

GLOBE SPECIALTY METALS INC

Form 10-K/A

August 30, 2012

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Amendment No. 1 to

Form 10-K

(Mark One)

☒

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

For the fiscal year ended June 30, 2012

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 001-34420

Globe Specialty Metals, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

20-2055624

(I.R.S. Employer
Identification No.)

One Penn Plaza

250 West 34th Street, Suite 4125

New York, NY 10119

(Address of principal executive offices, including zip code)

(212) 798-8122

(Registrant's telephone number, including area code)

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

Title of Each Class

Common stock, \$0.0001 par value

Name of Each Exchange on Which
Registered

The NASDAQ Global Select Market

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 ☒

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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 Web site, 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 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. (Check one):

Large accelerated filer	Accelerated	Non-accelerated filer	Smaller reporting company
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of August 23, 2012, the registrant had 75,051,549 shares of common stock outstanding. As of December 31, 2011 (the last business day of the Registrant's most recently completed second fiscal quarter), the aggregate market value of such shares held by non-affiliates of the Registrant was approximately \$861.1 million.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive Proxy Statement relating to the 2012 Annual Meeting of Stockholders, filed with the Securities and Exchange Commission, are incorporated by reference in Part III, Items 10 - 14 of this Annual Report on Form 10-K as indicated herein.

EXPLANATORY NOTE

This Amendment No. 1 to the Annual Report on Form 10-K (“Amended 10-K”) of Globe Specialty Metals, Inc. (“we” or “Globe”) amends our Annual Report on Form 10-K for the year ended June 30, 2012 that was filed with the Securities Exchange Commission (“SEC”) on August 28, 2012 (“Original 10-K”). This Amended 10-K does not reflect a change in our results of operations or financial position as reported in the Original 10-K. Instead, this Amended 10-K is filed to amend the Report of Independent Registered Public Accounting Firm, which contained an incorrect date on the Original 10-K. This Amended 10-K does not reflect events occurring after the Original 10-K or modify or update the disclosure contained therein in any way other than as required to reflect the amendment discussed above.

This Amended 10-K consists only solely of the preceding cover page, this explanatory note, the amended exhibit index, the signature page, the amended Report of Independent Registered Public Accounting Firm and the officer certifications filed as Exhibits 31.1, 31.2 and 32.1

Item 15. Exhibits

The following exhibits are filed with this Annual Report or incorporated by reference:

Exhibit Number	Description of Document
2 .1	Purchase and Sale Agreement dated as of March 26, 2010, by and among Globe Metals Enterprises, Inc., Core Metals Group Holdings LLC and each of the Sellers named therein (6)
2 .2	Membership Interest Purchase Agreement dated May 27, 2011 by and among NGPC Asset Holdings II, LP, NGP Capital Resources Company and Globe BG, LLC relating to Alden Resources Inc. (7)
2 .3	Membership Interest Purchase Agreement dated May 27, 2011 by and among NGPC Asset Holdings II, LP, NGP Capital Resources Company and Globe BG, LLC relating to Gatliff Services, Inc. (7)
2 .4	Purchase Agreement dated May 27, 2011 by and among NGP Capital Resources Company, Globe BG, LLC and Globe Specialty Metals, Inc. regarding The Overriding Royalty Interests (7)
2 .5	Agreement of Purchase and Sale dated as of April 25, 2012 by and among Becancour Silicon Inc., Timminco Ltd., QSI Partners Ltd., and Globe Specialty Metals, Inc. †
Articles of Incorporation and Bylaws	
3 .1	Amended and Restated Certificate of Incorporation (1)
3 .2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation (1)
3 .3	Amended and Restated Bylaws (2)
Instruments Defining the Rights of Security Holders, Including Indentures	
4 .1	Third Amended and Restated Credit Agreement dated as of March 30, 2011, by and among GMI, Tennessee Alloys Company LLC, and GSM Sales, Inc., as borrowers, Alabama Sand and Gravel, Inc. and Laurel Ford Resources, Inc., as subsidiary guarantors, GSM, as Parent, the lender parties thereto, and Societe Generale, as Administrative Agent, Issuing Bank, Swingline Lender and Collateral Agent and SG Americas Securities LLC, as Sole Arranger (3)
4 .2	Term Loan Agreement, dated July 28, 2011, by and among GBG Holdings, LLC, Globe Specialty Metals, Inc., GSM Enterprises LLC, the Lenders from time to time party thereto, and BNP Paribas, as administrative agent, collateral agent, sole lead arranger and sole bookrunner (13)
4 .3	Credit Agreement, dated as of May 31, 2012, among the Company, certain subsidiaries of the Company from time to time party thereto, Fifth Third Bank as Administrative Agent and L/C issuer, Merrill Lynch, Pierce, Fenner & Smith Incorporated as Joint Lead Arranger and Joint Book Runner, Bank of America, N.A., KeyBank National Association, Sovereign Bank, N.A., and Wells Fargo Bank, N.A., as Co-Syndication Agents, and BBVA Compass Bank, Citibank, N.A., Citizens Bank Of Pennsylvania, HSBC Bank USA N.A., and PNC Bank, National Association, as Co-Documentation Agents, and the other lenders party thereto. (5)
We are a party to other instruments defining the rights of holders of long-term debt. No such instrument authorizes an amount of securities in excess of 10 percent of the total assets of the company and its subsidiaries on a consolidated basis. We agree to furnish a copy of each such instrument to the Commission on request.	
Material Contracts	
10 .1	Output and Supply Agreement, dated as of October 1, 2010, by and among Quebec Silicon Limited Partnership, Becancour Silicon Inc. (succeeded in interest by QSIP Canada ULC) and Dow Corning Corporation. †
10 .2	Shareholders Agreement between all the Shareholders of Quebec Silicon General Partner Inc., dated as of October 1, 2010, by and among Becancour Silicon Inc. (succeeded in interest by QSIP Canada ULC), Dow Corning Netherlands, B.V., and Quebec Silicon General Partner Inc. †

