acquisition of Jiangsu Yanshen. Accordingly, the unaudited financial data of the fourth quarter 2009 were adjusted in the financial statements for the year ended December 31, 2009 filed in the Form 20-F on June 30, 2010 to reflect the revised purchase price allocation in respect of the acquisition of Jiangsu Yanshen in 2009.

During the fourth quarter, Simcere's revenue and net income continued the stable growth trend of the previous three quarters, and we were especially encouraged by Endu's sales performance, said Mr. Jinsheng Ren, Chairman and Chief Executive Officer of Simcere Pharmaceutical Group. Highlighting the success of Simcere's R&D efforts, during the year, we filed four clinical trial applications with the SFDA.

Mr. Ren added, Looking ahead, we believe that China's fast-developing pharmaceutical market combined with Simcere's established and expanding national sales force and our growing product portfolio should help drive sustainable development in 2011 and beyond.

Table of Contents**2010 Fourth Quarter Financial Results**

Total revenue for the fourth quarter of 2010 was RMB587.7 million (US\$89.1 million), which represented an increase of 7.6% from RMB546.5 million for the same period in 2009. For the full year of 2010, total revenue was RMB2,141.1 million (US\$324.4 million), which represented an increase of 15.3% from RMB1,857.1 million for the full year of 2009.

Revenue from edaravone injection products under the brand names Bicun and Yidasheng totaled RMB222.4 million (US\$33.7 million) for the fourth quarter of 2010, which was 37.9% of the Company's product revenue for the fourth quarter of 2010, an increase of 5.1% from RMB211.7 million for the same period in 2009. For the full year of 2010, revenue from Bicun and Yidasheng totaled RMB791.9 million (US\$120.0 million), an increase of 6.2% from RMB745.4 million for the full year of 2009.

Revenue from Endu, the Company's patented anti-cancer biotech product, amounted to RMB67.9 million (US\$10.3 million) in the fourth quarter of 2010, which was 11.6% of the Company's product revenue for the fourth quarter of 2010, an increase of 99.7% from RMB34.0 million for the same period in 2009. For the full year of 2010, revenue from Endu totaled RMB223.1 million (US\$33.8 million), an increase of 79.6% from RMB124.2 million for the full year of 2009.

Revenue from Sinofuan, a 5-FU sustained release implant for the treatment of cancer, amounted to RMB36.1 million (US\$5.5 million) for the fourth quarter of 2010, which was 6.1% of the Company's product revenue for the fourth quarter of 2010, an increase of 17.9% from RMB30.6 million for the same period in 2009. For the full year of 2010, revenue from Sinofuan totaled RMB151.8 million (US\$23.0 million), an increase of 20.2% from RMB126.3 million for the full year of 2009.

Revenue from other branded generic products including Zailin and Yingtaiqing amounted to RMB255.4 million (US\$38.7 million), which was 43.5% of the Company's product revenue for the fourth quarter of 2010, an increase of 20.4% from RMB212.1 million for the same period in 2009. For the full year of 2010, revenue from other branded generic products totaled RMB896.3 million (US\$135.8 million), which represented an increase of 13.3% from RMB791.0 million for the full year of 2009.

Gross margin for the fourth quarter of 2010 was 84.1%, increasing from 83.6% for the same period in 2009. For the full year of 2010, gross margin was 84.0%, increasing from 82.7% for the full year of 2009.

Research and development expenses for the fourth quarter of 2010 totaled RMB31.4 million (US\$4.8 million), which represented a decrease of 37.3% from RMB50.1 million for the same period in 2009. This decrease was primarily due to a government research and innovation subsidy recognized in the fourth quarter of 2010 which offset part of the Company's research and development expenses and several concentrated payments by the Company in the same period of 2009 for several research and development projects. As a percentage of total revenue, research and development expenses were 5.4% for the fourth quarter of 2010, compared to 9.2% for the same period in 2009. For the full year of 2010, research and development expenses totaled RMB125.7 million (US\$19.1 million), compared to RMB133.0 million for the full year of 2009.

Sales, marketing and distribution expenses for the fourth quarter of 2010 were RMB330.6 million (US\$50.1 million), which represented an increase of 10.2% from RMB299.9 million for the same period in 2009. As a percentage of total revenue, sales, marketing and distribution expenses were 56.3% for the fourth quarter of 2010, compared to 54.9% for the same period in 2009. This increase was primarily due to the expansion of our sales team and higher promotion expenses for new-to-market drugs. For the full year of 2010, sales, marketing and distribution expenses were RMB1,186.1 million (US\$179.7 million), which represented an increase of 18.3% from RMB1,002.4 million for the full year of 2009.

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General and administrative expenses were RMB69.6 million (US\$10.5 million) for the fourth quarter of 2010, which represented an increase of 23.6% from RMB56.3 million for the same period in 2009. As a percentage of total revenue, general and administrative expenses increased to 11.8% for the fourth quarter of 2010 from 10.3% for the same period in 2009. For the full year of 2010, general and administrative expenses were RMB269.5 million (US\$40.8 million), which represented an increase of 21.3% from RMB222.1 million for the full year of 2009.

Share-based compensation expense, which was allocated to research and development expenses, sales, marketing and distribution expenses, and general and administrative expenses, based on the nature of the work that the employee was assigned to perform, totaled RMB8.1 million (US\$1.2 million) for the fourth quarter of 2010. Share-based compensation expenses for the fourth quarter of 2009 were RMB6.0 million. For the full year of 2010, share-based compensation expenses totaled RMB31.1 million (US\$4.7 million), which represented an increase of 31.3% from RMB23.7 million for the full year of 2009.

Income from operations was RMB62.8 million (US\$9.5 million) for the fourth quarter of 2010, compared to a loss of RMB25.8 million for the same period in 2009. The loss in the fourth quarter of 2009 was due to the recognition of a goodwill impairment charge of RMB76.4 million arising from the acquisition of Jiangsu Yanshen, which was included in earnings for the year ended December 31, 2009. For the full year of 2010, operating income was RMB217.9 million (US\$33.0 million), which represented an increase of 113.2% from RMB102.2 million for the full year of 2009.

Income tax benefit for the fourth quarter of 2010 was RMB6.8 million (US\$1.0 million), compared to income tax expense of RMB8.1 million for the same period in 2009. The income tax benefit recognized in the fourth quarter of 2010 was primarily due to the recognition of the deferred tax assets on the tax losses noted by one of the Group's PRC subsidiaries during 2010. For the full year of 2010, income tax expense was RMB10.6 million (US\$1.6 million) compared to RMB16.9 million for the full year of 2009.

Net income attributable to Simcere was RMB58.7 million (US\$8.9 million) for the fourth quarter of 2010, compared to a loss of RMB75.4 million for the same period in 2009. Net margin was 10.0% for the fourth quarter of 2010, compared to negative 13.8% for the fourth quarter of 2009. For the full year of 2010, net income was RMB172.4 million (US\$26.1 million), which represented an increase of 552.4% from RMB26.4 million for the full year of 2009. Net margin for the full year of 2010 was 8.1% as compared to 1.4% for the full year of 2009.

