FOOTSTAR INC
Form PRER14A
May 05, 2011

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

SCHEDULE 14A
(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

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

(Amendment No. 1)

Filed by the Registrant x

Filed by a Party other than the Registrant x

Check the appropriate box:

x Preliminary Proxy Statement

¨ Confidential, for Use of the Commission Only (as permitted by Rule14a-6(e)(2))

¨ Definitive Proxy Statement

o Definitive Additional Materials

o Soliciting Material Under Rule 14a-12

FOOTSTAR, INC.
(Name of Registrant as Specified in Its Charter)

FOOTSTAR, INC.
FOOTSTAR ACQUISITION, INC.
(Name of Persons(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

o No fee required.

x Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

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(1) Title of each class of securities to which transaction applies:

Common Stock, par value $0.01 per share ("Common Stock")

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(2) Aggregate number of securities to which transaction applies:

24,183,897 shares of Common Stock

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(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):

The filing fee of $16.54 was calculated pursuant to Exchange Act Rule 0-11 by multiplying 0.0001161 by an amount equal to the product of 150,000 shares of Common Stock, which constitutes the total number of outstanding shares of Common Stock estimated to be exchanged for the right to receive $0.95 per share in cash, without interest, in the proposed merger, and $0.95 per share.

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(4) Proposed maximum aggregate value of transaction:

$142,500

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(5) Total fee paid:

$16.54

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x Fee paid previously with preliminary materials:

¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

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(1) Amount previously paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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FOOTSTAR, INC.
933 MACARTHUR BLVD.
MAHWAH, NEW JERSEY 07430
(201) 934-2000

[_____], 2011

Dear Footstar Stockholders:

You are cordially invited to attend a special meeting of stockholders of Footstar, Inc. ("Footstar"), to be held at 10:00 a.m., local time, on [_____], 2011, at the offices of Olshan Grundman Frome Rosenzweig & Wolosky LLP located at Park Avenue Tower, 65 East 55th Street, New York, New York 10022. At the meeting, in accordance with Delaware law, our stockholders of record as of May 5, 2009 will be asked to consider and vote upon a proposal to revoke the Amended Plan of Complete Dissolution and Liquidation of Footstar, Inc. (the "Plan of Dissolution"). In addition, subject to the approval of the first Proposal, our stockholders of record as of [_____], 2011 will be asked to vote upon a proposal to adopt an Agreement and Plan of Merger, dated as of February 14, 2011, pursuant to which Footstar Acquisition, Inc. ("Acquisition") will merge with and into Footstar, with Footstar as the surviving corporation.

The merger, if approved, will enable us to terminate the registration of our common stock under the federal securities laws and thereby eliminate the significant expense required to comply with the reporting and related requirements under those laws. Commonly referred to as a "going private" transaction, the proposed merger will reduce the number of our stockholders of record to fewer than 300, as required for the elimination of our periodic reporting obligations under the federal securities laws. As a result, our common stock will be ineligible for quotation on the OTC Bulletin Board. At a special meeting held on May 5, 2009, Footstar's stockholders adopted and approved the Plan of Dissolution. In order to consummate the merger with Acquisition, Footstar must first revoke the Plan of Dissolution, which under Delaware law requires the approval of stockholders. Accordingly, the approval of the proposal to approve the merger is subject to the approval of the proposal to revoke the Plan of Dissolution. See the accompanying proxy statement for a more detailed discussion of the reasons for and effects of the merger.

Under the terms of the merger agreement, each outstanding share of our common stock (other than shares as to which appraisal rights have been demanded and not withdrawn or lost) held by those of you who own fewer than 500 shares of our common stock in record form in any discrete account will, at the effective time of the merger, be cancelled and converted into the right to receive $0.95 in cash, without interest. As of [_____], 2011, only approximately 0.5% of our shares are held by stockholders owning less than 500 shares in record form. We believe that a cash-out threshold of 500 shares will have the effect of enabling us to "go private." Throughout the attached proxy statement, when we refer to the small stockholders or cashed-out stockholders we are referring to holders of record of fewer than 500 shares of our common stock. In addition, when we refer to continuing stockholders or remaining stockholders, we are referring to holders of record of 500 or more shares.

