

HUDSON HIGHLAND GROUP INC  
Form 10-K  
February 23, 2011

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**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 DECEMBER 31, 2010**

**OR**

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

**COMMISSION FILE NUMBER 000-50129**

**HUDSON HIGHLAND GROUP, INC.**

(Exact Name of Registrant as Specified in its Charter)

Delaware

59-3547281

(State or Other Jurisdiction of  
Incorporation or Organization)

(I.R.S. Employer  
Identification Number)

**560 Lexington Avenue, New York, New York 10022**

(Address of Principal Executive Offices)

**(212) 351-7300**

(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, \$0.001 par value	The NASDAQ Stock Market LLC
Preferred Share Purchase Rights	The NASDAQ Stock Market LLC

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 15(d) of the Securities 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 during the preceding 12 months (or for such shorter period that the registrant was required to submit to 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 definition of "large accelerated filer", "accelerated filer", and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

Indicate by checkmark whether the Registrant is a shell company (as defined in Exchange Act Rule 12b-2). Yes o No  
x

The aggregate market value of the voting common stock held by non-affiliates of the Registrant was approximately \$138,860,000 based on the closing price of the Common Stock on the NASDAQ Global Market on June 30, 2010.

The number of shares of Common Stock, \$.001 par value, outstanding as of January 31, 2011 was 32,166,474

## **DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Proxy Statement for the 2011 Annual Meeting of Stockholders are incorporated by reference into Part III.

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**PART I**

**ITEM 1. BUSINESS**

Hudson Highland Group, Inc. (the Company or Hudson, we, us and our) is one of the world's largest special professional staffing and talent management solutions providers. The Company provides professional staffing services on a permanent and contract consulting basis and a range of talent management services to businesses operating in many industries. The Company helps its clients in recruiting and developing employees for professional-level functional and managerial positions.

The Company is organized into four reportable segments: Hudson Europe, Hudson Australia and New Zealand (ANZ), Hudson Americas and Hudson Asia. These reportable segments constituted approximately 46%, 30%, 13% and 11% of the Company's gross margin, respectively, for the year ended December 31, 2010. The Hudson regional businesses were historically the combination of 67 acquisitions made between 1999 and 2001, which became the eResourcing division of Monster Worldwide, Inc. (Monster), formerly TMP Worldwide, Inc. Some of the Company's constituent businesses have operated for more than 20 years. On March 31, 2003, Monster distributed all of the outstanding shares of the Company to its stockholders of record on March 14, 2003 (the Distribution). Since the Distribution, the Company has operated as an independent publicly held company.

Hudson's four regional businesses provide professional contract consultants and permanent recruitment services to a wide range of clients. With respect to temporary and contract personnel, Hudson focuses on providing candidates with specialized functional skills and competencies, such as accounting and finance, legal and information technology. The length of a contract assignment varies. With respect to permanent recruitment, Hudson focuses on mid-level professionals typically earning between \$50,000 and \$150,000 annually and possessing the professional skills and/or profile required by clients. Hudson provides permanent recruitment services on both a retained and contingent basis.

In larger markets, Hudson's sales strategy focuses on both clients operating in particular industry sectors, such as financial services or technology, and candidates possessing particular professional skills, such as accounting and finance, information technology, legal and human resources. Hudson uses both traditional and interactive methods to select potential candidates for its clients.

Hudson regional businesses also provide candidate assessment, competency modeling, leadership development, performance management, and career transition through their talent management units. These services enable Hudson to offer clients a comprehensive set of management services, across the entire employment life-cycle from attracting, assessing and selecting best-fit employees to engaging and developing those individuals to help build a high-performance organization.

Hudson Europe operates from 38 offices in 13 countries, with 48% of its 2010 gross margin generated in the United Kingdom. Hudson ANZ operates from 12 offices in Australia and New Zealand, with 88% of its 2010 gross margin generated in Australia. Hudson Americas operates from 26 offices in the United States and Canada, with 97% of its 2010 gross margin generated in the United States. Hudson Asia operates from 5 offices in Mainland China, Hong Kong and Singapore, with 45% of its 2010 gross margin generated in Mainland China.