Basic and diluted earnings per American Depository Share (ADS) for the fourth quarter of 2010 were RMB1.10 (US\$0.17) and RMB1.06 (US\$0.16) respectively. Basic and diluted earnings per ADS for the full year of 2010 were RMB3.18 (US\$0.48) and RMB3.10 (US\$0.47) respectively. One ADS represents two ordinary shares of the Company.

As of December 31, 2010, the Company had **cash, cash equivalents and restricted cash** of RMB278.7 million (US\$42.2 million), compared to RMB458.1 million as of December 31, 2009.

Financial Statements

The unaudited condensed consolidated statements of income and balance sheets accompanying this press release have been prepared by management using U.S. GAAP. These financial statements are not intended to fully comply with U.S. GAAP because they do not present all of the financial statements and disclosures required by U.S. GAAP.

Safe Harbor Statement

This press release contains forward-looking statements. These statements constitute forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and as defined in the U.S. Private Securities Litigation Reform Act of 1995. These forward-looking statements can be identified by terminology such as anticipate, believe, estimate, expect, forecast, intend, may, plan, project, predict, should, expressions. In particular, the quotations from management in this press release and the section under Financial Outlook contain forward-looking statements. These forward looking statements are based upon management's current views and expectations with respect to future events and are not a guarantee of future performance. Furthermore, these statements are, by their nature, subject to a number of risks and uncertainties that could cause actual performance and results to differ materially from those discussed in the forward-looking

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statements as a result of a number of factors. Further information regarding these and other risks is included in Simcere's filings with the U.S. Securities and Exchange Commission at www.sec.gov. Simcere does not undertake any obligation to update any forward-looking statement, except as required under applicable law.

Conference Call

Simcere Pharmaceutical Group will host a conference call to discuss the Company's results for the fourth quarter and fiscal year 2010 on Tuesday, March 8 at 8 a.m. Eastern Time (Tuesday, March 8, at 9 p.m. Beijing/Hong Kong time). The management team will be on the call to discuss the results for fourth quarter and fiscal year 2010 and to answer questions.

To access the conference call, please dial:

United States toll-free: 1-866-831-5605
International: 1-617-213-8851
China Telecom: 10-800-130-0399 / 10-800-120-2655 / 10-800-152-1490
China Netcom: 10-800-852-1490 / 10-800-712-2655
China 400 (for mobile users): 400-881-1630 / 400-881-1629
Hong Kong: 852-3002-1672

Please ask to be connected to Q4 2010 Simcere Pharmaceutical Group Earnings Conference Call and provide the following passcode: 56440566. Simcere will also broadcast a live audio webcast of the conference call. The broadcast will be available by visiting the Investor Relations section of the Company's web site at www.simcere.com.

Following the earnings conference call, an archive of the call will be available by dialing:

United States toll-free dial-in number: 1-888-286-8010

United States dial-in number: 1-617-801-6888

The passcode for replay participants is: 22405893. The telephone replay also will be archived on the Investor Relations section of the Company's web site for seven days following the earnings announcement.

About Simcere Pharmaceutical Group

Simcere Pharmaceutical Group (Simcere) (NYSE: SCR) is a leading pharmaceutical company specializing in the development, manufacturing, and marketing of branded and proprietary pharmaceuticals in China. Simcere concentrates its research and development efforts on the treatment of diseases with high incidence and/or mortality rates and for which there is a clear demand for more effective pharmacotherapy such as cancer, strokes, cardiovascular disease, infectious diseases and pain. For more information about Simcere Pharmaceutical Group, please visit www.simcere.com.

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(AMOUNTS EXPRESSED IN THOUSANDS, EXCEPT SHARE AND ADS DATA)

	Three months ended December 31,			Year ended December 31,		
	2009 Adjusted* RMB	2010 RMB	2010 USD	2009 RMB	2010 RMB	2010 USD
Product revenue	545,174	587,368	88,995	1,843,685	2,125,977	322,118
Other revenue	1,279	365	55	13,386	15,121	2,291
Total revenue	546,453	587,733	89,050	1,857,071	2,141,098	324,409
Cost of materials and production	(89,468)	(93,244)	(14,128)	(320,945)	(341,787)	(51,786)
Gross profit	456,985	494,489	74,922	1,536,126	1,799,311	272,623
Operating expenses:						
Research and development	(50,129)	(31,448)	(4,765)	(132,981)	(125,737)	(19,051)
Sales, marketing and distribution	(299,890)	(330,608)	(50,092)	(1,002,419)	(1,186,144)	(179,719)
General and administrative	(56,339)	(69,617)	(10,548)	(222,118)	(269,512)	(40,835)
Impairment loss on goodwill	(76,398)			(76,398)		
Income (loss) from operations	(25,771)	62,816	9,517	102,210	217,918	33,018
Interest income	1,458	1,010	153	8,861	4,214	638
Interest expense	(3,446)	(5,465)	(828)	(12,126)	(19,920)	(3,018)
Foreign currency exchange gains	32	1,877	284	382	5,511	835
Other income	1,880	136	21	2,971	2,286	346
Equity in losses of equity method affiliated companies	(56,532)	(3,479)	(527)	(56,532)	(14,716)	(2,230)
Earnings (loss) before income taxes	(82,379)	56,895	8,620	45,766	195,293	29,589
Income tax expense	(8,066)	6,834	1,035	(16,897)	(10,640)	(1,612)
Net Income (loss)	(90,445)	63,729	9,655	28,869	184,653	27,977
Less: Net (income) loss	15,028	(5,033)	(763)	(2,441)	(12,242)	(1,855)

attributable to the
noncontrolling
interest

**Net income
(loss) attributable
to Simcere**

	(75,417)	58,696	8,892	26,428	172,411	26,122
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**Earnings (loss) per
share attributable
to Simcere:**

Basic	(0.68)	0.55	0.08	0.23	1.59	0.24
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Diluted	(0.66)	0.53	0.08	0.23	1.55	0.23
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**Earnings (loss) per
ADS attributable to
Simcere:**

Basic	(1.36)	1.10	0.17	0.46	3.18	0.48
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Diluted	(1.33)	1.06	0.16	0.45	3.10	0.47
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Weighted average
number of common
shares:

Basic	111,042,270	106,815,562	106,815,562	115,099,258	108,321,562	108,321,562
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Diluted	113,458,171	110,266,193	110,266,193	116,604,919	111,357,796	111,357,796
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*In fiscal year 2009 after the fourth quarter press release on March 16, 2010, the Company recognized a goodwill impairment charge of RMB76.4 million and an equity loss of RMB55.6 million associated with the acquisition of Jiangsu Yanshen. Accordingly, the unaudited financial data of the fourth quarter 2009 were adjusted in the financial statements for the year ended December 31, 2009 filed in the Form 20-F on June 30, 2010 to reflect the revised purchase price allocation in respect of the acquisition of Jiangsu Yanshen in 2009.

