

ENERGY FOCUS, INC/DE

Form S-1/A

August 04, 2014

As filed with the Securities and Exchange Commission on August 4, 2014

Registration No. 333-196140

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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**Amendment No. 3**

**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**

**94-3021850**

(State or other jurisdiction of (I.R.S. Employer

incorporation or organization) Identification No.)

**32000 Aurora Road, Suite B**

**Solon, Ohio 44139**

**(440)715-1300**

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

**James Tu**

**Executive Chairman and Chief Executive Officer**

**Energy Focus, Inc.**

**32000 Aurora Road, Suite B**

**Solon, Ohio 44139**

**(440)715-1300**

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

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this Registration Statement becomes effective.

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.

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 ☒

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**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 4, 2014**

## **PROSPECTUS**

### **ENERGY FOCUS, INC.**

1,250,000 Shares of Common Stock

We are offering 1,250,000 shares of our common stock.

Our common stock is currently quoted on the OTCQB Marketplace operated by the OTC Markets Group, Inc., or OTCQB, under the symbol “EFOI.” On August 1, 2014, the last reported sale price for our common stock was \$4.95 per share. Our common stock has been approved for listing on The NASDAQ Capital Market under the symbol “EFOI” concurrently with the closing of this offering.

**Investing in our common stock involves certain risks. See “Risk Factors” beginning on page 8 for a discussion of these risks.**

**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.**

	Per Share	Total
Public Offering Price	\$	\$
Underwriting Discounts and Commissions (1)	\$	\$

Proceeds to Energy Focus, before expenses      \$      \$

(1) The underwriters will receive compensation in addition to the underwriting discount of a warrant to purchase up to 100,000 shares of common stock at a per share exercise price equal to 120% of the public offering price of the common stock sold in this offering. See “Underwriting” beginning on page 34 of this prospectus for a description of compensation payable to the underwriters.

We have granted the underwriters an option exercisable at any time or from time to time, in whole or in part, for a period of 30 days from the date of this prospectus supplement to purchase up to an 187,500 additional shares of our common stock, less underwriting discounts and commissions, solely to cover overallotments, if any.

Delivery of the common stock is expected to be made on or about                      , 2014.

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**Roth Capital Partners**

**Northland Capital Markets**                      **BTIG**  
The date of this prospectus is                      , 2014.

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You should rely only on the information contained in this prospectus or in any free writing prospectus that we authorize to be distributed to you. We have not, and the underwriters have not, authorized anyone to provide you with additional or different information. This document may only be used where it is legal to sell these securities. You should assume that the information contained in this prospectus is accurate only as of the date of this prospectus.

No action is being taken in any jurisdiction outside the United States to permit a public offering of the common stock or possession or distribution of this prospectus in that jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of the prospectus applicable to that jurisdiction.

Unless the context otherwise requires, all references to “Energy Focus,” “we,” “us,” “our,” “our company,” or “the Company” 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.

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## PROSPECTUS SUMMARY

*This prospectus provides you with a general description of the common stock being offered. This summary does not contain all of the information that you should consider before investing in our common stock. 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.”*

*Unless otherwise indicated, the information in this prospectus reflects a one-for-ten reverse stock split of our common stock effected on July 16, 2014, and all share and per share data has been adjusted for the one-for-ten reverse stock split for all periods presented. Share numbers as adjusted for the split do not take into account the cash out of fractional shares. The actual amount of shares may be less than the amount shown.*

### Our Company

Energy Focus, Inc., together with its subsidiaries, designs, develops, manufactures, and markets energy-efficient LED lighting products, and is a leading provider of turnkey, energy-efficient, lighting retrofit solutions in the general commercial and the governmental and public sector markets. Energy Focus’ LED lighting technology offers significant energy savings, heat dissipation and maintenance cost benefits over conventional lighting for multiple applications.

