

US ENERGY CORP  
Form DEFA14A  
June 14, 2005

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

**SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934**

Filed by the Registrant  Filed by a party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement  
 **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**  
 Definitive Proxy Statement  
 Definitive Additional Materials  
 Soliciting Material Pursuant to '240.14a-12

**U.S. Energy Corp.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.  
 Fee computed on table below per Exchange Act Rules 14a-6(I)(1) and 0-11.

- 1) Title of each class of securities to which transaction applies:
  - 2) Aggregate number of securities to which transaction applies:
  - 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
  - 4) Proposed maximum aggregate value of transaction:
  - 5) Total fee paid:
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**U.S. ENERGY CORP.**  
**Minerals Plaza, Glen L. Larsen Building**  
**877 North 8th West**  
**Riverton, Wyoming 82501**

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**Notice of Annual Meeting of Shareholders**  
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We are pleased to give you notice of our Annual Meeting of Shareholders:

Date: Friday, July 22, 2005

Time: 10:00 AM MDT

Place: 877 North 8th West, Riverton, Wyoming 82501

Purpose: -Elect three directors to serve until the third succeeding annual meeting of shareholders, and until their successors have been duly elected or appointed and qualified;

- Ratify appointment of the independent auditor; and

- Transact any other business that may properly come before the meeting.

Record Date: May 31, 2005. The stock transfer books will not be closed.

**Your vote is important.** Whether or not you plan to attend the meeting, please complete, sign and date the enclosed proxy card and return it promptly in the enclosed envelope. We appreciate your cooperation.

By Order of the Board of Directors

Dated: June 17, 2005 Daniel P. Svilar, Secretary

**Information About Attending the Annual Meeting**

Only shareholders of record on May 31, 2005 may vote at the meeting. Only shareholders of record, and beneficial owners on the record date, may attend the meeting. If you plan to attend the meeting, please bring personal identification and proof of ownership if your shares are held in "street name" (i.e., your shares are held of record by brokers, banks or other institutions). Proof of ownership means a letter or statement from your broker showing your ownership of shares on the record date.

A list of shareholders entitled to vote at the meeting will be available for inspection by any record shareholder at the Company's principal executive offices in Riverton, Wyoming. The inspection period begins two days after the date this Notice is mailed and ends at the conclusion of the meeting.

**U.S. ENERGY CORP.**

**Minerals Plaza, Glen L. Larsen Building  
877 North 8th West  
Riverton, Wyoming 82501**

**PROXY STATEMENT  
FOR ANNUAL MEETING OF SHAREHOLDERS  
ON FRIDAY, JULY 22, 2005**

The Annual Report to Shareholders for the fiscal year ended December 31, 2004 is mailed to shareholders together with these proxy materials on or about June 17, 2005. The proxy materials consist of this proxy statement and notice of annual meeting, the Annual Report, and the Audit Committee Certification.

This proxy statement is provided in connection with a solicitation of proxies by the board of directors of U.S. Energy Corp. for the annual meeting of shareholders (the "meeting") to be held on Friday, July 22, 2005 and at any adjournments of the meeting.

**Who Can Vote**

If you held any shares of common stock on the record date (May 31, 2005), then you will be entitled to vote at the meeting. If you held stock in your own name, you may vote directly. If you own stock beneficially but in the record name (street name) of an institution, you may instruct the record holder how to vote when the record holder contacts you about voting and gives you the proxy materials.

**Common Stock Outstanding on the Record Date: 16,374,251 Shares**

**Quorum and Voting Rights**

A quorum for the meeting will exist if a majority of the voting power of the shareholders is present at the meeting, in person or represented by properly executed proxy delivered to us prior to the meeting. Shares of common stock present at the meeting that abstain from voting, or that are the subject of broker non-votes, will be counted as present for determining a quorum. A broker non-vote occurs when a nominee holding stock in street name or otherwise for a beneficial owner does not vote on a particular matter because the nominee does not have discretionary voting power with respect to that item and has not received voting instructions from the beneficial owner.

You are entitled to one vote for each share of U.S. Energy Corp. common stock you hold, except that in the election of directors you may cumulate your votes. Cumulative voting generally allows each holder of shares of common stock to multiply the number of shares owned by the number of directors being elected, and to distribute the resulting number of votes among nominees in any proportion that the holder chooses. Nominees in number equal to the seats to be filled, who receive a plurality of votes cast, are elected. If you abstain from voting, your shares will not be counted for or against any director.

Any other matter which properly comes before the meeting would be approved if the number of votes cast in favor exceed the number of votes opposed, unless Wyoming law requires a different approval ratio.

Abstentions and broker non-votes will have no effect on the election of directors. Abstentions as to all other matters which properly may come before the meeting will be counted as votes against those matters. Broker non-votes as to

all other matters will not be counted as votes for or against, and will not be included in calculating the number of votes necessary for approval of these matters.

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### **How Your Proxy Will Be Voted; Recommendation of the Board**

The board of directors is soliciting a proxy in the enclosed form to provide you with the opportunity to vote on all matters scheduled to come before the meeting, whether or not you attend in person.

The board of directors recommends you vote in favor of the nominees for directors, and in favor of ratifying management's re-appointment of the audit firm.

### **Granting Your Proxy**

If you sign properly and return the enclosed form of proxy, your shares will be voted as you specify. If you make no specifications, your proxy will be voted in favor of all proposals.

We expect no matters to be presented for action at the meeting other than the items described in this proxy statement. However, as permitted by SEC rule 14a-4(c), the enclosed proxy will confer discretionary authority with respect to any other matter that may properly come before the meeting, including any matter of which we did not have notice at least 45 days before the date of mailing proxy materials for last year's meeting. The persons named as proxies intend to vote in accordance with their judgment on any matters that may properly come before the meeting.

### **Revoking Your Proxy**

If you submit a proxy, you may revoke it later or submit a revised proxy at any time before it is voted. You also may attend the meeting in person and vote by ballot, which would cancel any proxy you previously submitted.

### **Proxy Solicitation**

We will pay all expenses of soliciting proxies for the meeting. In addition to solicitations by mail, arrangements have been made for brokers and nominees to send proxy materials to their principals, and we will reimburse them for their reasonable expenses. We have not hired a solicitation firm for the meeting. Our employees and directors will solicit proxies by telephone or other means, if necessary; these people will not be paid for these services.

### **Requirement and Deadlines for Shareholders to Submit Proxy Proposals**

Generally, we hold the annual meeting on the first Friday of each June. Under the rules of the SEC, if a shareholder wants us to include a proposal in our proxy statement and form of proxy for presentation at our Annual Meeting of Shareholders to be held in June 2006, the proposal must be received by us in writing at least 150 calendar days in advance of the meeting date (which would be approximately 120 days in advance of the mailing date), at U.S. Energy Corp., 877 North 8th West, Riverton, Wyoming 82501; Attention: Daniel P. Svilar, Secretary.

### **Corporate Governance, Audit Committee, Compensation Committee and Nominating Committee**

**Meetings of the Board.** The board of directors, which held eight formal meetings and two unanimous consent meetings in 2004, has primary responsibility for directing management of the business. The board currently consists of seven members. All members attended at least eight of the meetings, except Mr. Feinstein who has attended all meetings since appointed to the board in October 2004 and Mr. Michael T. Anderson who missed four meetings. Mr. Anderson also is a member of the Audit Committee and the Compensation Committee. The board conferred informally on several other occasions during the fiscal year. From time to time the directors also approve various matters by consent minutes without conducting formal meetings.



**Attendance by Directors at Annual Meetings.** Although most of the directors attend annual meetings of shareholders, we do not require such attendance. All of the directors attended the 2004 annual meeting of shareholders either in person or on the telephone, and the regular meeting of the board of directors following the 2004 annual meeting of shareholders.

**Communications from Security Holders to the Board of Directors.** Security holders may send communications to the board of directors, by addressing their communications to Keith G. Larsen, President and a director, or John L. Larsen, Chief Executive Office and a director, at 877 N. 8th W., Riverton, Wyoming 82501. The independent directors have established a process for collecting and organizing communications from security holders. Pursuant to this process, Keith and John Larsen will determine which of the communications address matters of substance and which should be considered by all directors, and will send those communications to all the directors for their consideration.

**Audit Committee.** To provide effective direction and review of fiscal matters, the board has established an audit committee. The audit committee has the responsibility of reviewing our financial statements, exercising general oversight of the integrity and reliability of our accounting and financial reporting practices, and monitoring the effectiveness of our internal control systems. The audit committee also recommends selection of an auditing firm and exercises general oversight of the activities of our independent auditors, principal financial and accounting officers and employees and related matters. The members of the audit committee are Don Anderson, H. Russell Fraser, Michael Anderson, and Michael H. Feinstein, all of whom are independent directors under criteria established by rule 4200(a)(15) adopted by the National Association of Securities Dealers, Inc. ("NASD").

The board of directors has determined that Michael T. Anderson and Michael Feinstein both are audit committee financial experts as defined in rule 401(h) of the SEC's regulation S-K.

The audit committee has reviewed our financial statements for the twelve months ended December 31, 2004 and discussed them with management. The committee also discussed with the independent audit firm the various matters required to be so discussed in SAS 63 (Codification of Statements on Auditing Standards, AU 380). Based on the foregoing, the audit committee recommended to the board of directors that the audited financial statements be included in our Annual Report on Form 10-K for the twelve months ended December 31, 2004, which was filed with the Securities and Exchange Commission on April 15, 2005.

The audit committee has adopted a written charter, a copy of which was included in the proxy statement for the June 2003 Annual Meeting (a copy will be next included with proxy materials for the 2006 Annual Meeting).

**Compensation Committee.** The Company has a compensation committee, whose members are Michael H. Feinstein and Russ Fraser, who are independent under criteria established by the NASD. This committee met formally on one occasion during the twelve months ended December 31, 2004, and discussed compensation matters informally several times throughout the fiscal year.

The compensation committee reviews and recommends to the board of directors compensation packages for the officers of U.S. Energy Corp. and subsidiaries (but not Crested Corp. which has its own compensation committee). The committee takes into account the need for different types of executives (administrative, financial, engineering, etc.), and the pay arrangements which corporations of similar size have adopted in our industry on both the national and local levels. Items considered include the experience of and contribution made (or to be made for new hires or promotions) by each person, and the methods of paying them (principally salary and stock options). In addition, the compensation committee reviews and recommends to the board of directors the granting of stock options to non-executive employees.





Compensation packages for the executive officers are approved by vote of the independent directors.

**Executive Committee.** The executive committee members are John L. Larsen, Keith G. Larsen, Harold F. Herron and H. Russell Fraser. This committee helps implement the board of directors' overall directives as necessary. This committee usually does not conduct formal meetings (none were held in 2004).

**Nominating Committee and Nominating Process.** When needed as determined by the board of directors, the nominating committee considers and recommends to the board of directors individuals who may be suitable to be nominated to serve as directors. H. Russell Fraser and Don Anderson are the nominating committee members; they are independent under criteria established by the NASD.

The nominating committee has adopted a written charter regarding the Company's director nomination process, a copy of which was included in the proxy statement for the June 2004 Annual Meeting (a copy will be next included with proxy materials for the 2007 Annual Meeting). This charter is not available on the company's website, but copies are available on request (without charge) addressed to Daniel P. Svilar, Secretary, U.S. Energy Corp., 877 North 8th West, Riverton, Wyoming 82501.

Pursuant to its charter, the nominating committee has adopted a policy for consideration of any director candidates recommended by security holders, and may (or may not) recommend to the board of directors that candidate(s) be put on an Annual Meeting election slate and identified in the Company's proxy statement, if:

- At least 150 calendar days before the meeting date, the security holder requests in writing that the nominating committee consider an individual for inclusion as a director nominee in the next proxy statement for an Annual Meeting. The security holder must identify the individual and provide background information about the individual sufficient for the committee to evaluate the suggested nominee's credentials. Such requests should be addressed to Keith G. Larsen, President, or John L. Larsen, Chief Executive Officer, who will forward the requests to the nominating committee.
- The candidate meets certain specific minimum qualifications: Substantial experience in top or mid-level management (or serving as a director) of public mineral exploration companies, with particular emphasis on understanding and evaluating mineral properties for either financing, exploration and development, or joint venturing with industry partners; contacts with mining or oil and gas industry companies to develop strategic partnerships or investments with the Company; and the ability to understand and analyze complex financial statements. A security holder-recommended candidate also will have to possess a good business and personal background, which the nominating committee will independently verify. These same categories of qualifications will be used by the nominating committee in considering any nominee candidate, whether recommended by a security holder, an officer, or another director.
- Although all security holder-recommended candidates, and all candidates recommended by another director or by an officer, will be evaluated by the nominating committee in good faith, the full board of directors, by majority vote, will make the final decision whether to include an individual on an Annual Meeting election slate and identified in the proxy statement for that Annual Meeting.
- For the 2005 Annual Meeting, or for the following Annual Meeting, the nominating committee has not received a request from any security holder for consideration of a nominee candidate.

All three of the director nominees for election at the 2005 Annual Meeting are incumbent directors standing for re-election, except for Michael H. Feinstein, who was appointed by the board of directors in September 2004.



**Management Cost Apportionment Committee**, established by USE and Crested in 1982, reviews the apportionment of costs between USE and Crested. John L. Larsen and Robert Scott Lorimer are members of this committee.

**Principal Holders of Voting Securities of the Company  
And Ownership by Officers and Directors**

The following is a list of all record holders who, as of the record date for this Annual Meeting, beneficially owned more than 5% of the outstanding shares of common stock, and the outstanding common stock beneficially held by each director and nominee, and each officer, and by all officers and directors as a group, as reported in filings with the SEC, or as otherwise known to us. This list includes shares held by Mark J. Larsen, an officer and director of a subsidiary, but not an officer or director of the Company. Beneficial ownership includes the shares underlying presently exercisable options.

Except as otherwise noted, each holder exercises the sole voting and dispositive powers over the shares listed opposite the holder's name, excluding shares subject to forfeiture and those held in ESOP accounts established for the employee's benefit. Dispositive powers over the forfeitable shares held by employees who are not officers, and by non-employee directors ("Forfeitable Shares") are shared by the Company's board of directors. Voting and dispositive powers over Forfeitable Shares held by the Company's five executive officers ("Officers' Forfeitable Shares") are shared by the Company's non-employee directors (Messrs. Anderson, Feinstein, Anderson, and Fraser). The ESOP Trustees (John L. Larsen and Harold F. Herron) exercise voting powers over non-allocated ESOP shares and dispositive powers over all ESOP shares. It should be noted that voting and dispositive powers over certain shares are shared by one or more of the listed holders. Such securities are reported opposite each holder having a shared interest therein.

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Name and address Of beneficial owner	Amount and Nature of Beneficial Ownership				Total Beneficial Ownership	Percent of Class <sup>(1)</sup>
	Voting Rights		Dispositive Rights			
	Sole	Shared	Sole	Shared		
John L. Larsen <sup>*(2)</sup> 201 Hill Street Riverton, WY 82501	1,110,073	968,726	1,110,073	1,407,865	2,640,458	16.4%
Keith G. Larsen <sup>*(3)</sup> 4045 Valley Green Cir. Riverton, WY 82501	784,189	820,415	733,174	835,595	1,605,924	10.0%
The K2 Principal Fund L.P. 444 Adelaide West Toronto, Ontario CANADA M5V 1S7		836,703 <sup>(13)</sup>	836,703		836,703	5.1%
Harold F. Herron <sup>*(4)</sup> 877 N. 8th W. Riverton, WY 82501	376,343	973,226	350,645	1,407,865	1,800,978	11.2%
Don C. Anderson <sup>*(5)</sup> P. O. Box 680 Midway, UT 84049	142,911	420,720	142,911	443,400	586,311	3.6%
Michael H. Feinstein <sup>*(6)</sup> 5309 East Paradise Lane Scottsdale, AZ 85254	476	420,720	476	443,400	443,876	2.8%
H. Russell Fraser <sup>*(7)</sup> 3453 Southfork Road Cody, WY 82414	121,356	422,020	121,356	444,700	566,056	3.5%
Michael T. Anderson <sup>*(8)</sup> 933 Main Street Lander, WY 82520	52,405	420,720	52,405	443,400	495,805	3.1%
Daniel P. Svilar <sup>***(9)</sup> 580 S. Indiana Street Hudson, WY 82515	636,338	818,915	636,338	817,915	1,566,933	9.7%
R. Scott Lorimer <sup>***(10)</sup> 11 Korrel Court Riverton, WY 82501	564,620	812,915	505,481	812,915	1,452,655	9.0%
Mark J. Larsen <sup>***(11)</sup>	453,618	4,600	416,184	-0-	453,618	2.8%

513 Westchester Cir.  
Riverton, WY 82501

All officers and directors

as

A group (nine persons)<sup>(12)</sup> 4,242,329 1,413,346 4,069,043 1,834,885 6,077,214 37.8%

\* Director

\*\* Officer (Mr. Mark Larsen was president of the Company's majority-owned subsidiary, Rocky Mountain Gas,, Inc., sold on June 1, 2005, but he is not an officer of the Company).

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- (1) Percent of class is computed by dividing the number of shares beneficially owned plus any options held by the reporting person, by the number of shares outstanding plus the shares underlying options held by that person.
- (2) Mr. John L. Larsen exercises sole voting powers over 426,513 shares contributed to a family limited partnership, 500 shares held in a street name account for his benefit, 64,160 shares held in an Individual Retirement Account ("IRA") established for his benefit, and 618,900 shares underlying options. He exercises shared voting rights over 155,811 shares held by the ESOP, which have not been allocated to accounts established for specific beneficiaries, and shares held by corporations of which Mr. Larsen is a director consisting of 512,359 shares held by Crested Corp. ("Crested"), 125,556 shares held by Plateau Resources Limited ("Plateau"), and 175,000 shares held by Sutter Gold Mining Inc. ("SGMI"). Mr. Larsen shares the voting rights over such shares with the other directors of those corporations. Mr. Larsen shares voting powers over the unallocated ESOP shares in his capacity as an ESOP Trustee with the other ESOP Trustees. Shares over which sole dispositive rights are exercised consist of 426,513 directly owned shares, 500 shares held in street name, 64,160 shares held in his IRA, and the 618,900 shares underlying options. Shared dispositive powers are exercised over 572,270 shares held by the ESOP, 22,680 Forfeitable Shares, 512,359 shares held by Crested, 125,556 shares held by Plateau and 175,000 shares held by SGMI. The shares listed under "Total Beneficial Ownership" also include 145,200 Officers' Forfeitable Shares.
- (3) Mr. Keith Larsen exercises sole voting rights over 62,539 directly held shares, 7,500 shares as custodian over shares held for his minor children under the Wyoming Uniform Transfers to Minors Act (the "Custodial Shares"), 51,015 shares held in an ESOP account established for his benefit, 663,135 shares underlying options. He exercises shared voting rights over 7,500 shares held directly by his minor children and shares held by corporations of which Mr. Larsen is a director consisting of 512,359 shares held by Crested, 125,556 shares held by Plateau, and 175,000 shares held by Sutter. Mr. Larsen shares the voting rights over such shares with the other directors of those corporations. Mr. Keith Larsen exercises sole dispositive rights over 62,539 directly held shares, 7,500 Custodial shares, and 663,135 shares underlying options. He exercises shared dispositive rights over 22,680 Forfeitable Shares 512,359 shares held by Crested, 125,556 shares held by Plateau and 175,000 shares held by SGMI. The shares listed under "Total Beneficial Ownership" also include 8,820 Officers' Forfeitable Shares.
- (4) Mr. Herron exercises sole voting powers over 86,141 directly owned shares, 11,000 shares held in an IRA established for his benefit, 4,500 Custodial Shares, 249,004 shares underlying options, and 25,698 shares held in the ESOP account established for his benefit. Shared voting powers are exercised over 4,500 Custodial shares, 155,811 shares held by the ESOP which have not been allocated to accounts established for specific beneficiaries, 512,359 shares held by Crested, 125,556 shares held by Plateau, and 175,000 shares held by Sutter. Sole dispositive powers are exercised over 86,141 directly held shares, 11,000 shares held in his IRA, 4,500 Custodial Shares and 249,004 shares underlying options. Mr. Herron exercises shared dispositive rights over 572,270 shares held by the ESOP, 512,359 shares held by Crested, 125,556 shares held by Plateau and 175,000 shares held by SGMI, and 22,680 Forfeitable Shares. Mr. Herron exercises shared dispositive and voting powers over the shares held by Crested, Sutter and Plateau as a director of those companies with the other directors of those companies and over the ESOP shares in his capacity as an ESOP Trustee with the other ESOP Trustees. The shares listed under "Total Beneficial Ownership" also include 39,450 Officers' Forfeitable Shares.
- (5) Mr. Don Anderson exercises sole voting powers over 37,356 directly held shares, 3,055 shares held in an IRA established for his benefit, and 102,500 shares underlying options. He exercises shared voting powers over 420,720 Officers' Forfeitable Shares. Mr. Anderson exercises dispositive power over 37,356 directly held shares, 3,055 IRA shares, and 102,500 shares underlying his options. He exercises shared dispositive powers over the 22,680 Forfeitable Shares and 420,720 Officers' Forfeitable Shares.



(6) Mr. Feinstein exercises sole voting rights over 476 directly held shares. He exercises shared voting powers over 420,720 Officers' Forfeitable Shares. Mr. Feinstein exercises sole dispositive rights over 476 directly held shares. He exercises shared dispositive powers over the 22,680 Forfeitable Shares and 420,720 Officers' Forfeitable Shares.

(7) Mr. Fraser exercises sole voting rights over 13,856 directly held shares, 4,000 shares held in an IRA for his benefit, 1,000 shares held in a street name account for his benefit and 102,500 shares underlying options. He exercises shared voting rights over 1,300 shares held directly by his wife and 420,720 Officers' Forfeitable Shares. Mr. Fraser exercises sole dispositive rights over 13,856 directly held shares, 4,000 IRA shares, 1,000 held in a street name account for his benefit and 102,500 shares underlying his options. He exercises shared dispositive powers over 1,300 wife's shares, 22,680 Forfeitable Shares, and 420,720 Officers' Forfeitable Shares.

(8) Mr. Mike Anderson exercises sole voting rights over 2,405 directly owned shares and 50,000 shares underlying his options. He exercises shared voting powers over 420,720 Officers' Forfeitable Shares. He exercises sole dispositive rights over 2,405 directly owned shares and 50,000 shares underlying his options. He exercises shared dispositive powers over the 22,680 Forfeitable Shares and 420,720 Officers' Forfeitable Shares.

(9) Mr. Svilar exercises sole voting powers over 87,439 directly owned shares, 2,125 shares held in joint tenancy with his wife, 26,244 shares held in an IRA established for his benefit, 630 shares held in a street name account established for his benefit, 1,000 Custodial Shares, and 518,900 shares underlying options. He exercises shared voting over 512,359 shares held by Crested, 125,556 shares held by Plateau, and 175,000 shares held by SGMI, 1,000 Custodial shares and 5,000 shares held by a private corporation of which he is a director and officer. He exercises sole dispositive power over 87,439 directly held shares, 2,125 joint tenancy shares, 26,244 IRA shares, 630 street name shares, 1,000 Custodial Shares, and 518,900 shares underlying his options. Mr. Svilar exercises shared dispositive rights over 512,359 shares held by Crested, 125,556 shares held by Plateau, 175,000 shares held by SGMI, and 5,000 shares held by a private corporation of which he is a director and officer. The shares listed under "Total Beneficial Ownership" also include 112,680 Officers' Forfeitable Shares.

(10) Mr. Lorimer exercises sole voting rights over 107,474 directly held shares, 59,139 shares held in the ESOP account established for his benefit, and 398,007 shares underlying options. He exercises shared voting over 512,359 shares held by Crested, 125,556 shares held by Plateau, and 175,000 shares held by SGMI. He exercises sole dispositive rights over 107,474 directly held shares, and 398,007 shares underlying options. Mr. Lorimer exercises shared dispositive rights over 512,359 shares held by Crested, 125,556 shares held by Plateau and 175,000 shares held by SGMI. The shares listed under "Total Beneficial Ownership" also include 75,120 Officers' Forfeitable Shares.

(11) Mr. Mark Larsen is listed in the table because he is president of Rocky Mountain Gas, Inc. ("RMG"), a majority-owned subsidiary of the Company through which the Company conducts its primary business. He exercises sole voting over 20,554 shares held directly, 4,600 Custodial Shares, 37,434 shares held in the ESOP account established for his benefit, and 391,030 shares underlying options. He exercises shared voting rights over 4,600 Custodial shares. Mr. Larsen exercises sole dispositive rights over 20,554 shares held directly, 4,600 Custodial shares, and 391,030 shares underlying his options.

(12) The group exercises sole voting rights over 844,753 directly held shares, 3,125 shares held in joint tenancy, 108,459 shares held in IRAs, 1,130 shares held in street name, 17,600 Custodial Shares, 173,286 ESOP shares and 3,093,976 shares underlying options. Shared voting rights are exercised over 1,300 shares held in IRA accounts for spouses, 17,600 shares held by minor children, 420,720 Officers' Forfeitable Shares,





155,811 shares held in the ESOP which are not allocated to plan participants, 512,359 shares held by Crested, 125,556 shares held by Plateau, 175,000 shares held by SGMI, and 5,000 shares held by private corporations. The sole dispositive shares consist of 844,753 directly held shares, 3,125 shares held in joint tenancy, 108,459 shares held in IRAs, 1,130 shares held in street name, 17,600 Custodial Shares, and 3,093,976 shares underlying options. The group exercises shared dispositive rights over 1,300 shares held in IRA accounts for spouses, 572,270 shares held in the ESOP, 512,359 shares held by Crested, 125,556 shares held by Plateau, 175,000 shares held by SGMI, 5,000 shares held by private corporations, 22,680 Forfeitable Shares, and 420,720 Officers' Forfeitable Shares.

<sup>(13)</sup> Based on a Schedule 13G filed with the SEC on March 10, 2005.

### Proposal One - Election of Directors

The directors are divided into three classes, each consisting of two persons so far as practicable, to be elected until the third succeeding annual meeting and until their successors have been duly elected or appointed and qualified or until death, resignation or removal. The terms of directors Keith Larsen, Michael Feinstein, and Don Anderson expire at the July 2005 meeting and they have been nominated for re-election. Current directors are:

Name, age and designation	Other positions with with the company	Director since	Meeting at which term will expire
John L. Larsen (74) (continuing director)	Chairman and CEO	1966	2006 Annual Meeting
Keith G. Larsen (46) (continuing director)	President and COO	1997	2006 Annual Meeting
Harold F. Herron (52) (continuing director)	Senior Vice President	1989	2007 Annual Meeting
Don C. Anderson (77) (nominee)		1990	2005 Annual Meeting
Michael H. Feinstein (69) (nominee)		2004	2005 Annual Meeting
H. Russell Fraser (63) (nominee)		1996	2005 Annual Meeting
Mike Anderson (53) (continuing director)		2003	2007 Annual Meeting

It is recommended that the shareholders vote for the election of Don C. Anderson, Michael J. Feinstein and H. Russell Fraser.