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SIMCERE PHARMACEUTICAL GROUP
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
(AMOUNTS EXPRESSED IN THOUSANDS)

	December 31, 2009 RMB	December 31, 2010 RMB	December 31, 2010 USD
Assets			
<i>Current assets</i>			
Cash, cash equivalents and restricted cash	458,145	278,716	42,230
Accounts and bills receivable, net	704,321	884,738	134,052
Inventories	106,655	89,732	13,596
Other current assets	102,743	135,301	20,500
Total current assets	1,371,864	1,388,487	210,378
Property, plant and equipment, net	758,246	866,262	131,251
Land use rights	146,158	142,910	21,653
Goodwill and intangible assets, net	695,267	658,139	99,718
Investments in and advance to affiliated companies	121,865	121,220	18,366
Other assets	44,502	41,234	6,248
Total assets	3,137,902	3,218,252	487,614
Liabilities			
<i>Current liabilities</i>			
Short-term borrowings and current portion of long-term debts	76,000	360,000	54,545
Accounts payable	41,439	49,638	7,521
Bills payable	110,810		
Other payables and accrued liabilities	464,616	596,208	90,335
Total current liabilities	692,865	1,005,846	152,401
Long-term debts, excluding current portion	122,685	19,306	2,925
Deferred tax liabilities	93,108	68,811	10,426
Other liabilities	21,561	22,593	3,423
Total liabilities	930,219	1,116,556	169,175
Redeemable noncontrolling interest		47,453	7,190
Shareholders' equity			
<i>Simcere shareholders' equity</i>			
Ordinary shares at par	8,716	8,422	1,276
Additional paid-in capital	1,170,687	890,950	134,992
Accumulated other comprehensive loss	(43,886)	(31,972)	(4,844)
Retained earnings	846,707	1,011,272	153,223
Total equity attributable to Simcere	1,982,224	1,878,672	284,647
Noncontrolling interest	225,459	175,571	26,602

Total shareholders equity	2,207,683	2,054,243	311,249
Commitments and contingencies			
Total liabilities, redeemable noncontrolling interest and shareholders equity	3,137,902	3,218,252	487,614

Note: The conversions of Renminbi (RMB) into United States dollars (USD) as at the reporting dates are based on the noon buying rate of USD1.00 = RMB6.600 on December 31, 2010 as set forth in the H. 10 statistical release of the Federal Reserve Board. No representation is intended to imply that the RMB amounts could have been, or could be, converted, realized or settled into U.S. dollars at that rate on the reporting dates.

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on any Debt Security that remains unclaimed for a specified period. The holder thereafter may look only to us for payment.

Global Securities. The Debt Securities of any series may be represented by one or more global securities (each, a "Global Security" and, together, the "Global Securities") that will have an aggregate principal amount equal to that of the Debt Securities of that series. Each Global Security will be registered in the name of a depository identified in the prospectus supplement. We will deposit the Global Security with the depository or a custodian, and the Global Security will bear a legend regarding the restrictions on exchanges and registration of transfer.

No Global Security may be exchanged in whole or in part for Debt Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any person other than the depository or any nominee of the depository unless (1) the depository has notified us that it is unwilling or unable to continue as depository or (2) an event of default occurs and continues with respect to the Debt Securities. The depository will determine how all securities issued in exchange for a Global Security will be registered.

As long as the depository or its nominee is the registered holder of a Global Security, the depository or the nominee will be considered the sole owner and holder of the Global Security and the underlying Debt Securities. Except as stated above, owners of beneficial interests in a Global Security will not be entitled to have the Global Security or any Debt Security registered in their names, will not receive physical delivery of certificated Debt Securities and will not be considered to be the owners or holders of the Global Security or underlying Debt Securities. We will make all payments of principal, premium and interest on a Global Security to the depository or its nominee. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of such securities in definitive form. These laws may prevent you from transferring your beneficial interests in a Global Security.

Only institutions that have accounts with the depository or its nominee and persons that hold beneficial interests through the depository or its nominee may own beneficial interests in a Global Security. The depository will credit, on its book-entry registration and transfer system, the respective principal amounts of Debt Securities represented by the Global Security to the accounts of its participants. Ownership of beneficial interests in a Global Security will be shown only on, and the transfer of those ownership interests will be effected only through, records maintained by the depository or any such participant.

The policies and procedures of the depository may govern payments, transfers, exchanges and other matters relating to beneficial interests in a Global Security. We and the Trustee assume no responsibility or liability for any aspect of the depository's or any participant's records relating to, or for payments made on account of, beneficial interests in a Global Security.

The specific terms of the depository arrangement with respect to any series of Debt Securities will be described in the applicable prospectus supplement.

Consolidation, Merger and Sale of Assets. Each Indenture provides that we may, without the consent of the holders of any of the Debt Securities outstanding under the applicable Indenture, consolidate with, merge into or transfer our assets substantially as an entirety to any person, provided that:

- any successor assumes our obligations on the applicable Debt Securities and under the applicable Indenture;
- after giving effect to the transaction, there is no Default or Event of Default that is continuing; and
- certain other conditions under the applicable Indenture are met.

Accordingly, such consolidation, merger or transfer of assets substantially as an entirety, which meets the conditions described above, would not create any Event of Default which would entitle holders of the Debt Securities, or the Trustee on their behalf, to take any of the actions described below under "Events of Default."

Leveraged and Other Transactions. Unless otherwise specified in the applicable prospectus supplement, the Indentures and the Debt Securities will not contain, among other things, provisions that would protect holders of the Debt Securities in the event of a highly leveraged or other transaction involving us that could adversely affect the holders of Debt Securities.

Modification of the Indentures; Waiver. Each Indenture provides that, with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding Debt Securities of each affected series, modifications and alterations of such Indenture may be made that affect the rights of the holders of such Debt Securities. However, no such modification or alteration may be made without the consent of the holder of each Debt Security so affected which would, among other things:

- change the maturity of the principal of, or of any installment of interest (or premium, if any) on, any Debt Security issued pursuant to such Indenture;
- change the principal amount thereof, premium thereon, if any, or interest thereon;
- change the method of calculation of interest or the currency of payment of principal or interest (or premium, if any) thereon;
- reduce the minimum rate of interest thereon;
- impair the right to bring suit for the enforcement of any such payment on or with respect to any such Debt Security;
- reduce the amount of principal of an Original Issue Discount Security that would be due and payable upon an acceleration of the maturity thereof;
- reduce the above-stated percentage in principal amount of outstanding Debt Securities of any series required to modify or alter such Indenture;
- in the case of Subordinated Debt Securities, modify the subordination provisions in a manner materially adverse to their holders;
- in the case of Debt Securities that are convertible or exchangeable into our other securities, adversely affect the right of holders to convert or exchange any of the Debt Securities;

- reduce the percentage in principal amount of outstanding Debt Securities of any series necessary for waiver of compliance with certain provisions of the Indentures or for waiver of certain defaults;
- modify provisions with respect to modification and waiver; or
- change our obligation to maintain an office or agency as required by the applicable Indenture.

