FOOTSTAR INC
Form PRE 14A
March 06, 2009

Table of Contents

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

SCHEDULE 14A (Rule 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant þ
Filed by a Party other than the Registrant o
Check the appropriate box:

þ Preliminary Proxy Statement
o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
o Definitive Proxy Statement
o Definitive Additional Materials
o Soliciting Material Under Rule 14a-12

Footstar, Inc.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

þ No fee required.

o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Table of Contents

PRELIMINARY COPY

FOOTSTAR, INC.
933 MacArthur Boulevard
Mahwah, New Jersey 07430

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS
TO BE HELD , 2009

To Our Shareholders:

NOTICE IS HEREBY GIVEN that a Special Meeting (together with any adjournments, postponements or reschedulings thereof, the Meeting) of the shareholders of Footstar, Inc., a Delaware corporation (the Company and sometimes referred to with the pronouns we , us and our for convenience), will be held at the Company s headquarters at 933 MacArthur Boulevard, Mahwah, New Jersey 07430 at 10:00 a.m. Eastern Time, on , 2009, to consider and vote on the following matters as described in this notice and the accompanying Proxy Statement:

1. To consider and vote upon a proposal to approve the **Amended Plan of Complete Dissolution and Liquidation of Footstar, Inc.** in the form attached as **Annex A** to the accompanying Proxy Statement (the Plan) and the voluntary dissolution and liquidation of the Company in accordance therewith (the Dissolution); and

2. To transact such other business as may properly come before the Meeting.

The Board of Directors initially approved a Plan of Complete Liquidation of Footstar, Inc. in May 2008 (the Original Plan), as modified, superseded and replaced by the Plan and Dissolution approved by the Board of Directors on March 5, 2009.

The Board of Directors has fixed the close of business on , 2009 as the record date for determination of those shareholders entitled to vote, and only shareholders of record at the close of business on that date will be entitled to notice of and to vote at the Meeting. At March 2, 2009, there were 21,524,831 shares of common stock issued and outstanding. A list of shareholders entitled to vote at the Meeting will be available for inspection during normal business hours at our principal executive offices located at the Company s headquarters at 933 MacArthur Boulevard, Mahwah, New Jersey 07430. Our transfer agent, Bank of New York Mellon, has been designated as the Inspector of Elections for the Meeting.

The approximate date on which the attached Proxy Statement is being mailed to shareholders is on or about , 2009. Shareholders who execute proxies may revoke them at any time prior to their being exercised by providing written notice of revocation to us or by delivering another proxy card at any time prior to the Meeting. Mere attendance at the Meeting will not revoke a proxy, but any shareholder present at the Meeting may revoke his or her proxy and vote in person. Any duly executed proxy card on which a vote is not indicated (except broker non-votes expressly indicating a lack of discretionary authority to vote) will be deemed a vote FOR approval of the Plan and our Dissolution. To assure representation at the Meeting, shareholders are urged to sign and return the enclosed proxy card as promptly as possible in the postage prepaid envelope enclosed for that purpose. Any shareholder attending the Meeting may vote in person even if he or she previously returned a proxy.

By Order of the Board of Directors

JONATHAN M. COUCHMAN

Chairman, President and Chief Executive Officer
, 2009

Table of Contents

PRELIMINARY COPY

FOOTSTAR, INC.
933 MacArthur Boulevard
Mahwah, New Jersey 07430

PROXY STATEMENT
FOR SPECIAL MEETING OF SHAREHOLDERS
TO BE HELD , 2009

This Proxy Statement is furnished to you in connection with the solicitation of proxies on behalf of the Board of Directors of Footstar, Inc. (the Company and sometimes referred to with the pronouns we , us and our for convenien for use at a Special Meeting (together with any adjournments, postponements or reschedulings thereof, the Meeting) of our shareholders. The Meeting is to be held at the Company s headquarters at 933 MacArthur Boulevard, Mahwah, New Jersey 07430 at 10:00 a.m., Eastern Time, on , 2009. This Proxy Statement and the enclosed proxy card are being sent on or about , 2009 to our shareholders of record who held common stock as of the close of business on , 2009 (the Record Date).

At the Meeting, the shareholders will be asked to consider and vote on the following matters: (1) a proposal to approve the Amended Plan of Complete Dissolution and Liquidation of Footstar, Inc. in the form attached as **Annex A** to this Proxy Statement (the Plan) and the dissolution and liquidation of the Company in accordance therewith (the Dissolution); and (2) to transact such other business as may properly come before the Meeting. We know of no other business to be presented at the Meeting. If any other proposals properly come before the Meeting, the individuals named in the accompanying proxy card will, to the extent permitted by law, vote shares as to which they have been granted a proxy in accordance with their judgment.

The Board of Directors initially approved a Plan of Complete Liquidation of Footstar, Inc. in May 2008 (the Original Plan). The Original Plan provided for the complete liquidation and ultimate dissolution of the Company after expiration of the Kmart Agreement in December 2008. The Plan, approved by the Board of Directors on March 5, 2009, reflects technical and legal changes to the Original Plan consistent with Delaware corporate law and is intended to modify, supersede and replace the Original Plan in order to more efficiently facilitate the liquidation and dissolution of the Company in the best interests of shareholders.