Executive officers are elected by the board of directors at the annual directors' meeting, which follows each Annual Shareholders' Meeting, to serve until the officer's successor has been duly elected and qualified, or until death, resignation or removal.



### **Family Relationships.**

Keith G. Larsen, a director, President and COO, and Mark J. Larsen, formerly President of Rocky Mountain Gas, Inc. and presently President of U.S. Moly Corp., are sons of John L. Larsen, Chairman, CEO and a principal shareholder. Harold F. Herron, a director and Senior Vice-President, is a former son-in-law of John L. Larsen. There are no other family relationships among the executive officers or directors of the Company.

### **Business Experience and Other Directorships of Directors and Nominees.**

**John L. Larsen** has been principally employed as an officer and director of the Company and Crested Corp. for more than the past five years. Mr. Larsen is the Chairman of the Board and Chief Executive Officer. He is also the Co-Chairman and a director of Crested, an affiliate of the Company. Crested has registered equity securities under the Securities Exchange Act of 1934 (the "Exchange Act"). Mr. Larsen is Chief Executive Officer and Chairman of the board of directors of Plateau Resources, Limited and a director of Sutter Gold Mining Inc., and he was a director of Rocky Mountain Gas, Inc. (until its sale on June 1, 2005) and Yellow Stone Fuels Inc. Mr. Larsen is a director of U.S. Uranium Ltd. and U.S. Moly Corp.

**Keith G. Larsen** has been principally employed by the Company and Crested for more than the past five years. He has been a director of the Company and its President and Chief Operating Officer since November 25, 1997. Mr. Larsen also was the Chief Executive Officer and a director of Rocky Mountain Gas, Inc. (until its sale on June 1, 2005) and is a director of Crested. Mr. Larsen is a U.S. Uranium Ltd., and U.S. Moly Corp.

**Harold F. Herron** has been the Company's Vice-President since January 1989, and now is Senior Vice President. Mr. Herron is President and a director of Crested Corp, and Plateau Resources, Limited, Chief Executive Officer and a director of Sutter Gold Mining Inc., and he was a director of Rocky Mountain Gas, Inc. until its sale on June 1, 2005. He is the President of U.S. Uranium Ltd. and a director of U.S. Moly Corp. Mr. Herron received an M.B.A. degree from the University of Wyoming after receiving a B.S. degree in Business Administration from the University of Nebraska at Omaha

**Don C. Anderson** has been a Company director since May 1990. From January 1990 until mid-1993, Mr. Anderson was the Manager of the Geology Department for the Company. Mr. Anderson was Manager of Exploration and Development for Pathfinder Mines Corporation, a major domestic uranium mining and milling corporation, from 1976 until his retirement in 1988. Previously, he was Mine Manager for Pathfinder's predecessor, Utah International, Inc., from 1965 to 1976. He received a B. S. degree in geology from Brigham Young University.

**Michael H. Feinstein** has been director of the Company since September 2004. Mr. Feinstein is a graduate in 1957 of Wharton School, University of Pennsylvania. He became a CPA in the state of Colorado in 1960. Mr. Feinstein is currently a financial and business consultant and the Director of Taxation for a CPA firm in Scottsdale, AZ, which provides accounting and tax services to small businesses. He has over 40 years of accounting, auditing, and business experience including 25 years of experience as an employee and subsequently a partner for Deloitte & Touche and its predecessors. He has served as a director, CFO and CEO of numerous public and private companies.

**H. Russell Fraser** has been a director of the Company since 1996 and a director of Rocky Mountain Gas, Inc. since 1999. He is past President and director of American Capital, Inc., the first "A" rated financial guarantee company in New York, New York. Mr. Fraser was chairman of the board and chief executive officer of Fitch Investors Services, L.P. for more than the past five years. Fitch Investors Services, L.P., New York, New York, is a nationwide stock and bond rating and information distribution company. From 1980-1989, Mr. Fraser served as president and chief executive officer of AMBAC, the oldest municipal bond issuer in the United States. In 2005, Mr. Fraser became a director of Ascend Services Limited, a privately held financial guarantee company based in the Cayman Islands.

Before joining AMBAC, Mr. Fraser was senior vice president and director of fixed-income research at PaineWebber, Inc. While a member of the board of directors at PaineWebber, Mr. Fraser participated in both the corporate and public finance departments and headed PaineWebber's trading and sales for all corporate bond products. Previously, he managed corporate ratings at Standard & Poor's, supervising research analysis of corporate bonds, preferred stock, and commercial paper. Mr. Fraser holds a B.S. in finance and economics from the University of Arizona. He is a member of the Municipal Analysts Group of New York and founder of the Fixed Income Analysts Society.

In August 2004, Mr. Fraser and his wife, and two family companies, filed petitions for reorganization under Chapter 11 of the Bankruptcy Code, due to the impact of health problems in 2004.

**Michael Thomas Anderson** was appointed to the board of directors on May 23, 2003. Mr. Anderson has run his own accounting and consulting practice since 1993. Prior to that, he was chief financial officer for an operating unit of a Fortune 500 company for eight years. From 1977 to 1985, Mr. Anderson worked in public accounting. He is a member of the AICPA and The Wyoming Society of CPAs. Mr. Anderson holds a B.S. degree in accounting from Brigham Young University.

#### **Filing of Reports Under Section 16(a)**

The Company has reviewed reports on Forms 3, 4 and 5 of ownership of common stock in the Company, which have been filed with the SEC in 2004 under Section 16(a) of the Exchange Act in 2003, and has received written representations from the filing persons. Based solely upon review of the reports and representations, one officer reported transactions late; Harold F. Herron (1). We know of no other untimely filings.

#### **Information Concerning Executive Officers Who Are Not Directors, and an Executive Officer and Director of a Subsidiary**

The following information is provided pursuant to Item 401 of Reg. S-K, regarding the executive officers of the Company who are not also directors.

**Daniel P. Svilar**, age 76, has been General Counsel for USE and Crested for more than the past five years. He also is Secretary and a director of Crested, and Secretary of USE. His positions of General Counsel to, and as officers of the companies, are at the will of the board of directors. There are no understandings between Mr. Svilar and any other person pursuant to which he was named as officer or General Counsel. Mr. Svilar received a B.S. degree in Engineering from the University of New Mexico and a J.D. from the University of Wyoming. He has no family relationships with any of the other executive officers or directors of USE or Crested. During the past five years, Mr. Svilar has not been involved in any Reg. S-K Item 401(f) proceeding.

**Robert Scott Lorimer**, age 54, has been Chief Accounting Officer, Chief Financial Officer and Treasurer for both USE and Crested for more than the past five years. Mr. Lorimer also has been their Vice President Finance since April 1998. Mr. Lorimer received a B.S. in Finance, Accounting, Economics and German from Brigham Young University and worked towards a Masters in Accountancy at the University of Nebraska. He serves at the will of the board of directors. There are no understandings between Mr. Lorimer and any other person, pursuant to which he was named as an officer, and he has no family relationship with any of the other executive officers or directors of USE or Crested. During the past five years, he has not been involved in any Reg. S-K Item 401(f) listed proceeding.

**Mark J. Larsen**, age 42, was the President of RMG until it was sold on June 1, 2005. Mr. Larsen is the President of U.S. Moly Corp. and the Director of Business Development and Operations Manager for USE. Mr. Larsen is the son of John L. Larsen.

### **Executive Compensation**

Under a Management Agreement dated August 1, 1981, USE and Crested share certain general and administrative expenses, including compensation of the officers and directors of the companies (but excluding directors' fees) which have been paid through the USECC Joint Venture ("USECC"). Substantially all the work efforts of the officers of USE and Crested are devoted to the business of both companies and to their subsidiary companies.

All personnel of USECC and RMG are employees of USE, in order to utilize the Company's ESOP as an employee benefit mechanism. The Company charges USECC for the direct and indirect costs of its employees for time spent on USECC matters, and USECC charges one-half of that amount to Crested and the Company.

### **SUMMARY COMPENSATION TABLE**

The following table sets forth the compensation paid to the Chief Executive Officer USE, and those of the four most highly compensated USE executive officers and Mark J. Larsen, President of RMG, who were paid more than \$100,000 cash in the (former) fiscal year ended May 31, 2002, more than \$50,000 cash in the fiscal period (seven months) ended December 31, 2002, and more than \$100,000 cash in the full years ended December 31, 2003 and 2004. The table includes compensation paid such persons by Crested and other subsidiaries during these periods for such persons' services to such companies.

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## SUMMARY COMPENSATION TABLE

(a) Name and Principal Position	(b) Year	Annual Compensation			Long Term Compensation Awards		Payouts	(i) All Other Compensation (\$) <sup>(1)</sup>
		(c) Salary(\$)	(d) Bonus(\$)	(e) Other Annual Compensation (\$)	(f) Restricted Stock Award(s) (\$)	(g) Options/ SARs(#)	(h) LPIT Pay- outs (\$)	
John L. Larsen CEO and Chairman	2004	\$176,500	\$ 14,700 <sup>(2)</sup>	\$-0-	\$ 25,700 <sup>(6)</sup>	125,000	\$-0-	\$24,300
	2003	174,500	25,300 <sup>(3)</sup>	-0-	117,200 <sup>(7)</sup>	-0-	-0-	22,700
	2002*	109,500	7,500 <sup>(4)</sup>	-0-	-0-	97,000 <sup>(10)</sup>	-0-	11,700
	2002	152,000	18,000 <sup>(5)</sup>	-0-	78,000 <sup>(8)</sup>	100,000 <sup>(10)</sup>	-0-	17,700
Keith G. Larsen President and COO	2004	\$162,000	\$ 24,500 <sup>(2)</sup>	\$-0-	\$25,700 <sup>(6)</sup>	125,000	\$-0-	\$24,300
	2003	156,000	40,000 <sup>(3)</sup>	-0-	62,000 <sup>(7)</sup>	-0-	-0-	22,700
	2002*	90,000	7,200 <sup>(4)</sup>	-0-	-0-	97,000 <sup>(10)</sup>	-0-	9,700
	2002	152,300	17,700 <sup>(5)</sup>	-0-	-0-	100,000 <sup>(10)</sup>	-0-	17,000
Mark J. Larsen President of RMG	2004	\$124,600	\$ 23,500 <sup>(2)</sup>	\$-0-	\$-0-	125,000	\$-0-	\$18,100
	2003**	120,000	33,300 <sup>(3)</sup>	-0-	-0-	-0-	-0-	17,400
Daniel P. Svilar G e n e r a l Counsel and Secretary	2004	\$ 155,100	\$ 14,300 <sup>(2)</sup>	\$-0-	\$25,700 <sup>(6)</sup>	125,000	\$-0-	\$19,500
	2003	149,400	24,700 <sup>(3)</sup>	-0-	103,400 <sup>(7)</sup>	-0-	-0-	22,700
	2002*	86,200	6,900 <sup>(4)</sup>	-0-	-0-	97,000 <sup>(10)</sup>	-0-	9,300
	2002	149,400	17,400 <sup>(5)</sup>	-0-	58,500 <sup>(8)</sup>	100,000 <sup>(10)</sup>	-0-	16,700
H a r o l d F . Herron S r . V i c e President	1994	\$138,000	\$ 13,800 <sup>(2)</sup>	\$-0-	\$25,700 <sup>(6)</sup>	125,000	\$-0-	\$22,600
	2003	106,200	65,700 <sup>(3)</sup>	-0-	89,600 <sup>(7)</sup>	-0-	-0-	22,700
	2002*	60,500	27,800 <sup>(9)</sup>	-0-	-0-	97,000 <sup>(10)</sup>	-0-	8,800
	2002	99,500	53,600 <sup>(9)</sup>	-0-	39,000 <sup>(8)</sup>	100,000 <sup>(10)</sup>	-0-	15,300
R . S c o t t Lorimer Treasurer and CRO	2004	\$141,000	\$ 16,400 <sup>(2)</sup>	\$-0-	\$25,700 <sup>(6)</sup>	125,000	\$-0-	\$23,900
	2003	135,700	24,000 <sup>(3)</sup>	-0-	89,600 <sup>(7)</sup>	-0-	-0-	22,700
	2002*	83,500	6,800 <sup>(4)</sup>	-0-	-0-	97,000 <sup>(10)</sup>	-0-	9,000
	2002	141,000	17,000 <sup>(5)</sup>	-0-	39,000 <sup>(8)</sup>	100,000 <sup>(10)</sup>	-0-	15,800

\* For seven months June 1, 2002 to December 31, 2002

\*\* Mr. Larsen became President of RMG on October 15, 2003. Compensation paid to Mr. Larsen as an employee of the Company (not an officer) before that date is not included in the table. Mr. Larsen ceased being an officer of RMG when that company was sold on June 1, 2005.

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(1) Dollar values for ESOP contributions.

(2) Consists of a bonus paid at the successful conclusion of the purchase of the Hi-Pro properties by RMG. The amount paid to each individual in the table was: John L. Larsen \$10,000, Keith Larsen \$20,000, Daniel P. Svilar \$10,000, Harold F. Herron \$10,000, R. Scott Lorimer \$12,500 and Mark Larsen \$20,000. An annual Christmas bonus is also included in this amount.

(3) Consists of a bonus granted to officers and employees after the conclusion of the formation of Pinnacle Gas and an additional bonus granted to officers and employees after the successful release of a portion of the cash bond for reclamation of the Shootaring Canyon uranium mill and a Christmas bonus. Mr. Herron was instrumental in growing The Brunton Company to the level that it could be sold to a third party. For his efforts the Company granted Mr. Herron a bonus which is paid out over several years, ending in August 2004. See note (8) for data on payments prior to 2003.

(4) Consists of Christmas bonus amounts granted to employees during the seven month period ended December 31, 2002.

(5) Consists of \$10,000 bonus granted to officers and employees after the conclusion of a coalbed methane gas transaction, and a Christmas bonus granted to employees. The Christmas bonus amounts granted for John L. Larsen, Keith G. Larsen, Daniel P. Svilar, Harold F. Herron and Robert Scott Lorimer during the fiscal year ended May 31, 2002 were \$8,000, \$7,700, \$7,400, \$6,700 and \$7,000, respectively.

(6) Consists of 10,000 shares issued to each Officer pursuant to the Company's 2001 Stock Compensation Plan. Under the terms of the plan, each Officer is to receive 10,000 shares of the Company's common stock or some other portion as approved by the compensation committee. The Company has agreed under the terms of the plan to pay all taxes due. The officer has agreed not to sell these shares to the market or pledge them on obligations until after his (i) retirement; (ii) total disability or (iii) in the case of the death of the officer, his estate may sell the shares of stock.

(7) Consists 20,000 shares issued to each Officer pursuant to the Company's 2001 Stock Compensation Plan. Under the terms of the plan each Officer is to receive 10,000 shares of the Company's common stock or some other portion as approved by the compensation committee. There were no issuances of shares under the plan during the years ended May 31, 2001 and 2002 or the seven months ended December 31, 2002. The issuance of these shares to the officers was therefore retroactive for the funding of the shares due each officer for 2002 and 2003. The Company has agreed under the terms of the plan to pay all taxes due. The officer has agreed not to sell these shares to the market or pledge them on obligations until after his (i) retirement; (ii) total disability or (iii) in the case of the death of the officer his estate may sell the shares of stock. Also includes shares issued under the 1996 stock award program multiplied by \$3.50 (the closing market price on the issue date for the year ending December 31, 2003). These shares are subject to forfeiture on termination of employment, except for retirement, death or disability. If the Company were to pay a stock dividend, dividends would be paid on these shares. The shares issued to each officer were 15,774, 11,830, 7887 and 7887 shares to John L. Larsen, Daniel P. Svilar, Harold F. Herron and Robert Scott Lorimer, respectively. This is the final funding under the Company's 2001 Stock Compensation Plan.

(8) Consists of shares issued under the 1996 stock award program multiplied by \$5.35 and \$3.90 (the closing market price on the issue dates for former fiscal years 2001 and 2002 respectively). These shares are subject to forfeiture on termination of employment, except for retirement, death or disability. If the Company were to pay a stock dividend, dividends would be paid on these shares. The following table lists the number of shares issued to each executive each year.



Name	Number of Shares	
	2001	2002
John L. Larsen	20,000	20,000
Keith G. Larsen	-0-	-0-
Daniel P. Svilar	15,000	15,000
Harold F. Herron	10,000	10,000
R. Scott Lorimer	10,000	10,000

<sup>(9)</sup> Mr. Herron was instrumental in growing The Brunton Company to the level that it could be sold to a third party. For his efforts the Company granted Mr. Herron a bonus which is paid out over several years, ending in August 2004. The amount of the bonus paid was \$21,200 and \$36,900 for the seven months ended December 31, 2002, and the fiscal year ended May 31, 2002, respectively. The total bonus paid to Mr. Herron also includes a bonus of \$6,600 for the seven months ended December 31, 2002, and \$6,700 for fiscal year ended May 31, 2002, respectively, and a \$10,000 bonus paid in 2002 to officers and employees after the conclusion of a coalbed methane gas transaction.

<sup>(10)</sup> Stock options granted pursuant to the Company's 2001 Incentive Stock Option Plan. See details of the options under "Grants to Executive Officers (Qualified and Nonqualified)" below.

#### **Executive Compensation Plans and Employment Agreements**

The Company has adopted a plan to pay the dependents of Messrs. J. Larsen and Svilar amounts equivalent to the salaries they are receiving at the time of their death, for a period of one year after death, and reduced amounts for up to five years thereafter. The amounts to be paid in such subsequent years have not yet been established, but would be established by the boards of directors of the Company and Crested.

Mr. Svilar has an employment agreement with the Company and Crested, which provides for an annual salary in excess of \$100,000, with the condition that Mr. Svilar pay an unspecified amount of expenses incurred by him on behalf of the Company and its affiliates. In the event Mr. Svilar's employment is involuntarily terminated, he is to receive an amount equal to the salary he was being paid at termination, for a year. If he should voluntarily terminate his employment, the Company and Crested will pay him that salary for nine months thereafter. The foregoing is in addition to Mr. Svilar's Executive Severance and Non-Compete Agreement with the Company (see below).

In fiscal 1992, the Company signed Executive Severance and Non-Compete Agreements with Messrs. John L. Larsen, Svilar and Lorimer, providing for payment to such person upon termination of his employment with the Company, occurring within three years after a change in control of the Company, of an amount equal to (i) severance pay in an amount equal to three times the average annual compensation over the prior five taxable years ending before change in control, (ii) legal fees and expenses incurred by such persons as a result of termination, and (iii) the difference between market value of securities issuable on exercise of vested options to purchase securities in USE, and the options' exercise price. These Agreements also provide that for the three years following termination, the terminated individual will not compete with USE in most of the western United States in regards to exploration and development activities for uranium, molybdenum, silver or gold. During fiscal 2001, the Company signed similar Agreements with Keith Larsen, Mark Larsen, Richard Larsen (an employee of USE but not an officer or director of USE or its affiliates), and Harold Herron. For such non-compete covenant, such persons will be paid monthly over a three year period an agreed amount for the value of such covenants. These Agreements are intended to benefit the Company's shareholders, by enabling such persons to negotiate with a hostile takeover offer and assist the board of directors concerning the fairness of a takeover, without the distraction of possible tenure insecurity following a change in control. As of this proxy statement, the Company is unaware of any proposed hostile takeover.



The Company and Crested provide all of their employees with certain forms of insurance coverage, including life and health insurance, with the exception of Messrs. John L. Larsen and Daniel P. Svilar. The Company and Crested reimburse Messrs. John Larsen and Svilar for their Medicare supplement premiums. The health insurance plan does not discriminate in favor of executive employees; life insurance of \$200,000 is provided to each member of upper management (which includes all persons in the compensation table except Messrs. John L. Larsen and Mr. Svilar), \$100,000 of such coverage is provided to middle-management employees, and \$90,000 of such coverage is provided to other employees.

**Employee Stock Ownership Plan ("ESOP").** An ESOP has been adopted to encourage ownership of the common stock by employees, and to provide a source of retirement income to them. The ESOP is a combination stock bonus plan and money purchase pension plan. It is expected that the ESOP will continue to invest primarily in the common stock. Messrs. John L. Larsen and Harold F. Herron are the trustees of the ESOP.

Contributions to the stock bonus plan portion of the ESOP are discretionary and are limited to a maximum of 15% of the covered employees' compensation for each accounting year. Contributions to the money purchase pension portion of the ESOP are mandatory (fixed at ten percent of the compensation of covered employees for each year), are not dependent upon profits or the presence of accumulated earnings, and may be made in cash or shares of company's common stock.

The Company made a contribution of 70,439 shares to the ESOP for the twelve months ended December 31, 2004, all of which were contributed under the money purchase pension plan. At the time the shares were contributed, the market price was \$2.96 per share, for a total contribution with a market value of \$208,500 (which has been funded by the Company). The Company and Crested each are responsible for one-half of that amount. 38,843 of the shares were allocated to the ESOP accounts of the executive officers of the Company and the (now former) president of Rocky Mountain Gas, Inc. Additionally, 6,058 shares were allocated to the ESOP accounts of these same individuals from ESOP shares forfeited by terminated employees who were not fully vested.

Employee interests in the ESOP are earned pursuant to a seven year vesting schedule; after three years of service, the employee is vested to 20% of the ESOP account, and thereafter at 20% per year. Any portion which is not vested is forfeited upon termination of employment, other than by retirement, disability, or death.

The maximum loan outstanding during the twelve months ended December 31, 2004 under a loan arrangement between the Company and the ESOP was \$927,013 at December 31, 2004. Interest owed by the ESOP was not booked by the Company. Crested pays one-half of the amounts contributed to the ESOP by the Company. Because the loans are expected to be repaid by contributions to the ESOP, Crested may be considered to indirectly owe one-half of the loan amounts to the Company.

**401(k) Plan.** In first quarter 2004, the Company established a traditional qualified 401(k) plan for employees, by which the Company will match \$0.50 for each \$1.00 contributed by participating employees, up to an annual \$3,000 per employee maximum contribution by the Company. During the twelve months ended December 31, 2004, the Company has contributed \$36,900 to this plan. Plan eligibility and vesting rules are uniform for all employees, including executive officers of the Company.

**1998 Incentive Stock Option Plan.** The Company's 1998 Incentive Stock Option Plan ("1998 ISOP") reserved an aggregate of 3,250,000 shares of common stock for issuance upon exercise of options granted thereunder.



Options expire no later than ten years from the date of grant, and upon termination of employment for cause. Subject to the ten year maximum period, upon termination, unless terminated for cause, options are exercisable for three months or in the case of retirement, disability or death, for one year.

At December 31, 2004 there were 1,464,646 options outstanding. No more options will be issued under the 1998 ISOP.

**2001 Incentive Stock Option Plan ("2001 ISOP").** The 2001 ISOP was approved at the 2001 Annual Meeting of Shareholders meeting, and provides for the issuance of options to purchase up to three million (3,000,000) shares of common stock. The 2001 ISOP was amended in 2004 to provide that the number of shares available for issuance always shall equal 20% of the total shares issued and outstanding at any point in time. The options are intended to qualify under section 422 of the Internal Revenue Code. Options are issued at exercise prices equal to (or for holders of 10% or more of the outstanding stock at the time, 110% of) market price on grant dates, and would vest (become exercisable) at various times as determined by the executive committee and approved by the board of directors. All options are exercisable for cash, or through other means as determined by the executive committee and approved by the board of directors, in accordance with similar plans of public companies.

For information about options, please see the consolidated Financial Statements in the Annual Report for the twelve months ended December 31, 2004. In 2004, options were granted, 12,000 options were cancelled and no previously granted options were exercised. At December 31, 2004, there were 2,659,000 option outstanding under the 2001 ISOP.

**Option Grants to Executive Officers in the Twelve Months  
Ended December 31, 2004 (Nonqualified)**

Name	Number of Shares Under Lying Options Granted	Percent of All Options Granted to Employees in 2004	Exercise Price	Expiration Date <sup>(1)</sup>	Grant Date Pres.Value <sup>(2)</sup>
John L. Larsen	125,000	9.8%	\$2.46	6/30/14	\$207,500
Keith G. Larsen	125,000	9.8%	\$2.46	6/30/14	\$207,500
Harold F. Herron	125,000	9.8%	\$2.46	6/30/14	\$207,500
Daniel P. Svilar	125,000	9.8%	\$2.46	6/30/14	\$207,500
R. Scott Lorimer	125,000	9.8%	\$2.46	6/30/14	\$207,500
Mark G. Larsen*	125,000	9.8%	\$2.46	6/30/14	\$207,500

\* President of Rocky Mountain Gas, Inc. Mr. Larsen resigned this position on the sale of RMG on June 1, 2005.

<sup>(1)</sup> Options were granted on July 1, 2004.

<sup>(2)</sup> The Black-Scholes option-pricing model was used to determine the grant date present value of the stock options that were granted to the named officer. The following facts and assumptions were used: An exercise price of \$2.46 which was equal to the market value of the stock on the grant date (July 1, 2004); a zero dividend yield; expected volatility of 50.8%, risk-free interest rate of 4.82%, and an expected life of 10 years.





**Aggregated Option/SAR Exercises in Last Fiscal Year and  
Twelve Months Ended 12/31/04 and Option/SAR Values at 12/31/04**

The following table shows options exercised during the twelve months ended December 31, 2004, options outstanding and exercisable at December 31, 2004 and the dollar values for in-the-money options, at December 31, 2004 (closing market price on that date was \$2.96).