The holders of a majority in aggregate principal amount of the outstanding Debt Securities of any series may waive, on behalf of the holders of all Debt Securities of that series, our compliance with certain restrictive provisions of the Indentures. Prior to the acceleration of the maturity of the Debt Securities of any series outstanding under the Indentures, the holders of a majority in aggregate principal amount of the outstanding Debt Securities of any series may waive any past default under the Indenture with respect to Debt Securities of that series, except a default (1) in the payment of principal, premium or interest on any Debt Security of that series or (2) in respect of a covenant or provision of the Indenture that cannot be amended without each holder's consent.

Except in certain limited circumstances, we may set any day as a record date for the purpose of determining the holders of outstanding Debt Securities of any series entitled to give or take any direction, notice, consent, waiver or other action under the Indentures. In certain limited circumstances, the Trustee may set a record date for action by holders. To be effective, the action must be taken by holders of the requisite principal amount of such Debt Securities within a specified period following the record date.

Events of Default. An Event of Default with respect to the Debt Securities of any series is defined in the applicable Indenture as:

- default in the payment of principal of or premium, if any, on any Debt Security of that series when due, whether or not, in the case of Subordinated Debt Securities, such payment is prohibited by the Subordinated Indenture;
- default in the payment of interest on any Debt Security of that series when due, which continues for 30 days, whether or not, in the case of Subordinated Debt Securities, such payment is prohibited by the Subordinated Indenture;
- failure to deposit any sinking fund payment, when due, in respect of any Debt Security of that series, whether or not, in the case of Subordinated Debt Securities, such payment is prohibited by the subordination provisions of the Subordinated Indenture;
- default in the performance by us of any of our other covenants in the applicable Indenture with respect to the Debt Securities of such series, which continues for 90 days after written notice by the Trustee or the holders of at least 25% in aggregate principal amount of the Debt Securities of that series;
- certain events of bankruptcy, insolvency or reorganization affecting us; and
- any other event that may be specified in a prospectus supplement with respect to any series of Debt Securities.

If an Event of Default (other than an Event of Default relating to events of bankruptcy, insolvency or reorganization) with respect to any series of Debt Securities occurs and is continuing, either the Trustee or the holders of at least 25% in aggregate principal amount of the Debt Securities of such series outstanding may declare the principal amount (or if such Debt Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all Debt Securities of that series to be immediately due and payable. If an Event of Default relating to events of bankruptcy, insolvency or reorganization with respect to the Debt Securities of any series at the time outstanding shall occur, the principal amount of all the Debt Securities of that series (or, in the case of any such Original Issue Discount Security, such specified amount) will automatically, and without any action by the applicable Trustee or any holder, become immediately due and payable. After any such acceleration, but before a judgment or decree based on acceleration, the holders of a majority in principal amount of the outstanding Debt Securities of that series may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the non-payment of accelerated principal (or other specified amount), have been cured or waived as provided in the applicable Indenture. For information as to waiver of defaults, see "Modification of the Indentures; Waiver."

If an Event of Default occurs and is continuing, the Trustee may, in its discretion, and at the written request of holders of not less than a majority in aggregate principal amount of the Debt Securities of any series, and upon reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request and subject to certain other conditions set forth in the applicable Indenture will, proceed to protect the rights of the holders of all the Debt Securities of such series.

The Indentures provide that upon the occurrence of an Event of Default relating to payments of principal of, premium, if any, or interest on any Debt Security, we will, upon demand of the Trustee, pay to it, for the benefit of the holder of any such Debt Security, the whole amount then due and payable on such Debt Securities for principal, premium, if any, and interest. The Indentures further provide that that if we fail to pay such amount upon such demand, the Trustee may, among other things, institute a judicial proceeding for the collection of the amount due.

No holder of a Debt Security of any series may institute any proceeding with respect to the Indentures, or for the appointment of a receiver or a trustee, or for other remedy, unless (1) the holder has previously given the Trustee written notice of a continuing event of default, (2) the holders of at least 25% in aggregate principal amount of the outstanding Debt Securities of that series have made a written request, and the holders have offered reasonable indemnity to the Trustee to institute the proceeding, and (3) the Trustee has failed to institute the proceeding, and has not received a direction inconsistent with the request within 60 days of such notice. The Indentures also provide that, notwithstanding any other provision of the applicable Indenture, the holder of any Debt Security of any series will have the right to institute suit for the enforcement of any payment of principal of, premium, if any, and interest on such Debt Securities when due and that such right will not be impaired without the consent of such holder.

We are required to file annually with the applicable Trustee a written statement as to the existence or non-existence of defaults under the Indentures or the Debt Securities.

Subordination of the Subordinated Debt Securities. The Subordinated Debt Securities will be our direct, unsecured obligations and, unless otherwise specified in the prospectus supplement relating to a particular series of Subordinated Debt Securities offered by such prospectus supplement, will be subject to the subordination provisions described in this section. Upon any distribution of our assets due to any dissolution, winding up, liquidation or reorganization, the payment of the principal of, premium, if any, and interest on the Subordinated Debt Securities is to be subordinated in right of payment to all Senior Indebtedness. In certain events of bankruptcy or insolvency, the payment of the principal of and interest on the Subordinated Debt Securities will, to the extent provided in the Subordinated Indenture, also be effectively subordinated in right of payment to all General Obligations (as defined below).

Upon any distribution of our assets due to any dissolution, winding up, liquidation or reorganization, the holders of Senior Indebtedness will first be entitled to receive payment in full of all amounts due or to become due before the holders of the Subordinated Debt Securities will be entitled to receive any payment in respect of the Subordinated Debt Securities. If upon any such payment or distribution of assets, after giving effect to such subordination provisions in favor of the holders of Senior Indebtedness, (i) there remain any amounts of cash, property or securities available for payment or distribution in respect of the Subordinated Debt Securities ("Excess Proceeds") and (ii) if, at such time, any creditors in respect of General Obligations have not received payment in full of all amounts due or to become due on or in respect of such General Obligations, then such Excess Proceeds will first be applied to pay or provide for the payment in full of such General Obligations before any payment or distribution may be made in respect of the Subordinated Debt Securities.

In addition, no payment may be made on the Subordinated Debt Securities, or in respect of any redemption, retirement, purchase or other acquisition of any of the Subordinated Debt Securities, at any time in the event:

- there is a default in the payment of the principal of, premium, if any, interest on or otherwise in respect of any Senior Indebtedness; or
- any event of default with respect to any Senior Indebtedness has occurred and is continuing or would occur as a result of such payment on the Subordinated Debt Securities or any redemption, retirement, purchase or other acquisition of any of the Subordinated Debt Securities, permitting the holders of such Senior Indebtedness to accelerate the maturity thereof.

Except as described above, our obligation to make payments of the principal of, premium, if any, or interest on the Subordinated Debt Securities will not be affected.