As a result of the merger, if you own fewer than 500 shares of our common stock in record form in any discrete account immediately prior to the merger, you will not have any ownership interest in Footstar and you will not participate in any potential future earnings (or losses) or growth of Footstar after the merger. Stockholders holding 500 or more shares of our common stock (which holdings currently constitute approximately 0.5% of our outstanding shares) in record form in any discrete account will continue to own the same number of shares after the merger (unless you exercise appraisal rights with respect to your shares).

After careful consideration, the board of directors of Footstar unanimously determined that the merger is advisable, fair to and in the best interests of Footstar's unaffiliated stockholders, including both unaffiliated continuing

stockholders and unaffiliated cash-out stockholders, and has adopted the merger agreement and, accordingly, recommends that its stockholders of record as of [_____], 2011 vote "FOR" adoption of the merger agreement and its stockholders of record as of May 5, 2009 vote "FOR" the proposal to revoke the Plan of Dissolution. In making its recommendation, the board of directors considered a variety of factors, which are described in the accompanying proxy statement .

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Consummation of the merger is subject to certain conditions, including the affirmative vote by holders of a majority of the voting power of our common stock outstanding as of [_____], 2011, the record date for the proposal to approve the merger, to adopt the merger agreement and approve the merger, and the approval of the revocation of the Plan of Dissolution pursuant to its terms. Approval of the revocation of the Plan of Dissolution is subject to, among other things, the affirmative vote by holders of a majority of the voting power of our common stock outstanding as of May 5, 2009, the record date for the proposal to revoke the Plan of Dissolution. Details of the proposed transactions are set forth in the accompanying proxy statement, which we urge you to read carefully in its entirety.

If you are a holder of record as of [_____], 2011, the record date for the proposal to approve the merger, you will find enclosed a proxy card to vote on that proposal. To adopt the merger agreement and approve the merger you should cast a vote "FOR" this proposal by following the instructions contained in the enclosed proxy card.

If you are a holder of record as of May 5, 2009, the record date for the proposal to revoke the Plan of Dissolution, you will find enclosed a proxy card to vote on that proposal. To approve the proposal to revoke the Plan of Dissolution you should cast a vote "FOR" this proposal by following the instructions contained in the enclosed proxy card.

If you properly sign and return your proxy card(s) with no voting instructions, you will be deemed to have voted "FOR" adoption of the merger agreement and/or "FOR" the proposal to revoke the Plan of Dissolution, as the case may be. If you fail to return your proxy card(s) and fail to vote at the special meeting, the effect will be the same as a vote against the proposal to approve the merger and/or the proposal to revoke the Plan of Dissolution, as the case may be. RETURNING THE PROXY CARD(S) DOES NOT DEPRIVE YOU OF YOUR RIGHT TO ATTEND THE SPECIAL MEETING AND VOTE YOUR SHARES IN PERSON.

Please do not send your Footstar common stock certificates at this time. If the merger is completed, you will receive written instructions for exchanging your Footstar stock certificates for cash.

Sincerely,

/s/ Jonathan M. Couchman

Jonathan M. Couchman
President and Chief Executive Officer

Mahwah, New Jersey

This proxy statement is dated [_____], 2011 and is first being mailed to stockholders of Footstar on or about [_____], 2011.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved this transaction, passed upon the merits or fairness of this transaction, or passed upon the adequacy or accuracy of the information contained in this proxy statement. Any representation to the contrary is a criminal offense.

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FOOTSTAR, INC.
933 MACARTHUR BLVD.
MAHWAH, NEW JERSEY 07430
(201) 934-2000

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON [_____], 2011

Notice is hereby given that a special meeting of the stockholders of Footstar, Inc. ("Footstar"), will be held on [_____], 2011 at 10:00 a.m., local time, at the offices of Olshan Grundman Frome Rosenzweig & Wolosky LLP located at Park Avenue Tower, 65 East 55th Street, New York, New York 10022 for the following purposes:

1. To consider and vote upon a proposal to revoke the Amended Plan of Complete Dissolution and Liquidation of Footstar, Inc. (the "Plan of Dissolution");

2. Subject to the approval of the first Proposal, to consider and vote upon a proposal to adopt and approve the Agreement and Plan of Merger (the "Partial Cash-Out Merger Agreement"), dated as of February 14, 2011, by and among Footstar and Footstar Acquisition, Inc. ("Acquisition") pursuant to which, among other things, Acquisition will be merged with and into Footstar, with Footstar being the surviving corporation, upon the terms and subject to the conditions of the Partial Cash-Out Merger Agreement described in the accompanying proxy statement (the "Partial Cash-Out Merger");

3. To consider and vote upon a motion to adjourn the special meeting for the purpose of soliciting additional proxies, if necessary; and

4. To consider, act upon and transact such other business as may properly come before the special meeting or any adjournments or postponements thereof.