Corporate expenses are reported separately from the four reportable segments and pertain to certain functions, such as executive management, corporate governance, human resources, accounting, administration, tax and treasury, the majority of which are attributable and have been allocated to the reportable segments.

## **DISCONTINUED OPERATIONS**

In the first half of 2009, the Company exited Italy and Japan. The operations in Italy were part of the Hudson Europe reportable segment and the operations in Japan were part of the Hudson Asia reportable segment.

In the second quarter of 2008, the Company sold substantially all of the assets of Balance Public Management B.V. ( BPM ), a division of Balance Ervaring op Projectbasis, B.V. ( Balance ), a subsidiary of the Company, which was part of the Hudson Europe reportable segment. In the first quarter of 2008, the Company sold substantially all of the assets of its Hudson Americas energy, engineering and technical staffing division ( ETS ), which was part of the Hudson Americas reportable segment.

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In the fourth quarter of 2006, the Company sold its Highland Partners ( Highland ) executive search business, which was a separate reportable segment of the Company.

In accordance with the provisions of Financial Accounting Standards Board ( FASB ) Accounting Standards Codification Topic ( ASC ) 205-20-45 *Reporting Discontinued Operations* , the assets, liabilities, and results of operations of the Company s discontinued operations above were reclassified as discontinued operations for all the periods presented. The gain or loss on sale and results of operations of the disposed businesses were reported in discontinued operations in the relevant periods.

## **SALES AND MARKETING**

Each of Hudson s regional businesses maintains sales personnel aligned along functional practice areas or industry sector groups as appropriate for the market. From time to time, sales people receive incentives for cross-selling services with other practices and business units as the client need arises. In addition, each region has the capability to identify and develop international sales opportunities that arise from clients with global needs.

The Company s global marketing and communications function is responsible for brand and marketing strategy, client and candidate lead generation campaigns, public relations and corporate/employee communications. This team closely coordinates with the local operations to generate leads, support sales efforts and build a strong brand reputation both in the external market and within the organization.

We use three principal channels for marketing our services and promoting our brand: (1) in the United Kingdom, Australia, New Zealand, and other countries where it is an accepted practice, we use client-paid and Company-paid advertising for vacant positions; (2) public relations to promote our experts and offerings, and original research on business management and human capital issues of particular relevance to senior business managers; and (3) the Internet, both for promoting the Company s services to clients and attracting, assisting and managing candidates.

## **CLIENTS**

The Company s clients include small to large-sized corporations and government agencies. At December 31, 2010, there were approximately 3,600 Hudson Europe clients, 1,187 Hudson ANZ clients, 316 Hudson Americas clients, and 833 Hudson Asia clients. The business of the Company is not dependent upon either a single client or a limited number of clients.

## **COMPETITION**

The markets for the Company s services and products are highly competitive. There are few barriers to entry, so new entrants occur frequently, resulting in considerable market fragmentation. Companies in this industry compete on price, service quality, new capabilities and technologies, client attraction methods, and speed of completing assignments.

## **EMPLOYEES**

The Company employs approximately 2,200 people worldwide. In most jurisdictions, our employees are not represented by a labor union or a collective bargaining agreement. The Company regards its relationships with its employees as satisfactory.



## **SEGMENT AND GEOGRAPHIC DATA**

Financial information concerning the Company's reportable segments and geographic areas of operation is included in Note 15 in the Notes to Consolidated Financial Statements contained in Item 8 of this Form 10-K.

### **AVAILABLE INFORMATION**

We maintain a Web site with the address *www.hudson.com*. We are not including the information contained on our Web site as part of, or incorporating it by reference into, this report. Through our Web site, we make available free of charge (other than an investor's own Internet access charges) our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and amendments to these reports in a timely manner after we provide them to the Securities and Exchange Commission.

