

EDIETS COM INC  
Form 10-K  
March 30, 2012  
Table of Contents

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2011**

**OR**

.. **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934**

**For the transition period from            to**

**Commission File Number: 000 - 30559**

**eDiets.com, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**56-0952883**  
(I.R.S. Employer  
Identification No.)

**1000 Corporate Drive, Suite 600**

**Fort Lauderdale, FL 33334**

(Address of principal executive offices) (zip code)

**(954) 360-9022**

(Registrant's telephone number, including area code)

**Securities registered pursuant to Section 12(b) of the Act:**

<b>Title of each class</b>	<b>Name of each exchange on which registered</b>
Common Stock, Par Value \$0.001 Per Share	OTC Bulletin Board

**Securities registered pursuant to Section 12(g) of the Act: None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K .

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.

Large accelerated filer

Accelerated filer

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Non-accelerated filer (Do not check if a smaller reporting company)  Smaller reporting company  
Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of shares of the Common Stock held by non-affiliates at the end of the most recently completed second fiscal quarter, based upon the close price for such stock on that date, was approximately \$6.9 million.

As of March 16, 2012, there were 14,310,534 shares of the registrant's Common Stock outstanding.

### **DOCUMENTS INCORPORATED BY REFERENCE**

The registrant intends to file a proxy statement pursuant to Regulation 14A within 120 days of the end of the fiscal year ended December 31, 2011. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

**Table of Contents**

**Table of Contents**

	<b>Page</b>
<b><u>PART I</u></b>	
ITEM 1. <b><u>BUSINESS</u></b>	2
ITEM 1A. <b><u>RISK FACTORS</u></b>	7
ITEM 1B. <b><u>UNRESOLVED STAFF COMMENTS</u></b>	13
ITEM 2. <b><u>PROPERTIES</u></b>	13
ITEM 3. <b><u>LEGAL PROCEEDINGS</u></b>	13
ITEM 4. <b><u>MINE SAFETY DISCLOSURES</u></b>	
<b><u>PART II</u></b>	13
ITEM 5. <b><u>MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES</u></b>	13
ITEM 6. <b><u>SELECTED FINANCIAL DATA</u></b>	14
ITEM 7. <b><u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u></b>	16
ITEM 7A. <b><u>QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u></b>	27
ITEM 8. <b><u>FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA</u></b>	27
ITEM 9. <b><u>CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE</u></b>	27
ITEM 9A. <b><u>CONTROLS AND PROCEDURES</u></b>	27
ITEM 9B. <b><u>OTHER INFORMATION</u></b>	28
<b><u>PART III</u></b>	28
ITEM 10. <b><u>DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE</u></b>	28
ITEM 11. <b><u>EXECUTIVE COMPENSATION</u></b>	28
ITEM 12. <b><u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS</u></b>	28
ITEM 13. <b><u>CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE</u></b>	29
ITEM 14. <b><u>PRINCIPAL ACCOUNTING FEES AND SERVICES</u></b>	29
<b><u>PART IV</u></b>	29
ITEM 15. <b><u>EXHIBITS, FINANCIAL STATEMENT SCHEDULES</u></b>	29
<b><u>SIGNATURES</u></b>	34

**Table of Contents**

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

The information contained in this Annual Report on Form 10-K and the documents that are incorporated by reference contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements concern expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. Specifically, this Annual Report on Form 10-K and the documents incorporated by reference contain forward-looking statements regarding:

our expectation that we will seek additional financial support and that that management will continue to evaluate various possibilities, including through a private placement or public offering of our common stock or securities convertible into our common stock, selling one or more lines of business, or all or a portion of the Company's assets, entering into a business combination, reducing or eliminating operations, liquidating assets, or seeking relief through a filing under the U.S. Bankruptcy Code;

our belief regarding market demand for our products and our competitive position in our industry;

our expectation regarding the efficiency and effectiveness of our advertising;

our expectation that our total gross margins will continue to improve in the future as our continued efforts to improve meal delivery margin are realized;

our expectation that revenue streams from meal delivery will continue to be the largest share of total revenues;

our belief that we can rapidly secure alternate technology infrastructure vendors if we experience an interruption in website or call center service;

our expectations regarding implementing programs designed to enhance the privacy protection of our visitors to our website;

our expectation that we will conduct our operations in compliance with applicable regulatory requirements;

our expectation regarding the effect of any legal proceedings or legal inquiries on our financial condition or results of operations; and

our estimates regarding certain accounting and tax matters, including the adoption of certain accounting pronouncements.

