

FUNCTION (X) INC.
Form S-1/A
October 07, 2011

As filed with the Securities and Exchange Commission on October 7, 2011
Registration No. 333- 174481

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-1/A
(Amendment No. 1)

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

FUNCTION(X) INC.
(Exact name of registrant as specified in its charter)

Delaware	7370	33-0637631
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

902 Broadway
11th Floor

New York, New York 10010

212-231-0092

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Robert F.X. Sillerman
Executive Chairman
902 Broadway
11th Floor
New York, New York 10010
212-231-0092

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Christopher S. Auguste, Esq.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of Americas
New York, New York 10036

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

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, check the following box. [x]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) 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 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 post-effective amendment filed pursuant to Rule 462(d) 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. []

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 [] (Do not check if a smaller reporting company) [x]
 smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be offered	Amount of shares to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price(3)	Amount of registration fee
Common stock, par value \$0.001 per share	13,232,597	\$11.00 (2)	\$145,558,567.00	\$16,899.35
Common stock, par value \$0.001 per share	940,000	\$11.00 (2)	\$10,340,000.00	\$1,200.47
Common stock, par value \$0.001 per share	250,000	\$11.00 (2)	\$2,750,000.00	\$319.28
Common stock, par value \$0.001 per share	100,000	\$11.00 (2)	\$1,100,000.00	\$127.71
Total	14,522,597	\$11.00	\$159,748,567.00	\$18,546.81

(1) In accordance with Rule 416(a), the Registrant is also registering hereunder an indeterminate number of shares that may be issued and resold resulting from stock splits, stock dividends or similar transactions.

(2) Calculated in accordance with Rule 457(g) based upon the price at which the warrants were exercised.

(3) Estimated solely for the purpose of computing the amount of the registration fee in accordance with Rule 457(a) of the Securities Act of 1933, as amended.

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 hereafter 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.

PROSPECTUS

Subject to completion, dated [____], 2011
14,522,597 Shares of Common Stock

This prospectus relates to an aggregate of 14,522,597 shares of common stock, par value \$0.001 per share, of Function(x) Inc., a Delaware corporation, that may be sold from time to time by one of the selling stockholders named in this prospectus.

None of the selling stockholders named in this prospectus are members of management or employees of the Company. We will not receive any proceeds from the sales of any shares of common stock by the selling stockholders.

Our common stock currently trades in the over-the-counter market and is quoted on the Pink Sheets Electronic Quotation Service under the symbol "FNCX". The closing price for our common stock on October 6, 2011 was \$7.01 per share. The shares will be offered at a fixed price of \$7.00 per share until such time as the shares are quoted on the OTC Bulletin Board or listed for trading or quoted on any other exchange or public market and thereafter at prevailing market price or privately negotiated prices.

As of October 7, 2011, Robert F.X. Sillerman, our Executive Chairman, together with the other directors, executive officers and affiliates own 114,728,000 of the outstanding shares of our common stock, representing approximately 77% of the voting power of the outstanding shares of our common stock.

Investing in our common stock involves a high degree of risk. See the section entitled "Risk Factors" beginning on page 5 to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The information in this prospectus is not complete and may be changed. No person may sell the securities described in this document until the registration statement filed with the Securities and Exchange Commission is declared effective. This prospectus is not an offer to sell these securities and no person named in this prospectus is soliciting offers to buy these securities in any state where the offer or sale is not permitted.

The date of this prospectus is [____], 2011

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PROSPECTUS SUMMARY

The following summary highlights some of the information contained in this prospectus, and it may not contain all of the information that is important to you in making an investment decision. You should read the following summary together with the more detailed information regarding our company and the common stock being sold by the selling stockholders in this offering, including the “Risk Factors” and our financial statements and related notes, included elsewhere in this prospectus.

Conventions

In this prospectus, unless indicated otherwise,

- “Function(x),” “Company,” “we,” “us” and “our” refer to Function(x) Inc.
- “U.S. dollar,” “\$” and “US\$” refer to the legal currency of the United States.
- All amounts in thousands except share and per share data and where otherwise noted.

The Company

Overview of Our Business

Overview of Transition in the Company’s Business

The fiscal year ended June 30, 2011 was a transition year for Function(x). On October 24, 2010 the Company disposed of its remaining interest in Oaktree Systems, Inc (“Oaktree”) and was not active and had no operating business. After the disposition of Oaktree, the Company began exploring the possibility of identifying and merging with or investing in one or more operating businesses. Then, on February 15, 2011, we completed a recapitalization (the “Recapitalization”) with Sillerman Investment Company, LLC, a Delaware limited liability company (“Sillerman”) and EMH Howard LLC, a New York limited liability company (“EMH Howard”) and changed our name to Function(x) Inc. With the Recapitalization, the Company changed course and, under new management, began moving in a new direction, which is to provide a platform for investments in media and entertainment, with a particular emphasis on digital and mobile technology.