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## ITEM 1A. RISK FACTORS

The following risk factors and other information included in this Annual Report on Form 10-K should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations. If any of the following risks occur, our business, financial condition, results of operations, and cash flows could be materially adversely affected.

**Our operations will be affected by global economic fluctuations, including the global economic conditions prevailing during 2010.**

Demand for our services fluctuates with changes in economic conditions in the markets in which we operate. Those conditions include slower employment growth or reductions in employment. We have limited flexibility to reduce expenses during economic downturns due to some overhead costs which are fixed in the short-term. Furthermore, we may face increased pricing pressures during economic downturns. During the 2009 economic downturn, many employers in our operating regions reduced their overall workforce to reflect the reduced demand for their products and services. This contributed to an operating loss for our company in 2009. While conditions improved during 2010, weakness persisted in some economies. As a result, we reported a net loss for 2010. During 2010, many governments also announced reductions in public sector spending. This may have an ongoing impact on our businesses in certain markets. Despite indications of improving economic conditions, the economic recovery has been slower than in previous business cycles and may result in lower operating results than expected.

**Our operating results fluctuate from quarter to quarter and therefore quarterly results cannot be used to predict future periods results.**

Our operating results fluctuate quarter to quarter primarily due to the vacation periods during the first quarter in the ANZ region and the third quarter in the Americas and Europe regions. Demand for our services is typically lower during traditional national vacation periods when clients are on vacation.

**Our revenue can vary because our clients can terminate their relationship with us at any time with limited or no penalty.**

We provide professional mid-market staffing services on a temporary assignment-by-assignment basis, which clients can generally terminate at any time or reduce their level of use when compared to prior periods. Our professional recruitment business is also significantly affected by our clients' hiring needs and their views of their future prospects.

Clients may, on very short notice, reduce or postpone their recruiting assignments with us and, therefore, affect demand for our services. This could have a material adverse effect on our business, financial condition and results of operations.

**Our markets are highly competitive.**

The markets for our services are highly competitive. Our markets are characterized by pressures to reduce prices, provide high levels of service, incorporate new capabilities and technologies and accelerate job completion schedules. Furthermore, we face competition from a number of sources. These sources include other executive search firms and professional search, staffing and consulting firms. Several of our competitors have greater financial and marketing resources than we do. Due to competition, we may experience reduced margins on our services, loss of market share and our customers. If we are not able to compete effectively with current or future competitors as a result of these and

other factors, our business, financial condition and results of operations could be materially adversely affected.

We have no significant proprietary technology that would preclude or inhibit competitors from entering the mid-market professional staffing contract and consulting markets. We cannot provide assurance that existing or future competitors will not develop or offer services that provide significant performance, price, creative or other advantages over our services. In addition, we believe that, with continuing development and increased availability of information technology, the industries in which we compete may attract new competitors. Specifically, the increased use of the Internet may attract technology-oriented companies to the professional staffing industry. We cannot provide assurance that we will be able to continue to compete effectively against existing or future competitors. Any of these events could have a material adverse effect on our business, financial condition and results of operations.

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**Our investment strategy subjects us to risks.**

From time to time, we make investments, including acquisitions, as part of our growth plans. Investments may not perform as expected because they are dependent on a variety of factors, including our ability to effectively integrate new personnel and operations, our ability to sell new services, and our ability to retain existing or gain new clients.

Furthermore, we may need to borrow more money from lenders or sell equity or debt securities to the public to finance future investments and the terms of these financings may be adverse to us.

**We face risks related to our international operations.**

We conduct operations in nineteen countries and face both translation and transaction risks related to foreign currency exchange. For the year ended December 31, 2010, approximately 87% of our gross margin was earned outside of the United States. Our financial results could be materially affected by a number of factors particular to international operations. These include, but are not limited to, difficulties in staffing and managing international operations, operational issues such as longer customer payment cycles and greater difficulties in collecting accounts receivable, changes in tax laws or other regulatory requirements, issues relating to uncertainties of laws and enforcement relating to the regulation and protection of intellectual property, and currency fluctuation. If we are forced to discontinue any of our international operations, we could incur material costs to close down such operations.

