

ENERGY FOCUS, INC/DE  
Form S-1/A  
August 09, 2012

As filed with the Securities and Exchange Commission on August 9, 2012  
Registration No. 333-183058

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

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AMENDMENT NO. 1 TO  
FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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ENERGY FOCUS, INC.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

94-3021850  
(I.R.S. Employer  
Identification No.)

32000 Aurora Road  
Solon, Ohio 44139  
440.715.1300

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

Joseph G. Kaveski  
Chief Executive Officer  
Energy Focus, Inc.  
32000 Aurora Road  
Solon, Ohio 44139  
440.715.1300

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

Copy to:

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Cleveland, Ohio 44103-3785  
216.241.2880

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

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If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.  x

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee (3)
Common Stock, \$0.0001 par value per share	29,525,000	\$0.25	\$7,381,250	\$845.89

(1) The shares being registered include such indeterminate number of additional shares of common stock issuable for no additional consideration by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration, which results in an increase in the number of outstanding shares of our common stock. In the event of a stock split, stock dividend or similar transaction involving our common stock, in order to prevent dilution, the number of shares registered shall be automatically increased to cover the additional shares in accordance with Rule 416(a) under the Securities Act of 1933.

(2) Estimated solely for the purpose of computing the registration fee in accordance with Rule 457(a) of the Securities Act. The Registrant's common stock is quoted on the Over The Counter Bulletin Board under the symbol "EFOI." This estimate is based upon the closing sales price per share of the shares of common stock of the Registrant on August 1, 2012.

(3) Previously paid.

The Registrant hereby amends this registration statement on the date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on a date as the Securities and Exchange Commission, acting pursuant to Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED AUGUST 9, 2012

PROSPECTUS

ENERGY FOCUS, INC.

29,525,000 Shares of Common Stock

The selling shareholders identified in this prospectus may offer and sell up to 29,525,000 shares of our common stock consisting of (a) 19,600,000 shares that the selling shareholders own, and (b) 9,925,000 shares covered by warrants that the selling shareholders own.

We are not selling any shares of our common stock in this offering and we will not receive any of the proceeds from the sale of these shares by the selling shareholders. We may receive proceeds on the exercise of warrants for shares of our common stock covered by this prospectus.

The prices at which the selling shareholders may sell the shares will be determined by the prevailing market price for the shares or in negotiated transactions. We will bear all costs associated with the registration of the shares covered by this prospectus.

Our common stock is registered under Section 12(g) of the Securities Exchange Act of 1934 and quoted on the Over The Counter Bulletin Board under the symbol "EFOI." On August 1, 2012, the last reported sale price for our common stock was \$0.25 per share.

See "Transactions" beginning on page 13 for a discussion of the shares of the selling shareholders identified in this prospectus.

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Investing in our common stock involves certain risks. See "Risk Factors" beginning on page 4 for a discussion of these risks.

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

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The date of this prospectus is August \_\_, 2012.



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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission (the “SEC”). Under the registration process, the selling shareholders may, from time to time, offer and sell up to 29,525,000 shares of our common stock, as described in this prospectus, in one or more offerings. This prospectus provides you with a general description of the common stock that the selling shareholders may offer. You should read this prospectus carefully before making an investment decision.

You should rely only on the information contained in this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. For further information, please see the section of this prospectus entitled “Where You Can Find More Information.” We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

You should not assume that the information appearing in this prospectus is accurate as of any date other than the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or any sale of a security. Our business, financial condition, results of operations, and prospects may have changed since those dates.

Unless the context otherwise requires, all references to “Energy Focus,” “we,” “us,” “our,” “our company,” or “the Company” in this prospectus refer to Energy Focus, Inc., a Delaware corporation, and its subsidiaries, and their respective predecessor entities for the applicable periods, considered as a single enterprise.

This prospectus contains trademarks, trade names, service marks and service names of Energy Focus, Inc. and other companies.



## PROSPECTUS SUMMARY

This prospectus provides you with a general description of the common stock being offered. You should read this prospectus, including all documents incorporated herein by reference, together with additional information described under the heading "Where You Can Find More Information."