These forward-looking statements reflect our current views about future events and are subject to risks, uncertainties and assumptions. We wish to caution readers that certain important factors may have affected and could in the future affect our actual results and could cause actual results to differ significantly from those expressed in any forward-looking statement. The most important factors that could prevent us from achieving our goals, and cause the assumptions underlying forward-looking statements and the actual results to differ materially from those expressed in or implied by those forward-looking statements include, but are not limited to, the following:

our ability to raise additional capital;

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our ability to maintain compliance with applicable regulatory requirements;

our ability to attract and retain customers at an acceptable cost;

the effectiveness of our marketing and advertising programs;

our inability to recruit and retain key executive officers;

our ability to accurately assess market demand for our products;

our ability to continue to develop innovative new services and products and enhance our existing services and products, or the failure of our services and products to continue to appeal to the market;

our ability to improve our meal delivery margin and its effect on total gross margins;

our ability to rapidly secure alternate technology infrastructure vendors if we experience website or call center service interruption;

competition from other weight management industry participants or the development of more effective or more favorably perceived weight management methods;

the impact of our debt service obligations;

our ability to successfully implement programs designed to enhance the privacy protection of our visitors to our website;

our ability to sufficiently increase our revenues and maintain expenses and cash capital expenditures at appropriate levels;

the state of the credit markets and capital markets, including the level of volatility, illiquidity and interest rates; and

our ability to successfully estimate certain accounting and tax matters, including the effect on our Company of adopting certain accounting pronouncements.

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**Table of Contents**

**ITEM 1. BUSINESS  
GENERAL**

**Products and Services**

eDiets.com, Inc. ( eDiets , the Company or we ) leverages the power of technology to bring weight loss solutions to both consumers and businesses. We generate revenue in four ways:

We offer a nationwide weight-loss oriented meal delivery service.

We sell digital weight-loss programs.

We derive licensing revenues for the use of our intellectual property and development revenues related to the planning, design and development of private-label nutrition websites.

We sell advertising throughout our content assets, which are primarily our diet, fitness and healthy lifestyle-oriented websites.

**Subscription Business (includes our digital subscription-based plans and our meal delivery plans)**

We have been offering digital subscription-based plans in the United States since 1998, when we launched our first diet plan. Our digital diet plans are personalized according to an individual's weight goals, food and cooking preferences and include the related shopping lists and recipes. eDiets offers a variety of approximately twenty different diet plans, some of which we have developed and some of which we have licensed from third parties under exclusive arrangements. We also offer a subscription-based nationwide weight-loss oriented meal delivery service.

Subscribers to our digital diet and meal delivery plans are acquired through our own advertising or through co-marketing arrangements with third parties. In addition to a digital diet or meal delivery product, they receive access to support offerings including interactive online information, communities and education as well as telephone and online support. eDiets offers message boards on various topics of interest to our subscribers, online meetings presented by registered dietitians and the resources of approximately 45 customer service representatives and nutritionists.

Digital subscription programs ranging from four weeks to 52 weeks are billed in advance in varying increments of time. Substantially all of our digital subscribers purchase programs via credit/debit cards, with renewals billed automatically, until cancellation. During 2011 we recorded approximately \$2.6 million in digital plans revenue, or approximately 11.6% of total revenues for 2011.

Meal delivery subscribers purchase a full week or five days of prepared breakfasts, lunches, and dinners, supplemented by snacks that are generally shipped to arrive within two to three days. During 2011 we recorded approximately \$17.7 million in meal delivery revenue, or approximately 80.0% of total revenues for 2011.

**License Business (includes business-to-business and royalty revenue)**

Our eDiets Corporate Services subsidiary is actively engaged in providing private label online nutrition, fitness and wellness programs to companies mainly in the health insurance, pharmaceutical and food industries. During 2011 we recorded approximately \$1.1 million in business-to-business revenue, or approximately 4.9% of total revenues for 2011.

We also recognized approximately \$0.6 million in royalty revenue in 2011 as a result of having licensed to Tesco plc ( Tesco ) the exclusive rights to use eDiets brand and diet plan technology in the UK and Ireland. Effective July 31, 2009, we terminated this exclusive licensing agreement with Tesco. The termination agreement provides Tesco with certain continuing rights in the Company technology used by or incorporated into Tesco's diet website prior to termination, including a three-year non-exclusive right to use such technology and, thereafter, an assignment of certain intellectual property rights relating to such technology.

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### Content Business (includes advertising and ecommerce revenue)

Our advertising sales revenues from third-party banner impressions on our website were approximately \$0.2 million, or approximately 1.0% of total revenues for 2011, and are derived from our flagship website, www.eDiets.com. The site includes free content developed primarily by our in-house editorial staff.