(a) Name	(b) In Twelve Months Ended 12/31/04 Shares Acquired on Exercise (#)	(c) Value Realized(\$)	(d) Number of Options/SARs at 12/31/04 Outstanding	(e) Number of Options/SARs at 12/31/04 Exercisable	(f) Value of In-the-Money Options/SARs at 12/31/04 Exercisable
J o h n L . Larsen, CEO	-0-	-0-	34,782	34,782	\$ 2,956 <sup>(1)</sup>
	-0-	-0-	77,718	77,718	\$ 74,609 <sup>(2)</sup>
	-0-	-0-	184,400	184,400	\$ 103,264 <sup>(3)</sup>
	-0-	-0-	100,000	100,000	\$ (94,000) <sup>(4)</sup>
	-0-	-0-	97,000	97,000	\$ 68,870 <sup>(5)</sup>
	-0-	-0-	125,000	-0-	\$ -0- <sup>(6)</sup>
K e i t h G . Larsen President	-0-	-0-	34,782	34,782	\$ 2,956 <sup>(1)</sup>
	-0-	-0-	52,718	52,718	\$ 50,609 <sup>(2)</sup>
	-0-	-0-	298,079	298,079	\$ 166,924 <sup>(3)</sup>
	-0-	-0-	100,000	100,000	\$ (94,000) <sup>(4)</sup>
	-0-	-0-	52,556	52,556	\$ 37,315 <sup>(5)</sup>
	-0-	-0-	125,000	-0-	\$ -0- <sup>(6)</sup>
H a r o l d F . Herron, S r . V i c e President	-0-	-0-	-0-	-0-	\$ -0- <sup>(1)</sup>
	-0-	-0-	20,109	20,109	\$ 19,305 <sup>(2)</sup>
	-0-	-0-	27,617	27,617	\$ 15,466 <sup>(3)</sup>
	-0-	-0-	50,000	50,000	\$ (47,000) <sup>(4)</sup>
	-0-	-0-	26,278	26,278	\$ 18,657 <sup>(5)</sup>
	-0-	-0-	125,000	-0-	\$ -0- <sup>(6)</sup>
D a n i e l P . Svilar Secretary	-0-	-0-	34,782	34,782	\$ 2,956 <sup>(1)</sup>
	-0-	-0-	40,218	40,218	\$ 38,609 <sup>(2)</sup>
	-0-	-0-	121,900	121,900	\$ 68,264 <sup>(3)</sup>
	-0-	-0-	100,000	100,000	\$ (94,000) <sup>(4)</sup>
	-0-	-0-	97,000	97,000	\$ 68,870 <sup>(5)</sup>
	-0-	-0-	125,000	-0-	\$ -0- <sup>(6)</sup>
R . S c o t t Lorimer	-0-	-0-	-0-	-0-	\$ -0- <sup>(1)</sup>

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Treasurer	-0-	-0-	40,218	40,218	\$ 38,609 <sup>(2)</sup>
	-0-	-0-	80,233	80,233	\$ 44,930 <sup>(3)</sup>
	-0-	-0-	100,000	100,000	\$ (94,000) <sup>(4)</sup>
	-0-	-0-	52,556	52,556	\$ 37,315 <sup>(5)</sup>
	-0-	-0-	125,000	-0-	\$ -0- <sup>(6)</sup>
M a r k J . Larsen	-0-	-0-	27,782	27,782	\$ 2,361 <sup>(1)</sup>
	-0-	-0-	-0-	-0-	\$ -0- <sup>(2)</sup>
	-0-	-0-	41,248	41,248	\$ 23,099 <sup>(3)</sup>
	-0-	-0-	100,000	100,000	\$ (94,000) <sup>(4)</sup>
	-0-	-0-	97,000	97,000	\$ 68,870 <sup>(5)</sup>
	-0-	-0-	125,000	-0-	\$ -0- <sup>(6)</sup>

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(1) Equal to \$2.96 the closing market price on December 31, 2004, less \$2.875 per share option exercise price, multiplied by all shares exercisable.

(2) Equal to \$2.96, the closing market price on December 31, 2004, less \$2.00 per share option exercise price, multiplied by all shares exercisable.

(3) Equal to \$2.96, the closing market price on December 31, 2004, less \$2.40 per share option exercise price, multiplied by all shares exercisable.

(4) Equal to \$2.96, the closing market price on December 31, 2004, less \$3.90 per share option exercise price, multiplied by all shares exercisable.

(5) Equal to \$2.96, the closing market price on December 31, 2004, less \$2.25 per share option exercise price, multiplied by all shares exercisable.

(6) Equal to \$2.96, the closing market price on December 31, 2004, less \$2.84 per share option exercise price, multiplied by the number of options exercisable.

**1996 Stock Award Program.** The Company had an annual incentive compensation arrangement for the issuance of up to 67,000 shares of common stock each year (from 1997 through 2002) to executive officers of the Company, in amounts determined each year based on earnings of the Company for the prior fiscal. A total of 392,536 shares were issued under this plan. The compensation committee did not award any shares under this plan during the seven months ended December 31, 2002; 43,378 shares were issued in 2003 to close out the program. One-half of the compensation expense under the Program was the responsibility of Crested.

Each allocation of shares was determined by the compensation committee; the shares were issued in the name of the officer, and is being earned out (vested) over 5 years, at the rate of 20% as of May 31 of each year following the date of issue. However, none of the vested shares become available to or come under the control of the officer until termination of employment by retirement, death or disability. Upon termination, the share certificates will be released to the officer; until termination, the certificates are held by the Treasurer of the Company. Voting rights are exercised over the shares by the non-employee directors of the Company; dividends or other distributions with respect to the shares will be held by the Treasurer for the benefit of the officers.

The number of shares awarded each year out of such 67,000 shares aggregate limit was determined by the compensation committee.

**2001 Stock Compensation Plan.** The shareholders approved the 2001 Stock Compensation Plan (the "plan") at the 2001 Annual Shareholders Meeting.

The plan has an initial term of seven years, with up to 10,000 shares of common stock to be issued in January of each year to six individuals (five officers of U.S. Energy Corp: John L. Larsen, Keith G. Larsen, Robert Scott Lorimer, Harold F. Herron, Daniel P. Svilar, and Mark J. Larsen, formerly President and a director of Rocky Mountain Gas, Inc. and now President of U.S. Moly Corp.). The number of shares to be issued in any year is determined by the compensation committee and approved by the independent directors, taking into account our public stock prices at the date of grant and during the prior calendar year, the Company's financial condition and business prospects, and other factors deemed appropriate. The Company pays the income taxes owed by recipients as a result of receipt of the stock.



The stock recipients have agreed not to sell or transfer such shares during their employment with the Company. As of December 31, 2004, 150,000 shares had been granted under the Plan (30,000 shares each to John L. Larsen, Keith G. Larsen, Robert Scott Lorimer, Harold F. Herron, and Daniel P. Svilar). No shares were issued under the Plan in 2001 or 2002. 20,000 shares were issued to each of the five officers during the twelve months ended December 31, 2003 and 10,000 shares to each during the twelve months ended December 31, 2004. Mark J. Larsen will be first eligible to receive shares under the Plan in 2005.

The 2001 Stock Compensation Plan is now the sole mechanism for compensating management with stock, however options may be granted to management and others under the 2001 ISOP. This plan is designed to reward executives with equity, and encourage them to increase their ownership of the Company and not sell their shares in the market.

### **Directors' Fees and Other Compensation**

The Company pays non-employee directors a fee of \$150 per meeting attended. All directors are reimbursed for expenses incurred with attending meetings.

In addition, non-employee directors are compensated for services at \$400 per month, payable each year by the issue of shares of USE common stock based on the closing stock market price as of January 15. In 2005, the Company issued 11,475 shares to the non-employee directors (3,104 shares each to Don Anderson, H. Russell Fraser, and Michael T. Anderson, 2,386 to Nick Bebout and 476 shares to Mike Feinstein at an average price of \$3.10). This compensation was for services during 2003 and 2004.

### **Certain Relationships and Related Transactions**

**Debt Owed by a Director.** In the early 1990s, Harold F. Herron, an officer and director, had been living in and caring for a house owned by the Company. In fiscal 1995, Mr. Herron purchased the home for \$260,000 (equal to appraised value), and was reimbursed by the Company for \$22,830 of leasehold improvements he had made to the property. The Company accepted a promissory note for \$112,170 of the purchase price, with 7% annual interest; a payment schedule was entered into and Mr. Herron is current in his payments on the note. This note was a nonrecourse note secured by 30,000 shares of the Company's common stock owned by Mr. Herron. At December 31, 2003, he owed \$90,300 on the note. During 2004 he gave up 5,000 shares of the collateral to reduce the debt. Mr. Herron also gave up 5,000 shares of the collateral to reduce the debt in January of 2005. The collateral now consists of 5,000 shares of the Company common stock. The balance under the note at the record date was \$30,600.

**Family Employment.** Three of John L. Larsen's sons, one former son-in-law (Harold F. Herron), and one grandson are employed by the Company or subsidiaries. Collectively, Mr. Larsen and these family members received \$844,700 in total compensation for services during the twelve months ended December 31, 2004, including benefits.

**Transactions Involving USECC and Crested.** The Company and Crested conduct most activities through their equally-owned joint venture USECC. From time to time the Company and Crested advance funds to or make payments on behalf of USECC, which create intercompany debt. The party extending funds is subsequently reimbursed by the other venturer. Crested owed the Company \$9,650,900 at December 31, 2004.

**Participation by Officers, Directors and Employees in Stock Ownership of Subsidiaries.** Historically, our business strategy has been, and will continue to be, acquiring grass roots and/or developed mineral properties when commodity prices are low (such as they have been, in the past, in natural gas, gold, uranium and molybdenum), then operating, selling, leasing or joint venturing the properties, or selling the companies we set up to hold and explore or develop the properties to other companies in the mineral sector when prices are moving upward.

Typically, projects initially are acquired, financed and operated by USE and Crested in their joint venture. From time to time, some of the projects are later transferred to separate companies organized for that purpose, with the objective of raising capital from an outside source for further development and/or joint venturing with other companies. Examples of this corporate strategy are, for gold properties, Sutter Gold Mining Inc. (formerly Globemin Resources Inc., a publicly traded British Columbia company, which acquired Sutter Gold Mining Company, and then changed its name to Sutter Gold Mining Inc.); and Rocky Mountain Gas, Inc. for coalbed methane gas. Additional subsidiaries have been organized but are not yet active: U.S. Uranium Ltd. for uranium, and U.S. Moly Corp. for molybdenum.

Initial ownership of these subsidiaries is by USE and Crested, with additional stock (plus options) issued by the subsidiary company's board of directors to the officers, certain of the directors, and employees of USE. Additional stock and/or options may be issued to other persons with experience specifically related to the subsidiary company's projects. The stock, and the options, will be forfeited if the individual's employment is terminated for any reason except retirement. The subsidiary stock is issued to officers, directors and employees for nominal cash consideration. The subsidiary ownership percentages will vary, but in general, officers, directors and employees of USE would own not more than 10% (on an initial fully diluted basis, including options), and USE and Crested would own 90%. USE' and Crested's participation in that 90% will depend on the properties and funding which each contributes to the subsidiary at inception. Subsequent investments by third parties would dilute the stock ownership of all the initial owners.

On the disposition of a subsidiary company through a merger, sale of assets, or other transaction, the equity positions in subsidiary companies held by officers, directors and employees of USE will be entitled to receive the same consideration (pro rata) as the equity positions of USE, Crested and third party investors; no preferential terms will be accorded to the officers, directors and employees, although in certain instances, some of the individuals might be employed by the acquiring company. If a subsidiary becomes a public company through an underwritten initial public offering, some or all of the equity held by USE, Crested and the individuals might be subject to lock up restrictions for a period of time following the offering. Typically, those lock up restrictions would apply equally (have the same duration) for USE and Crested, and for the officers and directors, although equity held by non-management employees might not be locked up.

The profitability (if any) of the stock in the subsidiaries owned USE, Crested, and the individuals, will not be known until a disposition or a successful public offering occurs. A subsidiary company may be merged, its assets sold, or otherwise disposed of without the transaction being subject to a vote by the shareholders of USE and Crested, in which event the shareholders of USE and Crested would be relying on the judgment of the directors of USE and Crested who do not own stock or hold options to buy stock in the subsidiary.

As of the date of this proxy statement, USE and Crested, and their officers, certain of their directors, and their employees, own stock and options to buy stock in the subsidiaries shown below. Information about subsidiaries, which are not now active or expected to become active in 2005, is not shown.



· As of April 11, 2005, U.S. Energy Corp. ("USE"), its majority-owned subsidiary Crested Corp. ("Crested"), and their joint-majority-owned subsidiary Rocky Mountain Gas, Inc. ("RMG," a privately-held Wyoming corporation), entered into a binding agreement with Enterra Energy Trust ("Enterra") for the acquisition of RMG by Enterra in consideration of \$20,000,000, payable pro rata to the RMG shareholders in the amounts of \$6,000,000 in cash and \$14,000,000 in exchangeable shares of one of the subsidiary companies of Enterra. Enterra (Calgary, Alberta) is an open ended unincorporated investment trust; units of Enterra are traded on the Toronto Stock Exchange (the "TSX") and Nasdaq. The purchase price was subject to a minor adjustment of \$266,000 if certain overriding royalty interests were purchased.

On May 20, 2005, the agreement with Enterra was amended to provide for payment of the \$6,000,000 component with \$500,000 cash and \$5,500,000 with Enterra units, subject to the minor adjustment.

On June 1, 2005, the agreement, as amended, was closed: Enterra US Acquisitions Inc. (a privately-held Washington corporation organized by Enterra for purposes of the RMG acquisition, hereafter "Acquisitions") acquired all the outstanding stock of RMG, for which Enterra paid \$500,000 cash and issued \$5,234,000 of Enterra units (the "Enterra Initial Units"), net of the \$266,000 adjustment for the purchase of overriding royalty interests (effected May 1, 2005); and Acquisitions issued \$14,000,000 of class D shares of Acquisitions. The Enterra Initial Units and the class D shares were issued pro rata to the RMG shareholders, with certain adjustments (see below). USE's and Crested's participation in the consideration received was approximately \$17,841,700. USE's consolidated subsidiary, Yellowstone Fuels, Inc. ("YSFI") also received approximately \$296,700.

RMG was acquired with approximately \$3,500,000 of debt (at December 31, 2004) owed by its subsidiary (RMG I, LLC) to its mezzanine lenders, USE will no longer carry this debt on its consolidated balance sheet. As a result of the RMG disposition, USE and Crested no longer directly hold coalbed methane properties, although with their holdings in securities of Enterra (and Acquisitions), and Pinnacle Gas Resources, Inc. ("Pinnacle") (a private coalbed methane company in which USE and Crested hold an equity interest), both companies will continue with investments in the oil and gas sector.

The Enterra Initial Units presently are tradeable on the TSX. On June 1, 2006, the class D shares of Acquisitions (not traded anywhere) will be exchangeable, on a one-for-one basis, for additional Enterra units (the "Enterra Additional Units"); the Enterra Additional Units will be tradeable on the TSX at that time. For purposes of the Securities Act of 1933, the class D shares of Acquisitions and the Enterra Initial Units have been issued (and the Enterra Additional Units will be issued on June 1, 2006) as restricted securities under rule 144. The Enterra Initial Units will not be tradeable on Nasdaq until June 1, 2006, and the Enterra Additional Units will not be tradeable on Nasdaq until June 1, 2007, in both instances subject to compliance with rule 144. Proceeds from liquidation over time of the Enterra Initial Units and the to-be-received Enterra Additional Units will fund exploration and development work on other mineral properties held by USE and Crested, and to retire USE debt (see "Restructuring of USE Debt" below).

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RMG's minority equity ownership of Pinnacle was not included in the disposition of RMG, but was assigned to USE and Crested in proportion to their ownership of RMG. Enterra is entitled to be paid by USE an amount of up to (but not more than) \$2,000,000, if proceeds from a future disposition by USE and Crested to a third party of the minority equity interest in Pinnacle exceed \$10,000,000. Currently, we have no information about whether or when Pinnacle might become a public company or might be purchased by third parties. The value of the minority equity position upon a future disposition could be more or less than \$10,000,000. The boards of directors of USE and Crested determined that the value of RMG's minority equity interest in Pinnacle is approximately \$6,250,000; based upon Pinnacle's recent sales of equity to its shareholders (RMG did not participate in those sales). To compensate the minority shareholders of RMG (including officers, directors and employees of USE and Crested, Mark J. Larsen (former president and a former director of RMG), Yellowstone Fuels, Inc. ("YSFI") and Tom Swank (a former director of RMG) for their pro rata beneficially-owned 5.9% (\$370,916) of the \$6,250,000 value of the minority Pinnacle interest transferred to USE and Crested, restricted shares of common stock of USE will be issued to the former minority shareholders of RMG, pro rata for their May 31, 2005 percentage beneficial ownership in Pinnacle (through their former ownership in RMG). These USE shares will be valued at the Nasdaq Official Close Price at a date to be selected, anticipated being in the third quarter of 2005.

On May 10, 2005, RMG issued 3,893,584 shares of common stock to USE and 502,130 shares of common stock to Crested, in consideration of the cancellation by USE and Crested of approximately \$6,268,700 and \$808,400 owed to USE and Crested, for USE issuing USE stock on conversion of RMG common and preferred stock purchased by third party investors, payment of RMG's general and administrative overhead, and RMG's operating deficits. As a result of this transaction, prior to closing of the Enterra agreement, RMG had issued and outstanding 16,851,453 shares of common stock, of which USE owned 10,228,527 shares (60.7%), Crested owned 5,620,464 shares (33.4%), and Yellowstone Fuels Corp. (an affiliate of USE) owned 250,000 shares (1.5%). Individuals owned 4.4% of RMG (including 2.5% which was owned by certain of the officers and directors of USE, Crested, and RMG). The holders of all these RMG shares received their pro rata share of the Enterra Initial Units and the class D shares of Acquisitions, with the following exceptions:

- USE's and Crested's portions of Enterra Initial Units was reduced by 16,983 and 9,331 Enterra Initial Units (for their portions of the \$500,000 cash component); and by another 9,035 and 4,965 Enterra Initial Units (for their portions of \$266,000 of the total amount paid to buy out and cancel overriding royalty interests held by mezzanine lenders on certain gas properties owned by RMG, which buy out was required by the agreement with Enterra). USE issued to the mezzanine lenders warrants to purchase a total of 50,000 shares of common stock of USE; the exercise price will be valued at the Nasdaq Official Close Price at a date to be selected, anticipated to be in the third quarter of 2005.
- USE's portion of the class D shares of Acquisitions was reduced by 10,664 class D shares which were issued to a secured lender of USE.

Those officers and directors of USE and Crested who owned stock in RMG, Mark J. Larsen (president and a director of RMG until June 1, 2005), Tom Swank (a director of RMG until June 1, 2005), and Richard Larsen (an employee of USE) received the following amounts (the value of the Enterra Initial Units, and the Enterra Additional Units when issued in exchange for the class D shares of Acquisitions, and the value of the USE shares to be issued for their minority beneficial ownership of Pinnacle), in proportion to their percentage ownership of RMG stock: John L. Larsen (\$122,989); Keith G. Larsen (\$171,255); Harold F. Herron (\$80,956); Don Anderson (\$7,786); H. Russell Fraser

(\$15,568); Robert Scott Lorimer (\$93,411); Daniel P. Svilar (\$98,081); Mark J. Larsen (\$71,616); Richard Larsen (\$71,616) and Tom Swank (\$15,568). These amounts will vary depending on the market value of the Enterra Trust Units, and the USE shares, when sold; the Units are valued, only for purposes of the foregoing disclosures, at \$19.00 per Unit.

The employees of RMG, and the officers and directors, of USE and Crested held options to purchase 3,712,500 shares of RMG, at \$3.00 per share. However, as one of the conditions to closing the Enterra agreement, all of these options were cancelled.

For information about RMG, see USE' Form 10-K for the year ended December 31, 2005. For more information about the closing of the Enterra agreement, see USE' Form 8-K filed June 7, 2005.

- U.S. Uranium Ltd. ("USUL") has issued options to purchase a total of 3,080,000 shares of common stock, at an exercise price of \$0.25 per share, to officers, directors and employees of USE and Crested. All these warrants have a 10 year life and vest at the rate of 20% for 5 years. USUL will issue stock to these individuals in 2005 for nominal cash consideration, and will issue stock to USE and Crested for certain uranium properties to be transferred into USUL in 2005. The percentage ownership of USE and Crested is expected to be approximately 90% on a combined basis, after the properties are transferred. USUL has not yet commenced operations and the uranium properties to be transferred into USUL have not yet been identified.
  - U.S. Moly Corp. ("Moly") has issued options to purchase a total of 3,080,000 shares of common stock, at an exercise price of \$0.25 per share, to officers, directors and employees of USE and Crested. All these warrants have a 10 year life and vest at the rate of 20% for 5 years. Moly will issue stock to these individuals in 2005 for nominal cash consideration, and will issue stock to USE and Crested for certain molybdenum properties located in Colorado, to be transferred into Moly in 2005, along with other rights and obligations associated with those properties. The percentage ownership of USE and Crested is expected to be approximately 90% on a combined basis, after the properties are transferred. Moly has not yet commenced operations.
  - Sutter Gold Mining Inc. ("SGMI") is owned 64.2% by USE; 1.5% by Crested; and 4% by officers and some of the directors of USE and Crested, and by Mark J. Larsen, former president and a director of RMG, president and a director of Moly, and a director of USUL. Options to purchase 710,000 shares are held by officers and directors of USE and Crested, and by Mark J. Larsen. SGMI has agreed to cancel all of these options, subject to officer and director consent. SGMI has resumed exploration activities on its gold property in California. More information about SGMI is contained in USE' Annual Report on Form 10-K for the year ended December 31, 2005.
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## Proposal 2 Ratification of the Appointment of Independent Auditors

The board of directors seeks shareholder ratification of the board's appointment of Epstein, Weber & Conover, PLC, Scottsdale, Arizona, certified public accountants, to act as the auditors of our financial statements for the year ending December 31, 2005. The audit committee has recommended that the board retain this auditing firm for 2005, which audited our financial statements for the year ended December 31, 2004. The board has not determined what action, if any, would be taken should the appointment of Epstein, Weber & Conover, PLC not be ratified at the meeting.

Grant Thornton ("GT") audited our financial statements for the year ended December 31, 2003, the (former) fiscal year ended May 31, 2002 and the seven month period ended December 31, 2002. On December 17, 2004, the Company dismissed GT and engaged Epstein, Weber & Conover, PLC to audit the financial statements for the year ended December 31, 2004.

GT's audit report on the financial statements for the year ended December 31, 2003, the seven months ended December 31, 2002, and the (former) fiscal year ended May 31, 2002, contained a qualification of uncertainty as to whether the Company would continue as a going concern. The audit report did not contain an adverse opinion or a disclaimer of opinion, and was not otherwise qualified or modified as to audit scope or accounting principles. Epstein, Weber & Conover, PLC's audit report on the financial statements for the year ended December 31, 2004, also contained a qualification of uncertainty as to whether the Company will continue as a going concern.

The decision to change GT as the audit firms was recommended by the Company's audit committee, and approved by that committee and the board of directors.

There has not been, during the two most recent fiscal years, or during any subsequent interim period preceding the change of audit firms, any disagreement with GT on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement, if not resolved to the satisfaction of GT, would have caused it to make reference to the subject matter of the disagreement in connection with its report.

In addition, during the two most recent fiscal years, there were no disagreements between the Company and GT which constituted "reportable events" under item 304(a)(1)(v) of Regulation S-K. Disclosure of such "reportable events" would be required even if the Company and GT did not express a difference of opinion regarding the event.

## Principal Accounting Fees and Services

Grant Thornton LLP billed us as follows for the years ended December 31, 2004 and 2003. Grant Thornton was dismissed as the Company's audit firm in December 2004. The information does not include fees paid to the new audit firm (Epstein, Weber & Conover, PLC) in late 2004.

	Year ended December 31,	
	2004	2003
Audit fees (a)	\$ 115,300	\$ 80,100
Audit-related fees(b)	\$ 27,200	\$ --
Tax fees(c )	\$ 33,700	\$ 15,800
All other fees(d)	\$ 40,400	\$ 13,100



(a) Includes fees for audit of the annual financial statements and review of quarterly financial information filed with the Securities and Exchange Commission.

(b) For assurance and related services that were reasonably related to the performance of the audit or review of the financial statements, which fees are not included in the Audit Fees category. The Company had no Audit-Related Fees for the periods ended December 31, 2004 and 2003.

(c) For tax compliance, tax advice, and tax planning services, relating to any and all federal and state tax returns as necessary for the years ended December 31, 2004 and 2003.

(d) For services in respect of other reports required to be filed by the SEC and other agencies.

The audit committee approves the terms of engagement before we engage the audit firm for audit and non-audit services, except as to engagements for services outside the scope of the original terms, in which instances the services have been provided pursuant to pre-approval policies and procedures, established by the audit committee. These pre-approval policies and procedures are detailed as to the category of service and the audit committee is kept informed of each service provided. These policies and procedures, and the work performed pursuant thereto, do not include delegation any delegation to management of the audit committee's responsibilities under the Securities Exchange Act of 1934.

This approval process was used with respect to the engagement of Grant Thornton for the 2002 and 2003, and with respect for the appointment of the new audit firm Epsetin Weber & Conover for the audit of the 2004 financial statements and related services.

The percentage of services provided for Audit-Related Fees, Tax Fees and All Other Fees for 2004 (and 2003), all provided pursuant to the audit committee's pre-approval policies and procedures, were: Audit-Related Fees 66% (74%); Tax Fees 16% (14%); and All Other Fees 18% (12%).

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### **Relationship with Independent Accountants**

Epstein, Weber & Conover, PLC has audited the Company's financial statements for the twelve months ended December 31, 2004. A representative of Epstein, Weber & Conover will be present at the meeting in person or by telephone to respond to appropriate questions, and will be provided the opportunity to make a statement at the meeting. There have been no disagreements between the Company and Epstein, Weber & Conover, PLC, concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which were not resolved to the satisfaction of that firm.

### **Copies of Our Form 10-K**

Promptly upon receiving a request from any shareholder, without charge we will send to the requester a copy of our Annual Report on Form 10-K for the twelve months ended December 31, 2004, with exhibits, as filed with the Securities and Exchange Commission. Please address your request to Daniel P. Svilar, Secretary, at U.S. Energy Corp., 877 North 8th West, Riverton, Wyoming 82501. You also may call or fax him at T 307.856.9271, F 307.857.3050.

### **Exhibit Index**

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
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99.1	Certification by Audit Committee
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**PROXY U.S. ENERGY CORP.PROXY**

KNOW ALL PERSONS: That the undersigned shareholder of U.S. Energy Corp. (the "Company") in the amount noted below, hereby constitutes and appoints Messrs. John L. Larsen and Harold F. Herron, or either of them with full power of substitution, as attorneys and proxies, to appear, attend and vote all of the shares of stock standing in the name of the undersigned at the Annual Meeting of the Company's shareholders to be held at the Company's Offices at 877 North 8th West, Riverton, Wyoming 82501 on **Friday, July 22, 2005 at 10:00 a.m.**, local time, or at any adjournments thereof upon the following:

**THE PROXIES WILL VOTE: (1) AS YOU SPECIFY ON THIS CARD; (2) AS THE BOARD OF DIRECTORS RECOMMENDS WHERE YOU DO NOT SPECIFY YOUR VOTE ON A MATTER LISTED ON THIS CARD, AND (3) AS THE PROXIES DECIDE ON ANY OTHER MATTER. The Board of Directors Recommends You Vote in Favor of the Nominees and in Favor the Selection of Independent Auditors.**

If you wish to vote on all matters as the Board of Director recommends, please sign, date and return this card. If you wish to vote on items individually, please also mark the appropriate boxes below.

INSTRUCTION: Mark only one box to each item.