The registration statement that contains this prospectus, including the exhibits to the registration statement, contains additional information about us and the securities being offered under this prospectus. You should read the registration statement and the accompanying exhibits for further information. The registration statement and exhibits can be read and are available to the public over the Internet at the SEC's website at <http://www.sec.gov> as described under the heading "Where You Can Find More Information."

### Business

We are a Delaware corporation. Our principal executive offices are located at 32000 Aurora Road, Solon, Ohio 44139. Our telephone number is 440.715.1300. The address of our website is [www.efoi.com](http://www.efoi.com). Information on our website is not part of this prospectus.

We design, develop, manufacture, and market energy-efficient lighting products, and we are a leading provider of turnkey energy-efficient lighting solutions in the governmental and public sector market, general commercial market, and the pool market. Our lighting technology offers significant energy savings, heat dissipation and maintenance cost benefits over conventional lighting for multiple applications.

We continue to evolve our business strategy to provide turnkey solutions, which use, but are not limited to, our patented and proprietary technology. Our solutions include light-emitting diode, fluorescent, and other high energy-efficient lighting technologies. Typical savings related to our technology approximates 80% in electricity costs, while providing full-spectrum light closely simulating daylight colors. Our strategy also incorporates continued investment into the research of new and emerging energy sources including, but not limited to, solar energy.

Our long-term strategy is to penetrate the \$100 billion existing building and \$300 million U.S. military lighting markets by providing turnkey, comprehensive energy-efficient lighting solutions, which utilize our proprietary energy-efficient lighting products. Early in 2012 we announced a cooperative agreement to develop the Asian market for our light-emitting diode products. We will continue to focus on markets where the benefits of our lighting solutions offerings, combined with our technology, are most compelling. These markets include: schools, universities, hospitals, office buildings, parking garages, supermarkets, museums, cold storage facilities, and manufacturing environments.

### Securities Offered

Common stock outstanding prior to this offering	44,541,696 shares—This number does not include the 9,925,000 shares covered by warrants owned by the Selling Shareholders and listed in the table on page 15.
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Common stock to be offered by the Selling Shareholders	29,525,000 shares—This number includes both the 19,600,000 shares owned by the Selling Shareholders, and the 9,925,000 shares covered by the warrants owned by them, and listed in the table on page 15.
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Common stock outstanding after this offering      54,466,696 shares—This number includes both the 19,600,000 shares owned by the Selling Shareholders, and the 9,925,000 shares covered by the warrants owned by them, and listed in the table on page 15.

Use of Proceeds      We will receive no proceeds from the sale by the Selling Shareholders of shares of common stock in this offering. We may receive proceeds on the exercise of warrants for shares of our common stock in this offering. We will use those proceeds for general corporate purposes.

Over-The-Counter Bulletin Board symbol      EFOI

## Transactions

**Introduction.** This “Prospectus Summary--Transactions” section outlines the transactions where and when the Selling Shareholders, defined below, acquired their shares of our common stock, based upon our records and the SEC filings of the Selling Shareholders.

**Our Bonding Support Program.** As part of our bonding support program, on August 11, 2011, we entered into a Letter of Credit Agreement (“LOC”) with Mark J. Plush, our Vice President Finance, Chief Financial Officer, and Secretary, in the amount of \$250,000. The LOC bears interest at the rate of 12.5% on the face amount and has a term of 24 months. It is collateralized by a cash deposit with the insurance company that had issued our contract performance bonds and by 32% of the unpledged shares of capital stock of Crescent Lighting, Ltd., one of our subsidiaries. As an incentive to enter into the LOC, we issued to Mr. Plush a five-year detached warrant to purchase 125,000 shares of our common stock at an exercise price of \$0.01 per share. Our shareholders approved the warrant at their June 16, 2010 Annual Meeting.

We did not register the offering and issuance to Mr. Plush of the shares covered by the warrant that we issued to him under the Securities Act of 1933, as amended, in reliance upon the exemption from the registration requirements of the Act in Section 4(2) of the Act. We have agreed with Mr. Plush to register for re-sale to the public under the Securities Act of 1933 the 125,000 shares of common stock covered by his warrant.