### Our Industry

The weight loss industry in the U.S. is large and continues to grow. According to Marketdata Enterprises, Inc. in a 2011 report, our particular segment, the Online Dieting Market, was estimated to grow from approximately \$990.0 million in 2010 to \$1.2 billion in 2014.



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## **Table of Contents**

We believe the growing population of overweight and obese people who are motivated by both an increasing awareness of the health benefits of weight loss and the desire to improve their lives is driving the growth of weight-loss solutions. We believe our comprehensive and integrated weight-loss offerings, which include our fresh-prepared meal delivery service, personalized online subscription-based plans and licensing related to private-label websites uniquely positions us in serving both consumers and businesses.

### **Marketing**

Our total advertising media spending in 2011 was approximately \$6.3 million, or approximately 28.6% of revenues. We currently pay to advertise our services through cable television placements, online paid and natural search programs, Web affiliate programs, third party online banners, and print advertising campaigns. In addition, we advertise on our websites and in our email newsletters. Over the last few years our cost to acquire subscribers through banner advertisements on the major online portals has risen as a result of rapidly rising online advertising rates. We have responded by shifting an increasing percentage of our advertising budget to television, paid search programs and co-marketing partnerships.

### **Competition**

We face significant competition. In the online subscription diet business our most significant competitor is www.weightwatchers.com, which is owned by Weight Watchers® International. We also compete with privately-held Waterfront Media, Inc., which operates a variety of diet- and self-help-oriented websites including www.southbeachdiet.com, and with the WebMD® Weight Loss Center operated by WebMD, Inc. In the meal delivery business we compete with Nutrisystem, Inc. and Jenny Craig, Inc. as well as others. In the business-to-business licensing of digital diet, fitness and healthy lifestyle content, tools and services we compete with Miavita, which is owned by Matria Healthcare, Inc., Nutrihand, Genesant, and with several private companies. Many of our competitors in the weight loss industry, including NutriSystem, Inc. and Jenny Craig, Inc., are significantly larger and have greater financial resources than we do and may be able to devote greater resources for the development and promotion of their services and products. We mainly compete in the areas of program efficacy, price, taste, customer service and brand recognition.

### **Dependence on Third Parties**

We derive significant portions of our business from relationships with both third party websites and third party licensors. Beginning in April 2003, we began to offer online personalized meal plans based upon intellectual property licensed from third parties.

In addition, we depend on certain third party technology vendors for the day-to-day smooth operation and availability of our website and services. We have designed our infrastructure to provide reliability and scalability as it supports our operations. Our data centers are located within two secure tier 1 collocation facilities in Chicago, Illinois and Lithia Springs, Georgia. The facilities provide us with:

ready access to increased network bandwidth;

improved redundancy, security, and disaster recovery; and

24-hour onsite management and support.

Although the facilities provide us with increased security and reliability, there can be no assurance that we will not experience an interruption in service. During 2011, our site was operating 99% of the time. To the extent that service is interrupted or delayed, we could experience a decrease in traffic, loss of customers and harm to our reputation. However, we believe that we could secure alternate technology infrastructure vendors rapidly.

Approximately 80% of our revenue comes from our meal delivery program, from which we currently depend on one third party meal delivery vendor for the manufacture and fulfillment of our prepared meals. If we are unable to obtain sufficient quantity, quality and variety of food and fulfillment of customer orders in a timely and low-cost manner from this manufacturer, we will be unable to adequately fulfill our customers orders which would adversely affect our operating results and damage the value of our brand. Our orders are currently shipped by one third-party, United Parcel Service, Inc.



## **Table of Contents**

### **INTELLECTUAL PROPERTY, PROPRIETARY RIGHTS AND DOMAIN NAMES**

Our success depends on the goodwill associated with our trademarks and other proprietary intellectual property rights.

We attempt to protect our intellectual property and proprietary rights through a combination of trademark, copyright and patent law, trade secret protection and confidentiality agreements with our employees and marketing and advertising partners. We pursue the registration of our domain names, trademarks and service marks and patents in the United States and abroad. A substantial amount of uncertainty exists concerning the application of the intellectual property laws to the Internet and there can be no assurance that existing laws provide adequate protection of our proprietary intellectual property or our domain names. The steps we take to protect our proprietary rights may not be adequate and third parties may infringe or misappropriate our copyrights, trademarks, service marks and similar proprietary rights.