The proposals are described in detail in the accompanying proxy statement and the appendices thereto. You are urged to read these materials very carefully and in their entirety before deciding how to vote. In particular, you should consider the discussion in the section of this proxy statement entitled "Special Factors."

The board of directors of Footstar has fixed the close of business on [_____], 2011 as the record date for determining the stockholders entitled to notice of and to vote at the special meeting on the proposal to approve the Partial Cash-Out Merger (the "Going Private Record Date"). In accordance with Delaware law, May 5, 2009 has been fixed as the record date for determining the stockholders entitled to notice of and to vote at the special meeting on the proposal to revoke the Plan of Dissolution (the "Dissolution Record Date"). Only holders of record of shares of Footstar common stock at the close of business on the respective record date for each proposal are entitled to notice of, and to vote at, the special meeting or any adjournments or postponements thereof. The affirmative vote by holders of a majority of the voting power of Footstar common stock entitled to vote at the special meeting with respect to the proposal to approve the Partial Cash-Out Merger is required to adopt the Partial Cash-Out Merger Agreement and approve the Partial Cash-Out Merger. The affirmative vote by holders of a majority of the voting power of Footstar common stock entitled to vote at the special meeting with respect to the proposal to revoke the Plan of Dissolution is required to revoke the Plan of Dissolution. At a special meeting held on May 5, 2009, Footstar's stockholders adopted and approved the Plan of Dissolution. In order to consummate the Partial Cash-Out Merger with Acquisition, Footstar must first revoke the Plan of Dissolution, which, in accordance with Delaware law, requires the approval of the stockholders of record as of the Dissolution Record Date, the date Footstar's stockholders adopted the Plan of Dissolution. Accordingly, the approval of the proposal to approve the Partial Cash-Out Merger is subject to the approval of the proposal to revoke the Plan of Dissolution.

After careful consideration, the board of directors of Footstar unanimously determined that the Partial Cash-Out Merger is advisable, fair to and in the best interests of Footstar's unaffiliated stockholders, including both unaffiliated continuing stockholders and unaffiliated cashed-out stockholders, and has adopted the Partial Cash-Out Merger Agreement and, accordingly, recommends that stockholders of record as the Going Private Record Date vote "FOR" adoption of the Partial Cash-Out Merger Agreement and stockholders of record as of the Dissolution Record Date vote "FOR" the proposal to revoke the Plan of Dissolution.

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Your vote is very important, regardless of the number of shares of Footstar common stock you own. Please vote your shares as soon as possible to ensure that your shares are represented at the special meeting. To vote your shares, you must complete and return the enclosed proxy card(s).

If you are a holder of record, you may also cast your vote in person at the special meeting. If you are a holder of record as the Going Private Record Date, you will find enclosed a proxy card to vote on that proposal. To adopt the Partial Cash-Out Merger Agreement and approve the Partial Cash-Out Merger you should cast a vote "FOR" this proposal by following the instructions contained in the enclosed proxy card. If you are a holder of record as of the Dissolution Record Date, you will find enclosed a proxy card to vote on that proposal. To approve the proposal to revoke the Plan of Dissolution you should cast a vote "FOR" this proposal by following the instructions contained in the enclosed proxy card.

If your shares are held in an account at a brokerage firm or bank, you must instruct them on how to vote your shares. If you do not instruct your broker or bank on how to vote, it will have the same effect as voting against the proposal to approve the Partial Cash-Out Merger and/or the proposal to revoke the Plan of Dissolution, as the case may be.

All holders of our common stock have the right under Delaware law to demand an appraisal of their shares and to have a judicial determination of the fair value of their shares. These rights, generally known as appraisal rights, are described in detail in the proxy statement accompanying this notice. In addition, a copy of Section 262 of the Delaware General Corporation Law, which governs appraisal rights, is attached as Appendix C to this proxy statement. We urge you to read both the applicable section of the proxy statement and the statutory provisions carefully. If you wish to demand an appraisal of your shares, you must strictly comply with the statutory requirements.

