

GIGA TRONICS INC

Form S-3/A

August 20, 2015

As filed with the Securities and Exchange Commission on August 20, 2015

Registration No. 333- 205051

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1 to

FORM S-3 REGISTRATION STATEMENT

UNDER THE SECURITIES ACT OF 1933

Giga-tronics Incorporated

(Exact Name of Registrant as Specified in its Charter)

California

(State or Other Jurisdiction of Incorporation or Organization)

94-2656341

(I.R.S. Employer Identification Number)

4650 Norris Canyon Road

San Ramon, CA 94583

(925) 328-4650

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

John R. Regazzi

Chief Executive Officer

Giga-tronics Incorporated

4650 Norris Canyon Road

San Ramon, CA 94583

(925) 328-4650

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

With Copies to:

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Sheppard Mullin Richter & Hampton LLP

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San Francisco, California 94111

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

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

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be Registered	Proposed maximum offering price per unit (1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee (3)
Common Stock, no par value(2)	3,956,456	\$1.845	\$7,299,661.32	\$848.22

(1)

Estimated solely for the purpose of calculating the registration fee and based on the average of the high and low sales prices of our Common Stock of \$1.88 on June 15, 2015 on the Nasdaq Capital Market pursuant to Rule 457(c) under the Securities Act of 1933, as amended.

- Includes shares preferred stock purchase rights attached to each share of common stock under a Rights Agreement
- (2) between the issuer and American Stock Transfer & Trust Company, LLC dated as of January 23, 2013, as amended to date.
 - (3) Previously paid.
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The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. The selling shareholder may not sell these securities until the Securities and Exchange Commission declares our registration statement effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED _____, 2015

PRELIMINARY PROSPECTUS

GIGA-TRONICS INCORPORATED

3,956,456 SHARES OF COMMON STOCK

This prospectus relates to the potential resale from time to time of our common stock by Alara Capital AVI II, LLC (“Alara”). The prospectus relates to 1,010,034 shares of common stock currently held by Alara and 2,946,422 shares of common stock that Alara has the right to acquire, consisting of 999,700 shares issuable upon conversion of 9,997 outstanding shares of our Series B Convertible Voting Perpetual Preferred Stock (“Series B Preferred Stock”), 342,465 shares issuable upon conversion of 3,424.65 outstanding shares of Series C Convertible Voting Perpetual Preferred Stock (“Series C Preferred Stock”), 511,186 shares issuable upon conversion of 5,111.86 shares of our Series D Convertible Voting Perpetual Preferred Stock (“Series D Preferred Stock”) and 1,093,071 shares issuable upon the exercise of warrants. Alara acquired the 1,010,034 shares of common stock currently held by it through the exercise of warrants on February 16, 2015, February 23, 2015 and May 14, 2015. The exercised warrants were previously issued to Alara in three private placements completed on November 10, 2011, February 25, 2013 and July 8, 2013. Alara acquired the preferred shares in three private placements completed on November 10, 2011, February 25, 2013 and July 8, 2013, respectively. Alara acquired warrants to purchase 1,093,071 shares of common stock which have not yet been exercised by it in two private placements completed on February 16, 2015 and February 23, 2015.

We refer to shares of our common stock as the “commons shares” and shares of our preferred stock as “preferred shares,” regardless whether such shares are Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock.

The preferred shares are convertible into common shares and the unexercised warrants are exercisable for common shares by Alara at any time. Alara and its successors, including transferees, which we collectively refer to as the “selling shareholder,” may offer the securities from time to time directly or through underwriters, broker-dealers or agents and in one or more public or private transactions and at fixed prices, prevailing market prices, at prices related to prevailing market prices or at negotiated prices. If these securities are sold through underwriters, broker-dealers or agents, the selling shareholder will be responsible for underwriting discounts or commissions or agents’ commissions.

We will not receive any proceeds from the sale of the common shares by the selling shareholder. The registration of the common shares does not necessarily mean that the selling shareholder will sell any of the common shares. The timing and amount of any sale are within the selling shareholder’s sole discretion, subject to certain restrictions. See “Plan of Distribution.”