### **GOVERNMENT REGULATION**

There are an increasing number of laws and regulations being promulgated by the United States government, governments of individual states and governments overseas that pertain to the Internet and doing business online. In addition, a number of legislative and regulatory proposals are under consideration by federal, state, local and foreign governments and agencies. Laws or regulations have been or may be adopted with respect to the Internet relating to:

liability for information retrieved from or transmitted over the Internet;

online content regulation;

commercial e-mail;

visitor privacy; and

taxation and quality of products and services.

Moreover, the applicability to the Internet of existing laws governing issues such as:

intellectual property ownership and infringement;

consumer protection;

obscenity;

defamation;

employment and labor;

the protection of minors;

health information; and

personal privacy and the use of personally identifiable information.

This area is uncertain and developing. Any new legislation or regulation or the application or interpretation of existing laws may have an adverse effect on our business. Even if our activities are not restricted by any new legislation, the cost of compliance may become burdensome, especially as different jurisdictions adopt different approaches to regulation.

#### **LIABILITY FOR INFORMATION RETRIEVED FROM OUR WEBSITE AND FROM THE INTERNET**

Content may be accessed on our website and this content may be downloaded by visitors and subsequently transmitted to others over the Internet. This could result in claims made against us based on a variety of theories, including, but not limited to, tort, contract and intellectual property violations. We could also be exposed to liability with respect to content that may be posted by visitors to our chat rooms or bulletin boards. It is also possible that if any information contains errors or false or misleading information or statements, third parties could make claims against us for losses incurred in reliance upon such information. In addition, we may be subject to claims alleging that, by directly or indirectly providing links to other websites, we are liable in tort, contract or intellectual property, for the wrongful actions of third party website operators. The Communications Decency Act of 1996, as amended, provides that, under certain circumstances, a provider of Internet services shall not be treated as a publisher or speaker of any information provided by a third-party content provider. This safe harbor has been interpreted to exempt certain activities of providers of Internet services. Our activities may prevent us from being able to take advantage of this safe harbor provision. Any claims brought against us in this respect may have a material and adverse effect on our business.

## **Table of Contents**

### **PRIVACY CONCERNS**

The Federal Trade Commission (FTC) has adopted regulations and guidelines regarding the collection and use of personally identifiable consumer information obtained from individuals when accessing websites, with particular emphasis on access by minors. Such regulations include requirements that companies establish certain procedures to, among other things:

give adequate notice to consumers regarding the type of information collected and disclosure practices;

provide consumers with the ability to have personally identifiable information deleted from a company's database;

provide consumers with access to their personal information and with the ability to rectify inaccurate information;

notify consumers of changes to policy and procedure for the use of personally identifiable information;

clearly identify affiliations with third parties that may collect information or sponsor activities on a company's website; and

obtain express parental consent prior to collecting and using personal identifying information obtained from children under 13 years of age.

These regulations also include enforcement and redress provisions. We have implemented and intend to continue to implement programs designed to enhance the protection of the privacy of our visitors and comply with these regulations. However, the FTC's regulatory and enforcement efforts may adversely affect our ability to collect personal information from visitors and customers and therefore limit our marketing efforts.

### **TRADE PRACTICES REGULATIONS**

The FTC and certain states' regulatory authorities regulate advertising and consumer matters such as unfair and deceptive trade practices. The FTC renewed its focus on claims made in weight-loss advertisements, announcing, for example, new guidelines effective December 2009 concerning the use of endorsements and testimonials in advertising. In addition, the state of Florida, where our corporate offices are located, regulates certain marketing and disclosure requirements for weight loss providers. The nature of our interactive Internet activities may subject us to similar legislation in a number of other states. Although we intend to conduct our operations in compliance with applicable regulatory requirements and continually review our operations to verify compliance, we cannot ensure that aspects of our operations will not be reviewed and challenged by the regulatory authorities and that if challenged that we would prevail. Furthermore, we cannot ensure that new laws or regulations governing weight loss and nutrition services providers will not be enacted, or existing laws or regulations interpreted or implied in the future in such way as to cause harm to our business.

In addition, we generate advertising revenue from third-party banner impressions on our website. These advertisements can be weight-loss related. Any regulations or enforcement actions that adversely affect the companies which advertise on our website may indirectly have an adverse effect on us through either lower advertising budgets at those companies, redirected marketing campaigns or restrictions on the type of advertisements that these companies run.