The Board of Directors unanimously recommends that the shareholders vote FOR the Plan and our Dissolution.

This Proxy Statement summarizes information about the proposal that we will submit for shareholder consideration and action at the Meeting, as well as other information that you may find useful in deciding how to vote. The enclosed proxy card is the document by which you actually authorize another person to vote your shares in accordance with your instructions, as reflected on the proxy card.

Our principal executive offices are located at 933 MacArthur Boulevard, Mahwah, New Jersey 07430. Our telephone number is (201) 934-2000. We are first mailing this Proxy Statement, the Plan and the related proxy card on or about , 2009 to our shareholders of record as of the Record Date, who are the shareholders entitled to notice of, and to vote at, the Meeting.

This Proxy Statement is dated , 2009.

Table of Contents

EXPLANATORY NOTE

The Company is a holding company, incorporated under the laws of the State of Delaware and operated its businesses through its subsidiaries which principally operated as a retailer selling family footwear through licensed footwear departments in discount chains and wholesale arrangements since 1961. The Company operated licensed footwear departments in various Kmart Corporation (Kmart) stores and this business arrangement comprised substantially all of its sales and profits.

Commencing March 2, 2004, the Company and most of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of Title 11 of the United States Code (Bankruptcy Code or Chapter 11) in the United States Bankruptcy Court.

On February 7, 2006, the Company successfully emerged from bankruptcy and paid substantially all creditors in full with interest. As part of the Company s emergence from bankruptcy, substantially all of the Company s business operations were related to the agreement pursuant to which it operated the licensed footwear departments in Kmart stores (the Kmart Agreement). The Kmart Agreement expired by its terms at the end of 2008.

Following its emergence from bankruptcy, the Board of Directors, with the assistance of investment bankers, evaluated a number of possible alternatives to enhance shareholder value, including acquisition opportunities, changes in the terms of the Company s principal contracts, including the early termination of or extension of the Kmart Agreement, the payment of one or more dividends, and the sale of our assets or stock. The Board of Directors determined the best course of action was to operate under the Kmart Agreement through its scheduled expiration at the end of December 2008.

In May 2008, the Board of Directors determined that it was in the best interests of the Company and its shareholders to liquidate and ultimately dissolve after the expiration of the Kmart Agreement in December 2008 (and other miscellaneous contracts through the end of such term) and to sell and/or dispose of any of the Company s other remaining assets, including its property in Mahwah, New Jersey, which contains its corporate headquarters and 21 acres of land. Under the terms of the Kmart Agreement, Kmart is required to purchase from the Company all of the remaining inventory in the Kmart footwear departments at values set forth in the Kmart Agreement. The process of selling the inventory to Kmart commenced immediately after the expiration of the Kmart Agreement on December 31, 2008. During 2009, the Company received $52.8 million related to the liquidation sale of the inventory from Kmart; however, the Company is currently pursuing the collection of certain additional disputed amounts for which there can be no assurance that any additional cash will be received.

Also in May 2008, the Board of Directors approved the Original Plan, which provided for the complete liquidation and ultimate dissolution of the Company after expiration of the Kmart Agreement in December 2008. The Plan, which is being submitted to shareholders at the Meeting, reflects technical and legal changes to the Original Plan consistent with Delaware corporate law and is intended to modify, supersede and replace the Original Plan in order to more efficiently facilitate the liquidation and dissolution of the Company in the best interests of shareholders. The Plan and Dissolution were approved by the Board of Directors on March 5, 2009.

The Plan, attached as **Annex A,** provides for the complete, voluntary liquidation of the Company by providing for the sale of its remaining assets and the wind-down of the Company s business as described in the Plan and for distributions of available cash to shareholders as determined by the Board of Directors.

On January 8, 2009, the Company announced that its Board of Directors declared a special cash distribution to shareholders in the amount of $1.00 per common share. The Company recorded this distribution effective the date the declaration was made by the Board of Directors. This special cash distribution totaling $21.5 million was paid on January 27, 2009.

The Company anticipates that if the Plan and Dissolution are approved by shareholders, then its Board of Directors will declare a special cash distribution to shareholders in the amount of $1.90 per common share to be paid to shareholders as soon as practicable following shareholder approval of the Plan and Dissolution.

Table of Contents

SUMMARY TERM SHEET OF THE PLAN AND DISSOLUTION

The following briefly outlines the material terms of the proposed Plan and Dissolution, but does not summarize all of the information regarding the Plan and our Dissolution of the Company that is contained elsewhere in this Proxy Statement. This information is provided to assist our shareholders in their review of this Proxy Statement and in considering the proposed Plan and Dissolution, which is to be submitted for shareholder action at the Meeting. However, this Summary Term Sheet may not contain all of the information that is important to you. To understand fully the Plan and Dissolution being submitted for shareholder approval, you should carefully read this Proxy Statement and the accompanying copy of the Plan in their entirety.