By reason of the subordination in favor of the holders of Senior Indebtedness, in the event of a distribution of assets upon any dissolution, winding up, liquidation or reorganization, our creditors who are not holders of Senior Indebtedness or the Subordinated Debt Securities may recover less, proportionately, than holders of Senior Indebtedness and may recover more, proportionately, than holders of the Subordinated Debt Securities.

Subject to payment in full of all Senior Indebtedness, the holders of Subordinated Debt Securities will be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or our securities applicable to Senior Indebtedness. Subject to payment in full of all General Obligations, the holders of the Subordinated Debt Securities will be subrogated to the rights of the creditors in respect of General Obligations to receive payments or distributions of cash, property or our securities applicable to such creditors in respect of General Obligations.

"Senior Indebtedness" for purposes of the Subordinated Indenture is the principal of, premium, if any, and interest on:

- all of our indebtedness for money borrowed (other than (i) the Subordinated Debt Securities and (ii) the Junior Subordinated Indebtedness (as defined below)) whether outstanding on the date of execution of the Subordinated Indenture or created, assumed or incurred after that date, except such indebtedness as is by its terms expressly stated to be not superior in right of payment to the Subordinated Debt Securities or to rank equally with the Subordinated Debt Securities; and
- any deferrals, renewals or extensions of any such Senior Indebtedness.

The term "indebtedness for money borrowed" as used in this prospectus includes, without limitation, any obligation of, or any obligation guaranteed by us for the repayment of borrowed money, whether or not evidenced by bonds, debentures, notes or other written instruments, and any deferred obligation for the payment of the purchase price of property or assets. The Subordinated Indenture does not limit our issuance of additional Senior Indebtedness.

The Subordinated Debt Securities will rank senior in right of payment to our Junior Subordinated Indebtedness upon any distribution of our assets due to any dissolution, winding up, liquidation or reorganization, to the extent provided in the instruments creating our Junior Subordinated Indebtedness. "Junior Subordinated Indebtedness" is the principal of, premium, if any, and interest on:

- all of our indebtedness for money borrowed whether outstanding on the date of the execution of the Subordinated Indenture or created, assumed or incurred after that date that is by its terms subordinated to the Subordinated Debt Securities; and
- any deferrals, renewals or extensions of any of such Junior Subordinated Indebtedness.

Unless otherwise specified in the prospectus supplement relating to a particular series of Subordinated Debt Securities offered thereby, the term "General Obligations" means all obligations to make payment on account of claims in respect of derivative products such as interest and foreign exchange rate contracts, commodity contracts and similar arrangements, other than:

- obligations on account of Senior Indebtedness;
- obligations on account of indebtedness for money borrowed ranking equal with or subordinate to the Subordinated Debt Securities; and
- obligations which by their terms are expressly stated not to be senior in right of payment to the Subordinated Debt Securities or to rank equally with the Subordinated Debt Securities.

Unless otherwise specified in the prospectus supplement relating to any series of Subordinated Debt Securities, payment of principal of the Subordinated Debt Securities may be accelerated only in case of the bankruptcy, insolvency or reorganization of our company.

Defeasance and Covenant Defeasance. To the extent stated in the prospectus supplement, we may elect to apply the provisions relating to defeasance and discharge of indebtedness, or to defeasance of certain restrictive covenants in the Indentures, to the Debt Securities of any series.

DESCRIPTION OF PREFERRED STOCK

This section describes the general terms of our preferred stock, \$0.01 par value, to which any prospectus supplement may relate. Certain terms of any series of our preferred stock offered by any prospectus supplement will be described in such prospectus supplement. If so indicated in the prospectus supplement, the terms of that series may differ from the terms described below. The provisions of our preferred stock described below are not complete. You should refer to our certificate of incorporation and any certificate of amendment to our certificate of incorporation or certificate of designations filed with the SEC in connection with the offering of our preferred stock.

General. We currently have one share of preferred stock outstanding. That share, the FCE Special Voting Share, was issued in connection with our acquisition of Global Thermoelectric Inc. The FCE Special Voting Share votes together with our common stock as a single class and has a number of votes equal to the number of exchangeable shares issued by FCE Canada Inc., our indirect wholly-owned subsidiary, other than those held by us or our majority-owned subsidiaries. Under our certificate of incorporation, our board of directors has the authority, without further stockholder action, to issue from time to time preferred stock in one or more series and for such consideration as may be fixed from time to time by our board of directors. Our board also has the authority to fix and determine, in the manner provided by law, the relative rights and preferences of the shares of any series so established, such as dividend and voting rights. Our certificate of incorporation authorizes 250,000 shares of undesignated preferred stock. Prior to the issuance of each series of preferred stock, our board of directors will adopt resolutions creating and designating the series as a series of preferred stock.

Our preferred stock will have the dividend, liquidation, redemption, voting and conversion rights set forth below unless otherwise specified in the applicable prospectus supplement. You should read the prospectus supplement relating to the particular series of preferred stock offered thereby for specific terms, including:

- the designation, stated value and liquidation preference of such preferred stock and the number of shares offered;
- the initial public offering price at which the preferred stock will be issued;
- the dividend rate or rates (or method of calculation), the dividend periods, the date on which dividends will be payable and whether such dividends will be cumulative or noncumulative and, if cumulative, the dates from which dividends will begin to cumulate;
- any redemption or sinking fund provisions;
- any conversion provisions; and
- any additional rights, preferences, privileges, qualifications, limitations and restrictions of the preferred stock.

Our preferred stock will, when issued, be fully paid and nonassessable and have no preemptive rights. Unless otherwise specified in the applicable prospectus supplement, the shares of each series of preferred stock will upon issuance rank equally in all respects with each other then outstanding series of preferred stock.

Preferred stock could be issued quickly with terms that could delay or prevent a change of control or make the removal of management more difficult. Additionally, the issuance of preferred stock may decrease the market price of our common stock and may adversely affect the voting and other rights of the holders of our common stock.

Rank. Any series of our preferred stock will, with respect to dividend rights and rights on liquidation, winding up or dissolution, rank:

- senior to all classes of our common stock and to all equity securities issued by us, the terms of which specifically provide that the equity securities will rank junior to that preferred stock;
- equally with all equity securities issued by us, the terms of which specifically provide that the equity securities will rank equally with that preferred stock; and
- junior to all equity securities issued by us, the terms of which specifically provide that the equity securities will rank senior to that preferred stock.

Dividends. The holders of our preferred stock will be entitled to receive, when, as and if declared by our board of directors, dividends at such rates and on such dates as will be specified in the applicable prospectus supplement. Such rates may be fixed or variable or both. If variable, the formula used for determining the dividend rate for each dividend period will be specified in the applicable prospectus supplement. Dividends will be payable to the holders of record as they appear on our stock books on such record dates as will be fixed by our board. Dividends may be paid in the form of cash, preferred stock (of the same or a different series) or our common stock, in each case as specified in the applicable prospectus supplement.