Regarding the foreign currency risk inherent in international operations, the results of our local operations are reported in the applicable foreign currencies and then translated into U.S. dollars at the applicable foreign currency exchange rates for inclusion in our financial statements. In addition, we generally pay operating expenses in the corresponding local currency. Because of devaluations and fluctuations in currency exchange rates or the imposition of limitations on conversion of foreign currencies into U.S. dollars, we are subject to currency translation exposure on the revenue and income of our operations in addition to economic exposure. Our consolidated U.S. dollar cash balance could be lower because a significant amount of cash is generated outside of the United States. This risk could have a material adverse effect on our business, financial condition and results of operations.

**We depend on our key management personnel.**

Our continued success will depend to a significant extent on our senior management team. The loss of the services of one or more key senior management team member could have a material adverse effect on our business. On February 22, 2011, our Board of Directors removed Jon F. Chait as chairman and chief executive officer ( CEO ) of the company and appointed Mary Jane Raymond, the company s executive vice president and chief financial officer, to serve as interim CEO until the search process of the successor is completed. Our inability to attract a suitable successor to replace Mr. Chait could have a material adverse effect on our business, financial condition and results of operations.

In addition, if one or more key employees join a competitor or form a competing company, the resulting loss of existing or potential clients could have a material adverse effect on our business, financial condition and results of operations.

**If we fail to attract and retain qualified personnel, it may negatively impact our business, financial condition and results of operations.**

Our success also depends upon our ability to attract and retain highly-skilled professionals who possess the skills and experience necessary to meet the staffing requirements of our clients. We must continually evaluate and upgrade our base of available qualified personnel to keep pace with changing client needs and emerging technologies.

Furthermore, a substantial number of our contractors during any given year may terminate their employment with us and accept regular staff employment with our clients. Competition for qualified professionals with proven skills is

intense, and demand for these individuals is expected to remain strong for the foreseeable future. There can be no assurance that qualified personnel will continue to be available to us in sufficient numbers. If we are unable to attract the necessary qualified personnel for our clients, it may have a negative impact on our business, financial condition and results of operations.

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**We face risks in collecting our accounts receivable.**

In virtually all of our businesses, we invoice customers after providing services, which creates accounts receivable. Delays or defaults in payments owed to us could have a significant adverse impact on our business, financial condition and results of operations. Factors that could cause a delay or default include, but are not limited to, business failures, turmoil in the financial and credit markets, and global economic conditions.

**We have had periods of negative cash flows and operating losses that may reoccur in the future.**

We have experienced negative cash flows and reported operating and net losses in the past. For example, our cash flows from operations were negative during 2010 and 2009 and we had operating and net losses for the years ended December 31, 2010, 2009 and 2008, which included impairment charges related to goodwill of \$64.5 million in 2008.

We cannot provide any assurance that we will have positive cash flows or operating profitability in the future, particularly to the extent the global economy continues to recover slowly from the global economic downturn. If our revenue declines or if operating expenses exceed our expectations, we may not be profitable and may not generate positive operating cash flows.

**Our credit facilities restrict our operating flexibility.**

Our credit facilities contain various restrictions and covenants that restrict our operating flexibility including:

- borrowings limited to eligible receivables;
- lenders' ability to impose restrictions, such as payroll or other reserves;
- limitations on payments of dividends;
- restrictions on our ability to make additional borrowings, or to consolidate, merge or otherwise fundamentally change our ownership;
- limitations on capital expenditures, investments, dispositions of assets, guarantees of indebtedness, permitted acquisitions and repurchases of stock; and
- limitations on certain intercompany payments of expenses, interest and dividends.