By Order of the Board of Directors,

Jonathan M. Couchman
President and Chief Executive Officer

Mahwah, New Jersey
[_____], 2011

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SUMMARY TERM SHEET

The following summary term sheet, together with the "Questions and Answers About the Special Meeting, the Partial Cash-Out Merger and the Proposal to Revoke the Plan of Dissolution" following this summary term sheet, highlight selected information from this proxy statement about our proposed Partial Cash-Out Merger, the proposal to revoke the Amended Plan of Complete Dissolution and Liquidation of Footstar, Inc. (the "Plan of Dissolution") and the special meeting. This summary term sheet and the question and answer section may not contain all of the information that is important to you. To better understand, and for a more complete description of, the Partial Cash-Out Merger, the proposal to revoke the Plan of Dissolution, and the special meeting, you should carefully read this entire document and all of its appendices before you vote. For your convenience, we have directed your attention in parentheses to the location in this proxy statement where you can find a more complete discussion of each item listed below.

As used in this proxy statement, "Footstar," "we," "our," and "us" refer to Footstar, Inc. and all of its subsidiaries, the term "Acquisition" refers to Footstar Acquisition, Inc., the term "Partial Cash-Out Merger Agreement" refers to the Agreement and Plan of Merger dated as of February 14, 2011, as amended, by and among Footstar and Acquisition, the term "Partial Cash-Out Merger" refers to the proposed merger between Footstar and Acquisition pursuant to the Partial Cash-Out Merger Agreement and described herein and the term "common stock" or "common shares" refers to the issued and outstanding common shares of Footstar common stock, par value $0.01 per share.

The Parties (see page [__])

Footstar, Inc.
933 MacArthur Blvd.
Mahwah, New Jersey 07430

Footstar, Inc., a Delaware corporation, is a holding company that is currently winding down pursuant to the Plan of Dissolution, which was adopted by Footstar's stockholders on May 5, 2009. The proposal to revoke the Plan of Dissolution will, if approved by stockholders, authorize Footstar to file a certificate of revocation of dissolution with the Secretary of State of the State of Delaware which, at the effective time thereof, cause the revocation of the Plan of Dissolution. The phone number of Footstar's principal executive office is (201) 934-2000 ext. 5.

On January 3, 2011, CPEX Pharmaceuticals, Inc., a Delaware corporation ("CPEX"), FCB I Holdings Inc., a Delaware corporation ("NewCo") and FCB I Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of NewCo ("Merger Sub"), entered into an Agreement and Plan of Merger (the "CPEX Transaction Agreement"). On April 5, 2011, the transaction was consummated, and Merger Sub merged with and into CPEX (the "CPEX Transaction"), and CPEX became a wholly owned subsidiary of NewCo and an indirectly, majority-owned subsidiary of Footstar.

CPEX is a wholly owned subsidiary of NewCo, which is owned 80.5% by Footstar Corporation, a Texas corporation ("Footstar Corp"), and 19.5% by an unaffiliated investment holding company (the "19.5% Stockholder"). Footstar Corp is a wholly owned subsidiary of Footstar. In exchange for their respective 80.5% and 19.5% ownership of NewCo, Footstar Corp and the 19.5% Stockholder provided approximately $3.2 million and approximately $0.8 million, respectively, in equity financing to fund the CPEX Transaction.

See "SPECIAL FACTORS – Transaction with CPEX" for a more complete description of the CPEX Transaction Agreement.

Footstar Acquisition, Inc.
933 MacArthur Blvd.
Mahwah, New Jersey 07430

Footstar Acquisition, Inc., a Delaware corporation and a wholly owned subsidiary of Footstar, was formed solely for the purpose of engaging in the transactions contemplated by the Partial Cash-Out Merger Agreement. Acquisition has not conducted any significant activities other than those incident to its approval and execution of the Partial Cash-Out Merger Agreement and related documents. Acquisition has no material assets or liabilities, other than its rights and obligations under the Partial Cash-Out Merger Agreement, and has no operations.

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The Special Meeting (see page [__])

At the special meeting, stockholders of record as of [_____], 2011 (the "Going Private Record Date") are being asked to vote to approve the proposal to approve the Partial Cash-Out Merger of Acquisition with and into Footstar, with Footstar continuing as the surviving corporation, and, in accordance with Delaware law, stockholders of record as of May 5, 2009 (the "Dissolution Record Date") are being asked to approve the proposal to revoke the Plan of Dissolution. The Plan of Dissolution was approved and adopted by Footstar's stockholders on May 5, 2009. In order to consummate the Partial Cash-Out Merger, Footstar must first revoke the Plan of Dissolution in accordance with Section 311 of the Delaware General Corporation Law (the "DGCL"). Accordingly, the approval of the proposal to approve the Partial Cash-Out Merger is subject to the approval of the proposal to revoke the Plan of Dissolution.