The Company’s New Line of Business

The Company’s business is to create and manage digital products and services that encourage consumer participation and active engagement with media and entertainment content. These digital media products are designed to accommodate a variety of media and entertainment experiences, including but not limited to television, movies, games and music. The Company plans to generate revenues from advertising, sponsorship, e-commerce and other sources based on the aggregation of registered users.

The Company plans to host, maintain, develop and operate a suite of digital products that will leverage proprietary technology. The initial products will be delivered via mobile applications and websites, marketed to high value media consumers. In addition, the Company is developing and managing software and databases for the identification of multimedia content, commercials, and promotional information that will be used on multiple types of internet-connected devices. We will also use our software and databases to deliver highly targeted advertising and marketing solutions via digital services, initially on mobile phones and other handheld mobile devices.

The Company's initial product design will be distributed on a variety of mainstream mobile operating systems. The products will verify user engagement of various forms of entertainment content through a real-time check-in

process. The initial market for the product targets TV audiences across various channels and platforms: broadcast and cable networks, live, time-shifted and on-demand television, as well as online distribution of television programming. The Company's consumer participation and engagement will be limited to participants who are 13 years of age or older.

The Beta product was delivered for usability testing in September and will undergo further testing in the fourth quarter of calendar 2011. The Company is targeting an initial release to be made in such quarter or early 2012. The national launch to a wider general audience is scheduled for 2012.

Since the Recapitalization and prior to the end of the fiscal year, the Company hired personnel with diverse backgrounds in General Management in Digital Media and Entertainment, along with specialists in Product Development, Engineering, Marketing, Analytics, Sales and Business Development, and Human Resources, Finance and Legal for the purpose of furthering the business plan and building the first product.

The Company's Formation and Former Line of Business

Function(x) was incorporated in Delaware in July 1994, and was formerly known as Gateway Industries, Inc. We had no operating business or full-time employees from December 1996 to March 2000, when we acquired all of the outstanding common stock of Oaktree. Through Oaktree, we provided cost effective marketing solutions to organizations needing sophisticated information management tools.

We acquired Oaktree on March 21, 2000 pursuant to a stock purchase agreement. The purchase price of Oaktree was approximately \$4,100 consisting of \$2,000 in cash, the issuance of 600,000 restricted shares of common stock of the Company and the assumption of approximately \$650 of debt, which was repaid at the closing date, plus certain fees and expenses. In December 2007, Oaktree sold 5,624 shares of its common stock to Marketing Data, Inc., an affiliate of an officer of Oaktree, for \$1. As a result, our ownership interest in Oaktree was reduced to 20% of Oaktree's outstanding common stock. In connection with this transaction, we agreed to make a capital contribution of \$225 to Oaktree at closing. As a result of this transaction, we recorded a loss on sale of subsidiary in the amount of \$4,238 during the year ended December 31, 2007.

In July 2005, we sold 500,000 shares of 10% series A preferred stock to Steel Partners II, L.P. ("Steel Partners II"), an affiliate of Jack L. Howard, who was at the time our Chairman of the Board and Chief Executive Officer and our largest stockholder, for a purchase price of \$1,467. In addition, we sold to Steel Partners II warrants to purchase 1,500,000 shares of common stock, with an exercise price of \$0.22 per share, for a purchase price of \$33. On May 15, 2008, we repurchased all of the preferred stock and warrants originally issued to Steel Partners II for a purchase price of \$1. None of the warrants were ever exercised by Steel Partners II and no dividend was paid on the preferred stock.

On October 24, 2010, Oaktree repurchased our remaining 20% interest in Oaktree for \$0.10. As a result, Marketing Data, Inc. owned 100% of the outstanding common stock of Oaktree. From October 2010, after the Company completed the disposition of its interest in Oaktree through the date of the Recapitalization in February 2011, the Company was not active and had no operating business.

The Recapitalization

As previously disclosed, on February 7, 2011, Function(x) Inc. (formerly Gateway Industries, Inc.) entered into the Agreement and Plan of Recapitalization (the “Recapitalization Agreement”) by and among the Company, Sillerman and EMH Howard LLC. All of the following amounts, other than share information, set forth in this report appear in the thousands.