These restrictions and covenants could have adverse consequences for investors, including the need to use a portion of our cash flow from operations for debt service rather than for our operations, restrictions on our ability to incur additional debt financing for future working capital or capital expenditures, a lesser ability to take advantage of significant business opportunities, such as acquisition opportunities, the potential need to undertake equity transactions which may dilute the ownership of existing investors, and inability to react to market conditions by selling lesser-performing assets.

In addition, a default, amendment or waiver to our credit facilities to avoid a default may result in higher rates of interest and could impact our ability to obtain additional borrowings. Finally, debt incurred under our credit facilities bear interest at variable rates. Any increase in interest expense could reduce the funds available for operations.

**If we are unable to achieve anticipated cost savings through our cost reduction initiatives, including outsourcing, our ability to compete could be adversely impacted and our regional operations could be disrupted.**

We have undertaken a series of cost reduction initiatives. In 2009, we initiated a number of structural cost reduction and productivity improvement initiatives in our operations to reduce costs and improve profitability. The impact of these cost reduction actions may be influenced by several factors including our ability to maintain the level of cost savings currently being realized as a result of these initiatives.

In the first quarter of 2009, we outsourced certain back-office processes performed in our Hudson ANZ regional business to a company located in India. The processes that were outsourced are invoicing, accounts payable, accounts receivable and transactional accounting. The efficient operation of that regional business is dependent on, among other things, the stability of the Indian political environment. Substantially all of the

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specially-trained employees at the Indian company are Indian nationals. Because substantially all of the named operations have been transferred, it may not be possible to replace the Indian-based employees in another location, should operations at this Indian company be disrupted. This could impact adversely the operational efficiency of that regional business.

**We rely on our information systems, and if we lose that technology or fail to further develop our technology, our business could be harmed.**

Our success depends in large part upon our ability to store, retrieve, process, and manage substantial amounts of information, including our client and candidate databases. To achieve our strategic objectives and to remain competitive, we must continue to develop and enhance our information systems. This may require the acquisition of equipment and software and the development, either internally or through independent consultants, of new proprietary software. Our inability to design, develop, implement and utilize, in a cost-effective manner, information systems that provide the capabilities necessary for us to compete effectively, or any interruption or loss of our information processing capabilities, for any reason, could harm our business, financial condition and results of operations.

**Our business depends on uninterrupted service to clients.**

Our operations depend on our ability to protect our facilities, computer and telecommunication equipment and software systems against damage or interruption from fire, power loss, cyber attacks, sabotage, telecommunications interruption, weather conditions, natural disasters and other similar events. Additionally, severe weather can cause our employees or contractors to miss work and interrupt delivery of our service, resulting in a loss of revenue. While interruptions of these types that have occurred in the past have not caused material disruption, it is not possible to predict the type, severity or frequency of interruptions in the future or their impact on our business.

**We may be exposed to employment-related claims, legal liability and costs from clients, employers and regulatory authorities that could adversely affect our business, financial condition or results of operations, and our insurance coverage may not cover all of our potential liability.**

We are in the business of employing people and placing them in the workplaces of other businesses. Risks relating to these activities include:

- claims of misconduct or negligence on the part of our employees;
- claims by our employees of discrimination or harassment directed at them, including claims relating to actions of our clients;

- claims related to the employment of illegal aliens or unlicensed personnel;
- claims for payment of workers' compensation and other similar claims;
- claims for violations of wage and hour requirements;
- claims for retroactive entitlement to employee benefits;
- claims of errors and omissions of our temporary employees;

- claims by taxing authorities related to our independent contractors and the risk that such contractors could be considered employees for tax purposes;

- claims related to our non-compliance with data protection laws, which require the consent of a candidate to transfer resumes and other data; and

- claims by our clients relating to our employees' misuse of client proprietary information, misappropriation of funds, other misconduct, criminal activity or similar claims.