1. Election of Directors:

FOR the nominee                       ABSTAIN  
Michael H. Feinstein \_\_\_\_\_                      Michael H. Feinstein \_\_\_\_\_

FOR the nominee                       ABSTAIN  
H. Russell Fraser \_\_\_\_\_                      H. Russell Fraser \_\_\_\_\_

FOR the nominee                       ABSTAIN  
Don C. Anderson \_\_\_\_\_                      Don C. Anderson \_\_\_\_\_

**IN THE VOTING FOR DIRECTORS, YOU HAVE THE OPTION: To vote for some nominees(s), but abstain from voting for other nominee(s). To do so, (1) check the FOR box, and (2) draw a line through the name of the nominee(s) you want to abstain from. To abstain from voting for all nominees, check the ABSTAIN box and do not draw a line through any name.**

**OR,**  
**To vote for nominees by cumulating your votes, follow these steps: (1) check the FOR box; (2) multiply the number of shares you hold times 2; and (3) print the number of votes you want to cast on the line next to the nominee(s) you want to vote for, and draw a line through the nominee(s) you do not want to vote for. You may cast your votes for one nominee, or you may distribute your votes among the nominees as you wish. The total votes cast must equal the total number of shares you hold, multiplied by 3.**

2. Ratification of appointment of Epstein, Weber & Conover, PLC as independent auditors for the current fiscal year.

FOR the appointment                       AGAINST the appointment                       ABSTAIN





**PROXY U.S. ENERGY CORP.PROXY**

**THIS PROXY IS SOLICITED BY THE BOARD OF DIRECTORS. THE SHARES REPRESENTED  
HEREBY WILL BE VOTED AS PROVIDED ON THE REVERSE SIDE.**

Sign your name exactly as it appears on the mailing label below. It is important to return this Proxy properly signed in order to exercise your right to vote, if you do not attend in person. When signing as an attorney, executor, administrator, trustee, guardian, corporate officer, etc., indicate your full title as such.

(Sign on this line - joint holders may sign appropriately)

é                      ù (Date)(Number of Shares)

PLEASE NOTE: Please sign, date and place this Proxy in the enclosed self-addressed, postage prepaid envelope and deposit it in the mail as soon as possible.

Please check if you are planning to attend the meeting o

ë                      û If the address on the mailing label is not correct, please provide the correct address in the following space.

">  
Current  
230,562

206,928

Non-current  
109,516

87,905

Total deferred revenue  
340,078

294,833

**7. COMMITMENTS AND CONTINGENCIES**

Leases—We lease certain of our facilities under various non-cancelable operating leases, which expire through 2017. Rent expense was \$2.1 million for each of the three-month periods ended September 30, 2012 and September 30, 2011. Rent expense was \$6.5 million and \$6.1 million for the nine months ended September 30, 2012 and September 30, 2011, respectively.

The aggregate future non-cancelable minimum rental payments on operating leases as of September 30, 2012 are as follows (\$ amounts in 000's):

	Rental Payment
Fiscal years:	
2012 (remainder)	2,425
2013	7,799
2014	5,024
2015	2,291
Thereafter	579
Total	18,118

Contract Manufacturer and Other Commitments—Our independent contract manufacturers procure components and build our products based on our forecasts. These forecasts are based on estimates of future demand for our products, which are in turn based on historical trends and an analysis from our sales and marketing organizations, adjusted for overall market conditions. In order to reduce manufacturing lead times and plan for adequate component supply, we may issue purchase orders to some of our independent contract manufacturers which may not be cancelable. As of September 30, 2012, we had \$23.8 million of open purchase orders with our independent contract manufacturers that are not cancelable.

In addition to commitments with contract manufacturers, we have open purchase orders and contractual obligations associated with our ordinary course of business for which we have not received goods or services. As of September 30, 2012, we had \$3.9 million in other purchase commitments.

Table of Contents

## FORTINET, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Unaudited)

Warranties—We generally provide a one-year warranty on hardware products and a 90-day warranty on software. Accrued warranty activities are summarized as follows (\$ amounts in 000's).

	For The Nine Months Ended And As Of September 30, 2012	For The Year Ended And As Of December 31, 2011
Accrued warranty balance - beginning of the period	2,582	1,878
Warranty costs incurred	(1,843	) (1,778
Provision for warranty	1,604	2,103
Adjustments to previous estimates	(307	) 379
Accrued warranty balance - end of the period	2,036	2,582

Litigation—In August 2009, Enhanced Security Research, LLC and Security Research Holdings LLC (collectively “ESR”), a non-practicing entity, filed a complaint against us in the United States District Court for the District of Delaware alleging infringement by us and other defendants of two patents. The plaintiffs are claiming unspecified damages and requesting an injunction against the alleged infringement. In June 2010, the Court granted our motion to stay pending the outcome of reexamination proceedings on both asserted patents. The U.S. Patent and Trademark Office (“PTO”) has rejected all of the claims of the patents in the suit and ESR appealed this result to the Board of Patent Appeals and Interferences (“BPAI”). In August 2012, the BPAI completed its review of both reexamination proceedings, and, after the BPAI's review, all claims of the asserted ESR patents remain rejected. We have determined that, as of this time, there is not a reasonable possibility that a loss has been incurred.

In April 2010, an individual, a former stockholder of Fortinet, filed a class action lawsuit against us claiming unspecified damages in the California Superior Court for the County of Los Angeles alleging violation of various California Corporations Code sections and related tort claims alleging misrepresentation and breach of fiduciary duty regarding the 2009 repurchase by Fortinet of shares of its stock while we were a privately-held company. In September 2010, the Court granted our motion to transfer the case to the California Superior Court for Santa Clara County and the plaintiff has filed several amended complaints in the Superior Court to add individual defendants, among other amendments. The Superior Court set a trial date for December 2012, but subsequently we have made progress in settlement discussions for this matter. We have determined that, as of this time, it is reasonably likely that to settle this matter, Fortinet will pay approximately \$1.0 million, which has been accrued as of September 30, 2012.

In July 2010, Network Protection Sciences, LLC (“NPS”), a non-practicing entity, filed a complaint in the United States District Court for the Eastern District of Texas alleging patent infringement by us and other defendants. NPS is claiming unspecified damages, including treble damages for willful infringement, and requests an injunction against such alleged infringement. In December 2011, the United States District Court for the Eastern District of Texas ordered the case to be transferred to the Northern District of California. In June 2012, the United States District Court for the Northern District of California dismissed the other defendants for misjoinder, and the case is proceeding with Fortinet as the sole defendant. We have determined that, as of this time, there is not a reasonable possibility that a loss has been incurred.

In June 2012, we received a letter from SRI International (“SRI”) claiming that we infringed certain SRI patents. Subsequently, we filed a complaint in the United States District Court for the Northern District of California seeking declaratory relief and a judgment that the SRI patents were invalid, unenforceable and/or not infringed by any of our products or services. The case is currently in the very early stages, and we have determined that, as of this time, there is not a reasonable possibility that a loss has been incurred.

Indemnification—Under the indemnification provisions of our standard sales contracts, we agree to defend our customers against third-party claims asserting infringement of certain intellectual property rights, which may include patents, copyrights, trademarks, or trade secrets, and to pay judgments entered on such claims. Our exposure under these indemnification provisions is generally limited by the terms of our contracts to the total amount paid by our customer under the agreement. However, certain agreements include indemnification provisions that could potentially expose us to losses in excess of the amount received under the agreement. To date, there have been no claims under such indemnification provisions.

Table of Contents

## FORTINET, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Unaudited)

## 8. STOCKHOLDERS' EQUITY

## Restricted Stock Units

Our 2009 Equity Incentive Plan (the “2009 Plan”) permits us to grant awards of stock options, stock appreciation rights, restricted stock, restricted stock units, and performance units or performance shares. In August 2012, we began to grant RSUs instead of stock options to employees, non-employees, and members of the board of directors. RSUs are payable in shares of our common stock as the periodic vesting requirements are satisfied. RSUs will vest over a four-year period from the date of grant if the employees, non-employees, or directors, as applicable, remain with us for the duration of the vesting period. The value of RSUs is determined based on the number of shares granted and the quoted price of our common stock on the date of grant.

The following table summarizes the RSU activity and related information for the period presented below (in 000's, except per share amounts):

	Restricted Stock Units Outstanding	Weighted-Average Grant-Date Fair Value per Share (\$)
	Number Of Shares	
Balance—December 31, 2011	—	—
Granted	667	24.89
Forfeited	(14	) 24.89
Vested	—	—
Balance—September 30, 2012	653	24.89
RSUs expected to vest—September 30, 2012	602	24.89

As of September 30, 2012, total compensation cost related to unvested RSUs that were granted to employees and non-employees under the 2009 Plan but not yet recognized was \$16.0 million, net of estimated forfeitures. This cost is expected to be amortized on a straight-line basis over a weighted-average vesting period of 3.8 years.

## Stock Options

The following table summarizes the weighted-average assumptions relating to our employee stock options:

	Three Months Ended		Nine Months Ended	
	September 30, 2012	September 30, 2011	September 30, 2012	September 30, 2011
Expected term in years	—	4.6	4.6	4.6
Volatility (%)	—	46.2	46.4 - 51.9	40.4 - 46.2
Risk-free interest rate (%)	—	1.5	0.7 - 0.9	1.5 - 2.0

Dividend rate (%)	—	—	—	—
Estimated fair value (\$)	—	8.07	11.13	7.85

Table of Contents

## FORTINET, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Unaudited)

The following table summarizes the stock option activity and related information for the period presented below (in 000's, except per share amounts and contractual life):

	Options Outstanding		Weighted-Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (\$)
	Number Of Shares	Weighted-Average Exercise Price (\$)		
Balance—December 31, 2011	21,389	9.10		
Granted	3,401	26.38		
Forfeited	(1,024 )	19.10		
Exercised (aggregate intrinsic value of \$83,313)	(4,238 )	5.92		
Balance—September 30, 2012	19,528	12.32		
Options vested and expected to vest—September 30, 2012	18,876	12.07	4.36	234,005
Options vested and exercisable—September 30, 2012	10,894	6.17	3.44	195,582

As of September 30, 2012, total compensation cost related to unvested stock options granted to employees under the 2009 plan but not yet recognized was \$75.5 million, net of estimated forfeitures. This cost is expected to be amortized on a straight-line basis over a weighted-average period of 2.7 years.

## Shares Available for Grant

The following table presents the equity based awards (including stock options and RSUs) available for future issuance (in 000's)

	Shares Available For Grant
Balance—December 31, 2011	17,399
Authorized	7,750
Options granted	(3,401 )
Options forfeited	1,024
Options exercised	—
RSUs granted	(667 )
RSUs forfeited	14
RSUs exercised	—
Balance—September 30, 2012	22,119

Table of Contents

## FORTINET, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Unaudited)

## Employee Stock Purchase Plan

The following table summarizes the weighted-average assumptions relating to our ESPP:

	Three Months Ended		Nine Months Ended	
	September 30,	September 30,	September 30,	September 30,
	2012	2011	2012	2011
Expected term in years	0.5	0.5	0.5	0.5
Volatility (%)	43.1	59.9	53.7	59.9
Risk-free interest rate (%)	0.2	0.1	0.1	0.1
Dividend rate (%)	—	—	—	—
Estimated fair value (\$)	6.63	6.56	7.06	6.56

## Stock-based Compensation Expense

Stock-based compensation expense is included in costs and expenses as follows (\$ amounts in 000's):

	Three Months Ended		Nine Months Ended	
	September 30,	September 30,	September 30,	September 30,
	2012	2011	2012	2011
Cost of product revenue	85	64	237	129
Cost of services revenue	1,018	564	2,704	1,124
Research and development	2,525	1,516	6,774	2,954
Sales and marketing	3,879	2,708	10,797	6,289
General and administrative	1,323	882	3,416	2,178
	8,830	5,734	23,928	12,674

The following table summarizes stock-based compensation expense by award type (\$ amounts in 000's):

	Three Months Ended		Nine Months Ended	
	September 30,	September 30,	September 30,	September 30,
	2012	2011	2012	2011
Options—employee	6,825	5,193	19,507	11,877
Options—non-employee	160	6	475	262
RSUs	576	—	576	—
ESPP	1,269	535	3,370	535
	8,830	5,734	23,928	12,674



Table of Contents

## FORTINET, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Unaudited)

## 9. INCOME TAXES

The effective tax rate was 36% for the three months ended September 30, 2012, compared to an effective tax rate of 34% for the three months ended September 30, 2011. The effective tax rate was 34% for the nine months ended September 30, 2012, compared to an effective tax rate of 29% for the nine months ended September 30, 2011. The provision for income taxes for the periods presented is comprised of foreign income taxes, U.S. federal and state taxes, and withholding tax.

As of September 30, 2012 and December 31, 2011, unrecognized tax benefits were \$25.2 million and \$19.3 million, respectively. The total amount of \$25.2 million in unrecognized tax benefits, if recognized, would favorably impact the effective tax rate.

It is our policy to classify accrued interest and penalties related to unrecognized tax benefits in the provision for income taxes. As of September 30, 2012, we had approximately \$1.5 million accrued for estimated interest related to uncertain tax positions. We do not expect any material unrecognized tax benefits to expire within the next twelve months.

## 10. EMPLOYEE BENEFIT PLAN

The 401(k) tax-deferred savings plan (the “401(k) Plan”) permits participants to make contributions by salary deduction pursuant to Section 401(k) of the Internal Revenue Code of 1986, as amended. Under the 401(k) Plan, participating employees may defer a portion of their pre-tax earnings, up to the IRS annual contribution limit. In Canada, we have a Group Registered Retirement Savings Plan program (the “RRSP Plan”) which permits participants to make tax deductible contributions up to the maximum contribution limits under the Income Tax Act. Our aggregate matching contributions to the 401(k) Plan and RRSP Plan for the three and nine months ended September 30, 2012 were \$0.4 million and \$1.4 million, respectively. Our aggregate matching contributions to the 401(k) Plan and RRSP Plan for the three and nine months ended September 30, 2011 were \$0.4 million and \$1.2 million, respectively.

## 11. SEGMENT AND SIGNIFICANT CUSTOMER INFORMATION

The following tables set forth revenue, and property and equipment—net, by geographic region (\$ amounts in 000's):

	Three Months Ended		Nine Months Ended	
	September 30,	September 30,	September 30,	September 30,
	2012	2011	2012	2011
Revenue				
Americas:				
United States	38,674	36,565	103,983	88,838
Other Americas	18,543	13,463	51,587	37,376
Total Americas	57,217	50,028	155,570	126,214
Europe, Middle East and Africa (“EMEA”)	45,566	37,942	130,116	108,216
Asia Pacific and Japan (“APAC”)	33,485	28,456	96,791	78,285

Total revenue	136,268	116,426	382,477	312,715
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During the three and nine months ended September 30, 2012, one distributor, Exclusive Networks, accounted for 10% and 11% of revenue, respectively. During the three and nine months ended September 30, 2011, no single customer or distributor accounted for 10% or more of total revenue.

Table of Contents

## FORTINET, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Unaudited)

	September 30, 2012	December 31, 2011
Property and Equipment—Net		
Americas:		
United States	18,499	2,225
Canada	4,888	4,062
Other Americas	78	33
Total Americas	23,465	6,320
EMEA	1,348	805
APAC	1,207	841
Total property and equipment—net	26,020	7,966

## 12. FOREIGN CURRENCY DERIVATIVES

The notional value of our outstanding forward exchange contracts that were entered into in order to hedge balance sheet accounts as of September 30, 2012 consisted of the following (\$ amounts in 000's):

	Buy/Sell	Notional
Balance Sheet Contracts:		
Currency		
CAD	Buy	16,812
EUR	Buy	5,908
GBP	Buy	3,083

## 13. ACQUISITION

On March 8, 2012, we completed the acquisition of IntruGuard Devices (“IntruGuard”), a leading supplier of Intelligent Availability Protection Systems, for a total consideration of \$950,000. Of the total consideration, \$400,000 is being withheld in escrow as security for IntruGuard's indemnification obligations. We accounted for this acquisition as a purchase of a business and, accordingly, the total purchase price has been allocated to tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair market values as of the acquisition date. The purchase price allocation resulted in purchased tangible assets of \$53,000 and liabilities of \$43,000, and purchased identifiable intangible assets of \$940,000. Identifiable intangible assets consist of purchased technology. The fair value assigned to identifiable intangible assets acquired was determined using the income approach, which discounts expected future cash flows to present value using estimates and assumptions determined by us. Purchased identifiable intangible assets are being expensed as Cost of revenue on a straight-line basis over three years. Of the \$400,000 previously withheld in escrow, \$199,000 was released to the selling shareholders during the three months ended September 30, 2012.

Table of Contents

## FORTINET, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

(Unaudited)

## 14. INTANGIBLE ASSETS

The following table presents the detail of our intangible assets with definite lives included in other assets (\$ amounts in 000's):

	September 30, 2012			December 31, 2011		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Existing technology	3,041	1,145	1,896	1,772	394	1,378

Amortization expense was \$0.3 million and \$0.2 million for the three months ended September 30, 2012 and September 30, 2011, respectively, and \$0.7 million and \$0.3 million for the nine months ended September 30, 2012 and September 30, 2011, respectively. The following table summarizes estimated future amortization expense of intangible assets with definite lives as of September 30, 2012 (\$ amounts in 000's):

Fiscal Years:	Amount
2012 (remainder)	279
2013	964
2014	540
2015	108
2016	5
Total	1,896

## Table of Contents

### ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

In addition to historical information, this Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements include, among other things, statements concerning our expectations regarding:

- variability in sales in certain product categories from year to year and between quarters;
- expected impact of sales of certain products;
- continued sales into large enterprises;
- mix of billings between products and services;
- mix of service sales containing multi-year support and subscription contracts;
- the significance of stock-based compensation as an expense;
- the proportion of our revenue that consists of our product and service revenues and future trends with respect to service revenue as we renew existing services contracts and expand our customer base;
- the impact of our product innovation strategy;
- trends in revenue, costs of revenue, and gross margin;
- trends in our operating expenses, including personnel costs, research and development expense, sales and marketing expense and general and administrative expense;
- our effective tax rate; and
- the sufficiency of our existing cash and investments to meet our cash needs for at least the next 12 months;

as well as other statements regarding our future operations, financial condition and prospects and business strategies. These forward-looking statements are subject to certain risks and uncertainties that could cause our actual results to differ materially from those reflected in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in this Quarterly Report on Form 10-Q and, in particular, the risks discussed under the heading "Risk Factors" included elsewhere in this Quarterly Report on Form 10-Q and in our other SEC filings, including our Form 10-K. We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

### Business Overview

We provide network security solutions, which enable broad, integrated and high performance protection against dynamic security threats while simplifying the IT security infrastructure for enterprises, service providers and governmental entities worldwide. As of September 30, 2012, we had shipped over 1,000,000 appliances to more than 10,000 channel partners and to more than 140,000 end-customers worldwide, including a majority of the Fortune Global 100.

Our core Unified Threat Management (“UTM”) product line of FortiGate physical and virtual appliances ships with a set of security and networking capabilities, including firewall, VPN, application control, antivirus, intrusion prevention, Web filtering, antispam and WAN acceleration functionality. We derive a substantial majority of product sales from our FortiGate appliances, which range from the FortiGate-20 series, designed for small businesses, to the FortiGate-5000 series for large enterprises, telecommunications carriers, and service providers. Sales of FortiGate products are generally balanced across entry-level (FortiGate-20 to -100 series), mid-range (FortiGate-200 to -800 series) and high-end (FortiGate-1000 to -5000 series) models with each product category representing approximately one-third of FortiGate sales. Our UTM solution also includes our FortiGuard security subscription services, which end-customers can subscribe to in order to obtain access to dynamic updates to intrusion prevention, application control, antivirus, Web filtering, vulnerability management and antispam functionality included in our appliances. End-customers can also choose to purchase FortiCare technical support services for our products. End-customers also often use FortiManager and FortiAnalyzer products in conjunction with a FortiGate

## Table of Contents

deployment to provide centralized management, analysis and reporting capabilities. We complement our core FortiGate product line with other appliances and software that offer additional protection from security threats to other critical areas of the enterprise, such as messaging, Web application firewalls, databases, protection against denial of service attacks (DDoS) and endpoint security for employee computers and mobile devices. Sales of these complementary products have grown in recent quarters, although these products still represent less than 10% of our revenue.

In October 2012, we announced our new FortiOS 5.0 operating system. FortiOS 5.0 is our fifth generation security operating system, and this release brings more than 150 new features to our FortiGate product line. In addition, we announced version 5.0 operating systems for our FortiManager, FortiAnalyzer, and FortiClient products, to address the need for increasingly sophisticated management and analysis of the network infrastructure and endpoint devices in various environments.

In October 2012, we also announced our new FortiASIC-SoC2 processor. FortiASIC-SoC2 is our second-generation processor that combines general purpose processing power with Fortinet's custom technology to provide hardware-accelerated network security performance for our FortiGate appliances. It provides more than double the general processing capacity than its predecessor.

## Financial Highlights

We recorded revenue of \$136.3 million and \$382.5 million during the three and nine months ended September 30, 2012, respectively. This represents an increase of 17% and 22% during the three and nine months ended September 30, 2012, respectively, compared to the same periods last year. Revenue included \$1.8 million and \$2.6 million from the sales of previously-acquired patents during the three months ended September 30, 2012 and September 30, 2011, respectively. Product revenue was \$63.0 million and \$177.9 million during the three and nine months ended September 30, 2012, respectively, an increase of 19% and 27% during the three and nine months ended September 30, 2012, respectively, compared to the same periods last year. Services revenue was \$69.8 million and \$197.3 million during the three and nine months ended September 30, 2012, respectively, an increase of 21% and 24% during the three and nine months ended September 30, 2012, respectively, compared to the same periods last year.

- We generated cash flows from operating activities of \$133.6 million during the nine months ended September 30, 2012, an increase of 21% compared to the same period last year.

• Cash, cash equivalents and investments were \$690.3 million as of September 30, 2012, an increase of \$151.6 million from December 31, 2011.

• Deferred revenue was \$340.1 million as of September 30, 2012, an increase of \$45.2 million from December 31, 2011.

During the three months ended September 30, 2012, revenues grew as a result of the successful execution of our global sales strategy and the continued product innovation that has strengthened our technology advantages and resulted in market share gains. The recent introduction of several new FortiGate entry-level appliances such as the FortiGate-20C and -40C with their WIFI counterparts and the FortiGate-100D; the FortiGate-600C and FortiGate-800C mid-range appliances; and the FortiGate-1000C, FortiGate-3240C and FortiGate-5101C for large enterprises and service providers continued to gain traction and contributed to the revenue growth.

We continue to invest in research and development to strengthen our technology leadership position, as well as sales and marketing to expand brand awareness, strengthen our value proposition, and expand our global sales team and

distribution channels. We experienced healthy deal volumes driven by traction in enterprise data center deployments, large enterprise deals, with particular strength in the retail, financial and telecommunications sectors. The number of deals involving sales greater than \$100,000 was 168 in the three months ended September 30, 2012, compared to 130 in the three months ended September 30, 2011. The number of deals involving sales greater than \$250,000 was 61 in the three months ended September 30, 2012, compared to 39 in the three months ended September 30, 2011. The number of deals involving sales greater than \$500,000 was 16 in the three months ended September 30, 2012, compared to 13 in the three months ended September 30, 2011. We expect some variability in this metric, and remain focused on investing in our sales and research and development resources in order to expand our reach into new high-growth verticals and emerging markets, and meet increasing customer expectations about the quality and functionality of our products, as we continue to sell to large customers, such as enterprise and service providers. While we have experienced some success selling into certain vertical customer segments, such as service providers and enterprise, we have experienced less traction selling into other verticals such as the U.S. federal government and there can be



Table of Contents

no assurance we will be successful selling into certain vertical customer segments.

During the three months ended September 30, 2012, operating expenses increased by 23% compared to the same period last year. The increase was primarily driven by additional headcount to support our growth as we continued to invest in the development of new products and expand our sales coverage. We also incurred \$1.3 million of litigation settlement expense in the three months ended September 30, 2012. These increases were partially offset by favorable foreign currency exchange rates compared to the same period last year. Headcount increased to 1,854 at September 30, 2012 from 1,527 at September 30, 2011. Our accelerated pace of hiring continued this quarter, particularly in support, sales and marketing and research and development as we increased headcount by 92 from June 30, 2012.

**Key Metrics**

We monitor the key financial metrics set forth below on a quarterly basis to help us evaluate growth trends, establish budgets, measure the effectiveness of our sales and marketing efforts and assess operational efficiencies. Our total deferred revenue increased by \$8.7 million from \$331.4 million at June 30, 2012 to \$340.1 million at September 30, 2012. Revenue recognized plus the change in deferred revenue from the beginning to the end of the period is a useful metric that management identifies as billings. Billings for services drive deferred revenue, which is an important indicator of the health and visibility of our business, and has historically represented a majority of the quarterly revenue that we recognize. We also ended the three months ended September 30, 2012 with \$690.3 million in cash, cash equivalents and investments and have had positive cash flow from operations for every fiscal year since 2005. We discuss revenue, gross margin, and the components of operating income and margin under “Results of Operations,” and we discuss our cash, cash equivalents, and investments under “Liquidity and Capital Resources.” Deferred revenue and cash flow from operations are discussed immediately below the following table.

	For The Three Months Ended Or As Of			
	September 30,	September 30,		
	2012	2011		
	(\$ amounts in 000's)			
Revenue	136,268	116,426		
Gross margin	72	73	%	%
Operating income <sup>(1)</sup>	25,770	26,160		
Operating margin	19	22	%	%
Total deferred revenue	340,078	275,126		
Increase in total deferred revenue over prior quarter	8,710	1,927		
Cash, cash equivalents and investments	690,303	502,967		
Cash flows from operating activities	40,770	36,039		
Free cash flow <sup>(2)</sup>	24,342	34,704		

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(1) Includes:

Stock-based compensation expense	8,830	5,734
Patent settlement income	478	478

(2) Free cash flow is a non-GAAP financial measure, which is defined as net cash provided by operating activities less capital expenditures, as further described below.

Deferred revenue. Our deferred revenue consists of amounts that have been invoiced but that have not yet been recognized as revenue. The majority of our deferred revenue balance consists of the unamortized portion of services revenue from subscription and support service contracts. We monitor our deferred revenue balance because it represents a significant portion of revenue to be recognized in future periods. The following table reflects the calculation of billings as discussed in the paragraph above. For a discussion of the limitations of non-GAAP financial

measures, see “—Other Non-GAAP Financial Measures” below.