Our common stock is traded on the Nasdaq Capital Market under the symbol “GIGA.” On June 17, 2015, the closing price of our common stock on Nasdaq was \$1.82 per share. You are urged to obtain current market quotations of the common stock.

Investing in our securities involves a high degree of risk. See “Risk Factors” beginning on page 8.

Our principal executive offices are located at 4650 Norris Canyon Road, San Ramon, California, 94583, and our telephone number is (925) 328-4650. Our Internet address is <http://www.gigatronics.com>.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2015.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we filed with the Securities and Exchange Commission (the “SEC”) using a “shelf” registration process. Under this shelf registration process, the selling shareholder may, from time to time, offer and sell, in one or more offerings, the securities described in this prospectus.

We may provide a prospectus supplement containing specific information about the terms of a particular offering by the selling shareholder. The prospectus supplement may add, update or change information in this prospectus. If the information in this prospectus is inconsistent with a prospectus supplement, you should rely on the information in that prospectus supplement. You should read both this prospectus and, if applicable, any prospectus supplement. See “Where You Can Find More Information” for more information.

Whenever we refer to the “Company,” “we,” “our” or “us” in this prospectus, we mean Giga-tronics Incorporated and its consolidated subsidiaries, unless the context suggests otherwise. When we refer to “you” or “yours,” we mean investors considering a purchase of the securities.

SUMMARY

The Company

Giga-tronics Incorporated includes the operations of the Giga-tronics Division and Microsource Inc. (Microsource), a wholly owned subsidiary of the Company. The Giga-tronics Division designs, manufactures and markets a broad line of test and measurement equipment used in the development, test and maintenance of wireless communications products and systems, flight navigational equipment, electronic defense systems and automatic testing systems. These products are used primarily in the design, production, repair and maintenance of commercial telecommunications, radar, and electronic warfare equipment.

Microsource develops and manufactures a broad line of YIG (Yttrium, Iron, Garnet) tuned oscillators, filters and microwave synthesizers, which are used by its customers in operational applications and in manufacturing a wide variety of microwave instruments and devices.

Giga-tronics was incorporated in the State of California on March 5, 1980. Our principal executive offices are located at 4650 Norris Canyon Road, San Ramon, California 94583, and our telephone number at that location is (925) 328-4650. Our website address is <http://www.gigatronics.com>.

Sales of Preferred Stock

Series B Preferred Stock

On November 10, 2011, we sold 9,997 shares of our Series B Preferred Stock to Alara for \$2,199,000 in cash pursuant to a Securities Purchase Agreement entered into on October 31, 2011. The Series B Preferred Stock was priced at \$220 per share. Each share of Series B Preferred Stock is convertible at the option of the holder into 100 shares of our common stock, subject to customary adjustments for stock splits, stock dividends, recapitalizations and similar transactions.

The Company also issued to Alara a Warrant to purchase up to 848,684 additional shares of common stock of the Company for \$3.30 per share. As discussed below, the Warrant was modified on February 25, 2013 to reduce the number of shares exercisable under the Warrant to 506,219, and was further modified again on July 8, 2013 to reduce the exercise price to \$1.43 per share and extend the expiration date from August 7, 2014 to August 7, 2015.

Series C Preferred Stock

On February 25, 2013, we sold 3,424.65 shares of our Series C Preferred Stock to Alara for \$500,000, or approximately \$146.00 per share, pursuant to a Securities Purchase Agreement dated as of February 19, 2013. Each share of Series C Preferred Stock is convertible at the option of the holder into 100 shares of our common stock, subject to adjustments for stock splits, stock dividends, recapitalizations and similar transactions.

In accordance with the terms of the Securities Purchase Agreement dated February 19, 2013, we and Alara agreed to modify the Warrant that we issued to Alara on November 10, 2011 so that it would represent the right to purchase 506,219 shares at the price of \$3.30 per share, rather than 848,684 shares.