### **COMMERCIAL E-MAIL REGULATION**

We rely to varying degrees on online advertising and e-mail in our marketing efforts. The use of e-mail advertising may become less effective in the future for a number of reasons. Some of these reasons are regulatory, as legislators attempt to address problems related to perceived deceptive practices in unsolicited bulk e-mails. For example, the federal CAN-SPAM Act of 2003, which became effective January 1, 2004, places requirements on certain commercial e-mail activity relating to, among other things, making conspicuous and effective opt-out procedures available to the recipient and the identification and location of the sender. We have implemented procedures to ensure compliance with the

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federal CAN-SPAM Act of 2003, but future legislation or regulatory developments under existing laws may have a negative impact on our ability to advertise by e-mail. E-mail advertising also may become less effective in the future for non-regulatory reasons, including the sheer volume of unsolicited e-mail being received, increased use of "white lists" through which only pre-approved sender addresses are not filtered, and other e-mail filtering systems which may become more robust in response to recent viruses and worms circulating on the Internet.

Furthermore, we cannot provide any assurance that future regulation of commercial e-mail will not also impose significant costs or restrictions on even subscriber-based or "opt-in" e-mail services such as our newsletter service. As part of the public debate on commercial e-mail regulations, for example, some have advocated an electronic stamp program applicable to commercial e-mail generally, and it is unclear what exceptions, if any, there would be under such a program for a periodic newsletter service such as ours if such a program were passed as legislation.

## **Table of Contents**

### **REGULATION BY OTHER JURISDICTIONS**

Due to the global nature of the Internet, it is possible that, although transmissions by us over the Internet originate primarily in the United States, the governments of other foreign countries might attempt to regulate our transmissions or prosecute us for violations of their laws. These laws may be modified, or new laws enacted, in the future. We may unintentionally violate these laws to the extent that our transmissions are sent to or made available in these jurisdictions. Like domestic regulations that may apply to our activities, even if compliance is possible the cost of compliance may be burdensome. Any of these developments could cause our business to suffer. In addition, as our service is available over the Internet in multiple states and foreign countries, these jurisdictions may claim that we are required to qualify to do business as a foreign corporation in each state or foreign country. We have not qualified to do business as a foreign corporation in any jurisdiction, except Florida. This failure by us to qualify as a foreign corporation in a jurisdiction where we are required to do so could subject us to taxes and penalties and could result in our inability to enforce contracts in such jurisdictions.

### **Company Information**

General information about us can be found at <http://www.ediets.com/company/AbouteDiets.jsp>. We make available our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to these reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act ) as soon as reasonably practicable after we electronically file such materials with the Securities and Exchange Commission, free of charge on our website.

Information contained on our website, or on any other website mentioned in this Annual Report, is not incorporated by reference in this Annual Report and does not constitute a part of this Annual Report.

We currently employ approximately 63 employees of which 59 are full time employees.

### **General Development of the Business**

The predecessor to eDiets was incorporated in the State of Delaware in March 1996 under the name Self-help Technologies, Inc. The Company's mission was, and remains, to provide solutions that help individuals to realize their full potential. Initially, the product developed and promoted was personalized diet programs for direct to consumer sales at in-store locations such as grocery stores. However, we quickly shifted our promotional strategy to online direct to consumer sales as consumer acceptance and usage of the Internet began to accelerate.

Much of 1996 and 1997 were spent in developing a software platform that facilitates the production of individualized meal plans and shopping lists using a specific mathematical algorithm, which takes into account such criteria as the user's physical condition, proclivity to exercise, food preferences, cooking preferences, desire to use pre-packaged meals or dine out, among others.

We sold our first online diet program in 1998 and continued to market memberships through modest online advertising arrangements with several leading Internet portals throughout 1998 and 1999. These advertising arrangements were enhanced in February 1999 when our founder and then Chief Executive Officer, David Humble, completed the development of software that measures consumer response to marketing, pricing and other elements of a direct marketing campaign. Mr. Humble has granted the Company a perpetual royalty-free license for this technology for use in the scope of its current business.

In November 1999, eDiets merged into a newly-created, wholly-owned subsidiary of Olas, Inc., a publicly-traded company of which substantially all of the operating assets had been sold in 1995. Olas, Inc. then changed its name to eDiets.com, Inc. Following the merger, in November and December 1999 eDiets completed a private placement of common stock and warrants that generated approximately \$6.3 million in net proceeds to the Company. Beginning in early 2000, we primarily used the proceeds from this financing to fund online advertising expenditures that significantly increased in the Company's base of paying subscribers.

In 2003, we implemented a strategy to obtain exclusive licenses for the intellectual property associated with a variety of third party nutrition and fitness approaches and to offer personalized versions of these approaches in addition to our own internally-developed plans all at one web location.