Table of Contents

	Three Months Ended	
	September 30, 2012	September 30, 2011
	(\$ amounts in 000's)	
Billings:		
Revenue	136,268	116,426
Increase in deferred revenue	8,710	1,927
Total billings (Non-GAAP)	144,978	118,353

Cash flow from operations. We monitor cash flow from operations as a measure of our overall business performance. Our cash flow from operations is driven in large part by advance payments for both new and renewal contracts for subscription and support services, consistent with our billings for the period. Monitoring cash flow from operations and free cash flow enables us to analyze our financial performance excluding the non-cash effects of certain items such as depreciation, amortization and stock-based compensation expenses, thereby allowing us to better understand and manage the cash needs of our business. Free cash flow, an alternative non-GAAP financial measure of liquidity, is defined as net cash provided by operating activities less capital expenditures. For a discussion of the limitations of non-GAAP financial measures, see “—Other Non-GAAP Financial Measures” below.

	Three Months Ended	
	September 30, 2012	September 30, 2011
	(\$ amounts in 000's)	
Free Cash Flow:		
Net cash provided by operating activities	40,770	36,039
Less purchases of property and equipment	(16,428	) (1,335
Free cash flow (Non-GAAP)	24,342	34,704

## Other Non-GAAP Financial Measures

To supplement our condensed consolidated financial statements presented in accordance with U.S. GAAP, we consider certain financial measures that are not prepared in accordance with GAAP, including billings and free cash flow discussed above as well as non-GAAP gross margin, non-GAAP income from operations and non-GAAP operating margin, non-GAAP operating expenses and non-GAAP net income. These non-GAAP financial measures are not based on any standardized methodology prescribed by GAAP and are not necessarily comparable to similar measures presented by other companies.

We use these non-GAAP financial measures internally in analyzing our financial results and believe they are useful to investors, as a supplement to GAAP measures, in evaluating our ongoing operational performance and enhancing an overall understanding of our past financial performance, as they help illustrate underlying trends in our business that could otherwise be masked by the effect of the expenses that we exclude in these non-GAAP financial measures. Furthermore, we use many of these measures to establish budgets and operational goals for managing our business and evaluating our performance. We also believe that the use of these non-GAAP financial measures provides an additional tool for investors to use in comparing our recurring core business operating results over multiple periods with other companies in our industry, many of which present similar non-GAAP financial measures to investors.

These non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with GAAP. There are a number of limitations related to the use of these non-GAAP financial measures versus the nearest GAAP equivalent of these financial measures. First, these

non-GAAP financial measures exclude certain recurring, non-cash charges such as stock-based compensation expense and a patent settlement. Stock-based compensation has been, and will continue to be for the foreseeable future, a significant recurring expense in our business and is an important part of our employees' overall compensation. Second, the expenses that we exclude in our calculation of these non-GAAP financial measures may differ from the expenses, if any, that our peer companies may exclude when they report their results of operations. We compensate for these limitations by providing the nearest GAAP equivalents of these non-GAAP financial measures and describing these GAAP equivalents in our Results of Operations below.

Non-GAAP gross margin is gross margin as reported on our condensed consolidated statements of operations, excluding the impact of stock-based compensation expense, which is a non-cash charge. Non-GAAP income from operations is operating

Table of Contents

income, as reported on our condensed consolidated statements of operations, excluding the impact of stock-based compensation expense and the income from a patent settlement. Non-GAAP operating margin is non-GAAP income from operations divided by revenue. The following tables reconcile GAAP gross margin, income from operations, and operating margin to non-GAAP gross margin, non-GAAP income from operations, and non-GAAP operating margin for the three months ended September 30, 2012 and September 30, 2011.

	Three Months Ended		September 30,	
	September 30, 2012		2011	
	Amount	% of Revenue	Amount	% of Revenue
	(\$ amounts in 000's)			
Total revenue	136,268		116,426	
GAAP gross profit and margin	98,460	72	85,287	73
Stock-based compensation expense	1,103	1	628	1
Non-GAAP gross profit and margin	99,563	73	85,915	74
GAAP income from operations and margin	25,770	19	26,160	22
Stock-based compensation expense:				
Cost of revenue	1,103	1	628	1
Research and development	2,525	1	1,516	1
Sales and marketing	3,879	3	2,708	2
General and administrative	1,323	1	882	1
Total stock-based compensation	8,830	6	5,734	5
Patent settlement	(478)	) —	(478)	) —
Non-GAAP income from operations and margin	34,122	25	31,416	27

Non-GAAP operating expenses exclude the impact of stock-based compensation expense and the income from a patent settlement. The following tables reconcile GAAP operating expenses to non-GAAP operating expenses for the three months ended September 30, 2012 and September 30, 2011.

Table of Contents

	Three Months Ended September 30, 2012		September 30, 2011	
	Amount	% of Revenue	Amount	% of Revenue
(\$ amounts in 000's)				
Operating Expenses:				
Research and development expenses:				
GAAP research and development expenses	20,498	15	16,834	14
Stock-based compensation	(2,525)	(1)	(1,516)	(1)
Non-GAAP research and development expenses	17,973	14	15,318	13
Sales and marketing expenses:				
GAAP sales and marketing expenses	44,743	33	36,934	32
Stock-based compensation	(3,879)	(3)	(2,708)	(2)
Non-GAAP sales and marketing expenses	40,864	30	34,226	30
General and administrative expenses:				
GAAP general and administrative expenses	7,449	5	5,359	5
Stock-based compensation	(1,323)	(1)	(882)	(1)
Patent settlement	478	—	478	—
Non-GAAP general and administrative expenses	6,604	4	4,955	4
Total operating expenses:				
GAAP operating expenses	72,690	53	59,127	51
Stock-based compensation	(7,727)	(5)	(5,106)	(4)
Patent settlement	478	—	478	—
Non-GAAP operating expenses	65,441	48	54,499	47

Non-GAAP net income is net income, as reported in our condensed consolidated statements of operations, excluding the impact of stock-based compensation expense and income from a patent settlement. The following tables reconcile GAAP net income as reported on our condensed consolidated statements of operations to non-GAAP net income for the three months ended September 30, 2012 and September 30, 2011.

	Three Months Ended	
	September 30, 2012	September 30, 2011
(\$ amounts in 000's)		
Net Income:		
GAAP net income	17,206	17,917
Stock-based compensation expense <sup>(1)</sup>	8,830	5,734
Patent settlement <sup>(2)</sup>	(478)	(478)
Provision for income taxes <sup>(3)</sup>	9,565	9,207
Non-GAAP income before provision for income taxes	35,123	32,380
Tax effects related to non-GAAP adjustments <sup>(4)</sup>	(11,942)	(10,685)
Non-GAAP net income	23,181	21,695
Non-GAAP net income per share - diluted	0.14	0.13

Shares used in per share calculation - diluted	166,791	163,869
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- (1) Stock-based compensation expense is added back to GAAP net income to reconcile to non-GAAP income before taxes.
- (2) The patent settlement income is removed from GAAP net income to reconcile to non-GAAP income before taxes.
- (3) Provision for income taxes is our GAAP provision that must be added to GAAP net income to reconcile to non-GAAP

## Table of Contents

income before taxes.

(4) Tax provision related to non-GAAP income before tax reflects 34% and 33% effective tax rates in the three months ended September 30, 2012 and September 30, 2011, respectively. Based on the annual estimate for geographic split of income, as well as various tax credits we expect to achieve in various locations, we currently plan to use a 34% tax rate for the year, subject to discrete items that may occur in a particular quarter.

## Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our financial statements, which have been prepared in accordance with U.S. GAAP. These principles require us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, cash flow and related disclosure of contingent assets and liabilities. Our estimates include those related to revenue recognition, stock-based compensation, valuation of inventory, warranty liabilities and accounting for income taxes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates. To the extent that there are material differences between these estimates and our actual results, our future financial statements will be affected.

There have been no significant changes to our critical accounting policies and estimates since the fiscal year ended December 31, 2011.

Revenue Recognition—In October 2009, the Financial Accounting Standards Board (“FASB”) amended the Accounting Standards Codification (“ASC”) as summarized in ASU No. 2009-13, Revenue Recognition (Topic 605): Multiple-Deliverable Revenue Arrangements (“ASU 2009-13”), and ASU No. 2009-14, Software (Topic 985): Certain Revenue Arrangements That Include Software Elements (“ASU 2009-14”). ASU 2009-13 amended the accounting for multiple-element arrangements to provide guidance on how the deliverables in an arrangement should be separated and eliminates the use of the residual method. ASU 2009-13 also requires an entity to allocate revenue using the relative selling price method. The standard establishes a hierarchy of evidence to determine the stand-alone selling price of a deliverable based on vendor-specific objective evidence (“VSOE”), third party evidence (“TPE”), and the best estimated selling price (“BESP”). If VSOE is available, it would be used to determine the selling price of a deliverable. If VSOE is not available, the entity would determine whether TPE is available. If so, TPE must be used to determine the selling price. If TPE is not available, then the BESP would be used. ASU 2009-14 amended industry specific revenue accounting guidance for software and software related transactions to exclude from its scope tangible products containing software components and non-software components that function together to deliver the product's essential functionality.

This guidance does not generally change the units of accounting for our revenue transactions. Most non-software products and services qualify as separate units of accounting because they have value to the customer on a standalone basis and our revenue arrangements generally do not include a right of return relative to delivered products.

The majority of our products are hardware appliances containing software components that function together to provide the essential functionality of the product, therefore, our hardware appliances are considered non-software deliverables and are no longer within the scope of ASC 985-605.

Our product revenue also includes software products that may operate on the hardware appliances, but are not considered essential to the functionality of the hardware and continue to be subject to the guidance at ASC 985-605, which remains unchanged. Certain of our software, when sold with our appliances, is considered essential to its functionality and as a result is no longer accounted for under ASC 985-605; however, this same software if sold separately is accounted for under the guidance at ASC 985-605.



For all transactions originating or materially modified after December 31, 2010, we recognize revenue in accordance with ASU 2009-13. Certain arrangements with multiple deliverables may continue to have software deliverables that are subject to ASC 985-605 along with non-software deliverables that are subject to ASU 2009-13. When a sales arrangement contains multiple elements, such as hardware appliances, software, customer support services, and/or professional services, we allocate revenue to each element based on the aforementioned selling price hierarchy. In multiple element arrangements where software is more-than-incidental, revenue is allocated to each separate unit of accounting for each of the non-software deliverables and to the software deliverables as a group using the relative selling prices of each of the deliverables in the arrangement based on the selling price hierarchy in ASU 2009-13.

VSOE of fair value for elements of an arrangement is based upon the normal pricing and discounting practices for those services when sold separately. In determining VSOE, we require that a substantial majority of the selling prices for a

## Table of Contents

service fall within a reasonably narrow pricing range, generally evidenced by a substantial majority of such historical stand-alone transactions falling within a reasonably narrow range of the median rates. In addition, we consider major segments, geographies, customer classifications, and other variables in determining VSOE.

We are typically not able to determine TPE for our products or services. TPE is determined based on competitor prices for similar deliverables when sold separately. Generally, our go-to-market strategy differs from that of our peers and our offerings contain a significant level of differentiation such that the comparable pricing of products with similar functionality cannot be obtained. Furthermore, we are unable to reliably determine what similar competitor products' selling prices are on a stand-alone basis.

For our hardware appliances, we use BESP as our selling price. For our support and other services, we generally use VSOE as our selling price. When we are unable to establish a selling price using VSOE for our support and other services, we use BESP in our allocation of arrangement consideration. The objective of BESP is to determine the price at which we would transact a sale if the product or service were sold on a stand-alone basis. We determine BESP for a product or service by considering multiple factors including, but not limited to, cost of products, gross margin objectives, pricing practices, geographies, customer classes and distribution channels. We review our BESP estimates on a quarterly basis to coincide with our VSOE review process.

We recognize revenue for our software sales based on software revenue recognition guidance pursuant to ASC 985-605. Under ASC 985-605, we use the residual method to recognize revenue when a product agreement includes one or more elements to be delivered and VSOE of fair value for all undelivered elements exists. If evidence of the fair value of one or more undelivered elements does not exist, all revenue is generally deferred and recognized when delivery of those elements occurs or when fair value can be established. When the undelivered element for which we do not have VSOE of fair value is support, revenue for the entire arrangement is recognized ratably over the support period.

We derive revenue from sales of products, including appliances and software, and services, including subscription, support and other services. Our appliances include operating system software that is integrated into the appliance hardware and is deemed essential to its functionality. As a result, we account for revenue in accordance with ASU 2009-13 and all related interpretations.

Revenue is recognized when all of the following criteria have been met:

• Persuasive evidence of an arrangement exists. Binding contracts or purchase orders are generally used to determine the existence of an arrangement.

• Delivery has occurred. Delivery occurs when we fulfill an order and title and risk of loss has been transferred or upon delivery of the service contract registration code.

• The fee is fixed or determinable. We assess whether the fee is fixed or determinable based on the payment terms associated with the transaction. In the event payment terms differ from our standard business practices, the fees are deemed to be not fixed or determinable and revenue is recognized when the payments become due, provided the remaining criteria for revenue recognition have been met.

• Collectability is probable. We assess collectability based primarily on creditworthiness as determined by credit checks and analysis, as well as payment history. Payment terms generally range from 30 to 90 days from invoice date.

For arrangements which include end-customer acceptance criteria, revenue is recognized upon acceptance. We recognize product revenue on sales to distributors that have no general right of return and direct sales to end-customers upon shipment, once all other revenue recognition criteria have been met. We also recognize revenue upon sell-through for distributor agreements that allow for rights of return. Such returns are estimated and recorded as a reduction to revenue. Substantially all of our products have been sold in combination with services, which consist of subscriptions and/or support. Subscription services provide access to our antivirus, intrusion prevention, web filtering, and anti-spam functionality. Support services include rights to unspecified software upgrades, maintenance releases and patches, telephone and Internet access to technical support personnel, and hardware support.

The subscription and support services start on the date the customer registers the appliance. The customer is then entitled to service for the stated contractual period beginning on the registration date.

Table of Contents

We offer certain sales incentives to channel partners. We reduce revenue for estimates of sales returns and allowances. Additionally, in limited circumstances we may permit end-customers, distributors and resellers to return our products, subject to varying limitations, for a refund within a reasonably short period from the date of purchase. We estimate and record reserves for sales incentives and sales returns based on historical experience.

Recently Adopted Accounting Pronouncements

See Note 1 of our notes to condensed consolidated financial statements for a full description of recently adopted accounting pronouncements.

Table of Contents

## Results of Operations

Three months ended September 30, 2012 and September 30, 2011

## Revenue

	Three Months Ended		September 30,		Change	% Change
	September 30, 2012	% of Revenue	September 30, 2011	% of Revenue		
	Amount		Amount			
	(\$ amounts in 000's)					
Revenue:						
Product	63,027	46	53,093	46	9,934	19
Services	69,782	51	57,835	50	11,947	21
Ratable and other revenue	3,459	3	5,498	4	(2,039)	(37)
Total revenue	136,268	100	116,426	100	19,842	17
Revenue by Geography:						
Americas	57,217	42	50,028	43	7,189	14
EMEA	45,566	33	37,942	33	7,624	20
APAC	33,485	25	28,456	24	5,029	18
Total revenue	136,268	100	116,426	100	19,842	17

Total revenue increased by \$19.8 million, or 17%, during the three months ended September 30, 2012 compared to the three months ended September 30, 2011. All three regions delivered growth compared to the prior year. Product revenue increased by \$9.9 million, or 19%, compared to the three months ended September 30, 2011, as we experienced higher sales volumes and increased demand for our entry-level and high-end products. Strong demand for the FortiGate-40C, FortiGate-60C and Fortigate-100D entry-level models and the FortiGate-1000C, -3240C and 5000-series high-end appliance products all contributed to the growth. Overall, the average selling price for products was slightly lower due to a greater mix of entry-level products, while unit volume increased to drive the growth, compared to the three months ended September 30, 2011. Services revenue increased by \$11.9 million, or 21%, during the three months ended September 30, 2012 compared to the three months ended September 30, 2011 due to recognition of revenue from our growing deferred revenue balance consisting of subscription and support contracts sold to a larger customer base. The decrease in ratable and other revenue was due to the continuing decline in amortization of ratable revenue. Ratable and other revenue for the three months ended September 30, 2012 included a \$1.8 million sale of previously-acquired patents, which was a decrease from a \$2.6 million sale of previously-acquired patents in the three months ended September 30, 2011. Excluding the decline in ratable and other revenue, product and services revenue combined together increased by 20% compared to the three months ended September 30, 2011.

## Cost of revenue and gross margin

	Three Months Ended		Change	% Change
	September 30, 2012	September 30, 2011		
	(\$ amounts in 000's)			
Cost of revenue:				
Product	23,995	20,606	3,389	16
Services	13,166	9,438	3,728	39
Ratable and other revenue	647	1,095	(448)	(41)

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Total cost of revenue	37,808	31,139	6,669	21
Gross margin (%):				
Product	61.9	61.2	0.7	
Services	81.1	83.7	(2.6	)
Ratable and other revenue	81.3	80.1	1.2	
Total gross margin	72.3	73.3	(1.0	)

31

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Table of Contents

Total gross margin decreased by 1.0 percentage point during the three months ended September 30, 2012 driven by a decline in services gross margins. Product gross margin increased by 0.7 of a percentage point during the three months ended September 30, 2012 compared to the three months ended September 30, 2011, primarily related to lower overhead and indirect product costs as a percentage of product revenue. This was partially offset by higher direct product costs as a percentage of product revenue due to a greater mix of entry-level product sales. We also continued to experience the impact from cost increases related to higher material costs incurred to support higher density storage requirements for our recent release of FortiOS 5.0, our next generation operating system. We expect these product cost increases to be temporary as we begin to bring costs down in the future. From time to time, we have experienced sales of previously reserved inventory. During the three months ended September 30, 2012, we experienced a positive impact to gross margin of 0.2 of a percentage point due to the sale of fully reserved inventory compared to a positive impact to gross margin of 0.5 of a percentage point during the three months ended September 30, 2011. The 2.6 percentage points' decrease in services gross margin was primarily due to our continued investment in our technical support team to accommodate our expanding customer base and higher demands from large enterprise customers. In addition, we experienced growth in our professional consulting services which have lower gross margins than our support and subscription services. The \$3.7 million increase in services costs consisted primarily of a \$2.2 million increase in cash-based personnel costs related to headcount growth, a \$0.5 million increase in warranty costs, and a \$0.5 million increase in other expenses. Higher stock-based compensation expense of \$0.5 million also reduced services gross margin by 0.6 of a percentage point compared to the three months ended September 30, 2011.

## Operating expenses

	Three Months Ended September 30, 2012		September 30, 2011		Change	% Change
	Amount	% of Revenue	Amount	% of Revenue		
	(\$ amounts in 000's)					
Operating expenses:						
Research and development	20,498	15	16,834	14.4	3,664	22
Sales and marketing	44,743	33	36,934	31.7	7,809	21
General and administrative	7,449	5	5,359	4.6	2,090	39
Total operating expenses	72,690	53	59,127	50.7	13,563	23

## Research and development expense

Research and development expense increased by \$3.7 million, or 22%, during the three months ended September 30, 2012 compared to the three months ended September 30, 2011, primarily due to an increase in personnel costs. Cash-based personnel costs increased by \$2.2 million primarily due to increased headcount to support the development of new products and continued enhancements of our existing products. In addition, stock-compensation expense increased by \$1.0 million and other expenses increased by \$0.5 million. The increase in research and development expense was partially offset by a 4% year-over-year increase in the US dollar exchange rate against the Canadian dollar, as a majority of our research and development personnel are located in Canada. We intend to continue to invest in our research and development organization but expect research and development expense as a percentage of revenue to remain comparable or decline for the remainder of fiscal 2012.

## Sales and marketing expense

Sales and marketing expense increased by \$7.8 million, or 21%, in the three months ended September 30, 2012 compared to the three months ended September 30, 2011, primarily due to increased personnel costs. Cash-based personnel costs increased by \$4.0 million due to higher salaries, commissions, and benefits resulting from increased headcount in order to expand our sales infrastructure. We also incurred a \$1.2 million increase in stock-based compensation expense, a \$0.9 million increase in marketing related activities, a \$0.4 million increase in depreciation expense, a \$0.3 million increase in litigation settlement expense, a \$0.2 million increase in occupancy-related costs, and a \$0.7 million increase other expenses. We intend to continue to make investments in our sales resources and infrastructure, which are critical to support sustainable growth but expect sales and marketing expense as a percentage of revenue to remain at comparable levels for the remainder of fiscal 2012.

General and administrative expense



Table of Contents

General and administrative expense increased by \$2.1 million, or 39% in the three months ended September 30, 2012, compared to the three months ended September 30, 2011. Cash-based personnel costs increased by \$0.4 million, stock-based compensation expense increased by \$0.4 million, supplies expense increased by \$0.2 million, and professional services expenses increased by \$0.1 million. In addition, we recorded an accrual of \$1.0 million for litigation settlement expense. We expect general and administrative expense as a percentage of revenue to remain comparable or decline during the remainder of fiscal 2012.

## Interest income and other (expense) income, net

	Three Months Ended		Change	% Change
	September 30, 2012	September 30, 2011		
	(\$ amounts in 000's)			
Interest income	1,318	904	414	46
Other (expense) income, net	(317)	60	(377)	*

\* not meaningful

The \$0.4 million increase in interest income in the three months ended September 30, 2012 compared to the three months ended September 30, 2011 was due to interest earned on higher invested balances. The \$0.4 million change in other (expense) income, net was primarily due to higher foreign exchange losses for the three months ended September 30, 2012.

## Provision for income taxes

	Three Months Ended		Change	% Change
	September 30, 2012	September 30, 2011		
	(\$ amounts in 000's)			
Provision for income taxes	9,565	9,207	358	4
Effective tax rate (%)	36	34	2	—

Our effective tax rate was 36% for the three months ended September 30, 2012, compared to an effective tax rate of 34% for the three months ended September 30, 2011.

The provision for income taxes for the three months ended September 30, 2012 is comprised of foreign income taxes, U.S. federal and state taxes, and withholding tax, and includes the benefit from adjustments in our intercompany transfer pricing associated with the benefit from stock options exercised by employees in various foreign subsidiaries. During the three months ended September 30, 2012, we paid \$4.0 million for income taxes. During the three months ended September 30, 2011, we paid \$0.3 million for income taxes.

The increase in the effective tax rate for the three months ended September 30, 2012, compared to the three months ended September 30, 2011, is primarily due to the expiration of the U.S. federal research tax credit and a decrease in benefit from adjustments in our intercompany transfer pricing associated with stock options exercised by employees of various foreign subsidiaries.



Table of Contents

Nine months ended September 30, 2012 and September 30, 2011

Revenue	Nine Months Ended September 30, 2012		September 30, 2011		Change	% Change
	Amount	% of Revenue	Amount	% of Revenue		
	(\$ amounts in 000's)					
Revenue:						
Product	177,923	47	139,945	45	37,978	27
Services	197,332	52	159,192	51	38,140	24
Ratable and other revenue	7,222	1	13,578	4	(6,356)	(47)
Total revenue	382,477	100	312,715	100	69,762	22
Revenue by Geography:						
Americas	155,570	41	126,214	40	29,356	23
EMEA	130,116	34	108,216	35	21,900	20
APAC	96,791	25	78,285	25	18,506	24
Total revenue	382,477	100	312,715	100	69,762	22

Total revenue increased by \$69.8 million, or 22%, during the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011, with all three regions growing over the prior year. Product revenue increased by \$38.0 million, or 27%, compared to the nine months ended September 30, 2011. The increase in product revenue was primarily driven by strong growth in the entry-level and mid-range product lines, driven by increased sales to large enterprise customers. Overall, the average selling price for products was slightly lower due to a greater mix of entry-level and mid-range products, while unit volume increased to drive the growth, compared to the nine months ended September 30, 2011. Services revenue increased by \$38.1 million, or 24%, during the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011, due to recognition of revenue from our growing deferred revenue balance consisting of subscription and support contracts sold to a larger customer base. The decrease in ratable and other revenue was primarily due to the decline in amortization of ratable revenue. Ratable and other revenue for the nine months ended September 30, 2012 included a \$1.8 million sale of previously-acquired patents, which was a decrease from a \$2.6 million sale of previously-acquired patents in the nine months ended September 30, 2011. Excluding the decline in ratable and other revenue, product and services revenue combined together increased by 25% compared to the nine months ended September 30, 2011.

## Cost of revenue and gross margin

	Nine Months Ended		Change	% Change
	September 30, 2012	September 30, 2011		
	(\$ amounts in 000's)			
Cost of revenue:				
Product	66,997	51,272	15,725	31
Services	36,846	25,815	11,031	43
Ratable and other revenue	2,135	4,026	(1,891)	(47)
Total cost of revenue	105,978	81,113	24,865	31

Gross margin (%):

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Product	62.3	63.4	(1.1	)
Services	81.3	83.8	(2.5	)
Ratable and other revenue	70.4	70.3	0.1	
Total gross margin	72.3	74.1	(1.8	)

Total gross margin decreased by 1.8 percentage points during the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011, as both product and services gross margins declined. Product gross margin

Table of Contents

decreased 1.1 percentage points during the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011, primarily related to a higher quantity of mid-range products purchased by a large retail customer with lower than average gross margins. We also experienced the impact from cost increases related to higher material costs incurred to support higher density storage requirements for our recent release of FortiOS 5.0, our next generation operating system. We expect these product cost increases to be temporary as we begin to bring costs down in the future. From time to time, we have experienced sales of previously reserved inventory. During the nine months ended September 30, 2012, we experienced a positive impact to gross margin of 0.2 of a percentage point due to the sale of fully reserved inventory compared to a positive impact to gross margin of 0.4 of a percentage point in the same period of the prior year. Services gross margin decreased by 2.5 percentage points during the nine months ended September 30, 2012 primarily due to our continued investment in our technical support organization to accommodate our expanding customer base and higher demands from enterprise customers. In addition, we experienced growth in our professional consulting services which has lower gross margins than our support and subscription businesses. Cost of services revenue increased by \$11.0 million primarily due to a \$6.1 million increase in cash-based personnel costs, a \$1.6 million increase in stock-based compensation, a \$1.4 million increase in warranty costs, a \$0.5 million increase in professional services expenses, a \$0.4 million increase in travel expenses, a \$0.4 million increase in occupancy-related costs, and a \$0.6 million increase in depreciation and other expenses.

## Operating expenses

	Nine Months Ended September 30, 2012		September 30, 2011		Change	% Change
	Amount	% of Revenue	Amount	% of Revenue		
	(\$ amounts in 000's)					
Operating expenses:						
Research and development	60,553	16	47,197	15	13,356	28
Sales and marketing	131,038	34	105,548	34	25,490	24
General and administrative	19,473	5	16,473	5	3,000	18
Total operating expenses	211,064	55	169,218	54	41,846	25

## Research and development expense

Research and development expense increased by \$13.4 million, or 28%, in the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011, primarily due to an increase of \$6.5 million in cash-based personnel costs as a result of increased headcount to support the development of new products and continued enhancements of our existing products. In addition, we incurred higher stock-based compensation expense of \$3.8 million, product development expenses of \$1.3 million, depreciation expense of \$0.7 million, supplies expense of \$0.6 million, occupancy-related costs of \$0.3 million, and other expenses of \$0.2 million. The increase in research and development expense was partially offset by a 3% year-over-year increase in the US dollar exchange rate against the Canadian dollar, as a majority of our research and development personnel are located in Canada. We intend to continue to invest in our research and development organization but expect expense as a percentage of revenue to remain at comparable levels for the remainder of fiscal 2012.