We are exposed to potential claims with respect to the recruitment process. A client could assert a claim for matters such as breach of a blocking arrangement or recommending a candidate who subsequently proves to be unsuitable for



the position filled. Similarly, a client could assert a claim for deceptive trade practices on the grounds that we failed to disclose certain referral information about the candidate or misrepresented

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material information about the candidate. Further, the current employer of a candidate whom we place could file a claim against us alleging interference with an employment contract. In addition, a candidate could assert an action against us for failure to maintain the confidentiality of the candidate's employment search or for alleged discrimination or other violations of employment law by one of our clients.

We may incur fines and other losses or negative publicity with respect to these problems. In addition, some or all of these claims may give rise to litigation, which could be time-consuming to our management team, costly and could have a negative effect on our business. In some cases, we have agreed to indemnify our clients against some or all of these types of liabilities. We cannot assure that we will not experience these problems in the future, that our insurance will cover all claims, or that our insurance coverage will continue to be available at economically-feasible rates.

From time to time, we may continue to incur liabilities associated with certain pre-spin off activities with Monster. Under the terms of our Distribution Agreement with Monster, these liabilities generally will continue to be retained by us. If these liabilities are significant, the retained liabilities could have a material adverse effect on our business, financial condition and results of operations. However, in some circumstance, we may have claims against Monster, and we will make a determination on a case by case basis

**Our ability to utilize net operating loss carry-forwards may be limited.**

The Company has U.S. net operating loss carry-forwards that expire through 2030. Section 382 of the Internal Revenue Code imposes an annual limitation on a corporation's ability to utilize NOLs if it experiences an ownership change. In general terms, an ownership change may result from transactions increasing the ownership of certain stockholders in the stock of a corporation by more than 50% over a three-year period. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change. The imposition of a limitation on our ability to use our NOLs to offset future taxable income could cause U.S. federal income taxes to be paid earlier than otherwise would be paid if such limitation were not in effect and could cause such NOLs to expire unused, reducing or eliminating the benefit of such NOLs.

**There may be volatility in our stock price.**

The market price for our common stock has fluctuated in the past and could fluctuate substantially in the future. For example, during 2010, the market price of our common stock reported on the NASDAQ Global Market ranged from a high of \$6.02 to a low of \$2.93. Factors such as general macroeconomic conditions adverse to workforce expansion, the announcement of variations in our quarterly financial results or changes in our expected financial results could cause the market price of our common stock to fluctuate significantly. Further, due to the volatility of the stock market generally, the price of our common stock could fluctuate for reasons unrelated to our operating performance.

**Government regulations may result in the prohibition, regulation or restriction of certain types of employment services we offer, the imposition of additional licensing or tax requirements, or increases in compliance audits may reduce our future earnings.**

In many jurisdictions in which we operate, the contract staffing industry is heavily regulated. For example, governmental regulations can restrict the length of contracts of contract employees and the industries in which they may be used. In some countries, special taxes, fees or costs are imposed in connection with the use of contract workers.

The countries in which we operate may:

create additional regulations that prohibit or restrict the types of employment services that we currently provide;  
impose new or additional benefit requirements;  
require us to obtain additional licensing to provide staffing services;  
impose new or additional visa restrictions on movements between countries;  
increase taxes, such as sales or value-added taxes, payable by the providers of staffing services; or

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increase the number of various tax and compliance audits relating to a variety of regulations, including wage and hour laws, unemployment taxes, workers compensation, immigration, and income, value-added and sales taxes.

Any future regulations that make it more difficult or expensive for us to continue to provide our staffing services may have a material adverse effect on our business, financial condition and results of operations.

**Provisions in our organizational documents and Delaware law will make it more difficult for someone to acquire control of us.**

Our certificate of incorporation and by-laws and the Delaware General Corporation Law contain several provisions that make more difficult an acquisition of control of us in a transaction not approved by our Board of Directors, including transactions in which stockholders might otherwise receive a premium for their shares over then current prices, and that may limit the ability of stockholders to approve transactions that they may deem to be in their best interests. Our certificate of incorporation and by-laws include provisions:

dividing our Board of Directors into three classes to be elected on a staggered basis, one class each year;