Series D Preferred Stock

On July 8, 2013, we sold Alara 5,111.86 shares of Series D Preferred Stock for approximately \$817,000 pursuant to a Securities Purchase Agreement dated as of June 27, 2013. Each share of Series D Preferred Stock is convertible at the option of the holder into 100 shares of our common stock, subject to customary adjustments for stock splits, stock dividends, recapitalizations and similar transactions.

In accordance with the terms of the Securities Purchase Agreement dated June 27, 2013, we issued Alara a new warrant representing the right to acquire up to 511,186 shares of our common stock at the price of \$1.43 per share, subject to adjustments for stock splits, stock dividends, reclassifications and similar events. This warrant was scheduled to expire on January 8, 2016. This warrant was exercised in February 2015 and May 2015.

Under the terms of the Securities Purchase Agreement dated June 27, 2013, the Company and Alara agreed to terminate the Investor's right to acquire 506,219 common shares at \$3.30 per share from a previously issued warrant and issue a new warrant to purchase 506,219 common shares at \$1.43 per share (the "Amended Warrant"). The Amended Warrant was issued in July 2013 and was exercised in full in February 2015.

Exercise of Warrants

On February 16, 2015, Alara exercised warrants held by it to acquire 824,435 shares of our common stock, pursuant to a Securities Purchase Agreement dated February 16, 2015. On February 23, 2015, Alara exercised warrants held by it to acquire 178,383 shares of our common stock, pursuant to Amendment No. 1 to Securities Purchase Agreement and Investor Rights Agreement dated February 23, 2015. On May 14, 2015, Alara exercised the remaining 14,587 warrants in a cashless exercise resulting in Alara acquiring 7,216 of shares of our common stock. Collectively, these exercises resulted in the acquisition of 1,010,034 shares of our common stock by Alara.

In accordance with the terms of the Securities Purchase Agreement dated February 16, 2015, we issued Alara a new warrant representing the right to acquire up to 898,634 shares of our common stock at the price of \$1.78 per share, subject to adjustments for stock splits, stock dividends, reclassifications and similar events. This warrant will expire on February 16, 2020. In accordance with the terms of Amendment No. 1 to Securities Purchase Agreement and

Investor Rights Agreement dated February 23, 2015, we issued Alara (i) a new warrant representing the right to acquire up to 194,437 shares of our common stock at the price of \$1.76 per share, subject to adjustments for stock splits, stock dividends, reclassifications and similar events, and (ii) an amended and restated warrant representing the right to acquire up to 14,587 shares of our common stock at the price of \$1.43 per share, representing the unexercised portion of the warrants issued June 27, 2013. The new warrant will expire on February 23, 2020 and the amended and restated warrant was exercised on May 14, 2015.

Investor Rights Agreement

Simultaneous with each sale of securities to Alara, we entered into an Investor Rights Agreement with Alara providing Alara with certain registration rights with respect to the common shares underlying the securities. Among other things, the Investor Rights Agreement requires us to file one or more resale registration statements covering the common stock issuable upon the conversion of the Series B Preferred Stock, the Series C Preferred Stock and the Series D Stock and the exercise of the warrants. In addition, in connection with the sale of the Series B Preferred Stock, we agreed that Alara may designate two persons to serve on our board of directors.

The Offering

The selling shareholder may offer its common shares from time to time through one or more underwriters, brokers or dealers on the Nasdaq Capital Market at market prices prevailing at the time of sale, in one or more negotiated transactions acceptable to such shareholder or in private transactions. We will not receive any proceeds from the sale of the common shares offered by this prospectus.