Our business operates in the following two segments:

Products: providing military, public sector, general commercial and industrial energy-efficient LED lighting offerings; and

Solutions: providing turnkey, high-quality, energy-efficient LED lighting application alternatives, primarily to the existing public-sector building market. We have also begun pursuing opportunities in the commercial and industrial sectors.

In November 2013, we sold and discontinued our pool products business, and are focusing our resources solely on our LED lighting retrofit business. With this as our goal, our solutions segment began focusing its efforts on only bidding all-LED replacement solutions in energy services companies’ (“ESCOs”) contract proposals versus fluorescent replacements. To support our lighting product business, research and development remains a key focus. Our research and development team is dedicated to the continuous improvement and innovation of our LED lighting technologies. Historically, we have supported much of our R&D activities through government grants. With our renewed focus on LED products, we have concentrated our efforts on bidding on research contracts and grants from those that support

LED technologies.

## **Our Industry**

According to the International Energy Agency (IEA)/Organisation for Economic Co-operation and Development (OECD), lighting is responsible for 19% of global electricity use. A Philips Market Intelligence 2011 report stated that in the United States alone, a 40% reduction in electricity use from lighting would save \$53 billion in annual energy costs and reduce energy demand the equivalent of 198 mid-sized power stations. We believe there is a substantial opportunity to achieve these electricity reductions through the broad adoption of LED bulbs, as they consume 50% to 85% less electricity and last three to ten times longer than traditional incandescent or fluorescent bulbs.

Our goal is to become a LED lighting retrofit leader by bringing affordable, high performance tubular light emitting diode (“TLED”) products to the global marketplace. According to a 2013 NPD DisplaySearch LED Lighting Market and Forecast Report, the global penetration rate for TLEDs in 2012 was 3.2% and is expected to grow to 22.3% in 2016. In the U.S., the penetration rate for TLEDs in 2012 was less than 1%, according to a 2013 U.S. Department of Energy report titled “Adoption of Light-Emitting Diodes in Common Lighting Applications.”

Specifically, we concentrate on selling our TLED products to three primary end markets: commercial and industrial, military and maritime and ESCOs. Our focus consists of replacing fluorescent lamps in troffer (i.e., standard office building recessed linear lighting) fixtures, high-bay fixtures, and parking garage luminaries with our TLED lamps. According to the “2010 U.S. Market Lighting Characterization” report published by the U.S. Department of Energy in January 2012, there were approximately 1.8 billion linear fluorescent lamps in the United States in the non-residential market in 2010. Based on these statistics and our calculations, we believe this total addressable market for our TLEDs in the U.S. alone is in excess of \$25 billion.

## **Our Products and Solutions**

We produce, source, and/or market a wide variety of lighting technologies to serve our primary end markets, including the following:

LED luminaires and fixtures to serve the U.S. Navy,

TLED replacements for linear fluorescent lamps,

LED luminaires and fixtures,

LED docklights,

TLED parking garage luminaires and fixtures,

LED cold storage globe luminaires, and

LED retrofit kits for high-intensity discharge (“HID”) applications.

The key features of our products are as follows:

Many of our products meet the lighting efficiency standards mandated by the Energy Independence and Security Act of 2007 (“EISA 2007”).

Many of our products qualify for federal and state tax and rebate incentives for commercial and residential consumers in certain states.

Many of our products make use of proprietary optical and electronics delivery systems that enable high efficiencies with superior lighting qualities.

Through our solutions segment, we partner with ESCOs where we specialize in developing and designing lighting retrofit solutions that generate guaranteed financial returns by using highly innovative lighting technologies. Our services include comprehensive lighting and energy audits, lighting design and solution development, turnkey lighting

implementation, Leadership in Energy & Environmental Design (“LEED”) ready lighting upgrades, and pre and post upgrade monitoring and measurement.

We are aggressively expanding our efforts to sell our LED linear replacement lamps into the general commercial and industrial sectors. We plan to open regional sales offices in strategic areas of the U.S. to extend our presence in certain key cities.