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- 10 .3 Amended and Restated Limited Partnership Agreement dated as of October 1, 2010, by and among Becancour Silicon Inc. (succeeded in interest by QSIP Canada ULC), Dow Corning Canada, Inc., and Quebec Silicon General Partner Inc. †
- Management Contracts and Compensatory Plans
- 10 .6 2006 Employee, Director and Consultant Stock Option Plan (1)
- 10 .7 Amendments to 2006 Employee, Director and Consultant Stock Option Plan (8)
- 10 .8 2010 Annual Executive Bonus Plan (9)
- 10 .9 Chief Financial Officer and Chief Legal Officer Annual Bonus Plan (10)
- 10 .10 Framework for the 2011 Annual Executive Long Term Incentive Plan (11)
- 10 .11 Employment Agreement, dated January 27, 2011, between GSM and Alan Kestenbaum (11)
- 10 .12 Employment Agreement, dated July 5, 2011, between GSM and Jeff Bradley (12)
- 10 .13 Employment Agreement, dated November 30, 2011, between GSM and Malcolm Appelbaum (4)
- 10 .14 Employment Agreement, dated June 20, 2008, between GSM and Stephen Lebowitz (1)
- 10 .15 Amendment to Employment Agreement, dated October 27, 2010, between GSM and Stephen Lebowitz (8)
- 10 .16 Executive Deferred Compensation Plan (4)
- 10 .17 Director Deferred Compensation Plan (4)
- 21 .1 Subsidiaries †
- 23 .1 Consent of KPMG LLP †
- 31 .1 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 ^
- 31 .2 Certification of the Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 ^
- 32 .1 Certification of the Principal Executive Officers and Principal Financial Officer Pursuant to 18 U.S.C. 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 ^
- 95 Mine Safety Disclosure †
- 101 The following materials from our Annual Report on Form 10-K for the fiscal year ended June 30, 2012 formatted in eXtensible Business Reporting Language (“XBRL”): (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Income, (iii) the Condensed Consolidated Statements of Changes in Stockholders’ Equity, (iv) the Condensed Consolidated Statements of Cash Flows, and (v) notes to these consolidated financial statements. *
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- † Filed with the Form 10-K filed on August 28, 2012.
- ^ Filed with this Amendment No. 1.
- * In accordance with Rule 406T of Regulation S-T, the XBRL related documents in Exhibit 101 to this Annual Report on Form 10-K are deemed not filed or part of a registration statement or prospectus for purposes of Section 11 or Section 12 of the Securities Act of 1933, as amended; are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended; and otherwise are not subject to liability under those Sections.
- 1 Incorporated by reference to the exhibit with the same designation filed with the Company's registration statement on Form S-1 (Registration No. 333-152513) filed on July 25, 2008.
- 2 Incorporated by reference to the exhibit with the same designation filed with Amendment No. 1 to the Company's registration statement on Form S-1 (Registration No. 333-152513) filed on November 4, 2008.
- 3 Incorporated by reference to exhibit to the Company's Form 8-K filed on April 5, 2011.
- 4 Incorporated by reference to exhibit to the Company's Form 10-Q filed on February 8, 2012.
- 5 Incorporated by reference to exhibit to the Company's Form 8-K filed on June 6, 2012.
- 6 Incorporated by reference to exhibit to the Company's Form 8-K filed on April 1, 2010.
- 7 Incorporated by reference to exhibit to the Company's Form 8-K filed on June 3, 2011.
- 8 Incorporated by reference to exhibit to the Company's Form 10-Q filed on February 11, 2011.
- 9 Incorporated by reference to exhibit to the Company's Form 10-K filed on September 28, 2010.
- 10 Incorporated by reference to exhibit to the Company's Form 10-Q filed on November 12, 2010.
- 11 Incorporated by reference to exhibit to the Company's Form 10-Q filed on May 12, 2011.
- 12 Incorporated by reference to exhibit to the Company's Form 10-K filed on August 26, 2011.
- 13 Incorporated by reference to exhibit to the Company's Form 8-K filed on August 2, 2011.
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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Amendment No. 1 to be signed on its behalf by the undersigned, thereunto duly authorized.

Globe Specialty Metals, Inc. (Registrant)

By: /s/ Malcolm Appelbaum
Malcolm Appelbaum
Chief Financial Officer

August 30, 2012

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Globe Specialty Metals, Inc.:

We have audited the accompanying consolidated balance sheets of Globe Specialty Metals, Inc. and subsidiary companies (the Company) as of June 30, 2012 and 2011, and the related consolidated statements of income, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended June 30, 2012. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the Standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Globe Specialty Metals, Inc. and subsidiary companies as of June 30, 2012 and 2011, and the results of their operations and their cash flows for each of the years in the three-year period ended June 30, 2012, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Globe Specialty Metals, Inc. and subsidiary companies' internal control over financial reporting as of June 30, 2012, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated August 27, 2012 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

New York, New York
August 27, 2012