RISK FACTORS

An investment in our securities involves significant risks. You should carefully consider the risks and uncertainties and the risk factors set forth in the documents and reports filed with the SEC that are incorporated by reference into this prospectus, as well as any risks described in any applicable prospectus supplement, before you make an investment decision regarding the securities. Such risks and uncertainties include, among other things:

our potential inability to obtain necessary capital to finance our operations;

market demand for and our ability to deliver our new product platform;

our potential loss of AS9100C certification, which could result in a decrease in revenues if it occurs and we are unable to regain such certification within a reasonable period;

our ability to remain listed for trading on the Nasdaq Capital Market;

U.S. and international general economic conditions;

our ability to develop competitive products in a market with rapidly changing technology and standards;

our dependence on the defense industry;

risks related to the volatility of the market price of our common stock;

changes in our credit profile;

a decline in demand for certain of the products we manufacture;

environmental, health and safety laws and regulations and the interpretation or implementation thereof;

potential product liability claims against us; and

the potential loss of key personnel.

Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our business operations.

FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference contain statements that are considered “forward-looking statements” within the meaning of United States securities laws. In addition, the Company and its management may make other written or oral communications from time to time that contain forward-looking statements.

Forward-looking statements, including statements about industry trends, management’s future expectations and other matters that do not relate strictly to historical facts, are based on assumptions by management, and are often identified by such forward-looking terminology as “expect,” “look,” “believe,” “anticipate,” “estimate,” “seek,” “may,” “will,” “trend,” “goal” or similar statements or variations of such terms. Forward-looking statements may include, among other things, statements about the Company’s confidence in its strategies and its expectations about general market conditions, financial performance, market and regulatory trends and developments, acquisitions and divestitures, new technologies, services and opportunities and earnings.

Forward-looking statements are subject to various risks and uncertainties, which change over time, are based on management’s expectations and assumptions at the time the statements are made, and are not guarantees of future results. Management’s expectations and assumptions, and the continued validity of the forward-looking statements, are subject to change due to a broad range of factors affecting the national and global economies, the equity, debt, currency and other financial markets, as well as factors specific to us.

Actual outcomes and results may differ materially from what is expressed in our forward-looking statements and from our historical financial results due to the factors discussed elsewhere in this prospectus or disclosed in our other SEC filings. Forward-looking statements should not be relied upon as representing our expectations or beliefs as of any date subsequent to the time this prospectus is filed with the SEC. We undertake no obligation to revise the forward-looking statements contained in this prospectus to reflect events after the time it is filed with the SEC. The factors discussed herein are not intended to be a complete summary of all risks and uncertainties that may affect our businesses. Though we strive to monitor and mitigate risk, we cannot anticipate all potential economic, operational and financial developments that may adversely impact our operations and our financial results.

Forward-looking statements should not be viewed as predictions, and should not be the primary basis upon which investors evaluate the Company. Any investor in our common stock should consider all risks and uncertainties disclosed in our SEC filings described below under the heading “Where You Can Find More Information,” all of which is accessible on the SEC’s website at <http://www.sec.gov>.

DESCRIPTION OF CAPITAL STOCK

General

We have 40,000,000 shares of authorized common stock, no par value, of which 6,293,281 (excluding 432,000 shares of unvested restricted stock) shares were outstanding as of June 16, 2015. We have 1,000,000 shares of authorized preferred stock, of which 250,000 are designated as Series A Junior Participating Preferred Stock (“Series A Preferred Stock”), none of which are outstanding; 10,000 are designated as Series B Preferred Stock of which 9,997 are outstanding; 3,500 shares of Series C Preferred Stock of which 3,424.65 are outstanding, and 6,000 shares of Series D Preferred Stock of which 5,111.86 are outstanding. Holders of our preferred stock are entitled to vote on an as-converted basis together with holders of our common stock on all matters submitted to a vote of shareholders. As of June 16, 2015, our executive officers and directors held options covering 1,136,500 shares of common stock which they had not yet exercised and 432,000 shares of unvested restricted stock. We had approximately 113 shareholders of record of our common stock at June 16, 2015.

Holders of our common stock are entitled to vote at all elections of directors and to vote or consent on all questions at the rate of one vote for each share. Shareholders may vote cumulatively in the election of directors. Under cumulative voting, every shareholder entitled to vote may give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of shares held or, the shareholder may distribute these votes on the same principle among as many candidates as the shareholder desires.