## Sales and marketing expense

Sales and marketing expense increased by \$25.5 million, or 24%, in the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011, primarily due to an increase of \$15.6 million in cash-based personnel costs as we continued to increase our sales headcount in order to expand our global footprint. In addition,

we incurred higher stock-based compensation expense of \$4.5 million, marketing-related expenses of \$2.4 million, depreciation expenses of \$0.9 million, occupancy-related costs of \$0.5 million, travel expenses of \$0.4 million, product development expenses of \$0.2 million, supplies expense of \$0.2 million, and other expenses of \$0.7 million. As a percentage of revenue, sales and marketing expenses remained flat as we accelerated the investment in our sales force during the past year to support future growth. The increase in sales and marketing expense was partially offset by a 10% year-over-year increase in the US dollar exchange rate against the Euro. We intend to continue to make investments in our sales resources and infrastructure, which are critical to support sustainable growth but expect sales and marketing expense as a percentage of revenue to remain at comparable levels for the remainder of fiscal 2012.

General and administrative expense

Table of Contents

General and administrative expense increased by \$3.0 million, or 18%, in the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011. The increase was primarily due to a \$1.2 million increase in stock-based compensation expense. Cash-based personnel costs increased \$0.3 million, supplies expense increased by \$0.3 million and other expenses increased by \$0.1 million. In addition, we recorded an accrual of \$1.0 million for litigation settlement expense. We expect general and administrative expense as a percentage of revenue to remain comparable or decline slightly during the remainder of fiscal 2012.

## Interest income and other (expense) income, net

	Nine Months Ended		Change	% Change
	September 30, 2012	September 30, 2011		
	(\$ amounts in 000's)			
Interest income	3,606	2,560	1,046	41
Other (expense) income, net	(315 )	(242 )	(73 )	*

\* not meaningful

The \$1.0 million increase in interest income in the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011 was due to interest earned on higher invested balances. The \$0.1 million change in other (expense) income, net for the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011 was due to slightly higher foreign exchange losses.

## Provision for income taxes

	Nine Months Ended		Change	% Change
	September 30, 2012	September 30, 2011		
	(\$ amounts in 000's)			
Provision for income taxes	23,397	18,704	4,693	25
Effective tax rate (%)	34	29	5	—

Our effective tax rate was 34% for the nine months ended September 30, 2012, compared with an effective tax rate of 29% for the nine months ended September 30, 2011. The provision for income taxes for the periods presented was comprised of foreign income taxes, U.S. federal and state taxes, and withholding tax. The increase in the effective tax rate for the nine months ended September 30, 2012 was primarily due to the expiration of the U.S. federal research tax credit and a decrease in benefit from adjustments in our intercompany transfer pricing associated with stock options exercised by employees of various foreign subsidiaries. During the nine months ended September 30, 2012, we paid \$10.3 million for income taxes. During the nine months ended September 30, 2011, we received a net refund of \$0.7 million for income taxes.

## Liquidity and Capital Resources

	September 30, 2012	December 31, 2011
	(\$ amounts in 000's)	
Cash and cash equivalents	75,466	71,990
Investments	614,837	466,697
Total cash, cash equivalents and investments	690,303	538,687

Working capital	215,958	256,706
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As of September 30, 2012, our cash, cash equivalents and investments of \$690.3 million were invested primarily in money market funds, commercial paper, corporate debt securities, municipal bonds, certificates of deposit and term deposits, and U.S. government and agency securities. As of September 30, 2012, \$19.9 million of our cash was held by our international subsidiaries and is therefore not immediately available to fund domestic operations unless the cash is repatriated. We do not



Table of Contents

enter into investments for trading or speculative purposes. We believe that our cash from operations together with existing cash and cash equivalents will be sufficient to meet our anticipated cash needs for at least the next 12 months. Our future capital requirements will depend on many factors including our growth rate, the timing and extent of spending necessary to support development efforts, the expansion of sales and marketing activities, the introduction of new and enhanced products and services offerings, the costs to ensure the continuing market acceptance of our products, and any capital for acquisitions. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we were unable to raise additional capital when desired, our business, operating results and financial condition would be adversely affected.

## Summary of Cash Flows

	Nine Months Ended	
	September 30, 2012	September 30, 2011
	(\$ amounts in 000's)	
Cash provided by operating activities	133,573	110,283
Cash used in investing activities	(175,479 )	(132,837 )
Cash provided by financing activities	45,617	23,282
Effect of exchange rates on cash and cash equivalents	(235 )	(957 )
Net increase (decrease) in cash and cash equivalents	3,476	(229 )

	Nine Months Ended	
	September 30, 2012	September 30, 2011
	(\$ amounts in 000's)	
Net income	45,329	45,998
Adjustments for non-cash charges <sup>(1)</sup>	33,288	18,054
Net income before non-cash charges	78,617	64,052
Increase in deferred revenue	45,192	22,471
Increase in income taxes payable	15,849	23,413
Increase in accounts payable and accrued liabilities, net	5,711	7,381
Decrease (increase) in accounts receivable—net	5,680	(3,559 )
Decrease (increase) in prepaid expenses and other assets, net	1,814	(697 )
Increase in accrued payroll and compensation	1,563	1,582
Increase in inventory	(14,977 )	(1,478 )
Increase in deferred tax assets	(4,515 )	(5,546 )
(Decrease) increase in other liabilities	(1,361 )	2,664
Net cash provided by operating activities	133,573	110,283

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 (1) Non-cash charges consist of depreciation and amortization, amortization of investment premiums, stock-based compensation, excess tax benefit from employee stock options plan, and other non-cash items, net.

## Operating Activities

Cash generated by operating activities is our primary source of liquidity. Our operating activities during the nine months ended September 30, 2012 provided \$133.6 million in cash as a result of net income of \$45.3 million, increased by non-cash adjustments of \$33.3 million and sources of cash of \$75.8 million partially offset by uses of

cash of \$20.9 million. Non-cash adjustments primarily consisted of stock-based compensation of \$23.9 million, amortization of investment premiums of \$10.0 million, and depreciation and amortization of \$8.1 million, offset partially by an excess tax benefit from employee stock option exercises of \$9.6 million. Sources of cash were related to a \$45.2 million increase in deferred revenue which was attributable primarily to increased sales of our subscription and support services, which have yet to be recognized as income, a \$15.8 million increase in income tax payable, a \$5.7 million increase in accounts payable and accrued liabilities, a \$5.7 million

## Table of Contents

decrease in accounts receivable, net, a \$1.8 million increase in prepaid expenses and other assets, net, and a \$1.6 million increase in accrued payroll and compensation, Uses of cash were primarily related to a \$15.0 million increase in inventory to ensure adequate levels of inventory to support high-turnover channel-driven products to reduce the risk of product stockouts, a \$4.5 million increase in deferred tax assets, and a \$1.4 million decrease in other liabilities.

Our operating activities during the nine months ended September 30, 2011 provided \$110.3 million in cash as a result of net income of \$46.0 million, increased by non-cash adjustments of \$18.1 million and sources of cash of \$57.5 million partially offset by uses of cash of \$11.3 million. Non-cash adjustments consisted of stock-based compensation of \$12.7 million, amortization of investment premiums of \$9.5 million, and depreciation and amortization of \$5.1 million, offset partially by an excess tax benefit from employee stock option exercises of \$9.3 million. Sources of cash were related to a \$22.5 million increase in deferred revenue which was attributable primarily to increased sales of our subscription and support services, which have yet to be recognized as income, a \$23.4 million increase in income tax payable due to our continued profitability and timing of tax payments, a \$7.4 million increase in accounts payable and accrued liabilities, a \$2.7 million increase in other liabilities, mainly due to the deferral of the patent litigation settlement, which is being amortized over three years, and a \$1.6 million increase in accrued payroll and compensation. Uses of cash were related to a \$5.5 million increase in deferred tax assets, a \$3.6 million increase in accounts receivable due to the overall growth of our business, a \$1.5 million increase in inventory from relatively low levels at September 30, 2010, and a \$0.7 million increase in prepaid expenses.

## Investing Activities

Our investing activities during the nine months ended September 30, 2012 consisted primarily of purchases, sales and maturities of investments, and to a lesser extent capital expenditures and acquisitions. The \$175.5 million of cash used in investing activities during the nine months ended September 30, 2012 was primarily due to net purchases of investments of \$154.4 million, purchases of property and equipment of \$20.3 million including \$14.5 million to purchase land and building to support the growth in our business operations, and our acquisition of IntruGuard of \$0.7 million.

Our investing activities during the nine months ended September 30, 2011 consisted primarily of purchases and sales of investments, and to a lesser extent capital expenditures and acquisitions. The \$132.8 million of cash used in investing activities during the nine months ended September 30, 2011 was due to net purchases of investments of \$127.4 million, capital expenditures of \$2.8 million, and our acquisition of TalkSwitch of \$2.6 million.

## Financing Activities

Our financing activities during the nine months ended September 30, 2012 resulted in net cash provided of \$45.6 million as a result of receiving proceeds of \$25.1 million and \$10.9 million, from the issuance of common stock under our stock option plan and ESPP, respectively, and an excess tax benefit from employee stock option exercises of \$9.6 million.

Our financing activities during the nine months ended September 30, 2011 resulted in net cash provided of \$23.3 million as a result of receiving proceeds of \$14.0 million from the issuance of common stock under our stock option plan, and an excess tax benefit from employee stock option exercises of \$9.3 million.

## Contractual Obligations

The following summarizes our contractual obligations as of September 30, 2012:

### Payments Due By Period

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	Total	Remainder of 2012	2013 - 2015	2016 - 2017	Thereafter
	(\$ amounts in 000's)				
Operating leases <sup>(1)</sup>	18,118	2,425	15,114	579	—
Capital leases <sup>(2)</sup>	110	6	75	29	—
Purchase commitments <sup>(3)</sup>	23,818	23,818	—	—	—
Other contracts <sup>(4)</sup>	3,866	3,866	—	—	—
Total <sup>(5)</sup>	45,912	30,115	15,189	608	—

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 (1) Consists of contractual obligations from non-cancelable office space under operating leases.

## Table of Contents

- (2) Consists of contractual obligations from non-cancelable equipment financed under capital leases. Includes principal and imputed interest.
- (3) Consists of minimum purchase commitments with independent contract manufacturers.  
Consists of an estimate of all open purchase orders and contractual obligations in the ordinary course of business, other than commitments with contract manufacturers and suppliers, for which we have not received the goods or services. Purchase obligations do not include contracts that may be cancelled without penalty. Although open
- (4) purchase orders are considered enforceable and legally binding, the terms generally allow us the option to cancel, reschedule, and adjust our requirements based on our business needs prior to the delivery of goods or performance of services.  
No tax liabilities related to uncertain tax positions have been included in the table. As of September 30, 2012, we
- (5) had \$26.7 million of tax liabilities, including interest, related to uncertain tax positions. Because of the high degree of uncertainty regarding the settlement of these liabilities, we are unable to estimate the years in which future cash outflows may occur.

### Off-Balance Sheet Arrangements

As of September 30, 2012, we did not have any relationships with unconsolidated organizations or financial partnerships, such as structured finance or special purpose entities, that would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

### ITEM 3. Quantitative and Qualitative Disclosures about Market Risk

There have been no material changes in our market risk during the nine months ended September 30, 2012, compared to the disclosures in Part II, Item 7A of our Form 10-K.

### ITEM 4. Controls and Procedures

#### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and interim chief financial officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of September 30, 2012. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on that evaluation, our chief executive officer and interim chief financial officer concluded that our disclosure controls and procedures were effective as of September 30, 2012 to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and interim chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

#### Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) or 15d-15(f) under the Exchange Act) during the three months ended September 30, 2012, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## Part II

### ITEM 1. Legal Proceedings

In August 2009, ESR, a non-practicing entity, filed a complaint against us in the United States District Court for the District of Delaware alleging infringement by us and other defendants of two patents. The plaintiffs are claiming unspecified damages and requesting an injunction against the alleged infringement. In June 2010, the Court granted our motion to stay pending the outcome of reexamination proceedings in the PTO on both asserted patents. The PTO rejected all of the claims of the patents in the suit and ESR appealed this result to the BPAI. In August 2012, the BPAI completed its review of both reexamination proceedings, and after the BPAI's review, all claims of the asserted ESR patents remain rejected.

## Table of Contents

In April 2010, an individual, a former stockholder of Fortinet, filed a class action lawsuit against us claiming unspecified damages in the California Superior Court for the County of Los Angeles alleging violation of various California Corporations Code sections and related tort claims alleging misrepresentation and breach of fiduciary duty regarding the 2009 repurchase by Fortinet of shares of its stock while we were a privately-held company. In September 2010, the Court granted our motion to transfer the case to the California Superior Court for Santa Clara County and the plaintiff has filed several amended complaints in the Superior Court to add individual defendants, among other amendments. The Superior Court set a trial date for December 2012, but subsequently we have made progress in settlement discussions for this matter.

In July 2010, NPS, a non-practicing entity, filed a complaint in the United States District Court for the Eastern District of Texas alleging patent infringement by us and other defendants. NPS is claiming unspecified damages, including treble damages for willful infringement, and requests an injunction against such alleged infringement. In December 2011, the United States District Court for the Eastern District of Texas ordered the case to be transferred to the Northern District of California. In June 2012, the United States District Court for the Northern District of California dismissed the other defendants for misjoinder, and the case is proceeding with Fortinet as the sole defendant.

In June 2012, we received a letter from SRI International (“SRI”) claiming that we infringed certain SRI patents. Subsequently, we filed a complaint in the United States District Court for the Northern District of California seeking declaratory relief and a judgment that the SRI patents were invalid, unenforceable and/or not infringed by any of our products or services.

### ITEM 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the following risks and all other information contained in this Quarterly Report on Form 10-Q, including our condensed consolidated financial statements and the related notes, before investing in our common stock. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, also may become important factors that affect us. If any of the following risks materialize, our business, financial condition and results of operations could be materially harmed. In that case, the trading price of our common stock could decline, and you may lose some or all of your investment.

#### Risks Related to Our Business

Our quarterly operating results are likely to vary significantly and be unpredictable.

Our operating results have historically varied from period to period, and we expect that they will continue to do so as a result of a number of factors, many of which are outside of our control and may be difficult to predict, including:

• the level of demand for our products and services;

• the timing of channel partner and end-customer orders;

• the timing of shipments, which may depend on many factors such as inventory levels and logistics, our ability to ship new products on schedule and to accurately forecast inventory requirements, and potential delays in the manufacturing process;

• inventory imbalances, such as those related to new products and the end of life of existing products;

the mix of products sold, the mix of revenue between products and services and the degree to which products and services are bundled and sold together for a package price;

the budgeting cycles and purchasing practices of our channel partners and end-customers;

seasonal buying patterns of our end-customers;

the timing of revenue recognition for our sales, which may be affected by both the mix of sales by our “sell-in” versus our “sell-through” channel partners, and by the extent to which we bring on new distributors;

the accuracy and timing of point of sale reporting by our sell-through distributors, which impacts our ability



Table of Contents

to recognize revenue;

the level of perceived threats to network security, which may fluctuate from period to period;

changes in end-customer, distributor or reseller requirements or market needs;

changes in the growth rate of the network security or UTM markets;

the timing and success of new product and service introductions by us or our competitors or any other change in the competitive landscape of our industry, including consolidation among our competitors or end-customers;

deferral of orders from end-customers in anticipation of new products or product enhancements announced by us or our competitors;

increases or decreases in our expenses caused by fluctuations in foreign currency exchange rates, as a significant portion of our expenses are incurred and paid in currencies other than the U.S. dollar;

decisions by potential end-customers to purchase network security solutions from larger, more established security vendors or from their primary network equipment vendors;

price competition;

changes in customer renewal rates for our services;

changes in the length of services contracts sold;

insolvency or credit difficulties confronting our customers, affecting their ability to purchase or pay for our products and services;

disruptions in our channel or termination of our relationship with important channel partners;

insolvency or credit difficulties confronting our key suppliers, which could disrupt our supply chain;

general economic conditions, both in our domestic and foreign markets; and

future accounting pronouncements or changes in our accounting policies.

Any one of the factors above or the cumulative effect of some of the factors referred to above may result in significant fluctuations in our quarterly financial and other operating results, including fluctuations in our key metrics. This variability and unpredictability could result in our failing to meet our internal operating plan or the expectations of securities analysts or investors for any period. If we fail to meet or exceed such expectations for these or any other reasons, the market price of our shares could fall substantially and we could face costly lawsuits, including securities class action suits. In addition, a significant percentage of our operating expenses are fixed in nature and based on forecasted revenue trends. Accordingly, in the event of revenue shortfalls, we are generally unable to mitigate the negative impact on margins in the short term.

Our billings and revenue growth may slow or may not continue.

Billings and revenue growth may slow or decline for a number of reasons, including a slowdown in demand for our products or services, an increase in competition, a decrease in the growth of our overall market, softness in demand in certain geographies, or if we fail for any reason to continue to capitalize on growth opportunities. We may not be able to sustain profitability in future periods if we fail to increase billings, revenue or deferred revenue, do not appropriately manage our cost structure, or encounter unanticipated liabilities. Any failure by us to maintain profitability and continue our billings and revenue growth could cause the price of our common stock to materially decline.

Reliance on a concentration of shipments at the end of the quarter could cause our revenue to fall below expected levels.

As a result of customer-buying patterns and the efforts of our sales force and channel partners to meet or exceed quarterly quotas, we have historically received a substantial portion of each quarter's sales orders and generated a substantial

## Table of Contents

portion of each quarter's revenue during the last two weeks of the quarter. If expected revenue at the end of any quarter is delayed for any reason, including the failure of anticipated purchase orders to materialize, our logistics partners' inability to ship products prior to quarter-end to fulfill purchase orders received near the end of the quarter, our failure to manage inventory to meet demand, our inability to release new products on schedule, any failure of our systems related to order review and processing, or any delays in shipments based on trade compliance requirements, our revenue for that quarter could fall below our expectations or those of securities analysts and investors, resulting in a decline in our stock price.

We rely significantly on revenue from subscription and support services which may decline, and because we recognize revenue from subscription and support services over the term of the relevant service period, downturns or upturns in sales of subscription and support services are not immediately reflected in full in our operating results.

Our services revenue has historically accounted for a significant percentage of our total revenue. Sales of new or renewal subscription and support services contracts may decline and fluctuate as a result of a number of factors, including end-customers' level of satisfaction with our products and services, the prices of our products and services, the prices of products and services offered by our competitors or reductions in our customers' spending levels. If our sales of new or renewal subscription and support services contracts decline, our revenue and revenue growth may decline and our business will suffer. In addition, we recognize subscription and support services revenue monthly over the term of the relevant service period, which is typically one year but has been as long as five years. As a result, much of the revenue we report each quarter is the recognition of deferred revenue from subscription and support services contracts entered into during previous quarters. Consequently, a decline in new or renewed subscription or support services contracts in any one quarter will not be fully reflected in revenue in that quarter but will negatively affect our revenue in future quarters. Accordingly, the effect of significant downturns in new or renewed sales of our subscriptions or support services is not reflected in full in our results of operations until future periods. Our subscription and support services revenue also makes it difficult for us to rapidly increase our revenue through additional service sales in any period, as revenue from new and renewal services contracts must be recognized over the applicable service period. Furthermore increases in the average term of services contracts would result in revenue for services contracts being recognized over longer periods of time.

Managing inventory of our products and product components is complex. Insufficient inventory may result in lost sales opportunities or delayed revenue, while excess inventory may harm our gross margins.

Managing our inventory is complex. Our channel partners may increase orders during periods of product shortages, cancel orders if their inventory is too high, return products or take advantage of price protection (if any is available to the particular partner), or delay orders in anticipation of new products. They also may adjust their orders in response to the supply of our products and the products of our competitors that are available to them and in response to seasonal fluctuations in end-customer demand. Furthermore, if the time required to manufacture certain products or ship products increases for any reason, this could result in inventory shortfalls. Management of our inventory is further complicated by the significant number of different products and models that we sell.

In addition, for those channel partners that have rights of return, inventory held by such channel partners affects our results of operations. Our inventory management systems and related supply chain visibility tools may be inadequate to enable us to effectively manage inventory. Inventory management remains an area of focus as we balance the need to maintain inventory levels that are sufficient to ensure competitive lead times against the risk of inventory obsolescence because of rapidly changing technology and customer requirements. If we ultimately determine that we have excess inventory, we may have to reduce our prices and write-down inventory, which in turn could result in lower gross margins. Alternatively, insufficient inventory levels may lead to shortages that result in delayed revenue or loss of sales opportunities altogether as potential end-customers turn to competitors' products that are readily

available. For example, we have experienced inventory shortages in the past, for instance, based on more demand for certain products than we had forecasted. If we are unable to effectively manage our inventory and that of our channel partners, our results of operations could be adversely affected.

We rely on third-party channel partners to generate substantially all of our revenue. If our partners fail to perform, our ability to sell our products and services will be limited, and if we fail to optimize our channel partner model going forward, our operating results will be harmed.

Substantially all of our revenue is generated through sales by our channel partners, which include distributors and resellers. We depend upon our channel partners to generate sales opportunities and manage the sales process. To the extent our channel partners are unsuccessful in selling our products, or we are unable to enter into arrangements with, and retain, a sufficient number of high quality channel partners in each of the regions in which we sell products, and keep them motivated to sell our products, our ability to sell our products and operating results will be harmed. The termination of our relationship with any significant channel partner may adversely impact our sales and operating results.

## Table of Contents

We provide sales channel partners with specific programs to assist them in selling our products, but there can be no assurance that these programs will be effective. In addition, our channel partners may be unsuccessful in marketing, selling and supporting our products and services. Our channel partners generally do not have minimum purchase requirements. They may also market, sell and support products and services that are competitive with ours, and may devote more resources to the marketing, sales and support of such products. They may also have incentives to promote our competitors' products to the detriment of our own. They may cease selling our products altogether. We cannot assure you that we will retain these channel partners or that we will be able to secure additional or replacement partners or that existing channel partners will continue to perform. The loss of one or more of our significant channel partners or the failure to obtain and ship a number of large orders each quarter through them could harm our operating results. In addition, any new sales channel partner will require extensive training and may take several months or more to achieve productivity. Our channel partner sales structure could subject us to lawsuits, potential liability and reputational harm if, for example, any of our channel partners misrepresent the functionality of our products or services to end-customers or our channel partners violate laws or our corporate policies. If we fail to optimize our channel partner model or fail to manage existing sales channels, our business will be seriously harmed.

If we are not successful in continuing to execute our strategy to increase our sales to larger end-customers, our results of operations may suffer.

An important part of our growth strategy is to increase sales of our products to large enterprises, service providers and governmental entities. Sales to enterprises, service providers and governmental entities involve risks that may not be present (or that are present to a lesser extent) with sales to small-to-mid-sized entities. These risks include:

- increased competition from competitors, such as Cisco Systems, Inc., Check Point Software Technologies Ltd., McAfee, Inc. (acquired by Intel Corporation), Palo Alto Networks, Inc., and Juniper Networks, Inc., that traditionally target enterprises, service providers and governmental entities and that may already have purchase commitments from those end-customers;

- increased purchasing power and leverage held by large end-customers in negotiating contractual arrangements;

- more stringent requirements in our support service contracts, including stricter support response times, and increased penalties for any failure to meet support requirements; and

- longer sales cycles and the associated risk that substantial time and resources may be spent on a potential end-customer that elects not to purchase our products and services.

Large enterprises, service providers and governmental entities often undertake a significant evaluation process that results in a lengthy sales cycle, in some cases over 12 months. Although we have a channel sales model, our sales representatives typically engage in direct interaction with our distributors and resellers in connection with sales to larger end-customers. Due to the lengthy nature, the size and scope, and stringent requirements of these evaluations, we typically provide evaluation products to these customers. We may spend substantial time, effort and money in our sales efforts without being successful in producing any sales. If we are unsuccessful in converting these evaluations into sales, we may experience an increased inventory of used products and potentially increased write-offs. In addition, product purchases by enterprises, service providers and governmental entities are frequently subject to budget constraints, multiple approvals, and unplanned administrative, processing and other delays. Finally, enterprise, service providers and governmental entities typically have longer implementation cycles, require greater product functionality and scalability and a broader range of services, including design services, demand that vendors take on a larger share of risks, sometimes require acceptance provisions that can lead to a delay in revenue recognition, and

expect greater payment flexibility from vendors. All these factors can add further risk to business conducted with these customers. If sales expected from a large end-customer for a particular quarter are not realized in that quarter or at all, our business, operating results and financial condition could be materially and adversely affected.

The average sales prices of our products may decrease, which may reduce our gross profits and adversely impact our financial results and the trading price of our common stock.

The average sales prices for our products may decline for a variety of reasons, including competitive pricing pressures, discounts we offer, a change in our mix of products, anticipation of the introduction of new products or promotional programs. Competition continues to increase in the market segments in which we participate, and we expect competition to further increase in the future, thereby leading to increased pricing pressures. Larger competitors with more diverse product offerings may reduce the price of products that compete with ours in order to promote the sale of other products or may bundle them with

## Table of Contents

other products. Additionally, although we price our products and services worldwide in U.S. dollars, currency fluctuations in certain countries and regions may negatively impact actual prices that partners and customers are willing to pay in those countries and regions. Furthermore, we anticipate that the average sales prices and gross profits for our products will decrease over product life cycles. We cannot assure you that we will be successful in developing and introducing new offerings with enhanced functionality on a timely basis, or that our product offerings, if introduced, will enable us to maintain our prices and gross profits at levels that will allow us to maintain profitability.

Actual, possible or perceived defects or vulnerabilities in our products or services, the failure of our products or services to prevent a virus or security breach, or misuse of our products could harm our reputation and divert resources.

Because our products and services are complex, they have contained and may contain defects or errors that are not detected until after their commercial release and deployment by our customers. Defects or vulnerabilities may impede or block network traffic or cause our products or services to be vulnerable to electronic break-ins or cause them to fail to help secure networks. Because the techniques used by computer hackers to access or sabotage networks change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques. In addition, defects or errors in our FortiGuard subscription updates or our FortiGate appliances could result in a failure of our FortiGuard services to effectively update end-customers' FortiGate appliances and thereby leave customers vulnerable to attacks. Furthermore, our solutions may also fail to detect or prevent viruses, worms or similar threats due to a number of reasons such as the evolving nature of such threats and the continual emergence of new threats that we may fail to add to our FortiGuard databases in time to protect our end-customers' networks. Our FortiGuard or FortiCare data centers and networks may also experience technical failures and downtime, and may fail to distribute appropriate updates, or fail to meet the increased requirements of a growing customer base. Any such technical failure, downtime, or failures in general may temporarily or permanently expose our end-customers' networks, leaving their networks unprotected against the latest security threats.