If the Plan and Dissolution are approved by shareholders, we intend to:

file a certificate of dissolution with the Delaware Secretary of State;

complete the sale or liquidation of the Company s remaining assets including its property in Mahwah, New Jersey, which may include, without limitation, entering into commercial leases to enhance or facilitate the sale of real estate, if advisable;

pay all of the Company s known obligations or provide adequate security for payment thereof as the Board of Directors deems appropriate in its sole discretion;

establish a contingency reserve for the satisfaction of unknown, disputed or contingent liabilities; and

make distributions to our shareholders of any remaining available liquidation proceeds.

The approval of the Plan and Dissolution by our shareholders will constitute full and complete authority for the Board of Directors and the officers of the Company, without further shareholder action, to proceed with the dissolution and liquidation of the Company in accordance with the Plan and any applicable provision of Delaware law.

After approval of the Plan and Dissolution by our shareholders and the filing of our certificate of dissolution with the Delaware Secretary of State, we plan to sell or liquidate any remaining assets and pay all of our known and undisputed liabilities and obligations. We then plan to establish a contingency reserve to cover any unknown, disputed or contingent liabilities and intend to distribute remaining amounts to shareholders as and when our Board of Directors deems appropriate. We anticipate that if the Plan and Dissolution are approved by shareholders, then our Board of Directors will declare a special cash distribution to shareholders in the amount of $1.90 per common share to be paid as soon as practicable following shareholder approval of the Plan and Dissolution. We anticipate that we will begin making distributions of liquidation proceeds to our shareholders within three to six months (or sooner) from the time we file our certificate of dissolution, in accordance with the Plan and Delaware law. We also intend to distribute remaining liquidation proceeds as promptly as practicable following the sale or liquidation of our remaining assets, subject to payment or provisions for the payment of known obligations and establishing a contingency reserve.

Because of the uncertainties as to the ultimate settlement amount of our remaining liabilities and expenditures we will face during liquidation, we are not able to predict with precision or certainty specific amounts, or timing, of future liquidation distributions. We are currently evaluating the market value of our limited remaining non-cash assets. At the present time, although we are not able to predict whether proceeds from the sale of our remaining assets will differ materially from amounts recorded for those assets on our balance sheet,

we currently estimate that the amount ultimately distributed to our shareholders will be between $2.65 and $3.45 per common share, including the special cash distribution to shareholders in the amount of $1.90 per common share that we anticipate will be declared by our Board of Directors if the Plan and Dissolution are approved by shareholders. To the extent that the value of our assets is less, or the amount of our liabilities or the amounts that we expend during liquidation are greater, than we anticipate, our shareholders could receive less than we currently estimate.

Table of Contents

As a result of our Dissolution and liquidation, for federal income tax purposes shareholders will recognize a gain or loss equal to the difference between (1) the sum of the amount of cash and the aggregate fair market value of any property distributed to them (reduced by any liability assumed or taken subject to), and (2) their tax basis in shares of our common stock. Any loss generally will be recognized only when the final distribution from us has been received, which could be as much as three years (or up to ten years if the Company elects to comply with Section 281(b) of the Delaware General Corporation Law) after our Dissolution. However, if we are unable to sell our property in Mahwah prior to the third anniversary of the filing of the certificate of dissolution, we may transfer such property into a liquidating trust, in which event we may make a final distribution after the third anniversary of the filing of the certificate of dissolution. You should consult your tax advisor as to the tax effects of the Plan and our Dissolution in your particular circumstances.

Under Delaware law, shareholders will not have dissenters appraisal rights in connection with the Plan or our Dissolution.

Under Delaware law, if we fail to create an adequate contingency reserve or if such reserve is insufficient to satisfy the ultimate aggregate amount of the Company s expenses and liabilities, each shareholder could be held liable for amounts due creditors to the extent of amounts the shareholder received from the Company.

The Board may modify, amend or abandon the Plan to the extent permitted by the Delaware General Corporation Law. The Plan cannot be amended or modified under circumstances that would require additional shareholder solicitations under the Delaware General Corporation Law or the federal securities law, unless we comply with the applicable provisions of such laws.

If the Plan and our Dissolution are not approved, our Board of Directors will consider strategic alternatives for the Company, including, without limitation, acquisitions, mergers, asset sales, a self-tender offer for the Company s shares, share repurchases, entry into commercial leases to enhance or facilitate the sale of our real estate, or other business opportunities. However, no assurance can be given that the Company will implement any such measure or that any such measure, if implemented, will be successful. Since the Kmart Agreement expired on December 31, 2008, we have had no operations and our principal assets consist of our cash and short-term investment balances, together with our property in Mahwah which is currently being marketed for sale.