Subject to the rights, privileges, preferences, restrictions and conditions attaching to any other class or series of shares of the Company, holders of common stock have the right to receive any dividends we declare and pay on our common stock. They also have the right to receive our remaining assets and funds upon liquidation, dissolution or winding-up, if any, after we pay to the holders of any series of preferred stock the amounts they are entitled to, and after we pay all our debts and liabilities.

Our common stock is subject and subordinate to any rights and preferences granted under our Articles of Incorporation and any rights and preferences which may be granted to any series of preferred stock by our board pursuant to the authority conferred upon our board under the Articles of Incorporation.

Subject to the participation rights of our outstanding preferred stock, our board of directors may declare dividends on our common stock out of the surplus or net profits as in their discretion may seem proper. During 2013 and 2014, we did not pay dividends on our common stock. To date, our policy has been to use our capital toward enhancement of our product position rather than paying dividends on our common stock.

The common shares offered by this prospectus and any related prospectus supplement are fully paid and non-assessable and do not have and are not subject to any preemptive or similar rights.

Our common stock is listed on the Nasdaq Capital Market under the symbol “GIGA”.

Rights Plan and Series A Junior Participating Preferred Stock

We have adopted a shareholder rights plan. Under the plan, holders of common stock will have the right to purchase shares of our Series A Preferred Stock at a discount to market value if a third party acquires, or in some cases publicly announces an intention to acquire, 20% (44% in the case of Alara or its limited partner, Spring Mountain Capital, L.P.) or more of the outstanding common stock of the Company without the prior consent of our board of directors. Prior to the acquisition by a person or group of 20% or more of the outstanding common stock, these rights are redeemable for \$0.001 per right at the option of our board of directors. These rights will expire on February 4, 2018.

Shares of Series A Preferred Stock purchasable upon exercise of the rights will not be redeemable. Each share of Series A Preferred Stock will generally be entitled to a minimum preferential dividend payment of 100 times the dividend declared per share of common stock. In the event of liquidation, the holders of the shares of Series A Preferred Stock will be entitled to a minimum preferential liquidation payment of \$100.00 per share but will be entitled to an aggregate payment of 100 times the payment made per share of common stock. Each share of Series A Preferred Stock will have 100 votes, voting together with our common stock. Finally, in the event of any merger, consolidation or other transaction in which shares of our common stock are exchanged, each share of Series A Preferred Stock will be entitled to receive 100 times the amount received per shares of common stock. These rights are protected by customary anti-dilution provisions. Because of the nature of the Series A Preferred Stock’s dividend, liquidation and voting rights, the value of the one one-hundredth interest in a share of Series A Preferred Stock purchasable upon exercise of a right should approximate the value of one share of common stock.

Our shareholder rights plan could make it more difficult for a third party to acquire control of the Company without the approval of the board of directors, even if our shareholders might benefit from the acquisition or otherwise favor the acquisition.

Series B Preferred Stock

We have 9,997 shares of our Series B Preferred Stock outstanding, all held by Alara. Each share of Series B Preferred Stock is convertible at the option of the holder into 100 shares of our common stock, subject to customary adjustments for stock splits, stock dividends, recapitalizations and similar transactions. Each share of Series B Preferred Stock has a liquidation preference of \$231, which is equal to 105% of the purchase price. If we paid a dividend on our common stock prior to December 31, 2013, we would have been required to pay a dividend on the Series B Preferred Stock equal to 110% and if we pay a dividend on our common stock on or after December 31, 2013, we are required to pay a dividend on the Series B Preferred stock equal to 100% of the cash dividend that would be payable on the number of shares of common stock into which each share of Series B Preferred Stock is then convertible. The Series B Preferred Stock generally votes together with the common stock, the Series C Preferred Stock and the Series D Preferred Stock, on an as-converted basis, on each matter submitted to the vote or approval of the holders of common stock, and votes as a separate class with respect to certain actions that adversely affect the rights of the Series B Preferred Stock and on other matters as required by law.