In 2006, we started to diversify our revenue streams by entering the business-to-business nutrition space with the acquisition of Nutrio.com, Inc. ( Nutrio ) and also with our launch of a nationwide diet meal delivery service.

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Seasonality: We typically experience our weakest conversion rates during our fiscal fourth quarter due to the November-December holiday season, and we moderate our advertising expenditures accordingly.



**Table of Contents****Executive Officers of Registrant**

Set forth below is certain information relating to our current executive officers.

Thomas Connerty	48 President and Chief Executive Officer
Kevin A. Richardson II	43 Chairman

Mr. Connerty joined the Board in April 2011 and was appointed President and Chief Executive Officer of the Company in February 2012. He has over 25 years of expertise in direct response marketing with leading consumer branded companies. Mr. Connerty formerly held a number of senior positions with Nutrisystem, Inc., a commercial provider of weight loss products and services, including Chief Marketing Officer from November 2004 to May 2008, Executive Vice President from April 2005 to May 2008 and Executive Vice President of Program Development from July 2006 to May 2008. While with Nutrisystem, Inc, Mr. Connerty was instrumental in successfully creating and implementing innovative direct marketing programs which contributed to that company's rapid growth. From 1999 to 2004, Mr. Connerty served as Vice President of Marketing at the Nautilus Group, where he played a key role in building the Bowflex division into one of the most profitable and recognizable names in the direct response home fitness market. Prior to Nautilus, Mr. Connerty served as the Vice President of Broadcast for the Home Shopping Network.

Mr. Richardson has served as the Company's Chairman of the Board of Directors since 2006. In March 2012, Mr. Richardson was appointed to perform the functions of the Company's principal financial officer and principal accounting officer. Mr. Richardson founded Prides Capital LLC and Prides Capital Partners LLC in January 2004 where he is Managing Director. Prides Capital LLC and Prides Capital Partners LLC specialize in strategic block, active investing in small- and micro-cap public and private companies. From April 1999 until the end of 2003, Mr. Richardson was a partner at Blum Capital Partners, a \$2.5 billion investment firm. Between May 1999 and September 2003, Mr. Richardson was the lead public partner on 18 investments. Prior to joining Blum Capital, Mr. Richardson was an analyst at Tudor Investment Corporation, an investment management firm. Previously, Mr. Richardson spent four years at Fidelity Management and Research where he was the assistant portfolio manager of the Fidelity Contra Fund, a registered investment company. Mr. Richardson also managed Fidelity Airline Fund, the Fidelity Aerospace and Defense Fund, and performed research and analysis in a variety of industry sectors (computer services, business services, media, financial services, and healthcare information technology). Previously, Mr. Richardson worked at Kidder, Peabody & Co. Mr. Richardson is also a director of SANUWAVE Health, Inc., and previously served as a director of QC Holdings, Inc. until June 2007 and Healthtronics, Inc. until November 2008. Mr. Richardson received an M.B.A. from Kenan-Flagler Business School at the University of North Carolina. Mr. Richardson originally joined the Board of Directors in connection with the 2006 purchase of approximately 9.9 million shares of common stock by Prides Capital Fund I, LP, in which Prides Capital Partners LLC is general partner.

**ITEM 1A. RISK FACTORS**

***We have experienced recurring operating losses and our liquidity has been significantly reduced, and we expect to continue incurring losses in the future.***

For the year ended December 31, 2011, we had a net loss of \$4.4 million and used \$3.5 million of cash in operations. As of December 31, 2011, we had an accumulated deficit of \$107.8 million and a total stockholders' deficit of \$1.3 million. As of December 31, 2011 and February 29, 2012 we had unrestricted cash of \$0.6 million and \$0.6 million, respectively. We may not achieve profitability in the future, and even if we do, we may not be able to sustain being profitable.

Due to uncertainty about our ability to meet our current operating expenses and capital expenditures, in their report on our annual financial statements for the year ended December 31, 2011, our independent registered public accounting firm stated that these conditions raise substantial doubt about the Company's ability to continue as a going concern. If we are unable to continue as a going concern, our stockholders will likely lose all of their investment in the Company.

***We will be required to raise additional funds to finance our operations and remain a going concern; we may not be able to do so when necessary, and/or the terms of any financings may not be advantageous to us.***

The continuation of our business is dependent upon raising additional financial support. In light of our results of operations, management has and intends to continue to evaluate various possibilities. These possibilities include: raising additional capital through the issuance of common or preferred stock, securities convertible into common stock, or secured or unsecured debt, selling one or more lines of business, or all or a portion of the Company's assets, entering into a business combination, reducing or eliminating operations, liquidating assets, or seeking relief through a

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filing under the U.S. Bankruptcy Code. These possibilities, to the extent available, may be on terms that result in significant dilution to our existing stockholders or that result in our existing stockholders losing all of their investment in the Company.