Dividends on any series of our preferred stock may be cumulative or noncumulative, as specified in the applicable prospectus supplement. If the dividends on a series of our preferred stock are noncumulative ("Noncumulative Preferred Stock"), and our board of directors fails to declare a dividend payable on a dividend payment date, then the holders of such preferred stock will have no right to receive a dividend in respect to the dividend period relating to such dividend payment date, and we will not be obligated to pay the dividend accrued for such period, whether or not dividends on such preferred stock are declared or paid on any future dividend payment dates.

We will not declare or pay or set apart for payment any dividends on any series of our preferred stock that rank, as to dividends, on a parity with or junior to the outstanding preferred stock of any series unless (i) if such outstanding preferred stock has a cumulative dividend ("Cumulative Preferred Stock"), full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on such preferred stock for all dividend periods terminating on or prior to the date of payment of any such dividends on such other series of the preferred stock or (ii) if such outstanding preferred stock is Noncumulative Preferred Stock, full dividends for the then-current dividend period on such preferred stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment.

Until full dividends are paid (or declared and payment is set aside) on our preferred stock ranking equal as to dividends, then:

- we will declare any dividends pro rata among the preferred stock of each series and any preferred stock ranking equal to such preferred stock as to dividends (i.e., the dividends we declare per share on each series of such preferred stock will bear the same relationship to each other that the full accrued dividends per share on each such series of the preferred stock (which will not, if such preferred stock is Noncumulative Preferred Stock, include any accumulation in respect to unpaid dividends for prior dividend periods) bear to each other);
- other than such pro rata dividends, we will not declare or pay any dividends or declare or make any distributions upon any security ranking junior to or equal with the preferred stock as to dividends or upon liquidation (except dividends on common stock payable in common stock, dividends or distributions paid for with securities ranking junior to the preferred stock as to dividends and upon liquidation and cash in lieu of fractional shares in connection with such dividends); and
- we will not redeem, purchase or otherwise acquire (or set aside money for a sinking fund for) our common stock or any other securities ranking junior to or equal with the preferred stock as to dividends or upon liquidation (except by conversion into or exchange for stock junior to the preferred stock as to dividends and upon liquidation).

We will not owe any interest, or any money in lieu of interest, on any dividend payment on any series of the preferred stock that may be past due.

Redemption. A series of our preferred stock may be redeemable, in whole or in part, at our option, and may be subject to mandatory redemption pursuant to a sinking fund or otherwise, in each case upon terms, at the times and at the redemption prices specified in the applicable prospectus supplement. Redeemed shares of our preferred stock will become authorized but unissued shares of preferred stock that we may issue in the future.

The prospectus supplement relating to a series of our preferred stock that is subject to mandatory redemption will specify the number of shares of such preferred stock that we will redeem each year and the redemption price per share. If shares of our preferred stock are redeemed, we will pay all accrued and unpaid dividends thereon (which will not, if such preferred stock is Noncumulative Preferred Stock, include any accumulation in respect of unpaid dividends for prior dividend periods) up to but excluding the date of redemption. The redemption price may be payable in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for our preferred stock of any series is payable only from the net proceeds of the issuance of our capital stock, the terms of such preferred stock may provide that, if no such capital stock will have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, such preferred stock will automatically and mandatorily be converted into shares of our applicable capital stock pursuant to conversion provisions specified in the applicable prospectus supplement.

If fewer than all the outstanding shares of our preferred stock of any series are to be redeemed, our board will determine the number of shares to be redeemed. We will redeem the shares pro rata from the holders of record of such shares in proportion to the number of such shares held by such holders (with adjustments to avoid redemption of fractional shares) or by lot or by any other method as may be determined by our board.

Even though the terms of a series of the Cumulative Preferred Stock may permit redemption of such preferred stock in whole or in part, if any dividends, including accumulated dividends, on that series are past due:

- we will not redeem any preferred stock of that series unless we simultaneously redeem all outstanding preferred stock of that series; and
- we will not purchase or otherwise acquire any preferred stock of that series.

The prohibition discussed in the preceding sentence will not prohibit us from purchasing or acquiring preferred stock of that series pursuant to a purchase or exchange offer if we make the offer on the same terms to all holders of that series.

Conversion Rights. The prospectus supplement relating to a series of convertible preferred stock will describe the terms on which shares of such series are convertible into our common stock.

Rights Upon Liquidation. Unless the applicable prospectus supplement states otherwise, if we voluntarily or involuntarily liquidate, dissolve or wind up our business, the holders of our preferred stock will be entitled to receive out of our assets available for distribution to stockholders, before any distribution of assets is made to holders of our common stock or any other class or series of shares ranking junior to such preferred stock upon liquidation, liquidating distributions in the amount of the liquidation preference of such preferred stock plus accrued and unpaid dividends (which will not, if such preferred stock is Noncumulative Preferred Stock, include any accumulation in respect of unpaid dividends for prior dividend periods). If we voluntarily or involuntarily liquidate, dissolve or wind up our business and the amounts payable with respect to our preferred stock of any series and any of our other securities ranking equal as to any such distribution are not paid in full, the holders of such preferred stock and of such other shares will share ratably in any such distribution of our assets in proportion to the full respective preferential amounts to which they are entitled. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of our preferred stock of any series will not be entitled to any further participation in any distribution of our assets.

Voting Rights. Except as described in this section or in the applicable prospectus supplement, or except as expressly required by applicable law, the holders of our preferred stock will not be entitled to vote. If the holders of a series of our preferred stock are entitled to vote and the applicable prospectus supplement does not state otherwise, each such share will be entitled to one vote on matters on which holders of such series of preferred stock are entitled to vote. For any series of our preferred stock having one vote per share, the voting power of such series, on matters on which holders of such series and holders of other series of our preferred stock are entitled to vote as a single class, will depend on the number of shares in such series, not the aggregate stated value, liquidation preference or initial offering price of the shares of such series of preferred stock.

Unless we receive the consent of the holders of an outstanding series of preferred stock and the outstanding shares of all other series of preferred stock which (i) rank equal with such series either as to dividends or the distribution of assets upon liquidation, dissolution or winding up of our business and (ii) have voting rights that are exercisable and that are similar to those of such series, we will not:

- authorize, create or issue, or increase the authorized or issued amount of, any class or series of stock ranking prior to such outstanding preferred stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of our business; or
- amend, alter or repeal, whether by merger, consolidation or otherwise, the provisions of our certificate or of the resolutions contained in any certificate of designations creating such series of preferred stock so as to materially and adversely affect any right, preference privilege or voting power of such outstanding preferred stock.

This consent must be given by the holders of a majority of all such outstanding preferred stock described in the preceding sentence, voting together as a single class. We will not be required to obtain this consent with respect to the actions listed in the second bullet point above, however, if we only (i) increase the amount of the authorized preferred stock, (ii) create and issue another series of preferred stock, or (iii) increase the amount of authorized shares of any series of preferred stock, if such preferred stock in each case ranks equal with or junior to the preferred stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of our business.