We continue to seek to aggressively penetrate the government and military lighting markets. In this regard, we have many products being actively marketed to United States federal government agencies through our distribution partners as well as our direct sales force and online web presence.

### **Our Strengths and Strategy**

Our long-term strategy is to continue to penetrate existing commercial and industrial buildings, and military and maritime lighting markets by providing turnkey, comprehensive and cost competitive energy-efficient lighting solutions that utilize our energy-efficient LED lighting products. We will continue to focus on markets where the economic benefits of our lighting solutions offerings are most compelling. These markets include the U.S. Navy, municipalities, universities, schools, hospitals, office buildings, parking garages, supermarkets, retail chains, warehouse facilities and manufacturing environments. The passage of the Energy Savings Performance Contracts legislation in nearly all the U.S. states and EISA 2007 by Congress created a natural market for our energy-efficient products due to certain mandated efficiency standards that our products meet.

Since many of our products today are more efficient than traditional lighting products such as incandescent bulbs and fluorescent lamps, our focus is to increase awareness and knowledge of our technology and offerings within our target markets and to establish comprehensive distribution networks so that we can reach as many potential customers as possible and as soon as possible.

Our strengths, which we believe provide a strategic competitive advantage, include the following:

providing the only LED fluorescent replacement lamps currently approved for the U.S. Navy,

providing high quality, price competitive TLED lamps to replace fluorescent and High Intensity Discharge (HID) lamps for commercial and industrial markets,

providing our customers with high performance LED lighting retrofit solutions with low total overall cost of ownership,

a broad and intimate understanding of lighting technologies and LED lighting applications,

a strong understanding of the existing commercial and industrial building market drivers and the evolution towards “green” lighting products and energy-efficient lighting systems that maximize customer return on investment,

fundamental proprietary knowledge of non-imaging optics and coatings, and

strong relationships and long-term partnerships with the federal government and government contractors for research and development.

Our tactical approach to implement our long-term strategy includes:

continuing to seek to aggressively penetrate the government and military lighting markets through our distribution partners, direct sales force and online presence,

continuing to develop mainstream lighting technologies that directly compete against linear fluorescent general illumination lamps and that lead the TLED retrofit market from quality, reliability and price standpoints,

penetrating the lighting retrofit market of existing buildings by adding sales associates and expanding geographical reaches in both the U.S. and U.K. markets, and

continuing to strengthen our services and value added to our customers by providing comprehensive LED solutions capabilities.

Through our strengths and these actions, we seek to achieve the following objectives:

sales growth and improved gross margins and overall financial performance,

further penetration of our military-grade LED lighting products to the military and maritime markets,

high quality and comprehensive sales and distribution networks to directly reach and service our clients,

a streamlined and effective organization that is focused on creating economic value for our customers through our energy-efficient LED products and solutions in the lighting retrofit market, and

continued development of mainstream lighting products that are not currently available and are differentiated by their performance, energy consumption, longevity, and cost of ownership.

Over the last 12 months, we have made significant progress in our plan to reposition the Company for growth and profitability including:

reestablishing corporate vision, mission and core values,

intensifying our focus on and developing business strategies to pursue TLED global lighting retrofit opportunities, specifically in the fluorescent and HID replacement markets,

realigning our leadership at the corporate level, as well as at individual business unit levels,

divesting non-core businesses by selling our pool lighting product business,

streamlining our operations by closing our Mexican facility and restructuring our product development practices, and improving our global supply chain practices that improved and will continue to improve our gross margins.

## **Recent Developments**

Between December 13, 2012 and October 10, 2013, we sold an aggregate of \$7,645,000 in principal amount of 5% subordinated convertible notes. The notes had a 5% annual interest rate and were convertible into our common stock at the rate of \$0.23 per share (pre-split). The 2012 notes were scheduled to mature on December 31, 2015 and the 2013 notes were scheduled to mature on December 31, 2016. During the second and fourth quarters of 2013, one investor converted \$1,500,000 in aggregate principal amount of notes into 6,521,739 shares (pre-split) of common stock. On March 31, 2014, all remaining investors converted the \$6,145,000 outstanding aggregate principal amount of notes into 26,717,393 shares (pre-split) of common stock.