TABLE OF CONTENTS

Table of Contents

CAUTION REGARDING FORWARD-LOOKING STATEMENTS

This Proxy Statement contains certain forward-looking statements, including statements concerning the value of the Company s assets, the anticipated liquidation value per share of our common stock, and the timing and amounts of any distributions of liquidation proceeds to shareholders. The Company intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, and is including this statement for purposes of invoking these safe harbor provisions. Forward-looking statements such as these involve known and unknown risks, uncertainties and other important factors that could cause the Company s actual results, performance or achievements, or other subjects of such statements, to differ materially from the Company s expectations regarding such matters expressed or implied by such forward-looking statements. These risks include the risk that we may incur additional liabilities, that the proceeds from the sale of our non-cash assets could be lower than anticipated, that the amount required for the settlement of our liabilities could be higher than expected, as well as the other factors set forth under the caption Risk Factors to be Considered in Connection with the Plan and Our Dissolution. All of such factors could substantially reduce or eliminate the amount available for distribution to our shareholders. Although the Company believes that the expectations reflected in its forward-looking statements contained in this Proxy Statement and accompanying materials are reasonable, it cannot guarantee future events or results. Except as may be required under federal law, the Company undertakes no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur.

QUESTIONS AND ANSWERS ABOUT THE MEETING AND RELATED MATTERS

These Questions and Answers summarize some of the information contained elsewhere in this Proxy Statement. They are provided to assist our shareholders in their review of this Proxy Statement and in considering certain matters to be acted upon at the Meeting. However, they may not contain all of the information that is important to you. To understand fully the proposals being submitted for shareholder approval, as well as the procedures for voting and for the Meeting, you should carefully read this Proxy Statement in its entirety.

Q: How much cash has the Company distributed to its shareholders since it emerged from bankruptcy on February 7, 2006?

A: The Board of Directors has declared special cash distributions totaling $7.00 per common share. Specifically, the Board of Directors has declared special cash distributions to shareholders in the following amounts and on the following dates: $5.00 per common share on March 27, 2007; $1.00 per common share on May 9, 2008; and $1.00 per common share on January 8, 2009. In addition, the Company anticipates that if the Plan and Dissolution are approved by shareholders, then the Board of Directors will declare a special cash distribution to shareholders in the amount of $1.90 per common share to be paid as soon as practicable following shareholder approval of the Plan and Dissolution.

Q: What matters will be presented for shareholder action at the Meeting?

A: The proposals to be submitted for consideration by our shareholders at the Meeting are:

1. To approve the Plan and our Dissolution of the Company in accordance with the terms of the Plan; and

2. Any other matter that may properly come before the Meeting.

We know of no other business to be presented at the Meeting. If any other proposals properly come before the Meeting, the individuals named in the accompanying proxy card will, to the extent permitted by law, vote shares as to which they have been granted a proxy in accordance with their judgment.

Q: Why is the Company proposing dissolution and liquidation?

A: In May 2008, the Board of Directors approved the Original Plan after having determined that it is in the best interests of the Company and its shareholders to liquidate and ultimately dissolve after the expiration of the Kmart Agreement in December 2008. Under the terms of the Kmart Agreement, immediately following

Table of Contents

expiration of the Kmart Agreement, Kmart is required to purchase from the Company all of the remaining inventory in the Kmart footwear departments at values set forth in the Kmart Agreement. The Original Plan provided for the complete liquidation and ultimate dissolution of the Company after expiration of the Kmart Agreement in December 2008 and for the sale and liquidation of other remaining assets, including the Company s property in Mahwah, New Jersey, which contains our corporate headquarters and 21 acres of land.

The Plan, attached as **Annex A**, reflects technical and legal changes to the Original Plan consistent with Delaware corporate law and is intended to modify, supersede and replace the Original Plan in order to more efficiently facilitate the liquidation and dissolution of the Company in the best interests of shareholders. The Plan and Dissolution were approved by the Board of Directors on March 5, 2009. The Plan provides for the complete liquidation of the Company by providing for the sale of remaining assets and the wind-down of the Company s business as described in the Plan and for distributions of available cash to shareholders as determined by the Board of Directors.

Q: How much do I receive if the Plan and our Dissolution are approved?

A: If the Plan and our Dissolution are approved, we expect that each holder of the Company s common stock will receive between $2.65 and $3.45 per common share, including the special cash distribution to shareholders in the amount of $1.90 per common share that we anticipate will be declared by our Board of Directors if the Plan and Dissolution are approved by shareholders. To the extent that the value of our assets is less, or the amount of our liabilities or the amounts that we expend during liquidation are greater, than we anticipate, our shareholders could receive less than we currently estimate.

Q: What happens if the Plan and our Dissolution are not approved?

A: If the Plan and our Dissolution are not approved, our Board of Directors will consider strategic alternatives for the Company, including, without limitation, acquisitions, mergers, asset sales, a self-tender offer for the Company s shares, share repurchases, entry into commercial leases to enhance or facilitate the sale of our real estate, or other business opportunities. However, no assurance can be given that the Company will implement any such measure or that any such measure, if implemented, will be successful. Since the Kmart Agreement expired on December 31, 2008, we have had no operations and our principal assets consist of our cash and short-term investment balances, together with our property in Mahwah which is currently being marketed for sale.