Pursuant to the Recapitalization Agreement, Sillerman, together with other investors approved by Sillerman, invested in the Company by acquiring 120,000,000 newly issued shares of common stock of the Company in a private placement transaction at a price of \$0.03 per share (on a post-split basis as described below), as a result of which Sillerman and the other investors acquired approximately 99% of the outstanding shares of common stock,

with Sillerman (together with Robert F.X. Sillerman personally) directly or indirectly beneficially owning more than a majority of the outstanding shares of common stock. Upon consummation, the proceeds of the private placement of \$3,600 (\$220 in cash and \$3,380 in five-year promissory notes with interest accruing at the annual rate equal to the long-term Applicable Federal Rate in effect as of the date of the Recapitalization Agreement, which was 4.15% per annum) were received.

On February 16, 2011, immediately after the Recapitalization was consummated, the Company issued 13,232,597 shares of common stock to an institutional investor (for \$10,000) at a price of approximately \$0.76 per share, and 940,000 shares of common stock to an accredited investor (\$500) at a price of approximately \$0.53 per share. The shares of common stock issued in such placements were exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to an exemption from registration for transactions not involving a public offering under Section 4(2) of the Securities Act, and the safe harbors for sales under Section 4(2) provided by Regulation D promulgated pursuant to the Securities Act. Transfer of the shares was restricted by the Company in accordance with the requirements of the Securities Act.

On February 16, 2011, the Company issued a five year warrant for 100,000 shares with an exercise price of \$0.80 per share to Berenson & Company, LLC, financial advisor to Sillerman in connection with the Recapitalization. On May 9, 2011, Berenson Investments LLC exercised the warrant and paid \$80 for 100,000 shares of the Company's common stock.

As part of the Recapitalization, the Company also issued 250,000 shares to J. Howard, Inc., an entity affiliated with Jack L. Howard, a director and officer of the Company prior to the Recapitalization, and its designees (which included former directors of the Company) in connection with partially extinguishing outstanding debt of \$171 owed to J. Howard, Inc. The fair market value of the shares at issuance was \$0.03 per share. The remaining debt of \$163 was satisfied on February 15, 2011 by payment to J. Howard, Inc. in such amount. In addition, J. Howard, Inc. was paid \$37 to be used for payment of expenses incurred in connection with the Recapitalization on behalf of the Company.

As part of the Recapitalization, the Company effectuated a 1 for 10 reverse split of its issued and outstanding common stock (the "Reverse Split"). The Reverse Split became effective on February 16, 2011. Under the terms of the Reverse Split, each share of common stock, issued and outstanding as of such effective date, was automatically reclassified and changed into one-tenth of one share of common stock, without any action by the stockholder. Fractional shares were rounded up to the nearest whole share. All share and per share amounts have been restated to reflect the Reverse Split.

The newly recapitalized company changed its name to Function (X) Inc. effective as of the date of the Recapitalization and changed its name to Function(x) Inc. on June 22, 2011. It now conducts its business under the name Function(x) Inc., with the ticker symbol FNCX. We have two wholly-owned subsidiaries, Project Oda, Inc. and Viggie Inc., each Delaware corporations.

Risk Factors

Our ability to successfully operate our business and achieve our goals and strategies is subject to numerous risks as discussed more fully below in the section entitled "Risk Factors," including, but not limited to, the following:

- Not currently generating revenue;
- Fluctuation in the price of our common stock;
- Thinly traded market for purchases and sales of our common stock;
 - Potential inability to achieve business objective;
- Potential inability to obtain financing for Company operations or of any particular product;
 - Increased competition;
 - Highly competitive industry;
- Potential loss of key members of our senior management; and

- Ability to obtain and enforce proprietary rights.

Any of the above risks could materially and adversely affect our business, financial position and results of operations. An investment in our common stock involves risks. You should read and consider the information set forth below in the section entitled “Risk Factors” and all other information set forth in this prospectus before investing in our common stock.

Corporate Information

The address of our principal executive office is 902 Broadway, 11th Floor, New York, New York 10010, and our telephone number is 212-231-0092.

Summary of the Offering

Common stock offered by selling stockholders

An aggregate of 14,522,597 shares of our common stock, par value \$0.001 per share, consisting of 14,522,597 shares of our common stock owned by the selling stockholders. This number represents in the aggregate approximately 9.7% of the outstanding shares of our common stock as of the date of this prospectus. (1) None of the selling stockholders named in this prospectus are members of management or employees of the Company.

Common stock to be outstanding immediately after this offering 149,142,024 shares

Proceeds to us

We will not receive any of the proceeds from the sale of shares of our common stock by the selling stockholders.