The Partial Cash-Out Merger Agreement (see page [__])

Under the Partial Cash-Out Merger Agreement, Acquisition will merge with and into Footstar, with Footstar to remain as the surviving corporation. We have attached a copy of the Partial Cash-Out Merger Agreement as Appendix A to this proxy statement. We encourage you to read the Partial Cash-Out Merger Agreement carefully because it is the legal document that governs the Partial Cash-Out Merger. Under the terms of the Partial Cash-Out Merger Agreement, if the Partial Cash-Out Merger is completed:

- those of you owning fewer than 500 shares of our common stock in record form in any discrete account as of the effective time of the Partial Cash-Out Merger will receive a cash payment of $0.95 per share, without interest (currently only approximately 0.5% of our shares are held by stockholders holding fewer than 500 shares in record form);

- those of you owning 500 or more shares of our common stock in record form in any discrete account as of the effective time of the Partial Cash-Out Merger will continue to hold their shares; and

- our officers and directors at the effective time of the Partial Cash-Out Merger will be our officers and directors immediately after the Partial Cash-Out Merger.

Throughout this proxy statement, when we refer to the small stockholders or cashed-out stockholders we are referring to record holders of fewer than 500 shares of our common stock. In addition, when we refer to continuing stockholders or remaining stockholders, we are referring to record holders of 500 or more shares.

If you hold shares of our common stock in street name, your broker, bank or other nominee is considered the stockholder of record with respect to those shares and not you. It is possible that the bank, broker or other nominee also holds shares for other beneficial owners of our common stock and therefore may hold 500 or more total shares in record form even if your street name shares total less than 500.

Footstar does not intend to effect the Partial Cash-Out Merger at the beneficial holder level. Accordingly, stockholders holding fewer than 500 shares of our common stock in street name through a nominee (such as a bank or broker) will not be cashed-out in the Partial Cash-Out Merger if their nominee holds a total of 500 or more shares in record form even if your street name shares total less than 500. If you hold fewer than 500 shares of common stock in street name and want to have your shares cashed out in the Partial Cash-Out Merger, you should instruct your nominee to transfer your shares into a record account in your name prior to 5 p.m. on the last business day prior to the effective time of the Partial Cash-Out Merger. In any event, if you hold your shares of our common stock in street name, we encourage you to contact your bank, broker or other nominee about the effect of the Partial Cash-Out Merger on your shares.

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Effect of the Partial Cash-Out Merger (see page [__])

As a result of the Partial Cash-Out Merger:

- following the Partial Cash-Out Merger, we intend to eliminate registration of our common shares under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and cease filing periodic reports under the Exchange Act, which means that price quotations for our common shares will no longer be available on the OTC Bulletin Board. Accordingly, the Partial Cash-Out Merger is considered a "going private" transaction;

- the number of our issued and outstanding shares will decrease from 24,183,897 to approximately [24,033,897];

- cashed-out stockholders will no longer have an interest in or be a stockholder of Footstar and, therefore, they will not be able to participate in any of our future earnings and growth;

- we estimate that the number of record stockholders will be reduced from approximately [2,600] to approximately 200; and

- the percentage of ownership of our common stock beneficially held by our current officers and directors as a group (including shares subject to currently exercisable options) will not change.

Reasons for the Partial Cash-Out Merger (see page [__])

The requirements of being a publicly traded company and complying with the federal securities laws are expensive. We anticipate that deregistration will enable us to save significant accounting, legal and administrative expenses relating to our public disclosure and reporting requirements under the Exchange Act. Accordingly, the board of directors believes that it is in the best interest of Footstar and our stockholders to complete the Partial Cash-Out Merger with Acquisition. In addition, since only approximately 0.5% of our shares are held by record stockholders owning less than 500 shares, the Partial Cash-Out merger will impact only a minimal amount of outstanding shares. Accordingly, the Partial Cash-Out Merger will likewise have a minimal effect on the voting power of continuing stockholders, and affiliated stockholders will realize a less than 1% increase in their aggregate voting power. In addition, cashed-out stockholders who wish to participate in future earnings and growth of Footstar, if any, may increase the number of shares they hold to 500 or more if they wish to remain stockholders of Footstar after the Partial Cash-Out Merger.