Q: If the Plan and our Dissolution are approved, what happens next?

A: We will file a certificate of dissolution with the Secretary of State of Delaware; complete the sale or liquidation of our remaining assets, which may include, without limitation, if advisable, entering into commercial leases to enhance or facilitate the sale of real estate; pay or adequately provide for the payment of our liabilities; distribute remaining proceeds to the shareholders; and otherwise effectuate the Plan.

Q: Who is entitled to vote at the Meeting?

A: Our Board of Directors has selected the close of business on , 2009 as the Record Date for the Meeting. Shareholders of record as of the Record Date are entitled to notice of, and to vote at, the Meeting. A list of shareholders entitled to vote will be available at the Meeting. This shareholder list also will be available for examination by any shareholder, for any purpose germane to the Meeting, at our principal offices during normal business hours starting ten days before the Meeting.

Q: How many shares must be present or represented in order to conduct business?

A: We need a quorum in order to conduct business at the Meeting. We will have a quorum at the Meeting if a majority of the shares issued and outstanding on the record date and entitled to vote are present, either in person or by proxy at the Meeting. Abstentions and broker non-votes will be counted as present for the purposes of determining whether there is a quorum at the Meeting. As of the Record Date, there were shares of our common stock outstanding. Therefore, at least shares of our common stock must be present or represented in order to conduct business at the Meeting.

Table of Contents

Q: What if a quorum is not present or represented at the Meeting?

A: If a quorum is not present, we expect to adjourn the Meeting in order to solicit additional proxies. In this event, the persons named in our proxy card will have the authority, and presently intend, to vote the shares as to which they have been granted proxies FOR adjournment.

Q: How many votes are entitled to be cast in respect of each share of common stock?

A: Holders of record of the Company s common stock on , 2009 will be entitled to one vote per share on each matter of business properly brought before the Meeting.

Q: What vote is required to approve the Plan and our Dissolution?

A: The affirmative vote of a majority of the total number of votes entitled to be cast by all shares outstanding on the Record Date is necessary to approve the Plan and our Dissolution.

Q: What are the interests of our Executive Officers and Board of Directors in the Plan?

A: The approval of the Plan and our Dissolution by our shareholders may have certain effects upon our executive officers and directors. Such effects are set forth below.

As of March 2, 2009, our executive officers and directors collectively beneficially own an aggregate of 1,405,635 shares of our common stock. In light of this ownership, if the Plan and our Dissolution is approved by our shareholders, then our executive officers and directors will be entitled to receive any liquidating distributions that are paid to our shareholders. In addition, 159,964 shares of restricted stock granted to various directors will immediately vest upon shareholder approval of the Plan and Dissolution.

The Company is party to employment agreements with its executive officers. A summary of the employment agreement with Jonathan Couchman, the Company s Chairman, President and Chief Executive Officer, is contained in the Form 8-K filed by the Company on December 9, 2008 and such employment agreement is attached to such Form 8-K. A summary of the employment agreements with the Company s other executive officers is contained in Amendment No. 1 to the Company s Annual Report on Form 10-K for the fiscal year ended December 29, 2007 and such employment agreements are incorporated by reference into the Form 10-K. Pursuant to their employment agreements, the executive officers, other than Jonathan Couchman, the Company s Chairman, President and Chief Executive Officer, are entitled to participate in the Company s semi-annual cash incentive program under which each executive is afforded the opportunity to earn not less than a set percentage of their base salary per year if certain targets are achieved. The percentage of base salary that each eligible executive may earn under the semi-annual cash incentive program at the targeted performance level is 50% of such person s base salary.

Following Dissolution (assuming that it is approved by our shareholders), we will continue to indemnify our officers, directors, employees and agents in accordance with our Certificate of Incorporation and By-laws for actions taken in connection with the Plan and the winding up of our affairs. As part of our Dissolution process, we intend to purchase a tail policy, for which we will have prepaid the premium to continue to maintain our directors and officers liability insurance for claims made following the expiration of the then current policy for 6 years.

Q: What is the effect if I do not return my proxy card and do not vote at the Meeting?

A: If you neither return your Proxy Card nor vote at the Meeting, the effect will be a vote against the proposal to approve the Plan and our Dissolution. Abstentions also will have the effect of a vote against the Plan and our Dissolution. Finally, if authority to vote shares is withheld, including instances where brokers are not permitted to exercise discretionary authority for beneficial owners who have not returned a proxy card (so-called broker non-votes), such shares will have the same effect as votes against the proposal to approve the Plan and our Dissolution.

Table of Contents

Q: If I hold shares of the Company s common stock in street name with my broker, will the broker vote these shares on my behalf?

A: A broker or other nominee will vote Company shares on the proposal to approve the Plan and our Dissolution only if the beneficial owner of those shares provides the broker or nominee with instructions on how to vote. Shareholders should follow the directions provided by their brokers regarding how to instruct brokers to vote their shares.