**Our 2012 Private Placement.** In a private placement, between February 29, 2012 and March 2, 2012, we sold to ten investors 19,600,000 shares of our common stock and warrants to purchase 9,800,000 shares. We sold the shares and warrants in units, each unit consisting of one share of common stock and one-half warrant to purchase one share of common stock. The purchase price of each unit was \$0.25. We raised a total of \$4.9 million in the offering. Each warrant separated immediately from the share of common stock in the unit, is fully exercisable at \$0.54 per share, and expires three years from the date of purchase.

We did not register the offering and issuance in the private placement of the shares of common stock, the warrant shares, or the warrants themselves under the Securities Act of 1933, as amended, in reliance upon the exemptions from the registration requirements of the Act in Section 4(2) of the Act and Rule 506 of Regulation D. We have agreed with the investors in the private placement to register for re-sale to the public under the Securities Act of 1933 the shares and the warrant shares that they purchased, but not the warrants themselves.

## RISK FACTORS

You should carefully consider the risks described below before purchasing our common stock. Our most significant risks and uncertainties are described below. They are not the only risks that we face, however. If any of the following risks actually occur, our business, financial condition, or results or operations could be materially, adversely affected, the price of our common stock could decline, and you may lose all or part of your investment therein. You should acquire shares of our common stock only if you can afford to lose your entire investment.

### Risks Associated with Our Business.

We have a history of operating losses and may incur losses in the future.

We have experienced net losses of \$6.1 million and \$8.5 million for the years ended December 31, 2011 and 2010, respectively. As of December 31, 2011, we had an accumulated deficit of \$74.9 million. Although management continues to address many of the legacy issues that have historically burdened our financial performance, we still face challenges in order to reach profitability. In order for us to attain profitability and growth, we will need to successfully address these challenges, including the continuation of cost reductions throughout our organization, improvement in gross margins, execution of our marketing and sales plans for our turnkey energy-efficient lighting solutions business, the development of new technologies into sustainable product lines, and continued improvements in our supply chain performance.

Although we are optimistic about reaching profitability, there is a risk that our business may not be as successful as we envision. Our independent public accounting firm has issued an opinion in connection with our 2011 Annual Report on Form 10-K raising substantial doubt as to our ability to continue as a going concern. This opinion stems from our historically poor operating performance, and our historical inability to generate sufficient cash flow to meet obligations and sustain operations without obtaining additional external financing. Although we are optimistic about obtaining the funding necessary for us to continue as a going concern, there can be no assurances that this objective will be successful. As such, we will continue to review and pursue selected external funding sources, if necessary, to execute these objectives including, but not limited to, the following:

- obtain financing from traditional or non-traditional investment capital organizations or individuals,
- potential sale or divestiture of one or more operating units, and
- obtain funding from the sale of our common stock or other equity or debt instruments.

Obtaining financing through the above-mentioned mechanisms contains risks, including:

- loans or other debt instruments may have terms and/or conditions, such as interest rate, restrictive covenants, and control or revocation provisions, which are not acceptable to management or our Board of Directors,
- the current environment in capital markets combined with our capital constraints may prevent us from being able to obtain any debt financing,
- financing may not be available for parties interested in pursuing the acquisition of one or more of our operating units, and

- additional equity financing may not be available to us in the current capital environment and could lead to further dilution of shareholder value for current shareholders of record.

Downturns in general economic conditions and construction trends could continue to materially and adversely affect our business.

Downturns in general economic and market conditions, both nationally and internationally, could have a material adverse effect on our business. In our legacy businesses, sales of our lighting products depend significantly upon the level of new building construction, which are affected by housing market trends, interest rates and the weather. Sales of our pool and spa lighting products depend substantially upon the level of new pool construction, which is also affected by housing market and construction trends. In addition, due to the seasonality of construction, sales of swimming pool and lighting products, and thus our revenue and income, have tended to be significantly lower in the first quarter of each year. Our future results of operations may experience substantial fluctuations from period to period as a consequence of these factors, and such conditions and other factors affecting capital spending may affect the timing of orders. An economic downturn coupled with a decline in our net sales could adversely affect our ability to meet our working capital requirements, support our capital requirements and growth objectives, or could otherwise adversely affect our business, financial condition, and results of operations. As a result, any general or market-specific economic downturns, particularly those affecting new building construction and renovation, or that cause end-users to reduce or delay their purchases of lighting products, services, or retrofit activities, would have a material adverse effect on our business, cash flows, financial condition, and results of operations.