There can be no assurances that the Company will be successful in raising adequate additional financial support. If not, the Company will be required to reduce operations and/or liquidate assets and/or seek relief through a filing under the U.S. Bankruptcy Code. The Company's consolidated financial statements do not include any adjustments relating to the recoverability of assets and classification of assets and liabilities that might be necessary should the Company be unable to continue as a going concern.

***We have no long-term credit facility or other source of long-term funding other than \$1.0 million in Notes held by a former officer and directors of our Company (the Director Notes), and as of December 31, 2011, we had approximately \$57,000 in accrued interest on the Director Notes that will mature on December 31, 2012.***

We have no long-term credit facility or other source of long-term funding other than the Director Notes which represent: (i) a promissory note to Kevin A. Richardson, II, one of the Company's directors and an officer of Prides Capital Partners, LLC (Prides), pursuant to which the Company borrowed \$600,000, (ii) a promissory note to Lee S. Isgur, one of the Company's directors, pursuant to which the Company borrowed \$200,000 and (iii) a promissory note to Kevin N. McGrath, formerly one of the Company's directors and the Company's President and Chief Executive Officer, pursuant to which the Company borrowed \$200,000. The Director Notes mature on December 31, 2012 at which time we must repay the original principal amount of \$1.0 million, together with accrued interest of approximately \$107,000. We do not believe that our cash flows from operations alone will be sufficient to support repayments and otherwise satisfy our repayment obligation under these Director Notes. Furthermore, even if we are able to refinance or extend the Director Notes, we will need additional financing to continue our operations. Based on our current financial condition, we may be unable to obtain such financing on commercially reasonable terms if at all. If we are unable to obtain third party financing, we will be required to pursue one or more alternative strategies, such as seeking additional equity capital, reducing operations, liquidating assets, or seeking relief through a filing under the U.S. Bankruptcy Code. Any such actions could adversely affect our financial condition and the value of our common stock.

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**Table of Contents**

*Our securities are quoted on the OTC Bulletin Board, which may limit the liquidity and price of our securities more than if our securities were quoted or listed on or a national securities exchange.*

Our common stock is currently quoted for trading in the OTC Bulletin Board, which is generally considered to be a less efficient market than markets such as NASDAQ or other national exchanges, and which may cause difficulty in conducting trades and difficulty in obtaining future financing. Some investors may perceive our securities to be less attractive because they are traded in the over-the-counter market. In addition, as an OTC Bulletin Board quoted company, we do not attract the extensive analyst coverage that accompanies companies listed on a national securities exchange. Further, institutional and other investors may have investment guidelines that restrict or prohibit investing in securities traded in the over-the-counter market. These factors may have an adverse impact on the trading and price of our securities.

*Economic conditions are adversely affecting consumer discretionary spending and may continue to negatively impact our business and operating results.*

Because our meal delivery offerings consist of freshly prepared meals, they are priced higher than our major competitors such as Nutrisystem and Jenny Craig. The success of our meal delivery business is therefore dependent on customers' willingness and ability to invest a larger percentage of discretionary spending in our meal delivery products than may be required with our competitors' products. Because discretionary spending is influenced by general economic conditions, consumer confidence and the availability of discretionary income, a protracted economic slowdown, increased unemployment, decreased salaries and wage rates, increased energy prices, inflation, rising interest rates or other industry-wide cost pressures adversely affect consumer behavior and decrease consumer discretionary spending. A decline in our customers' discretionary spending could adversely affect our business, financial condition, operating results and cash flows. If this difficult economic situation continues for a prolonged period of time or deepens in magnitude, our business and results of operations could be materially affected.

*We may be forced to enter into business combinations and strategic alliances on unfavorable terms which may disrupt our business.*

In order to continue our business, we may be required to enter into asset sales, business combinations, investments, joint ventures or other strategic alliances with other companies. To the extent we are able to find a purchaser or other joint venturer, due to our weak financial and operating condition, these transactions may be on highly unfavorable terms, which may materially adversely affect or eliminate the value of our common stock. If we are unable to consummate a transaction of this type, we may be required to cease operations.