An actual, possible or perceived security breach or infection of the network of one of our end-customers, regardless of whether the breach is attributable to the failure of our products or services to prevent the security breach, could adversely affect the market's perception of our security products and services. We may not be able to correct any security flaws or vulnerabilities promptly, or at all. Our products may also be misused by end-customers or third parties who obtain access to our products. For example, our products could be used to censor private access to certain information on the Internet. Such use of our products for censorship could result in negative press coverage and negatively affect our reputation, even if we take reasonable measures to prevent any improper shipment of our products or if our products are provided by an unauthorized third-party. Any actual, possible, or perceived defects, errors or vulnerabilities in our products, or misuse of our products, could result in:

• expenditure of significant financial and product development resources in efforts to analyze, correct, eliminate or work-around errors or defects or to address and eliminate vulnerabilities;

• loss of existing or potential end-customers or channel partners;

• delayed or lost revenue;

• delay or failure to attain market acceptance;

• negative publicity, which will harm our reputation; and

• litigation, regulatory inquiries or investigations that may be costly and harm our reputation.

Our business and operations have experienced rapid growth, and if we do not appropriately manage any future growth, or are unable to improve our systems and processes, our operating results will be negatively affected.

We have a high volume business that has grown over the last several years. We rely heavily on information technology systems to help manage critical functions such as order processing, revenue recognition, financial forecasts, inventory and supply chain management and trade compliance reviews. However, we have been slow to adopt and implement certain automated functions, like Electronic Data Interchange, which could have a negative impact on our business. For example, a large part of our order processing relies on the manual processing of emails internally and from our customers. Combined with the fact that we may receive a majority of our orders in the last few weeks of any given quarter, a significant interruption in our email service or other systems could result in delayed order fulfillment and decreased revenue for that quarter. To manage any future growth effectively, we must continue to improve and expand our information technology and financial infrastructure, operating and administrative systems and controls, and continue to manage headcount, capital and processes in an efficient



## Table of Contents

manner. We may not be able to successfully implement improvements to these systems and processes in a timely or efficient manner. In addition, our systems and processes may not prevent or detect all errors, omissions or fraud. Our failure to improve our systems and processes, or their failure to operate in the intended manner, may result in our inability to manage the growth of our business and to accurately forecast our revenue, expenses and earnings, or to prevent certain losses. Our productivity and the quality of our products and services may be adversely affected if we do not integrate and train our new employees quickly and effectively. Any future growth would add complexity to our organization and require effective coordination throughout our organization. Failure to manage any future growth effectively could result in increased costs and harm our results of operations.

If our estimates or judgments relating to our critical accounting policies are based on assumptions that change or prove to be incorrect, our operating results could fall below expectations of securities analysts and investors, resulting in a decline in our stock price.

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in “Management's Discussion and Analysis of Financial Condition and Results of Operations” in this Form 10-Q, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Our operating results may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of securities analysts and investors, resulting in a decline in our stock price. Significant assumptions and estimates used in preparing our condensed consolidated financial statements include those related to revenue recognition, stock-based compensation, valuation of inventory, warranty liabilities, and accounting for income taxes.

We offer retroactive price protection to certain of our major distributors, and if we fail to balance their inventory with end-customer demand for our products, our allowance for price protection may be inadequate, which could adversely affect our results of operations.

We provide certain of our major distributors with price protection rights for inventories of our products held by them. If we reduce the list price of our products, certain distributors receive refunds or credits from us that reduce the price of such products held in their inventory based upon the new list price. Future credits for price protection will depend on the percentage of our price reductions for the products in inventory and our ability to manage the levels of our major distributors' inventories. If future price protection adjustments are higher than expected, our future results of operations could be materially and adversely affected.

If we are unable to hire, retain and motivate qualified personnel, our business will suffer.

Our future success depends, in part, on our ability to continue to attract and retain highly skilled personnel. The loss of the services of any of our key personnel, the inability to attract or retain qualified personnel, or delays in hiring required personnel, particularly in engineering and sales, may seriously harm our business, financial condition and results of operations. From time to time, we have experienced turnover in our management-level personnel, including the recent resignation of our former Chief Financial Officer, Ken Goldman. None of our key employees has an employment agreement for a specific term, and any of our employees may terminate their employment at any time. Our ability to continue to attract and retain highly skilled personnel will be critical to our future success. Competition for highly skilled personnel is frequently intense, especially in the locations where we have a substantial presence and need for highly-skilled personnel: the San Francisco Bay Area, Vancouver, Canada and Beijing, China. A large portion of our employee base is substantially vested in significant stock option grants, and the ability to exercise those

options and sell their stock may result in a larger than normal turnover rate. We may not be successful in attracting, assimilating or retaining qualified personnel to fulfill our current or future needs. Also, to the extent we hire personnel from competitors, we may be subject to allegations that they have been improperly solicited or divulged proprietary or other confidential information.

We are dependent on the continued services and performance of our senior management, the loss of any of whom could adversely affect our business, operating results and financial condition.

Our future performance depends on the continued services and continuing contributions of our senior management to execute on our business plan, and to identify and pursue new opportunities and product innovations. Recently, Ken Goldman, our former Vice President and Chief Financial Officer, resigned from his position in October 2012. The loss of services of other members of senior management, particularly Ken Xie, our Co-founder, President and Chief Executive Officer and Michael Xie, our Co-founder, Vice President of Engineering and Chief Technology Officer, and any of our senior sales leaders, could significantly delay or prevent the achievement of our development and strategic objectives. In addition, key personnel

## Table of Contents

may be distracted by activities unrelated to our business. The loss of the services, or distraction, of our senior management for any reason could adversely affect our business, financial condition and results of operations.

Adverse economic conditions or reduced information technology spending may adversely impact our business.

Our business depends on the overall demand for information technology and on the economic health of our current and prospective customers. In addition, the purchase of our products is often discretionary and may involve a significant commitment of capital and other resources. Weak global economic conditions, weak economic conditions in certain geographies, or a reduction in information technology spending regardless of macro-economic conditions, could adversely impact our business, financial condition and results of operations in a number of ways, including longer sales cycles, lower prices for our products and services, higher default rates among our distributors, reduced unit sales and lower or no growth.

Because we depend on several third-party manufacturers to build our products, we are susceptible to manufacturing delays that could prevent us from shipping customer orders on time, if at all, and may result in the loss of sales and customers, and third-party manufacturing cost increases could result in lower gross margins.

We outsource the manufacturing of our security appliance products to a variety of contract manufacturing partners and original design manufacturing partners.

Our reliance on our third-party manufacturers reduces our control over the manufacturing process, exposing us to risks, including reduced control over quality assurance, product costs and product supply and timing. Any manufacturing disruption by our third-party manufacturers could impair our ability to fulfill orders. If we are unable to manage our relationships with these third-party manufacturers effectively, or if these third-party manufacturers experience delays, increased manufacturing lead-times, disruptions, capacity constraints or quality control problems in their manufacturing operations, or fail to meet our future requirements for timely delivery, our ability to ship products to our customers could be impaired and our business would be seriously harmed.

These manufacturers fulfill our supply requirements on the basis of individual purchase orders. We have no long-term contracts or arrangements with certain of our third-party manufacturers that guarantee capacity, the continuation of particular payment terms or the extension of credit limits. Accordingly, they are not obligated to continue to fulfill our supply requirements, and the prices we are charged for manufacturing services could be increased on short notice. If we are required to change third-party manufacturers, our ability to meet our scheduled product deliveries to our customers would be adversely affected, which could cause the loss of sales and existing or potential customers, delayed revenue or an increase in our costs which could adversely affect our gross margins. Our individual product lines are generally manufactured by only one manufacturing partner. Any production interruptions for any reason, such as a natural disaster, epidemic, capacity shortages, or quality problems, at one of our manufacturing partners would severely affect sales of our product lines manufactured by that manufacturing partner. Furthermore manufacturing cost increases for any reason could result in lower gross margins.

Our proprietary FortiASIC, which is the key to the performance of our appliances, is fabricated by contract manufacturers in foundries operated by United Microelectronics Corporation and Taiwan Semiconductor Manufacturing Company Limited (“TSMC”). Faraday Technology Corporation (using UMC's foundry), Kawasaki Microelectronics America, Inc. (“K-Micro”) (using TSMC's foundry) and Renesas Electronics Corporation (using UMC's foundry) manufacture our ASICs on a purchase order basis, and these foundries do not guarantee any capacity and could reject orders from Faraday, K-Micro or Renesas or try to increase pricing. Accordingly, the foundries are not obligated to continue to fulfill our supply requirements, and due to the long lead time that a new foundry would require, we could suffer temporary or long term inventory shortages of our FortiASIC as well as increased costs. Our suppliers may also prioritize orders by other companies that order higher volumes of products. If any of these

suppliers materially delays its supply of ASICs or specific product models to us, or requires us to find an alternate supplier and we are not able to do so on a timely and reasonable basis, or if these foundries materially increase their prices for fabrication of our ASICs or specific product models, our business would be harmed.

In addition, our reliance on third-party manufacturers and foundries limits our control over environmental regulatory requirements such as the hazardous substance content of our products and therefore our ability to ensure compliance with the European Union's ("EU") Restriction of Hazardous Substances Directive ("RoHS") and other similar laws.

Because some of the key components in our products come from limited sources of supply, we are susceptible to supply shortages, long lead times for components, and supply changes, each of which could disrupt or delay our scheduled product deliveries to our customers, result in inventory shortage, and may result in the loss of sales and customers, and increased component costs may result in lower gross margins.

We and our contract manufacturers currently purchase several key parts and components used in the manufacture of

## Table of Contents

our products from limited sources of supply. We are therefore subject to the risk of shortages and long lead times in the supply of these components and the risk that component suppliers discontinue or modify components used in our products. We have in the past experienced, and are currently experiencing, shortages and long lead times for certain components. Certain of our limited source components for particular appliances and suppliers of those components include: specific types of central processing units from Intel Corporation, Advanced Micro Devices, Inc., RMI/Netlogic Corporation and VIA Technologies, Inc., network chips from Broadcom Corporation, Marvell Technology Group Ltd. and Intel, and hard drives from Western Digital Technologies, Inc. The introduction by component suppliers of new versions of their products, particularly if not anticipated by us or our contract manufacturers, could require us to expend significant resources to incorporate these new components into our products. In addition, if these suppliers were to discontinue production of a necessary part or component, we would be required to expend significant resources and time in locating and integrating replacement parts or components from another vendor. Qualifying additional suppliers for limited source parts or components can be time-consuming and expensive.

Our manufacturing partners have experienced long lead times for the purchase of components incorporated into our products. Lead times for components may be adversely impacted by factors outside of our control, such as natural disasters and other factors. Our reliance on a limited number of suppliers involves several additional risks, including:

- potential inability to obtain an adequate supply of required parts or components when required;

- financial or other difficulties faced by our suppliers;

- infringement or misappropriation of our intellectual property;

- price increases;

- failure of a component to meet environmental or other regulatory requirements;

- failure to meet delivery obligations in a timely fashion; and

- failure in component quality.

The occurrence of any of these would be disruptive to us and could seriously harm our business. Any interruption or delay in the supply of any of these parts or components, or the inability to obtain these parts or components from alternate sources at acceptable prices and within a reasonable amount of time, would harm our ability to meet our scheduled product deliveries to our distributors, resellers and end-customers. This could harm our relationships with our channel partners and end-customers and could cause delays in shipment of our products and adversely affect our results of operations. In addition, increased component costs could result in lower gross margins.

We are exposed to fluctuations in currency exchange rates, which could negatively affect our financial condition and results of operations.

A majority of our operating expenses is incurred outside the United States. These expenses are denominated in foreign currencies and are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the Euro and Canadian dollar. For example, during the second and third quarters of 2011, we were affected by the weakening of the dollar against the Canadian dollar and the Euro, which caused our operating expenses to increase. Although we have been hedging currency exposures relating to certain balance sheet accounts and have periodically entered into cash flow hedges relating to certain operating expenses incurred outside of the United States, if we stop

hedging against any of these risks or if our attempts to hedge against these currency exposures are not successful, our financial condition and results of operations could be adversely affected. In addition, our sales contracts are primarily denominated in U.S. dollars and therefore substantially all of our revenue is not subject to foreign currency risk. However, a strengthening of the U.S. dollar could increase the real cost of our products to our customers outside of the United States, which could also adversely affect our financial condition and results of operations.

We generate a majority of revenue from sales to distributors, resellers and end-customers outside of the United States, and we are therefore subject to a number of risks associated with international sales and operations.

We market and sell our products throughout the world and have established sales offices in many parts of the world. Therefore, we are subject to risks associated with having worldwide operations. We are also subject to a number of risks typically associated with international sales and operations, including:

Table of Contents

• economic or political instability in foreign markets;

• greater difficulty in enforcing contracts, accounts receivable collection and longer collection periods;

• changes in regulatory requirements;

• difficulties and costs of staffing and managing foreign operations;

• the uncertainty of protection for intellectual property rights in some countries;

• costs of compliance with foreign policies, laws and regulations and the risks and costs of non-compliance with such policies, laws and regulations;

• costs of complying with U.S. laws and regulations for foreign operations, including the Foreign Corrupt Practices Act, import and export control laws, tariffs, trade barriers, and economic sanctions;

• other regulatory or contractual limitations on our ability to sell our products in certain foreign markets, and the risks and costs of non-compliance;

• heightened risks of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of financial statements and irregularities in financial statements;

• the potential for political unrest, terrorism, hostilities or war;

• management communication and integration problems resulting from cultural differences and geographic dispersion; and

• multiple and possibly overlapping tax structures.

Product and service sales may be subject to foreign governmental regulations, which vary substantially from country to country. Further, we may be unable to keep up-to-date with changes in government requirements as they change from time to time. Failure to comply with these regulations could result in adverse effects to our business. In many foreign countries it is common for others to engage in business practices that are prohibited by our internal policies and procedures or U.S. regulations applicable to us. Although we implemented policies and procedures designed to ensure compliance with these laws and policies, there can be no assurance that all of our employees, contractors, channel partners and agents will comply with these laws and policies. Violations of laws or key control policies by our employees, contractors, channel partners or agents could result in delays in revenue recognition, financial reporting misstatements, fines, penalties, or the prohibition of the importation or exportation of our products and services and could have a material adverse effect on our business and results of operations.

We are subject to governmental export and import controls that could subject us to liability or impair our ability to compete in international markets.

Because we incorporate encryption technology into our products, certain of our products are subject to U.S. export controls and may be exported outside the U.S. only with the required export license or through an export license exception. If we were to fail to comply with U.S. export licensing, U.S. Customs regulations and import regulations, U.S. economic sanctions and other countries' import and export laws, we could be subject to substantial civil and

criminal penalties, including fines for the company and incarceration for responsible employees and managers, and the possible loss of export or import privileges. In addition, if our channel partners fail to obtain appropriate import, export or re-export licenses or permits, we may also be adversely affected through reputational harm and penalties. Obtaining the necessary export license for a particular sale may be time-consuming and may result in the delay or loss of sales opportunities.

Furthermore, U.S. export control laws and economic sanctions prohibit the shipment of certain products to U.S. embargoed or sanctioned countries, governments and persons. Even though we take precautions to prevent our product from being shipped to U.S. sanctions targets, our products could be shipped to those targets by our channel partners, despite such precautions. Any such shipment could have negative consequences including government investigations and penalties and reputational harm. In addition, various countries regulate the import of certain encryption technology, including import permitting/licensing requirements, and have enacted laws that could limit our ability to distribute our products or could limit



## Table of Contents

our customers' ability to implement our products in those countries. Changes in our products or changes in export and import regulations may create delays in the introduction of our products in international markets, prevent our customers with international operations from deploying our products globally or, in some cases, prevent the export or import of our products to certain countries, governments or persons altogether. Any change in export or import regulations, economic sanctions or related legislation, shift in the enforcement or scope of existing regulations, or change in the countries, governments, persons or technologies targeted by such regulations, could result in decreased use of our products by, or in our decreased ability to export or sell our products to, existing or potential customers with international operations. Any decreased use of our products or limitation on our ability to export or sell our products would likely adversely affect our business, financial condition and results of operations.

If we fail to comply with environmental requirements, our business, financial condition, operating results and reputation could be adversely affected.

We are subject to various environmental laws and regulations including laws governing the hazardous material content of our products and laws relating to the recycling of electrical and electronic equipment. The laws and regulations to which we are subject include the EU, RoHS and the EU Waste Electrical and Electronic Equipment (WEEE) Directive as well as the implementing legislation of the EU member states. Similar laws and regulations have been passed or are pending in China, South Korea, Norway and Japan and may be enacted in other regions, including in the United States, and we are, or may in the future be, subject to these laws and regulations.

The EU RoHS and the similar laws of other jurisdictions ban the use of certain hazardous materials such as lead, mercury and cadmium in the manufacture of electrical equipment, including our products. We have incurred costs to comply with these laws, including research and development costs, costs associated with assuring the supply of compliant components and costs associated with writing off noncompliant inventory. We expect to incur more of these costs in the future. With respect to the EU RoHS, we and our competitors rely on an exemption for lead in network infrastructure equipment. It is possible this exemption will be revoked in the near future. If this exemption is revoked, if there are other changes to these laws (or their interpretation) or if new similar laws are passed in other jurisdictions, we may be required to reengineer our products to use components compatible with these regulations. This reengineering and component substitution could result in additional costs to us or disrupt our operations or logistics.

The EU has also adopted the WEEE Directive, which requires electronic goods producers to be responsible for the collection, recycling and treatment of such products. Although currently our EU international channel partners are responsible for the requirements of this directive as the importer of record in most of the European countries in which we sell our products, changes in interpretation of the regulations may cause us to incur costs or have additional regulatory requirements in the future to meet in order to comply with this directive, or with any similar laws adopted in other jurisdictions.

Our failure to comply with these and future environmental rules and regulations could result in reduced sales of our products, increased costs, substantial product inventory write-offs, reputational damage, penalties and other sanctions.

A portion of our revenue is generated by sales to governmental entities, which are subject to a number of challenges and risks.

Sales to U.S. and foreign federal, state and local governmental agency end-customers have accounted for a portion of our revenue in past periods, and we may in the future increase sales to governmental entities. Sales to governmental entities are subject to a number of risks. Selling to governmental entities can be highly competitive, expensive and time consuming, often requiring significant upfront time and expense without any assurance that we will win a sale.

Government demand, sales, and payment for our products and services may be negatively impacted by numerous factors and requirements unique to selling to government agencies, such as public sector budgetary cycles, funding authorizations and requirements unique to government agencies, with funding or purchasing reductions or delays adversely affecting public sector demand for our products, geopolitical matters, and rules and regulations applicable to certain government sales. To date we have had limited traction in sales to U.S. federal government agencies, and any future sales to governmental entities is uncertain. All of our sales to governmental entities have been made indirectly through our distribution channel. Governmental entities may have contractual or other legal rights to terminate contracts with our distributors and resellers for convenience or due to a default, and any such termination may adversely impact our future results of operations. For example, if the distributor receives a significant portion of its revenue from sales to such governmental entity, the financial health of the distributor could be substantially harmed, which could negatively affect our future sales to such distributor. Governments routinely investigate and audit government contractors' administrative processes, and any unfavorable audit could result in the government refusing to continue buying our products and services, a reduction of revenue or fines or civil or criminal liability if the audit uncovers improper or illegal activities. Any such penalties could adversely impact our results of operations in a material way. Finally, purchases by the U.S.

## Table of Contents

government may require certain products to be manufactured in the United States and other high cost manufacturing locations, and we may not manufacture all products in locations that meet the requirements of the U.S. government.

False detection of viruses or security breaches or false identification of spam or spyware could adversely affect our business.

Our antivirus and our intrusion prevention services may falsely detect viruses or other threats that do not actually exist. This risk is heightened by the inclusion of a “heuristics” feature in our products, which attempts to identify viruses and other threats not based on any known signatures but based on characteristics or anomalies that may indicate that a particular item is a threat. When our end-customers enable the heuristics feature in our products, the risk of falsely identifying viruses and other threats significantly increases. These false positives, while typical in the industry, may impair the perceived reliability of our products and may therefore adversely impact market acceptance of our products. Also, our antispyware services may falsely identify emails or programs as unwanted spam or potentially unwanted programs, or alternatively fail to properly identify unwanted emails or programs, particularly as spam emails or spyware are often designed to circumvent antispyware products. Parties whose emails or programs are blocked by our products may seek redress against us for labeling them as spammers or spyware, or for interfering with their business. In addition, false identification of emails or programs as unwanted spam or potentially unwanted programs may reduce the adoption of our products. If our system restricts important files or applications based on falsely identifying them as malware or some other item that should be restricted, this could adversely affect end-customers' systems and cause material system failures. Any such false identification of important files or applications could result in negative publicity, loss of end-customers and sales, increased costs to remedy any problem, and costly litigation.

If our internal network system is compromised by computer hackers, public perception of our products and services will be harmed.

We will not succeed unless the marketplace is confident that we provide effective network security protection. Because we provide network security products, we may be a more attractive target for attacks by computer hackers. Although we have not experienced significant damages from unauthorized access by a third-party of our internal network, if an actual or perceived breach of network security occurs in our internal systems it could adversely affect the market perception of our products and services. In addition, such a security breach could impair our ability to operate our business, including our ability to provide subscription and support services to our end-customers. If this happens, our revenue could decline and our business could suffer.

Our ability to sell our products is dependent on the quality of our technical support services, and our failure to offer high quality technical support services would have a material adverse effect on our sales and results of operations.

Once our products are deployed within our end-customers' networks, our end-customers depend on our technical support services, as well as the support of our channel partners, to resolve any issues relating to our products. If we or our channel partners do not effectively assist our customers in deploying our products, succeed in helping our customers quickly resolve post-deployment issues, and provide effective ongoing support, our ability to sell additional products and services to existing customers would be adversely affected and our reputation with potential customers could be damaged. Many enterprise, service provider and governmental entity end-customers require higher levels of support than smaller end-customers. If we fail to meet the requirements of the larger end-customers, it may be more difficult to execute on our strategy to increase our penetration with larger end-customers.

As a result, our failure to maintain high quality support services would have a material adverse effect on our business, financial condition and results of operations.

Changes in our provision for income taxes or adverse outcomes resulting from examination of our income tax returns could adversely affect our results.

Our provision for income taxes is subject to volatility and could be adversely affected by several factors, many of which are outside of our control, including:

- earnings being lower than anticipated in countries that have lower tax rates and higher than anticipated in countries that have higher tax rates;

- changes in the valuation of our deferred tax assets and liabilities;

- expiration of, or lapses in the research and development tax credit laws;

50

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Table of Contents

transfer pricing adjustments including the effect of acquisitions on our intercompany research and development and legal structure;

an increase in non-deductible expenses for tax purposes, including certain stock-based compensation expense, write-offs of acquired in-process research and development, and impairment of goodwill;

a decrease in the stock option exercises by our employees in some of our foreign subsidiaries that can cause an adverse transfer pricing adjustment;

tax costs related to intercompany realignments;

tax assessments resulting from income tax audits or any related tax interest or penalties that could significantly affect our income tax provision for the period in which the settlement takes place;

a change in our decision to indefinitely reinvest foreign earnings;

changes in accounting principles; or

changes in tax laws and regulations including possible changes in the United States to the taxation of earnings of our foreign subsidiaries, and the deductibility of expenses attributable to foreign income, or the foreign tax credit rules, or changes to the U.S. income tax rate, which would necessitate a revaluation of our deferred tax assets and liabilities.

Significant judgment is required to determine the recognition and measurement attribute prescribed in the FASB standard. In addition, the standard applies to all income tax positions, including the potential recovery of previously paid taxes, which if settled unfavorably could adversely impact our provision for income taxes or additional paid-in capital. Further, as a result of certain of our ongoing employment and capital investment actions and commitments, our income in certain foreign countries is subject to reduced tax rates and in some cases is wholly exempt from tax. Our failure to meet these commitments could adversely impact our provision for income taxes. In addition, we are subject to the continuous examination of our income tax returns by the Internal Revenue Service and other tax authorities. We regularly assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our provision for income taxes. There can be no assurance that the outcomes from these continuous examinations will not have an adverse effect on our results of operations.

Although we released our entire valuation allowance in fiscal 2009, we may in the future be required to establish a new valuation allowance. We will continue to assess the need for a valuation allowance on the deferred tax asset by evaluating both positive and negative evidence that may exist.

Forecasting our estimated annual effective tax rate is complex and subject to uncertainty, and there may be material differences between our forecasted and actual tax rates.

Forecasts of our income tax position and effective tax rate are complex and subject to uncertainty because our income tax position for each year combines the effects of a mix of profits earned and losses incurred by us in various tax jurisdictions with a broad range of income tax rates, as well as changes in the valuation of deferred tax assets and liabilities, the impact of various accounting rules and changes to these rules and tax laws, the results of examinations by various tax authorities, and the impact of any acquisition, business combination or other reorganization or financing transaction. To forecast our global tax rate, we estimate our pre-tax profits and losses by jurisdiction and forecast our tax expense by jurisdiction. If the mix of profits and losses, our ability to use tax credits, or effective tax

rates by jurisdiction is different than those estimated, our actual tax rate could be materially different than forecasted, which could have a material impact on our results of business, financial condition and results of operations.

As a multinational corporation, we conduct our business in many countries and are subject to taxation in many jurisdictions. The taxation of our business is subject to the application of multiple and sometimes conflicting tax laws and regulations as well as multinational tax conventions. Our effective tax rate is highly dependent upon the geographic distribution of our worldwide earnings or losses, the tax regulations and tax holidays in each geographic region, the availability of tax credits and carryforwards, and the effectiveness of our tax planning strategies. The application of tax laws and regulations is subject to legal and factual interpretation, judgment and uncertainty. Tax laws themselves are subject to change as a result of changes in fiscal policy, changes in legislation, and the evolution of regulations and court rulings. Consequently, taxing authorities may impose tax assessments or judgments against us that could materially impact our tax liability and/or our

## Table of Contents

effective income tax rate.

In addition, we may be subject to examination of our income tax returns by the Internal Revenue Service and other tax authorities. If tax authorities challenge the relative mix of U.S. and international income, our future effective income tax rates could be adversely affected. While we regularly assess the likelihood of adverse outcomes from such examinations and the adequacy of our provision for income taxes, there can be no assurance that such provision is sufficient and that a determination by a tax authority will not have an adverse effect on our business, financial condition and results of operations.

Our inability to acquire and integrate other businesses, products or technologies could seriously harm our competitive position.