An inability to obtain bonding could limit the number of solutions-based projects we are able to pursue.

As is customary in the construction business, we are often required to provide surety bonds to secure our performance under construction contracts. Our ability to obtain surety bonds primarily depends upon our capitalization, working capital, past performance, management expertise, and other external factors, including the overall capacity of the surety market. Surety companies consider such factors in relation to the amount of our backlog and their underwriting standards, which may change from time to time. The surety industry has undergone significant changes with several companies withdrawing completely from the industry or significantly reducing their bonding commitment. In addition, certain reinsurers of security risk have limited their participation in this market. Therefore, we could be unable to obtain surety bonds, when required, which could adversely affect our future results of operations and revenues.

We may not fully recognize the anticipated revenue reported in our solutions-based backlog.

The contracts we enter into, related to our solutions-based business, can be relatively large and typically range in the amount of \$0.1 million to as much as \$4.0 million. As of December 31, 2011, our solutions-based backlog of uncompleted work was \$2.0 million. We include a project in our backlog when a contract is awarded or a letter of intent is obtained. The revenue projected in our backlog may not be realized or, if realized, may not result in the revenue or profits expected. If a project included in our backlog is canceled, suspended or the scope of work is reduced, it would result in a reduction to our backlog which could materially affect the revenues and profits realized. If a customer should cancel a project, we may be reimbursed for costs expended to date but would have no contractual right to the total projected revenues included in our backlog. Cancellations or delays of significant projects could have a material adverse effect on future revenues, profits and cash flows.

If we are unable to accurately estimate the risks, revenues or costs associated with a project, we may achieve a lower than expected profit or incur a loss on that project.

For the solutions-based segment of our business, we generally enter into fixed price contracts. Fixed price contracts require us to perform a contract for a specified price regardless of our actual costs. As a result, the profit that we realize on a contract is dependent on the extent to which we successfully manage our costs and overruns. Cost overruns, whether due to inefficiency, inaccurate estimates or other factors, result in lower profit or a loss on a project.

A majority of our contracts are based on cost estimates that are subject to a number of assumptions. If our estimates of the risks, revenues or costs prove inaccurate or circumstances change, we may incur a lower profit or a loss on that project.

The percentage-of-completion method of accounting for contract revenues may result in material adjustments, which could result in a charge against earnings.

We recognize certain contract revenues using the percentage-of-completion method. Under this method, percentage-of-completion is determined by relating the actual cost of the work performed to date to the current estimated total cost of the respective contracts. When the estimate on a contract indicates a loss, we record the entire loss during the accounting period in which it is estimable. In the ordinary course of business, at a minimum on a quarterly basis, we prepare updated estimates of the total forecasted revenue, cost and profit or loss for each contract. The cumulative effect of revisions in estimates of the total forecasted revenue and costs during the course of the work is reflected in the accounting period in which the facts that caused the revision become known. To the extent that these revisions result in an increase, a reduction or elimination of previously reported contract profit, we recognize a credit or a charge against current earnings, which could be material.

We have international sales and are subject to risks associated with operating in international markets.

For the years ending December 31, 2011 and 2010 net sales of our products outside of the United States represented approximately 15.6% and 10.9% respectively, of our total net sales from continuing operations. We generally provide technical expertise and limited marketing support, while our independent international distributors generally provide sales staff, local marketing, and product services. We believe our international distributors are better able to service international markets due to their understanding of local market conditions and best business practices. International business operations are subject to inherent risks, including, among others:

- unexpected changes in regulatory requirements, tariffs, and other trade barriers or restrictions,
- longer accounts receivable payment cycles and the difficulty of enforcing contracts and collecting receivables through certain foreign legal systems,
- difficulties in managing and staffing international operations,
- potentially adverse tax consequences,
- the burdens of compliance with a wide variety of foreign laws,
- import and export license requirements and restrictions of the United States and each other country in which we operate,
- exposure to different legal standards and reduced protection for intellectual property rights in some countries,
- currency fluctuations and restrictions,
- political, social, and economic instability, including war and the threat of war, acts of terrorism, pandemics, boycotts, curtailment of trade or other business restrictions,
- periodic foreign economic downturns, and
- sales variability as a result of fluctuations in foreign currency exchange rates.