*Our future growth and profitability will depend in large part upon the effectiveness and efficiency of our marketing expenditures and our ability to select the right markets and media in which to advertise.*

Our future growth and profitability will depend in large part upon the effectiveness and efficiency of our marketing expenditures, including our ability to:

create greater awareness of our brand and our program;

identify the most effective and efficient level of spending in each market, media and specific media vehicle;

determine the appropriate creative message and media mix for advertising, marketing and promotional expenditures;

effectively manage marketing costs (including creative and media) in order to maintain acceptable customer acquisition costs;

select the right market, media and specific media vehicle in which to advertise; and

convert consumer inquiries into actual orders.

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Our planned marketing expenditures may not result in increased revenue or generate sufficient levels of brand name and program awareness. We may not be able to manage our marketing expenditures on a cost-effective basis whereby our customer acquisition cost may exceed the contribution profit generated from each additional customer.

*As the largest stockholder, Prides has significant influence over our company.*

As of March 16, 2012, Prides owned approximately 52.3% of our outstanding voting common stock based upon 14,310,534 shares outstanding. Therefore, as a practical matter, Prides has significant influence over the outcome of any stockholder vote, including the election of directors and the approval of mergers or other business combination transactions. Additionally, concentration of control in one stockholder may discourage potential investors from providing additional financing if we need it. Prides initially acquired our common stock under the terms of a 2006 Securities Purchase Agreement (the "Company Purchase Agreement"). The Company Purchase Agreement affords Prides certain participation rights and anti-dilution protections which could make it more difficult for us to obtain additional financing or to effect a merger or other business combination transaction. In addition, under the terms of the Company Purchase Agreement, as long as Prides owns at least 5% of our outstanding common stock, the following require the approval of a majority vote of our board of directors, which majority must include at least one Prides director:

authorize, create, designate, establish or issue any other class or series of capital stock ranking senior to our capital stock as to dividends or upon liquidation, or reclassification of any shares of our capital stock into shares having any preference or priority as to dividends or upon liquidation superior to any such preference or priority of our common stock;

adopt a plan for the liquidation, dissolution or winding up of the affairs of our company or any recapitalization plans;

amend, alter or repeal, whether by merger, consolidation or otherwise our Certificate of Incorporation;

alter or change the rights, preferences or privileges of our common stock or the warrants issued to Prides; or

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**Table of Contents**

directly or indirectly, declare or pay any dividend (other than dividends payable in shares of our common stock) or directly or indirectly purchase, redeem, purchase or otherwise acquire any share of our common stock (except for shares of our common stock repurchased from current or former employees, consultants, or directors upon termination of service in accordance with plans approved by our board of directors (whether in cash, securities or property or in our obligations).

***We face significant competition which may materially and adversely affect us.***

Competition is intense in the weight management industry and we must remain competitive in the areas of program efficacy, price, taste, customer service and brand recognition. In addition to Weight Watchers® International, Inc., Waterfront Media, Inc. and Nutrisystem, Inc. we currently compete with several Internet sites which provide diet and nutrition information, including WeightWatchers.com. We know of several other online competitors aggressively marketing online programs which may be somewhat similar to ours, including some that are offered at no charge to the customer.

Increased competition and a proliferation of free online diet plans could result in reductions in the prices we receive for our programs, lower margins, loss of customers and reduced visitor traffic to our website.

Several of our existing competitors and potential competitors have longer operating histories, greater name recognition and significantly greater financial, technical and marketing resources and may be able to devote greater resources for the development and promotion of their services and products. These competitors may also engage in more extensive marketing and advertising efforts, adopt more aggressive pricing policies and make more attractive offers to advertisers and alliance partners. Accordingly, we may not be able to compete successfully.

***We rely on third parties to provide us with adequate food supply and certain fulfillment, the loss of which could cause our revenue, earnings or reputation to suffer.***

*Food Manufacturer.* We currently depend on one third party meal delivery vendor for manufacture and fulfillment of our prepared meals. If we are unable to obtain sufficient quantity, quality and variety of food and fulfillment of customer orders in a timely and low-cost manner from this manufacturer, we will be unable to adequately fulfill our customers' orders which would adversely affect our operating results and damage the value of our brand.

*Freight and Fulfillment.* Our orders are currently shipped by one third-party, United Parcel Service, Inc. ( UPS ). Should UPS be unable to service our needs for even a short duration, our revenue and business could be harmed. Additionally, the cost and time associated with replacing UPS on short notice would add to our costs. Any replacement fulfillment provider would also require startup time, which could cause us to lose sales and market share.

Therefore, we are dependent on maintaining good relationships with these third parties. The services we require from these parties may be disrupted by a number of factors associated with their businesses, including the following:

labor disruptions;

delivery problems;

financial condition of operations;

internal inefficiencies;

equipment failure;