Q: Can I change my vote after I have signed and mailed my proxy card?

A: Yes. If you return your proxy card and you later change your mind, you may revoke the proxy at any time before a vote is taken at the Meeting by:

informing the Company in writing that you are revoking the proxy;

completing, executing and delivering a proxy card bearing a later date; or

voting in person at the Meeting.

Q: Can I still sell my shares of common stock?

A: You may sell your shares of common stock at this time. Our common stock currently trades on the OTC Bulletin Board and Pink Sheets LLC under the symbol FTAR.PK .

Q: What do I need to do now?

A: After carefully reading and considering the information in this Proxy Statement, including the copy of the Plan included as **Annex A**, you should complete and sign your proxy card and return it in the enclosed postage prepaid return envelope as soon as possible.

Q: What happens to my shares of common stock after the Dissolution?

A: The liquidation distributions under the Plan shall be in complete cancellation of all of the outstanding shares of our common stock. From and after the date specified by the Board for the effectiveness of the certificate of dissolution, and subject to applicable law, each holder of our common stock will have the right to receive distributions pursuant to and in accordance with the Plan.

Q: Should I send in my stock certificates now?

A: **You should not forward your stock certificates before receiving instructions to do so from the Company or its designated agent**. As a condition to receipt of any distribution to the Company s shareholders, the Board, in its absolute discretion, may require the Company s shareholders to (i) surrender their certificates evidencing their shares of common stock to the Company, or (ii) furnish the Company with evidence satisfactory to the Board of the loss, theft or destruction of such certificates, together with such surety bond or other security or indemnity as may be required by and satisfactory to the Board. If surrender of stock certificates should be required following the Dissolution, the Company will send you written instructions regarding such surrender. Any distributions otherwise payable by the Company to shareholders who have not surrendered their stock certificates, if requested to do so, may be held in trust for such shareholders, without interest, pending the surrender of such certificates

(subject to escheat pursuant to the laws relating to unclaimed property).

Q: How can I get additional information and documents?

A: If you need additional copies of this Proxy Statement or any public filings referred to in this Proxy Statement, you should contact Maureen Richards, the Company s Sr. Vice President, General Counsel and Corporate Secretary, at:

Footstar, Inc.
933 MacArthur Boulevard
Mahwah, New Jersey
(201) 934-2000

You also may view, download and print our public filings from the Securities and Exchange Commission s (the SEC) web site at www.sec.gov.

Table of Contents

VOTING AND VOTES REQUIRED

General

Shares of our common stock may be voted at the Meeting only if the holder of such shares is present in person or represented by proxy.

Record Date; Voting Securities; Quorum

In accordance with our By-laws, our Board of Directors has fixed the close of business on , 2009 as the Record Date for determining the shareholders entitled to notice of and to vote at the Meeting. At the close of business on the Record Date, the outstanding voting securities of the Company consisted of shares of our common stock.

We need a quorum in order to conduct business at the Meeting. We will have a quorum at the Meeting if a majority of the shares issued and outstanding on the record date and entitled to vote are present, either in person or by proxy at the Meeting. Abstentions and broker non-votes will be counted as present for the purposes of determining whether there is a quorum at the Meeting.

Votes Entitled to be Cast

Holders of record of the Company s common stock on the Record Date will be entitled to one vote per share on each matter of business properly brought before the Meeting.

Votes Required; Effect of Failures to Vote, Abstentions, Withheld Votes and Broker Non-Votes

The affirmative vote of a majority of the votes entitled to be cast on the matter by all shares outstanding as of the Record Date is necessary to approve the Plan and our Dissolution.

If you neither return your proxy card nor vote at the Meeting, the effect will be a vote against the proposal to approve the Plan and our Dissolution. Abstentions also will have the effect of a vote against the Plan and our Dissolution. Finally, if authority to vote shares is withheld, including instances where brokers are not permitted to exercise discretionary authority for beneficial owners who have not returned a proxy card (so-called broker non-votes), such shares will have the same effect as votes against the proposal to approve the Plan and our Dissolution.

A broker holding shares for a beneficial owner may not vote upon the matter of the Plan and our Dissolution without such beneficial owner s specific instructions. Accordingly, all beneficial owners of the Company s stock are urged to return their proxy cards, marked to indicate their votes, or to contact their brokers to determine what actions they must take to vote.

Voting by Proxy

Proxies in proper form received by the time of the Meeting will be voted in the manner specified therein. Shareholders may specify their choices by marking the appropriate boxes on the enclosed proxy card. If a proxy card is dated, signed and returned without specifying choices, the shares represented by that proxy card will be voted as recommended by the Board of Directors FOR approval of the Plan and our Dissolution. We are aware of no other business to be brought before the Meeting. However, the proxy card does provide for the grant of discretionary authority to the persons named to vote on such other business as may properly come before the Meeting.