If we are unable to respond effectively as new lighting technologies and market trends emerge, our competitive position and our ability to generate revenue and profits may be harmed.

To be successful, we will need to keep pace with rapid changes in light-emitting diode (“LED”) technology, changing customer requirements, new product introductions by competitors and evolving industry standards, any of which could render our existing products obsolete if we fail to respond in a timely manner. Development of new products incorporating advanced technology is a complex process subject to numerous uncertainties. We have previously experienced, and could in the future, experience delays in the introduction of new products. If effective new sources of light other than LED are discovered, our current products and technologies could become less competitive or obsolete. If others develop innovative proprietary lighting technology that is superior to ours, or if we fail to accurately anticipate technology and market trends, respond on a timely basis with our own development of new products and enhancements to existing products, and achieve broad market acceptance of these products and enhancements, our competitive position may be harmed and we may not achieve sufficient growth in our net sales to attain or sustain profitability.

If we are not able to compete effectively against companies with greater resources, our prospects for future success will be jeopardized.

The lighting industry is highly competitive. In the high performance lighting markets in which we sell our advanced lighting systems, our products compete with lighting products utilizing traditional lighting technology provided by many vendors. Additionally, in the advanced lighting markets in which we have primarily competed to date, competition has largely been fragmented among a number of small manufacturers. However, some of our competitors, particularly those that offer traditional lighting products, are larger companies with greater resources to devote to research and development, manufacturing, and marketing.

Moreover, in the general lighting market, we expect to encounter competition from an even greater number of companies. Our competitors are expected to include the large, established companies in the general lighting industry, such as General Electric, Osram Sylvania and Royal Philips Electronics. Each of these competitors has undertaken initiatives to develop LED technology. These companies have global marketing capabilities and substantially greater resources to devote to research and development and other aspects of the development, manufacture and marketing of LED lighting products than we possess. We may also face competition from traditional lighting fixture companies, such as Acuity Brands Lighting, Cooper Lighting, Hubbell Lighting, Lithonia Lighting, and Royal Philips Electronics. The relatively low barriers to entry into the lighting industry and the limited proprietary nature of many lighting products also permit new competitors to enter the industry easily.

In each of our markets, we also anticipate the possibility that LED manufacturers, including those that currently supply us with LEDs, may seek to compete with us. Our competitors’ lighting technologies and products may be more readily accepted by customers than our products. Additionally, to the extent that competition in our markets intensifies, we may be required to reduce our prices in order to remain competitive. If we do not compete effectively, or if we reduce our prices without making commensurate reductions in our costs, our net sales and profitability, and our future prospects for success, may be harmed.

If we are unable to obtain and adequately protect our intellectual property rights, our ability to commercialize our products could be substantially limited.

We consider our technology and processes proprietary. If we are not able to adequately protect or enforce the proprietary aspects of our technology, competitors may utilize our proprietary technology and our business, financial condition, and results of operations could be adversely affected. We protect our technology through a combination of patent, copyright, trademark and trade secret laws, employee and third-party nondisclosure agreements, and similar

means. Despite our efforts, other parties may attempt to disclose, obtain or use our technologies. Our competitors may also be able to independently develop products that are substantially equivalent or superior to our products or slightly modify our patents. In addition, the laws of some foreign countries do not protect our proprietary rights as fully as do the laws of the United States. As a result, we may not be able to protect our proprietary rights adequately in the United States or abroad.

As of December 31, 2011, our intellectual property portfolio consisted of 75 issued United States and foreign patents, various pending United States patent applications, and various pending Patent Cooperation Treaty patent applications filed with the World Intellectual Property Organization that serves as the basis of national patent filings in countries of interest. Because our patent position involves complex legal, scientific, and factual questions, the issuance, scope, validity, and enfo