Fairness of the Partial Cash-Out Merger (see page [__])

The board of directors has unanimously determined that the terms of the Partial Cash-Out Merger and the Partial Cash-Out Merger Agreement are advisable, fair to and in the best interests of Footstar stockholders, including unaffiliated cashed-out stockholders and unaffiliated continuing stockholders. The board of directors considered a number of factors, as more fully described under "Special Factors—Background of the Partial Cash-Out Merger" and "—Reasons for the Board's Recommendation," in making its recommendation.

The board of directors believes that the Partial Cash-Out Merger, the Partial Cash-Out Merger Agreement and the related transactions are substantively and procedurally fair to and in the best interests of the Footstar stockholders, including unaffiliated stockholders, for all of the reasons set forth herein. See "Special Factors—Reasons for the Board's Recommendation." In reaching its conclusions regarding fairness, the board of directors considered the interests of both record holders of fewer than 500 of our shares who will receive $0.95 per share in cash for their shares, and record holders of 500 or more of our shares who will remain stockholders after Footstar deregisters from its reporting obligations under the Exchange Act.

The board of directors of Footstar has determined that the minimum number of shares stockholders need to hold in order to not be cashed out in the Partial Cash-Out Merger is 500. Footstar believes that after cashing out stockholders who hold fewer than 500 shares, it will be eligible for deregistration of its common stock and, upon such deregistration, would no longer be subject to the filing requirements of the Exchange Act. The board considered several different thresholds and believes a cash-out threshold of 500 shares is an appropriate threshold because, once the Partial Cash-Out Merger is consummated, Footstar will be able to achieve its objective of deregistering from the Exchange Act filing requirements while at the same time impacting only approximately 0.5% of Footstar's outstanding shares.

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With respect to cashed-out Footstar stockholders, the board of directors considered, among other things, the fact that the cashed-out stockholders will not be able to participate in the future earnings and growth of Footstar, if any. However, the board of directors believes that these factors are more than offset by the benefits to the cashed-out stockholders, including (1) that the Partial Cash-Out Merger consideration of $0.95 per share represents a premium of 5% over the trailing average of the closing price of our common stock for the 20 trading days prior to February 14, 2011, the date of our public announcement of the execution of the Partial Cash-Out Merger Agreement, (2) the value presented by the opportunity to realize a disposition of an otherwise relatively small investment without incurring brokerage commissions or fees and (3) that stockholders who would otherwise be cashed out but desire to retain their equity interest in Footstar after the Partial Cash-Out Merger can increase the number of shares they hold to 500 shares or more prior to the effective time. To the extent that any of the stockholders holding the approximately 0.5% of our shares which would be cashed out want to retain their equity interest in Footstar, Footstar believes that there is sufficient trading volume to ensure that such stockholders can purchase a sufficient number of shares to continue as Footstar stockholders. See “Special Factors—Purpose of the Partial Cash-Out Merger” and “—Reasons for the Board’s Recommendation.”

With respect to continuing Footstar stockholders, the board of directors considered, among other things, the adverse effect of the loss of a public trading market for the common stock, the lack of publicly available information on Footstar when it ceases to file Exchange Act reports, that Footstar will no longer be subject to the provisions of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) when it terminates its Exchange Act registration and the reduced cash balance resulting from the transaction costs for the Partial Cash-Out Merger. However, the board of directors believes that these factors are more than offset by the benefits to the remaining stockholders created by the lower expenses and other benefits of becoming a non-reporting company. See “Special Factors—Purpose of the Partial Cash-Out Merger” and “—Reasons for the Board’s Recommendation.”

Transaction with CPEX (see page [__])

On January 3, 2011, CPEX, NewCo and Merger Sub entered into the CPEX Transaction Agreement. On April 5, 2011, the transaction was consummated, and Merger Sub merged with and into CPEX (the “CPEX Transaction”), and CPEX became a wholly owned subsidiary of NewCo and an indirectly, majority-owned subsidiary of Footstar.

CPEX is a wholly owned subsidiary of NewCo, which is owned 80.5% by Footstar Corp, and 19.5% by the 19.5% Stockholder. Footstar Corp is a wholly owned subsidiary of Footstar. In exchange for their respective 80.5% and 19.5% ownership of NewCo, Footstar Corp and the 19.5% Stockholder provided approximately $3.2 million and approximately $0.8 million, respectively, in equity financing to fund the CPEX Transaction.