A shareholder giving a proxy may revoke it at any time before it is voted by (1) informing the Company in writing that he, she or it is revoking the proxy; (2) completing, executing and delivering a proxy card bearing a later date; or (3) voting in person at the Meeting. Attendance at the Meeting will not itself be deemed to revoke a proxy previously granted unless the shareholder gives affirmative notice at the Meeting that he, she or it intends to revoke the earlier proxy and vote in person.

IF YOU CANNOT BE PRESENT AT THE MEETING, THE BOARD OF DIRECTORS REQUESTS THAT YOU COMPLETE, SIGN, DATE AND RETURN THE ACCOMPANYING PROXY CARD IN ORDER TO

Table of Contents

ENSURE THE PRESENCE OF A QUORUM AT THE MEETING. For your convenience, a pre-addressed and postage-paid return envelope is enclosed for that purpose.

No Dissenter s Rights

Under Delaware law, shareholders are not entitled to dissenters rights of appraisal in connection with the Plan or our Dissolution.

Stock Ownership

Information concerning the holdings of certain shareholders of the Company is set forth under Security Ownership of Certain Beneficial Owners and Management.

APPROVAL OF THE PLAN AND OUR DISSOLUTION

General

Our Board of Directors is proposing the Plan and our Dissolution of the Company in accordance with the Plan, which is being submitted for approval by our shareholders at the Meeting. A copy of the Plan is attached as **Annex A** to this Proxy Statement. The Board of Directors adopted the Plan and our Dissolution on March 5, 2009 and directed that the Plan and our Dissolution be submitted for shareholder action at the Meeting. The Plan will take effect on the date that it is approved by our shareholders.

If the Plan and our Dissolution are approved by the shareholders, we anticipate that our activities will be limited to actions we deem necessary or appropriate to accomplish, *inter alia*, the following:

filing a certificate of dissolution with the Secretary of State of Delaware and, thereafter, remaining in existence as a non-operating entity for at least three years as required under Delaware law;

complete the sale or liquidation of the Company s remaining assets including its property in Mahwah, which may include, without limitation, entering into commercial leases to enhance or facilitate the sale of real estate if advisable;

collecting, or providing for the collection of, accounts receivable, debts and other claims owing to the Company;

paying, or providing for the payment of, our debts and liabilities, including both known liabilities and those that are contingent, conditional, unmatured or unknown, in accordance with Delaware law;

winding up our remaining business activities and withdrawing from any jurisdiction in which we remain qualified to do business;

complying with the SEC s filing requirements for so long as we are required to do so;

making ongoing tax and other regulatory filings; and

preparing to make, and making, distributions to our shareholders of any liquidation proceeds that may be available for such distributions.

Under Delaware law, following approval of the Plan and subject to the terms of the Plan, our Board of Directors may take such actions as it deems necessary or appropriate in furtherance of the Dissolution and the winding up of the Company s affairs. Approval of the Plan by a majority of the votes entitled to be cast on the matter by all shares of common stock outstanding as of the Record Date will constitute approval of the above-listed activities, as well as all such other actions, by the Company.

During the liquidation process, we will pay our officers, directors, employees and agents compensation for services rendered in connection with the implementation of the Plan. Your approval of the Plan will constitute your approval of the payment of any such compensation. We anticipate that, if the Plan and our Dissolution are approved, the size of our Board of Directors would be reduced from seven to three members.

Table of Contents

Our Board of Directors may, at any time, appoint officers, hire employees and retain independent contractors to complete the liquidation of our remaining assets and distribute any net amount remaining from the sale of assets to our shareholders pursuant to the Plan.

As of January 3, 2009, we had approximately $56.5 million in cash and short-term investment balances and a book value of $6.2 million in property and equipment, net, including our property in Mahwah. Our balance sheet as of January 3, 2009 reflected total liabilities of approximately $24.4 million. In addition to satisfying the liabilities reflected on our balance sheet, we anticipate using cash in the next several months for a number of items, including, but not limited to, the following:

ongoing operating, overhead and administrative expenses;

extension of our directors and officers liability insurance;

expenses incurred in connection with the Dissolution and our liquidation; and

professional, legal, accounting, consulting and brokers fees.

We are currently evaluating the market value of our limited remaining non-cash assets. Although we are not able to predict with certainty whether sales proceeds from our remaining assets will differ materially from amounts recorded for those assets on our balance sheet at January 3, 2009, we currently estimate that the amount ultimately distributed to our shareholders will be between $2.65 and $3.45 per common share, including the special cash distribution to shareholders in the amount of $1.90 per common share that we anticipate will be declared by our Board of Directors if the Plan and Dissolution are approved by shareholders, computed as follows:

1. Estimated Expenses

	Aggregate Amounts		Per Share Amounts(1)	
Compensation and Benefits costs	$ 4,771,000	5,271,000		
Professional fees, Board of Director fees and Insurance costs(2)	$ 2,565,000	2,778,000		
General Administrative and Other costs	$ 2,642,000	2,892,000		
Headquarters Building costs(3)	$ 937,000	937,000		
Total Estimated Expenses	$ 10,915,000	11,878,000		
Reserve(4)	$ 250,000	14,000,000		
Total Estimated Expenses and Reserve	$ 11,165,000	25,878,000	$ 0.52	1.20