Series C Preferred Stock

We have 3,424.65 shares of our Series C Preferred Stock outstanding, all held by Alara. Each share of Series C Preferred Stock is convertible at the option of the holder into 100 shares of our common stock, subject to adjustments for stock splits, stock dividends, recapitalizations and similar transactions. Each share of Series C Preferred Stock has a liquidation preference of approximately \$146. If we paid a dividend on our common stock prior to January 1, 2014 or if we pay a dividend on our common stock on or after January 1, 2014, we are required to pay a dividend on the Series C Preferred Stock equal to 110% or 100%, respectively, of the cash dividend that would be payable on the number of shares of common stock into which each share of Series C Preferred Stock is then convertible. The Series C Preferred Stock generally votes on an as-converted basis together with our common stock, the Series B Preferred Stock and the Series D Preferred Stock on each matter submitted to the vote or approval of the holders of common stock, and would vote as a separate class with respect to certain actions that adversely affect the rights of the Series C Preferred Stock and on other matters as required by law.

Series D Preferred Stock

We have 5,111.86 of Series D Preferred Stock outstanding, all held by Alara. Each share of Series D Preferred Stock is convertible at the option of the holder into 100 shares of our common stock subject to customary adjustments for stock splits, stock dividends, recapitalizations and similar transactions. Each share of Series D Preferred Stock has a liquidation preference of \$143.00. If we paid a dividend on our common stock prior to June 1, 2014, we would have been required to pay a dividend on the Series D Preferred Stock equal to 110% and if we pay a dividend on our common stock on or after June 1, 2014, we will be required to pay a dividend on the Series D Preferred Stock equal to 100%, of the cash dividend that would be payable on the shares of common stock into which each share of Series D Preferred Stock is then convertible. The Series D Preferred Stock generally votes together with the common stock, the Series B Preferred Stock and the Series C Preferred Stock on an as-converted basis, on each matter submitted to the vote or approval of the holders of common stock, and votes as a separate class with respect to certain actions that adversely affect the rights of the Series D Preferred Stock and on other matters as required by law.

Remaining Authorized Preferred Stock

The remaining 730,500 undesignated shares of preferred stock authorized under our Articles of Incorporation are typically referred to as “blank check” preferred stock. This term refers to stock for which the rights and restrictions are determined by the board of directors of a corporation. Except in limited circumstances, the Company’s Articles of Incorporation authorize the Company’s board of directors to issue new shares of common stock or preferred stock without further shareholder action. Our Articles of Incorporation give our board of directors the authority at any time to:

divide the remaining authorized but unissued shares of preferred stock into series;

determine the designations, number of shares, relative rights, preferences and limitations of any series of preferred stock;

increase the number of shares of any preferred series; and

decrease the number of shares in a preferred series, but not to a number less than the number of shares outstanding.

The issuance of additional common or preferred stock may be viewed as having adverse effects upon the holders of common stock. Holders of our common stock will not have preemptive rights with respect to any newly issued stock. Our board of directors could adversely affect the voting power of holders of stock in our Company by issuing shares of preferred stock with certain voting, conversion and/or redemption rights. In the event of a proposed merger, tender offer or other attempt to gain control of our Company that the board of directors does not believe to be in the best interests of our shareholders, the board of directors could issue additional preferred stock, which could make any such takeover attempt more difficult to complete. The Company’s board of directors does not intend to issue any preferred stock except on terms that the board deems to be in the best interests of the Company and our shareholders.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company LLC, 59 Maiden Lane, Plaza Level, New York, NY 10038.

USE OF PROCEEDS

All securities sold pursuant to this prospectus will be offered and sold by the selling shareholder. We will not receive any of the proceeds from such sales.

PLAN OF DISTRIBUTION

The selling shareholder, which as used in this prospectus includes donees, pledgees, transferees or other successors-in-interest selling shares of common or interests in common shares received after the date of this prospectus from Alara as a gift, pledge, distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling shareholder may use any one or more of the following methods when disposing of shares or interests therein:

ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;

purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

an exchange distribution in accordance with the rules of the applicable exchange;

privately negotiated transactions;