In order to remain competitive, we may seek to acquire additional businesses, products, or technologies and intellectual property, such as patents. If we identify an appropriate acquisition candidate, we may not be successful in negotiating the terms of the acquisition, financing the acquisition, or effectively integrating the acquired business, product, technology or intellectual property into our existing business and operations. We may have difficulty incorporating acquired technologies, intellectual property or products with our existing product lines and maintaining uniform standards, controls, procedures and policies. Our due diligence may fail to identify all of the problems, liabilities or other shortcomings or challenges of an acquired business, product or technology, including issues with intellectual property, product quality or product architecture, regulatory compliance practices, revenue recognition or other accounting practices or employee or customer issues. In addition, any acquisitions we are able to complete may not be accretive to earnings and may not result in any synergies or other benefits we had expected to achieve, which could result in write-offs that could be substantial. Further, completing a potential acquisition and integrating acquired businesses, products, technologies or intellectual property will significantly divert management time and resources.

Our business is subject to the risks of warranty claims, product returns, product liability and product defects.

Our products are very complex and, despite testing prior to their release, have contained and may contain undetected defects or errors, especially when first introduced or when new versions are released. Product errors have affected the performance of our products and could delay the development or release of new products or new versions of products, adversely affect our reputation and our end-customers' willingness to buy products from us, and adversely affect market acceptance or perception of our products. Any such errors or delays in releasing new products or new versions of products or allegations of unsatisfactory performance could cause us to lose revenue or market share, increase our service costs, cause us to incur substantial costs in redesigning the products, cause us to lose significant end-customers, subject us to liability for damages and divert our resources from other tasks, any one of which could materially and adversely affect our business, results of operations and financial condition. Our products must successfully interoperate with products from other vendors. As a result, when problems occur in a network, it may be difficult to identify the sources of these problems. The occurrence of hardware and software errors, whether or not caused by our products, could delay or reduce market acceptance of our products, and have an adverse effect on our business and financial performance, and any necessary revisions may cause us to incur significant expenses. The occurrence of any such problems could harm our business, financial condition and results of operations.

Although we have limitation of liability provisions in our standard terms and conditions of sale, they may not fully or effectively protect us from claims as a result of federal, state or local laws or ordinances or unfavorable judicial decisions in the United States or other countries. The sale and support of our products also entail the risk of product liability claims. We maintain insurance to protect against certain claims associated with the use of our products, but our insurance coverage may not adequately cover any claim asserted against us. In addition, even claims that ultimately are unsuccessful could result in our expenditure of funds in litigation and divert management's time and

other resources.

Our business is subject to the risks of earthquakes, fire, power outages, floods and other catastrophic events, and to interruption by manmade problems such as civil unrest and terrorism.

A significant natural disaster, such as an earthquake, fire, a flood, or significant power outage could have a material adverse impact on our business, operating results and financial condition. Our corporate headquarters are located in the San Francisco Bay Area, a region known for seismic activity. In addition, natural disasters could affect our manufacturing vendors, suppliers or logistics providers' ability to perform services such as obtaining product components and manufacturing products on a timely basis and assisting with shipments on a timely basis. In the event our or our service providers' information technology systems or manufacturing or logistics abilities are hindered by any of the events discussed above, shipments could be delayed, resulting in missing financial targets, such as revenue and shipment targets, for a particular quarter. In addition, regional instability, acts of terrorism and other geo-political unrest could cause disruptions in our business or the business of

52

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## Table of Contents

our manufacturers, logistics providers, partners, or end-customers or the economy as a whole. Given our typical concentration of sales at each quarter end, any disruption in the business of our manufacturers, logistics providers, partners or end-customers that impacts sales at the end of our quarter could have a significant adverse impact on our quarterly results. All of the aforementioned risks may be augmented if the disaster recovery plans for us and our suppliers prove to be inadequate. To the extent that any of the above results in delays or cancellations of customer orders, or the delay in the manufacture, deployment or shipment of our products, our business, financial condition and results of operations would be adversely affected.

## Risks Related to Our Industry

The network security market is rapidly evolving and the complex technology incorporated in our products makes them difficult to develop. If we do not accurately predict, prepare for and respond promptly to technological and market developments and changing end-customer needs, our competitive position and prospects will be harmed.

The network security market is expected to continue to evolve rapidly. Moreover, many of our end-customers operate in markets characterized by rapidly changing technologies and business plans, which require them to add numerous network access points and adapt increasingly complex enterprise networks, incorporating a variety of hardware, software applications, operating systems and networking protocols. In addition, computer hackers and others who try to attack networks employ increasingly sophisticated techniques to gain access to and attack systems and networks. The technology in our products is especially complex because it needs to effectively identify and respond to new and increasingly sophisticated methods of attack, while minimizing the impact on network performance. Additionally, some of our new products and enhancements may require us to develop new hardware architectures and ASICs that involve complex, expensive and time consuming research and development processes. Although the market expects rapid introduction of new products or product enhancements to respond to new threats, the development of these products is difficult and the timetable for commercial release and availability is uncertain and there can be long time periods between releases and availability of new products. We have in the past and may in the future experience unanticipated delays in the availability of new products and services and fail to meet previously announced timetables for such availability. If we do not quickly respond to the rapidly changing and rigorous needs of our end-customers by developing and releasing and making available on a timely basis new products and services or enhancements that can respond adequately to new security threats, our competitive position and business prospects will be harmed.

Our URL database for our Web filtering service may fail to keep pace with the rapid growth of URLs and may not categorize websites in accordance with our end-customers' expectations.

The success of our Web filtering service depends on the breadth and accuracy of our URL database. Although our URL database currently catalogs millions of unique URLs, it contains only a portion of the URLs for all of the websites that are available on the Internet. In addition, the total number of URLs and software applications is growing rapidly, and we expect this rapid growth to continue in the future. Accordingly, we must identify and categorize content for our security risk categories at an extremely rapid rate. Our database and technologies may not be able to keep pace with the growth in the number of websites, especially the growing amount of content utilizing foreign languages and the increasing sophistication of malicious code and the delivery mechanisms associated with spyware, phishing and other hazards associated with the Internet. Further, the ongoing evolution of the Internet and computing environments will require us to continually improve the functionality, features and reliability of our Web filtering function. Any failure of our databases to keep pace with the rapid growth and technological change of the Internet will impair the market acceptance of our products, which in turn will harm our business, financial condition and results of operations.

In addition, our Web filtering service may not be successful in accurately categorizing Internet and application content to meet our end-customers' expectations. We rely upon a combination of automated filtering technology and human review to categorize websites and software applications in our proprietary databases. Our end-customers may not agree with our determinations that particular URLs should be included or not included in specific categories of our databases. In addition, it is possible that our filtering processes may place material that is objectionable or that presents a security risk in categories that are generally unrestricted by our users' Internet and computer access policies, which could result in such material not being blocked from the network. Conversely, we may miscategorize websites such that access is denied to websites containing information that is important or valuable to our customers. Any miscategorization could result in customer dissatisfaction and harm our reputation. Any failure to effectively categorize and filter websites according to our end-customers' and channel partners' expectations will impair the growth of our business.

If our new products and product enhancements do not achieve sufficient market acceptance, our results of operations and competitive position will suffer.

## Table of Contents

We spend substantial amounts of time and money to research and develop new products and enhanced versions of our existing products to incorporate additional features, improved functionality or other enhancements in order to meet our customers' rapidly evolving demands for network security in our highly competitive industry. When we develop a new product or an enhanced version of an existing product, we typically incur expenses and expend resources upfront to market, promote and sell the new offering. Therefore, when we develop and introduce new or enhanced products, they must achieve high levels of market acceptance in order to justify the amount of our investment in developing and bringing them to market.

Our new products or product enhancements could fail to attain sufficient market acceptance for many reasons, including:

- delays in releasing our new products or enhancements to the market;
- failure to accurately predict market demand in terms of product functionality and to supply products that meet this demand in a timely fashion;
- failure of our sales force and partners to focus on selling new products;
- inability to interoperate effectively with the networks or applications of our prospective end-customers;
- inability to protect against new types of attacks or techniques used by hackers;
- defects, vulnerabilities, errors or failures or any perceived possible defects, vulnerabilities, errors or failures;
- negative publicity about their performance or effectiveness;
- introduction or anticipated introduction of competing products by our competitors;
- poor business conditions for our end-customers, causing them to delay IT purchases;
- easing of regulatory requirements around security; and
- reluctance of customers to purchase products incorporating open source software.

If our new products or enhancements do not achieve adequate acceptance in the market, our competitive position will be impaired, our revenue will be diminished and the effect on our operating results may be particularly acute because of the significant research, development, marketing, sales and other expenses we incurred in connection with the new product or enhancement.

Unless we continue to develop better market awareness of our company and our products, our revenue may not continue to grow.

Increased market awareness of our capabilities and products is essential to our continued growth and our success in all of our markets, particularly for the large enterprise, service provider and governmental entities markets. We have historically had relatively low spending on certain marketing activities, and, if our marketing programs are not successful in creating market awareness of our company and products, our business, financial condition and results of operations will be adversely affected, and we will not be able to achieve sustained growth.

Demand for UTM products may be limited by market perception that UTM products are inferior to network security solutions from multiple vendors.

Sales of most of our products depend on increased demand for UTM products. If the UTM market fails to grow as we anticipate, our business will be seriously harmed. Target customers may view UTM “all-in-one” solutions as inferior to security solutions from multiple vendors because of, among other things, their perception that UTM products provide security functions from only a single vendor and do not allow users to choose “best-of-breed” defenses from among the wide range of dedicated security applications available. Target customers might also perceive that, by combining multiple security functions into a single platform, UTM solutions create a “single point of failure” in their networks, which means that an error, vulnerability or failure of the UTM product may place the entire network at risk. In addition, the market perception that UTM solutions may be suitable only for small and medium sized businesses because UTM lacks the performance capabilities and functionality of other solutions may harm our sales to large enterprise, service provider, and governmental entity end-customers. If the foregoing

## Table of Contents

concerns and perceptions become prevalent, even if there is no factual basis for these concerns and perceptions, or if other issues arise with the UTM market in general, demand for UTM products could be severely limited, which would limit our growth and harm our business, financial condition and results of operations. Further a successful and publicized targeted attack against us or another well known UTM vendor exposing a “single point of failure” could significantly increase these concerns and perceptions and may harm our business and results of operations.

We face intense competition in our market, especially from larger, better-known companies, and we may lack sufficient financial or other resources to maintain or improve our competitive position.

The market for network security products is intensely competitive, and we expect competition to intensify in the future. Our competitors include networking companies such as Cisco Systems, Inc., Juniper Networks, Inc., and security vendors such as Check Point Software Technologies Ltd., McAfee, Inc. (acquired by Intel Corporation), SonicWALL, Inc. (acquired by Dell, Inc.), Palo Alto Networks, Inc., and other point solution security vendors.

Many of our existing and potential competitors enjoy substantial competitive advantages such as:

• greater name recognition and longer operating histories;

- larger sales and marketing budgets and resources;

• broader distribution and established relationships with distribution partners and end-customers;

• access to larger customer bases;

• greater customer support resources;

• greater resources to make acquisitions;

• lower labor and development costs; and

• substantially greater financial, technical and other resources.

In addition, some of our larger competitors have substantially broader product offerings and leverage their relationships based on other products or incorporate functionality into existing products in a manner that discourages users from purchasing our products. These larger competitors often have broader product lines and market focus and are in a better position to withstand any significant reduction in capital spending by end-customers in these markets. Therefore, these competitors will not be as susceptible to downturns in a particular market. Also, many of our smaller competitors that specialize in providing protection from a single type of network security threat are often able to deliver these specialized network security products to the market more quickly than we can. Some of our smaller competitors are using third-party chips designed to accelerate performance. Conditions in our markets could change rapidly and significantly as a result of technological advancements or continuing market consolidation. Our current and potential competitors may also establish cooperative relationships among themselves or with third parties that may further enhance their resources. In addition, current or potential competitors may be acquired by third parties with greater available resources, such as Juniper's acquisition of NetScreen Technologies, Intel's acquisition of McAfee, Check Point's acquisition of Nokia's security appliance business and Dell's acquisition of SonicWALL. As a result of such acquisitions, our current or potential competitors might be able to adapt more quickly to new technologies and customer needs, devote greater resources to the promotion or sale of their products and services, initiate or withstand

substantial price competition, take advantage of acquisition or other opportunities more readily or develop and expand their product and service offerings more quickly than we do. In addition, our competitors may bundle products and services competitive with ours with other products and services. Customers may accept these bundled products and services rather than separately purchasing our products and services. Due to budget constraints or economic downturns, organizations may be more willing to incrementally add solutions to their existing network security infrastructure from competitors than to replace it with our solutions. These competitive pressures in our market or our failure to compete effectively may result in price reductions, fewer customer orders, reduced revenue and gross margins and loss of market share.

If functionality similar to that offered by our products is incorporated into existing network infrastructure products, organizations may decide against adding our appliances to their network, which would have an adverse effect on our business.

Large, well-established providers of networking equipment such as Cisco Systems, Inc. and Juniper Networks, Inc.

## Table of Contents

offer, and may continue to introduce, network security features that compete with our products, either in stand-alone security products or as additional features in their network infrastructure products. The inclusion of, or the announcement of an intent to include, functionality perceived to be similar to that offered by our security solutions in networking products that are already generally accepted as necessary components of network architecture may have an adverse effect on our ability to market and sell our products. Furthermore, even if the functionality offered by network infrastructure providers is more limited than our products, a significant number of customers may elect to accept such limited functionality in lieu of adding appliances from an additional vendor such as us. Many organizations have invested substantial personnel and financial resources to design and operate their networks and have established deep relationships with other providers of networking products, which may make them reluctant to add new components to their networks, particularly from other vendors such as us. In addition, an organization's existing vendors or new vendors with a broad product offering may be able to offer concessions that we are not able to match because we currently offer only network security products and have fewer resources than many of our competitors. If organizations are reluctant to add additional network infrastructure from new vendors or otherwise decide to work with their existing vendors, our business, financial condition and results of operations will be adversely affected.

### Risks Related to Intellectual Property

Our proprietary rights may be difficult to enforce, which could enable others to copy or use aspects of our products without compensating us.

We rely primarily on patent, trademark, copyright and trade secrets laws, confidentiality procedures and contractual provisions to protect our technology. Valid patents may not issue from our pending applications, and the claims eventually allowed on any patents may not be sufficiently broad to protect our technology or products. Any issued patents may be challenged, invalidated or circumvented, and any rights granted under these patents may not actually provide adequate defensive protection or competitive advantages to us. Patent applications in the United States are typically not published until at least 18 months after filing, or, in some cases, not at all, and publications of discoveries in industry-related literature lag behind actual discoveries. We cannot be certain that we were the first to make the inventions claimed in our pending patent applications or that we were the first to file for patent protection.

Additionally, the process of obtaining patent protection is expensive and time-consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. In addition, recent changes to the patent laws in the United States may bring into question the validity of certain software patents. As a result, we may not be able to obtain adequate patent protection or effectively enforce our issued patents.

Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our products or obtain and use information that we regard as proprietary. We generally enter into confidentiality or license agreements with our employees, consultants, vendors and customers, and generally limit access to and distribution of our proprietary information. However, we cannot assure you that the steps taken by us will prevent misappropriation of our technology. Policing unauthorized use of our technology or products is difficult. In addition, the laws of some foreign countries do not protect our proprietary rights to as great an extent as the laws of the United States, and many foreign countries do not enforce these laws as diligently as government agencies and private parties in the United States. From time-to-time, legal action by us may be necessary to enforce our patents and other intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement or invalidity. Such litigation could result in substantial costs and diversion of resources and could negatively affect our business, operating results and financial condition. If we are unable to protect our proprietary rights (including aspects of our software and products protected other than by patent rights), we may find ourselves at a competitive disadvantage to others who need not incur the additional expense, time and effort required

to create the innovative products that have enabled us to be successful to date.

Our products contain third-party open source software components, and failure to comply with the terms of the underlying open source software licenses could restrict our ability to sell our products.

Our products contain software modules licensed to us by third-party authors under “open source” licenses, including the GNU Public License, the GNU Lesser Public License (LGPL), the BSD License, the Apache License and others. From time-to-time, there have been claims against companies that distribute or use open source software in their products and services, asserting that open source software infringes the claimants' intellectual property rights. We could be subject to suits by parties claiming infringement of intellectual property rights in what we believe to be licensed open source software. Use and distribution of open source software may entail greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or other contractual protections regarding infringement claims or the quality of the code. Some open source licenses contain requirements that we make available source code for modifications or derivative works we create based upon the type of open source software we use. If we combine our proprietary software with open source



## Table of Contents

software in a certain manner, we could, under certain open source licenses, be required to release the source code of our proprietary software to the public. This would allow our competitors to create similar products with lower development effort and time and ultimately could result in a loss of product sales for us.

Although we monitor our use of open source software to avoid subjecting our products to conditions we do not intend, the terms of many open source licenses have not been interpreted by United States courts, and there is a risk that these licenses could be construed in a way that could impose unanticipated conditions or restrictions on our ability to commercialize our products. In this event, we could be required to seek licenses from third parties to continue offering our products, to make generally available, in source code form, our proprietary code, to re-engineer our products, or to discontinue the sale of our products if re-engineering could not be accomplished on a timely basis, any of which could adversely affect our business, operating results and financial condition.

Claims by others that we infringe their proprietary technology or other litigation matters could harm our business.

Patent and other intellectual property disputes are common in the network security industry. Third parties have asserted and may in the future assert claims of infringement of intellectual property rights against us. They may also assert such claims against our end-customers or channel partners whom we typically indemnify against claims that our products infringe the intellectual property rights of third parties. As the number of products and competitors in our market increases and overlaps occur, infringement claims may increase. Any claim of infringement by a third-party, even those without merit, could cause us to incur substantial costs defending against the claim and could distract our management from our business. In addition, litigation may involve patent holding companies or other adverse patent owners who have no relevant product revenue and against whom our own patents may therefore provide little or no deterrence or protection.

Although third parties may offer a license to their technology, the terms of any offered license may not be acceptable, and the failure to obtain a license or the costs associated with any license could cause our business, financial condition and results of operations to be materially and adversely affected. In addition, some licenses may be non-exclusive, and therefore our competitors may have access to the same technology licensed to us.

Alternatively, we may be required to develop non-infringing technology, which could require significant time, effort and expense and may ultimately not be successful. Furthermore, a successful claimant could secure a judgment or we may agree to a settlement that prevents us from distributing certain products or performing certain services or that requires us to pay substantial damages (including treble damages if we are found to have willfully infringed such claimant's patents or copyrights), royalties or other fees. Any of these events could seriously harm our business, financial condition and results of operations.

From time to time we are subject to lawsuits claiming patent infringement, and there are lawsuits claiming patent infringement currently pending, as discussed in "Part II-Item 1-Legal Proceedings." We are also subject to other litigation in addition to patent infringement claims, such as employment-related litigation and disputes, general commercial litigation, and other forms of litigation and disputes, including stockholder litigation. If we are unsuccessful in defending any such claims, our operating results and financial condition and results may be materially and adversely affected. For example, we may be required to pay substantial damages and could be prevented from selling certain of our products. Litigation, with or without merit, could negatively impact our business, reputation, and sales in a material fashion. In addition to the lawsuits described in "Legal Proceedings," several other non-practicing patent holding companies have sent us letters proposing that we license certain of their patents, and given this and the proliferation of lawsuits in our industry and other similar industries by both non-practicing entities and operating entities, we expect that we will be sued for patent infringement in the future, regardless of the merits of any such lawsuits. The cost to defend such lawsuits and any adverse result in such lawsuits could have a material adverse effect

on our results of operations and financial condition.

We rely on the availability of third-party licenses.

Many of our products include software or other intellectual property licensed from third parties. It may be necessary in the future to renew licenses relating to various aspects of these products or to seek new licenses for existing or new products. There can be no assurance that the necessary licenses would be available on acceptable terms, if at all. The inability to obtain certain licenses or other rights or to obtain such licenses or rights on favorable terms, or the need to engage in litigation regarding these matters, could result in delays in product releases until equivalent technology can be identified, licensed or developed, if at all, and integrated into our products and may have a material adverse effect on our business, operating results, and financial condition. Moreover, the inclusion in our products of software or other intellectual property licensed from third parties on a nonexclusive basis could limit our ability to differentiate our products from those of our competitors.

## Table of Contents

### Risks Related to Ownership of our Common Stock

As a public company, we are subject to compliance initiatives that will require substantial time from our management and result in significantly increased costs that may adversely affect our operating results and financial condition.

The Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as well as other rules implemented by the SEC and The NASDAQ Stock Market, impose various requirements on public companies, including requiring changes in corporate governance practices. These and proposed corporate governance laws and regulations under consideration may further increase our compliance costs. If compliance with these various legal and regulatory requirements diverts our management's attention from other business concerns, it could have a material adverse effect on our business, financial condition and results of operations. The Sarbanes-Oxley Act requires, among other things, that we assess the effectiveness of our internal control over financial reporting annually and disclosure controls and procedures quarterly. We are in the process of completing our evaluation of our internal controls over financial reporting for fiscal 2012 as required by Section 404 of the Sarbanes-Oxley Act of 2002. Although our assessment, testing and evaluation resulted in our conclusion that as of December 31, 2011, our internal controls over financial reporting were effective, we cannot predict the outcome of our testing in 2012 or future periods. If our internal controls or disclosure controls are ineffective in future periods, our business and reputation could be harmed. We may incur additional expenses and commitment of management's time in connection with further evaluations, both of which could materially increase our operating expenses and accordingly reduce our operating results.

Changes in financial accounting standards may cause adverse unexpected fluctuations and affect our reported results of operations.

A change in accounting standards or practices and varying interpretations of existing accounting pronouncements, such as changes to standards related to the increased use of fair value measure, financial instruments, and the potential requirement that U.S. registrants prepare financial statements in accordance with International Financial Reporting Standards ("IFRS"), could have a significant effect on our reported financial results or the way we conduct our business. If we do not ensure that our systems and processes are aligned with the new standards, we could encounter difficulties generating quarterly and annual financial statements in a timely manner, which would have an adverse effect on our business and our ability to meet our reporting obligations.

If securities or industry analysts stop publishing research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. If we do not maintain adequate research coverage or if one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

The trading price of our common stock is likely to be volatile.

The market price of our common stock is subject to wide fluctuations in response to, among other things, the risk factors described in this periodic report, and other factors such as rumors or fluctuations in the valuation of companies perceived by investors to be comparable to us. For example, in the three months ended September 30, 2012, the price of our common stock ranged from \$20.93 to \$27.68.

Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political, and market conditions, such as recessions, interest rate changes or international currency fluctuations, may negatively affect the market price of our common stock.

In the past, many companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

Our failure to raise additional capital or generate the significant capital necessary to expand our operations and invest in

58

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Table of Contents

new products could reduce our ability to compete and could harm our business.

We expect that our existing cash and cash equivalents will be sufficient to meet our anticipated cash needs for at least the next 12 months. If we need to raise additional funds in the future, we may not be able to obtain additional debt or equity financing on favorable terms, if at all. If we raise additional equity financing, our stockholders may experience significant dilution of their ownership interests and the per-share value of our common stock could decline.

Furthermore, if we engage in debt financing, the holders of debt would have priority over the holders of common stock and we may be required to accept terms that restrict our ability to incur additional indebtedness. We may also be required to take other actions that would otherwise be in the interests of the stockholders and force us to maintain specified liquidity or other ratios, any of which could harm our business, operating results and financial condition. If we need additional capital and cannot raise it on acceptable terms, we may not be able to, among other things:

- develop or enhance our products and services;
- continue to expand our sales and marketing and research and development organizations;
- acquire complementary technologies, products or businesses;
- expand operations, in the United States or internationally;
- hire, train and retain employees; or
- respond to competitive pressures or unanticipated working capital requirements.

Our failure to do any of these things could seriously harm our business, financial condition and results of operations.

Concentration of ownership among our existing executive officers, directors and their affiliates may prevent new investors from influencing significant corporate decisions.

As of October 23, 2012, our executive officers, directors and their affiliates beneficially owned, in the aggregate, approximately 17% of our outstanding common stock. As a result, these stockholders are able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions. This control could have the effect of delaying or preventing a change of control of our company or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders.

Anti-takeover provisions contained in our certificate of incorporation and bylaws, as well as provisions of Delaware law, could impair a takeover attempt.

Our certificate of incorporation, bylaws and Delaware law contain provisions that could have the effect of rendering more difficult, delaying or preventing an acquisition deemed undesirable by our board of directors. Our corporate governance documents include provisions:

- providing for a classified board of directors whose members serve staggered three-year terms;
- authorizing “blank check” preferred stock, which could be issued by the board without stockholder approval and may contain voting, liquidation, dividend and other rights superior to our common stock;

limiting the liability of, and providing indemnification to, our directors and officers;

limiting the ability of our stockholders to call and bring business before special meetings;

requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors;

controlling the procedures for the conduct and scheduling of board and stockholder meetings; and

providing the board of directors with the express power to postpone previously scheduled annual meetings and to cancel previously scheduled special meetings.

Table of Contents

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prevents some stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of a substantial majority of all of our outstanding common stock.

Any provision of our certificate of incorporation or bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds

Not applicable.

ITEM 3. Defaults upon Senior Securities

Not applicable.

ITEM 4. Mine Safety Disclosures

Not applicable.

ITEM 5. Other Information

None.

ITEM 6. Exhibits

The exhibits listed in the accompanying Exhibit Index are filed or incorporated by reference as part of this Quarterly Report on Form 10-Q.

Table of Contents

SIGNATURES

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.

Date: October 30, 2012

FORTINET, INC.

By: /s/ NANCY BUSH

Nancy Bush

Vice President and Interim Chief Financial Officer

Ken Goldman

Vice President and Chief Financial Officer



Table of Contents

## EXHIBIT INDEX

Exhibit Number	Description	Incorporated By Reference Herein Form	Date
10.1	Promotion letter, dated September 26, 2012, by and between the Company and Nancy Bush		
31.1*	Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002		
31.2*	Certification of Interim Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002		
32.1*	Certifications of Chief Executive Officer and Interim Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002		
101.SCH**	XBRL Taxonomy Extension Schema Document		
101.CAL**	XBRL Taxonomy Extension Calculation Linkbase Document		
101.PRE**	XBRL Taxonomy Extension Presentation Linkbase Document		
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document		
101.LAB**	XBRL Taxonomy Extension Label Linkbase Document		
101.INS**	XBRL Instance Document		

\* Filed herewith.

\*\* XBRL information is furnished and not filed for purposes of Sections 11 and 12 of the Securities Act of 1933 and Section 18 of the Securities Exchange Act of 1934, and is not subject to liability under those sections, is not part of any registration statement or prospectus to which it relates and is not incorporated or deemed to be incorporated by reference into any registration statement, prospectus or other document.