DESCRIPTION OF COMMON STOCK

This section describes the general terms and provisions of the shares of our common stock, par value \$0.0001 per share. The summary is not complete and is qualified in its entirety by reference to the description of our common stock incorporated by reference in this prospectus. We have also filed our certificate of incorporation and our bylaws as exhibits to the registration statement, of which this prospectus is a part. You should read our certificate of incorporation and our bylaws for additional information before you buy any of our common stock. See "Where You Can Find More Information."

General. As of January 31, 2004, our authorized common stock was 150,000,000 shares, of which _____ shares were issued and outstanding.

Voting Rights. The holders of our common stock have one vote per share. Holders of our common stock are not entitled to vote cumulatively for the election of directors. Generally, all matters to be voted on by stockholders must be approved by a majority, or, in the case of the election of directors, by a plurality, of the votes entitled to be cast at a meeting at which a quorum is present by all shares of common stock present in person or represented by proxy, voting together as a single class, subject to any voting rights granted to holders of any then outstanding preferred stock.

Dividends. Holders of common stock will share ratably in any dividends declared by the board of directors, subject to the preferential rights of any preferred stock then outstanding. Dividends consisting of shares of common stock may be paid to holders of shares of common stock.

Other Rights. In the event of liquidation, dissolution or winding up, after payment of liabilities and liquidation preferences on any shares of preferred stock then outstanding, the holders of common stock are entitled to share ratably in all assets available for distribution. Holders of common stock have no preemptive rights or rights to convert their common stock into any other securities. There are no redemption or sinking fund provisions applicable to the common stock.

Anti-Takeover Provisions

Certain Provisions of our Certificate of Incorporation and By-Laws may have Anti-Takeover Effects. A number of provisions of our certificate of incorporation and by-laws concern matters of corporate governance and the rights of stockholders. Some of these provisions, including, but not limited to, the inability of stockholders to take action by unanimous written consent, supermajority voting provisions with respect to any amendment of voting rights provisions, the filling of vacancies on the board of directors by the affirmative vote of a majority of the remaining directors, and the ability of the board of directors to issue shares of preferred stock and to set the voting rights, preferences and other terms thereof, without further stockholder action, may be deemed to have anti-takeover effect and may discourage takeover attempts not first approved by the board of directors, including takeovers which stockholders may deem to be in their best interests. If takeover attempts are discouraged, temporary fluctuations in the market price of our common stock, which may result from actual or rumored takeover attempts, may be inhibited. These provisions, together with the ability of the board of directors to issue preferred stock without further stockholder action, could also delay or frustrate the removal of incumbent directors or the assumption of control by stockholders, even if the removal or assumption would be beneficial to our stockholders. These provisions could also discourage or inhibit a merger, tender offer or proxy contest, even if favorable to the interests of stockholders, and could depress the market price of our common stock. The board of directors believes these provisions are appropriate to protect our interests and the interests of our stockholders. The board of directors has no present plans to adopt any further measures or devices which may be deemed to have an "anti-takeover effect."

Delaware Anti-Takeover Provisions. We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a publicly-held Delaware corporation from engaging in a "business combination," except under certain circumstances, with an "interested stockholder" for a period of three years following the date such person became an "interested stockholder" unless:

- before such person became an interested stockholder, the board of directors of the corporation approved either the business combination or the transaction that resulted in the interested stockholder becoming an interested stockholder;
- upon the consummation of the transaction that resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding shares held by directors who are also officers of the corporation and shares held by employee stock plans; or
- at or following the time such person became an interested stockholder, the business combination is approved by the board of directors of the corporation and authorized at a meeting of stockholders by the affirmative vote of the holders of 66-2/3% of the outstanding vote stock of the corporation which is not owned by the interested stockholder.

The term "interested stockholder" generally is defined as a person who, together with affiliates and associates, owns, or, within the three years prior to the determination of interested stockholder status, owned, 15% or more of a corporation's outstanding voting stock. The term "business combination" includes mergers, asset or stock sales and other similar transactions resulting in a financial benefit to an interested stockholder. Section 203 makes it more difficult for an "interested stockholder" to effect various business combinations with a corporation for a three-year period. The existence of this provision would be expected to have an anti-takeover effect with respect to transactions not approved in advance by the board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by stockholders. A Delaware corporation may "opt out" of Section 203 with an express provision in its original certificate of incorporation or any amendment thereto. Our certificate of incorporation does not contain any such exclusion.

Connecticut Anti-Takeover Provisions. The laws of the State of Connecticut, where our principal executive offices are located, impose restrictions on certain transactions between certain foreign corporations and significant stockholders. Section 33-840 of the Connecticut Business Corporation Act prohibits certain publicly-held foreign corporations that are based in Connecticut from engaging in a "business combination" (including the issuance of equity securities which have an aggregate market value of 5% or more of the total market value of the outstanding shares of the company) with an "interested stockholder" as defined in the Connecticut Business Corporation Act for a period of five years from the date of the stockholder's purchase of stock, unless approved in a prescribed manner. The application of this statute could prevent a change of control. Generally, approval is required by the board of directors, by a majority of our non-employee directors by 80% of the outstanding voting shares and two-thirds of the voting power of the outstanding shares of the voting stock other than shares held by the interested stockholder. We can give no assurance that these provisions would not prevent us from entering into a business combination that otherwise would be beneficial to us or to our stockholders.

Transfer Agent and Registrar. The transfer agent and registrar for our common stock is Continental Stock Transfer & Trust Company, New York, New York.

PLAN OF DISTRIBUTION

General. We may sell the securities offered by this prospectus in any of three ways:

- through underwriters;
- through agents; or
- directly to a limited number of institutional purchases or to a single purchaser.

The prospectus supplement for the securities we sell will describe that offering, including:

- the name or names of any underwriters;
- the purchase price and the proceeds to us from that sale;
- any underwriting discounts and other items constituting underwriters' compensation; and
- any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

Underwriters. If underwriters are used in the sale, we will execute an underwriting agreement with those underwriters relating to the securities that we will offer. Unless otherwise provided in the applicable prospectus supplement, the obligations of the underwriters to purchase these securities will be subject to conditions. The underwriters will be obligated to purchase all of these securities if any are purchased.

The securities subject to the underwriting agreement will be acquired by the underwriters for their own account and may be resold by them from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions and may also receive commissions from the purchasers of these securities for whom they may act as agent. Underwriters may sell these securities to or through dealers. These dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters or commissions from the purchasers for whom they may act as agent. Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

We also may sell the securities in connection with a remarketing upon their purchase, in connection with a redemption or repayment, by a remarketing firm acting as principal for its own account or as our agent. Remarketing firms may be deemed to be underwriters in connection with the securities that they remarket.

We may authorize underwriters to solicit offers by institutions to purchase the securities subject to the underwriting or terms agreement from us at the public offering price stated in the prospectus supplement under delayed delivery contracts providing for payment and delivery on a specified date in the future. If we sell securities under these delayed delivery contracts, the prospectus supplement will state that as well as the conditions to which these delayed delivery contracts will be subject and the commissions payable for that solicitation.