On July 16, 2014, we effected a one-for-ten reverse stock split. Our common stock has been approved for listing on The NASDAQ Capital Market concurrently with this offering. We cannot assure you that our stock will continue to trade at or above the minimum price for such listing.

The Company is in the process of finalizing its results for the second quarter of 2014. Based on information available to date, the Company preliminarily estimates the following for the second quarter of 2014:

Sales will be between \$6.3 million to \$6.7 million (unaudited), which would represent a sequential growth of 29% to 37% over the first quarter of 2014;

Net loss will be between \$600,000 and \$650,000 (unaudited); and

Results for the second quarter of 2014 will show continued improvement in gross margins.

The Company has provided estimates for its preliminary results described above because its financial closing procedures for the second quarter of 2014 are not yet complete. The Company currently expects that its final results will be approximately as described above. However, the estimates described above are preliminary and represent the most current information available to management. Therefore, it is possible that the Company's actual results may differ materially from these estimates due to the completion of its financial closing procedures, final adjustments and other developments that may arise between now and the time its financial results for the second quarter of 2014 are finalized. Accordingly, you should not place undue reliance on these estimates. The preliminary financial data for the second quarter of 2014 included in this prospectus has been prepared by, and is the responsibility of, the Company's

management.

In addition, based on the current expectations of management, the Company currently anticipates that EBITDA (earnings before interest, taxes, depreciation and amortization) will be positive for the second half of 2014. However, it is possible that the Company's actual results for the second half of 2014 may differ materially from the Company's expectations because of developments that may arise between now and the time its financial results are finalized for the 2014 fiscal year.

### **Summary Risk Factors**

Our business is subject to numerous risks described in the section entitled "Risk Factors" and elsewhere in this prospectus. You should carefully consider these risks before making an investment. Some of these risks include:

We have a history of operating losses and may incur losses in the future, and our auditors have issued a "Going Concern" opinion, meaning that we have been unable to sustain our operations without external funding, and such funding may not be available or available on acceptable terms.

If LED lighting technology fails to gain widespread market acceptance or 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.

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

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



We currently derive a significant portion of our revenue from a few customers and the loss of one of these customers, or a reduction in their demand for our services, could adversely affect our business, financial condition, results of operations and prospects.

If critical components and finished products that we currently purchase from a small number of third-party suppliers become unavailable or increase in cost, or if our suppliers fail to meet our requirements for quality, quantity and timeliness, our revenue and reputation in the marketplace could be harmed, which would damage our business.

A significant portion of our business is dependent upon the existence of government funding, which may not be available into the future and could result in a significant reduction in sales and could cause significant harm to our business.

An active trading market for our common stock may not develop and the market price for our common stock may decline below the offering price of our common stock in this offering.

The NASDAQ Capital Market may not continue to list our common stock for trading on its exchange if we do not comply with its continued listing requirements, which could adversely affect the price of our common stock and its liquidity.

## **Our Corporate Information**

The Company was founded in 1985 as Fiberstars, Inc., a California corporation and reincorporated in Delaware in November 2006. In May 2007, Fiberstars, Inc. merged with and became Energy Focus, Inc., also a Delaware corporation. Our principal executive offices are located at 32000 Aurora Road, Suite B, Solon, Ohio 44139. Our telephone number is 440.715.1300. Our website address is [www.energyfocusinc.com](http://www.energyfocusinc.com). Information on our website is not part of this prospectus.

**Securities Offered**

**Common Stock Offered by Us** 1,250,000 shares.

**Overallotment Option** We have granted the underwriters an option to purchase up to 187,500