(1) Based on 149,142,024 shares of common stock outstanding as of October 7, 2011.

RISK FACTORS

The shares of our common stock being offered for resale by the selling stockholders are highly speculative in nature, involve a high degree of risk and should be purchased only by persons who can afford to lose their entire investment in our common stock. Before purchasing any of the shares of our common stock, you should carefully consider the following factors relating to our business and prospects. If any of the following risks actually occur, our business, financial condition or operating results may suffer, the trading price of our common stock could decline, and you may lose all or part of your investment. You should also refer to the other information about us contained in this prospectus, including our financial statements and related notes.

Since we have a limited operating history and no revenues to date, we may be unable to achieve or maintain profitability. The likelihood of our success must be considered in light of the problems, expenses, difficulties, complications and delays frequently encountered by a small developing company.

We have limited financial resources and no revenues to date. The likelihood of our success must be considered in light of the problems, expenses, difficulties, complications and delays frequently encountered by a small developing company starting a new business enterprise and the highly competitive environment in which we will operate. Since we have a limited operating history, we cannot assure you that our business will be profitable or that we will ever generate sufficient revenues to fully meet our expenses and totally support our anticipated activities.

Our ability to continue as a business and implement our business plan will depend on our ability to raise sufficient debt or equity. There is no assurance such debt and/or equity offerings will be successful or that we will remain in business or be able to implement our business plan if the offerings are not successful.

We need substantial additional financing to execute our business plan which may not be available. If we are unable to raise additional capital, we may not be able to continue operations.

We do not yet have revenues and our ability to continue in business depends upon our ability to obtain working capital. There can be no assurance that any such financing would be available upon terms and conditions acceptable to us, if at all. The inability to obtain additional financing in a sufficient amount when needed, and upon acceptable terms and conditions could have a material adverse effect upon us. If additional funds are raised by issuing equity securities, further dilution to existing or future stockholders is likely to result.

We may seek to raise additional funds, finance acquisitions or develop strategic relationships by issuing capital stock that would dilute your ownership.

We have financed our operations, and we expect to continue to finance our operations, acquisitions and develop strategic relationships, by issuing equity or convertible debt securities, which could significantly reduce the percentage ownership of our existing stockholders. Furthermore, any newly issued securities could have rights, preferences and privileges senior to those of our existing stock. Moreover, any issuances by us of equity securities may be at or below the prevailing market price of our common stock and in any event may have a dilutive impact on your ownership interest, which could cause the market price of stock to decline. We may also raise additional funds through the incurrence of debt or the issuance or sale of other securities or instruments senior to our shares of common

stock. The holders of any debt securities or instruments we may issue would have rights superior to the rights of our common stockholders.

Our common stock price may fluctuate significantly and you may lose all or part of your investment.

Because we are a newly operating company, there are few objective metrics by which our progress may be measured. Consequently, we expect that the market price of our common stock will likely fluctuate significantly. There can be no assurance whether or when we will generate revenue from the license, sale or delivery of our unique products and services. In the absence of product revenue as a measure of our operating performance, we anticipate that investors and market analysts will assess our performance by considering factors such as:

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- announcements of developments related to our business;
- developments in our strategic relationships with companies;
- our ability to enter into or extend investigation phase, development phase, commercialization phase and other agreements with new and/or existing partners;
 - announcements regarding the status of any or all of our collaborations or products;
 - market perception and/or investor sentiment regarding our products and services;
- announcements regarding developments in the digital and mobile technology and the broadcast and entertainment industries in general;
 - the issuance of competitive patents or disallowance or loss of our patent or trademark rights; and
 - quarterly variations in our operating results.

We will not have control over many of these factors but expect that our stock price may be influenced by them. As a result, our stock price may be volatile and you may lose all or part of your investment.

The market for purchases and sales of our common stock may be very limited, and the sale of a limited number of shares could cause the price to fall sharply.

Our securities are very thinly traded. Accordingly, it may be difficult to sell shares of the common stock without significantly depressing the value of the stock. Unless we are successful in developing continued investor interest in our stock, sales of our stock could continue to result in major fluctuations in the price of the stock.

Since we do not intend to declare dividends for the foreseeable future, and we may never pay dividends, you may not realize a return on your investment unless the price of our common stock appreciates and you sell your common stock.

We will not distribute cash to our stockholders until and unless we can develop sufficient funds from operations to meet our ongoing needs and implement our business plan. The time frame for that is inherently unpredictable, and you should not plan on it occurring in the near future, if at all. Our payment of any future dividends will be at the discretion of our board of directors after taking into account various factors, including but not limited to our financial condition, operating results, cash needs, growth plans and the terms of any credit agreements that we may be a party to at the time. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize a return on their investment. Investors seeking cash dividends should not purchase our common stock.