During and after an offering through underwriters, the underwriters may purchase and sell the securities in the open market. These transactions may include overallocation and stabilizing transactions and purchases to convey syndicate short positions created in connection with the offering. The underwriters may also impose a penalty bid, which means that selling concessions allowed to syndicate members or other broker-dealers for the offered securities sold for their account may be reclaimed by the syndicate if the offered securities are repurchased by the syndicate in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the offered securities, which may be higher than the price that might otherwise prevail in the open market. If commenced, the underwriters may discontinue these activities at any time.

Agents. We may also sell any of the securities through agents designated by us from time to time. We will name any agent involved in the offer or sale of these securities and will list commissions payable by us to these agents in the prospectus supplement. These agents will be acting on a best efforts basis to solicit purchases for the period of their appointment, unless we state otherwise in the applicable prospectus supplement.

Direct Sales. We may sell any of the securities directly to purchasers. In this case, we will not engage underwriters or agents in the offer and sale of these securities.

Indemnification. We may indemnify underwriters, dealers or agents who participate in the distribution of the securities against certain liabilities, including liabilities under the Securities Act of 1933, and agree to contribute to payments which these underwriters, dealers or agents may be required to make.

Listing. Except as indicated in the applicable prospectus supplement, the securities are not expected to be listed on any securities exchange, except for our common stock, which is quoted on the Nasdaq National Market, and any underwriters or dealers will not be obligated to make a market in these securities. We cannot predict the activity or liquidity of any trading in these securities.

LEGAL MATTERS

Our counsel, Robinson & Cole LLP, Stamford, Connecticut, has issued an opinion on the validity of the offered securities.

EXPERTS

The financial statements of FuelCell Energy, Inc. as of October 31, 2003 and 2002 and for each of the years in the three-year period ended October 31, 2003 have been incorporated by reference in this prospectus in reliance upon the report of KPMG LLP, independent public accountants, incorporated by reference and upon the authority of that firm as experts in accounting and auditing.

PART II**INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth all expenses payable by the registrant, other than underwriting discounts, in connection with the offering of the securities being registered.

SEC Registration Fee.....	\$	12,670
Nasdaq National Market Listing Fee*.....	\$	_____
Blue Sky Fees and Expenses*.....	\$	_____
Printing Fees*.....	\$	125,000
Accounting Fees and Expenses*.....	\$	70,000
Legal Fees and Expenses*.....	\$	150,000
Miscellaneous Expenses*.....	\$	_____

Total*.....	\$	_____

* Estimated.

Item 15. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify any person, including an officer and director, who was or is, or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such cooperation), by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal actions and proceedings, had no reasonable cause to believe that his conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter herein, the corporation must indemnify such person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith.

The registrant's certificate of incorporation provides that none of our directors will be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as currently in effect or as the same may hereafter be amended.

Pursuant to Section 102(b) (7) of the Delaware General Corporation Law, the registrant's certificate of incorporation eliminates the liability of our directors to us or our stockholders, except for liabilities related to breach of duty of loyalty, actions not in good faith and certain other liabilities.

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The registrant maintains directors' and officers' liability insurance policies. The registrant's by-laws provide for indemnification of the registrant's officers and directors to the fullest extent permitted by applicable law.

Item 16. Exhibits

EXHIBIT NUMBER	DESCRIPTION OF EXHIBITS	PAGE NUMBER
1.1	Form of Underwriting Agreement*.....	
4.1	Certificate of Incorporation of the registrant, as amended (incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K dated September 21, 1999)	
4.2	Amendment to the Certificate of Incorporation of the registrant (incorporated by reference to the registrant's Proxy Statement dated October 6, 2000)	
4.3	Restated Bylaws of the registrant, as amended (incorporated by reference to Exhibit 3.2 to the registrant's Current Report on Form 8-K dated September 21, 1999)	
4.4	Specimen of Common Stock Certificate (incorporated by reference to Exhibit 4 contained in the registrant's Annual Report on Form 10-K for the fiscal year ended October 31, 1999)	
4.5	Form of Senior Indenture*.....	
4.6	Form of Subordinated Indenture*.....	
4.7	Form of Senior Debt Security*.....	
4.8	Form of Subordinated Debt Security*.....	
5.1	Opinion of Robinson & Cole LLP.....	46
12.1	Statement regarding computation of ratio of earnings to fixed charges.....	45
23.1	Consent of KPMG LLP.....	49
23.2	Consent of Robinson & Cole LLP (included in Exhibit 5.1)	
24.1	Power of Attorney (included on signature page of this Registration Statement)	
25.1	Statement of Eligibility and Qualification on Form T-1 of Trustee*.....	
.....		

*To be filed by amendment or as an exhibit to a report pursuant to Section 13(a), 13(c) or 15(d) of the Securities Exchange Act of 1934.

Item 17. Undertakings

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement: (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933; (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that provisions (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those provisions is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.
- (4) That, for purposes of determining any liability under the Securities Act of 1933, each filing of Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (5) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Securities and Exchange Commission under Section 305(b)(2) of the Trust Indenture Act.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Danbury, State of Connecticut, on February 13, 2004.

FUELCELL ENERGY, INC.

By: /s/ Jerry D. Leitman
 Jerry D. Leitman
 President and Chief Executive Officer

Such person whose signature appears below hereby appoints Jerry D. Leitman and Joseph G. Mahler, and each of them, each of whom may act without joinder of the other, as his or her true and lawful attorney-in-fact and agent, with full power and substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to execute in the name and on behalf of such person any amendment or any post-effective amendment to this Registration Statement, and any registration statement relating to any offering made in connection with the offering covered by this Registration Statement that is to be effective on filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing appropriate or necessary to be done, as full and for all intents and purposes and he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
<u>/s/ Jerry D. Leitman</u> Jerry D. Leitman	President, Chief Executive Officer and Director (Principal Executive Officer)	February 13, 2004
<u>/s/ Joseph G. Mahler</u> Joseph G. Mahler	Chief Financial Officer, Vice President, Corporate Secretary and Treasurer (Principal Accounting and Financial Officer)	February 13, 2004
<u>/s/ Warren D. Bagatelle</u> Warren D. Bagatelle	Director	February 13, 2004

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<u>/s/ Christopher R. Bentley</u> Christopher R. Bentley	Director	February 13, 2004
<u>/s/ Michael Bode</u> Michael Bode	Director	February 13, 2004
<u>/s/ James D. Gerson</u> James D. Gerson	Director	February 13, 2004
<u>/s/ Thomas L. Kempner</u> Thomas L. Kempner	Director	February 13, 2004
<u>/s/ William A. Lawson</u> William A. Lawson	Director	February 13, 2004
<u>/s/ Hansraj C. Maru</u> Hansraj C. Maru	Director	February 13, 2004
<u>/s/ Charles J. Murphy</u> Charles J. Murphy	Director	February 17, 2004
<u>/s/ John A. Rolls</u> John A. Rolls	Director	February 13, 2004
<u>/s/ Thomas R. Casten</u> Thomas R. Casten	Director	February 13, 2004
<u>/s/ George K. Petty</u> George K. Petty	Director	February 13, 2004

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