Since we are controlled by current insiders and affiliates of the Company, you and our other non-management shareholders will be unable to affect the outcome in matters requiring shareholder approval.

As of October 7, 2011, approximately 114,728,000 shares of our common stock, not including currently exercisable warrants, are owned by Sillerman and current affiliates and insiders representing control of approximately 77% of the total voting power, with Sillerman, together with Robert F.X. Sillerman personally, directly or indirectly beneficially owning more than a majority of the outstanding shares of common stock. As a result, Sillerman essentially has the ability to elect all of our directors and to approve any action requiring stockholder action, without the vote of any other stockholders. It is possible that the interests of Sillerman could conflict in certain circumstances with those of other stockholders. Such concentrated ownership may also make it difficult for our shareholders to receive a premium for their shares of our common stock in the event we merge with a third party or enter into other transactions that require shareholder approval. These provisions could also limit the price that investors might be willing to pay in the

future for shares of our common stock.

We rely on key members of management, the loss of whose services could adversely affect our success and development.

Our success depends to a certain degree upon certain key members of the management. These individuals are a significant factor in our growth and ability to meet our business objectives. In particular, our success is highly dependent upon the efforts of our executive officers and our directors, particularly Robert F.X. Sillerman, our Executive Chairman and Director. The loss of our executive officers and directors could slow the growth of our business, or it may cease to operate at all, which may result in the total loss of an investor's investment.

Compensation may be paid to our officers, directors and employees regardless of our profitability, which may limit our ability to finance our business plan and adversely affect our business.

Robert F.X. Sillerman, our Executive Chairman and director and Janet Scardino, our Chief Executive Officer and director are receiving compensation and any other current or future employees of our company may be entitled to receive compensation, payments and reimbursements regardless of whether we operate at a profit or a loss. Any compensation received by Mr. Sillerman, Ms. Scardino or any other senior executive in the future will be determined from time to time by the board of directors or our Compensation Committee. Such obligations may negatively affect our cash flow and our ability to finance our business plan, which could cause our business to fail.

Some of our officers and directors may have conflicts of interest in business opportunities that may be disadvantageous to us.

Robert F.X. Sillerman, our Executive Chairman and director, and Mitchell Nelson, our Executive Vice President, General Counsel, Secretary and director, are each engaged in other business endeavors, including serving as executive officers of Circle Entertainment Inc. ("Circle"). Under Mr. Sillerman's employment agreement, he is obligated to devote his working time to the Company's affairs, but may continue to perform his responsibilities as an executive officer of Circle, as well as in other outside non-competitive businesses. Mr. Sillerman has agreed to present to the Company any business opportunities related to or appropriate for the Company's business plan. Pursuant to Mr. Nelson's employment agreement, he is obligated to devote such time and attention to the affairs of the Company as is necessary for him to perform his duties as Executive Vice President and General Counsel. He is also entitled to perform similar functions for Circle pursuant to the shared services agreement described in the section entitled "Certain Relationships and Related Transactions" below. Although Circle and the Company have generally different business plans, interests and programs, it is conceivable there may be a conflict of interest in determining where a potential opportunity should be brought. Conflicts of interest are prohibited as a matter of Company policy, except under guidelines approved by the board of directors, as set forth in the Company's Code of Business Conduct and Ethics. The Company's Code of Business Conduct and Ethics also sets forth the procedures to follow in the event that a potential conflict of interest arises. For a description of the Company's Code of Business Conduct and Ethics, please see the section entitled "Corporate Governance" below.

Our business and growth may suffer if we are unable to attract and retain key officers or employees.

Our success depends on the expertise and continued service of our Executive Chairman, Robert F.X. Sillerman, and certain other key executives and technical personnel. It may be difficult to find a sufficiently qualified individual to

replace Mr. Sillerman or other key executives in the event of death, disability or resignation, resulting in our being unable to implement our business plan and the Company having no operations or revenues.

Furthermore, our ability to expand operations to accommodate our anticipated growth will also depend on our ability to attract and retain qualified media, management, finance, marketing, sales and technical personnel. However, competition for these types of employees is intense due to the limited number of qualified professionals. Our ability to meet our business development objectives will depend in part on our ability to recruit, train and retain top quality people with advanced skills who understand our technology and business. The Company believes that it will be able to attract competent employees, but no assurance can be given that the Company will be successful in this regard. If the Company is unable to engage and retain the necessary personnel, its business may be materially and adversely affected.