2. Estimated Liabilities

	Aggregate Amounts	Per Share Amounts(1)
Total Estimated Liabilities	$ 24,400,000	$ 1.13

3. Estimated Assets

	Aggregate Amounts	Per Share Amounts(1)	
Total Estimated Assets(3)(5)	$ 128,900,000 - 131,400,000	$ 5.99	6.10

Table of Contents

4. Estimated Distributions

	Aggregate Amounts		Per Share Amounts(1)				
Estimated Total Assets	$ 128,900,000	131,400,000 (7,717,444)	$ 5.99	6.10			
					(1,445,481)(i)	(301,286)(j)	
		(3,432,586)		(1,532,231)	(1,641,394)	(691,136)	(7,297,347)
Income (loss) before minority interest		(2,954,330)		2,604,392	513,565	1,275,634	1,439,261
Minority interest in loss of consolidated subsidiaries	$	(7,345)	$	0	$ 0	$ 0	$ (7,345)
Net income (loss)	$	(2,946,985)	$	2,604,392	$ 513,565	$ 1,275,634	$ 1,446,606
Net income (loss) per share, basic and diluted	$	(0.35)					$ 0.04
Weighted average shares outstanding, basic and diluted		8,541,886					38,420,578

(a) Historical financial information derived from quarterly report on Form 10-Q.
(b) Rental income is recognized on a straight-line basis.
(c) Consists of operating cost reimbursements.
(d) Consists of property operating expenses.
(e) Asset management fees calculated as 0.75% of the cost of the acquisitions on an annual basis limited to 1% of the net asset value of such acquisitions after deducting debt used to finance acquisitions.
(f) Depreciation expense on portion of purchase price allocated to building is recognized using the straight-line method and a 40-year life.
(g) Amortization of deferred leasing costs is recognized using the straight-line method over the lives of the respective leases.
(h) Represents interest expense on line of credit used to acquire assets, which bore interest at approximately 3.39% for the six months ended June 30, 2004.
(i) Represents interest expense on an assumed mortgage that bears interest at 5.8% interest and matures on December 10, 2018.
(j) Represents imputed interest expense on an interest free note payable. Interest expense was calculated using an imputed interest rate of 3.39%, which approximated the interest rate of similar financing.

The accompanying notes are an integral part of this statement.

WELLS REAL ESTATE INVESTMENT TRUST II, INC.

PRO FORMA STATEMENT OF OPERATIONS

FOR THE YEAR ENDED DECEMBER 31, 2003

(Unaudited)

		Pro Forma Adjustments			
			Recent Acquisitions		
	Wells Real Estate Investment Trust II, Inc. Historical (a)	Q1 and Q2 2004 Acquisitions	Other	3333 Finley Road and 1501 Opus Place	Pro Forma Totals
Revenues:					
Rental income	$ 0	$ 41,512,390(b)	$ 10,257,652(b)	$ 6,415,352(b)	$ 58,185,394
Tenant reimbursements	0	6,346,108(c)	134,506(c)	0	6,480,614
	0	47,858,498	10,392,158	6,415,352	64,666,008
Expenses:					
Property operating costs	0	15,499,757(d)	3,015,447(d)	0	18,515,204
Asset management fees	0	2,356,358(e)	394,471(e)	369,330(e)	3,120,159
General and administrative	94,455	0	0	0	94,455
Depreciation	0	6,646,311(f)	1,443,105(f)	1,258,461(f)	9,347,877
Amortization	0	13,690,076(g)	1,387,357(g)	916,233(g)	15,993,666
	94,455	38,192,502	6,240,380	2,544,024	47,071,361
Real estate operating income	(94,455)	9,665,996	4,151,778	3,871,328	17,594,647
Other income (expense):					
Interest income	0	0	0	0	0
Interest expense	0	(6,895,134)(h)	(398,761)(h)	(793,500)(h)	(11,642,626)
			(2,941,993)(i)	(613,238)(j)	
	0	(6,895,134)	(3,340,754)	(1,406,738)	(11,642,626)
Income (loss) before minority interest	(94,455)	2,770,862	811,024	2,464,590	5,952,021
Minority interest in loss of consolidated subsidiaries	$ (93,985)	$ 0	$ 0	$ 0	(93,985)
Net income (loss)	$ (470)	$ 2,770,862	$ 811,024	$ 2,464,590	$ 6,046,006

Net income (loss) per share, basic and diluted	$ (4.70)	$ 0.16
Weighted average shares outstanding, basic and diluted	100	38,420,578

(a) Historical financial information derived from annual report on Form 10-K.
(b) Rental income is recognized on a straight-line basis.
(c) Consists of operating cost reimbursements.
(d) Consists of property operating expenses.
(e) Asset management fees calculated as 0.75% of the cost of the acquisitions on an annual basis limited to 1% of the net asset value of such acquisitions after deducting debt used to finance acquisitions.
(f) Depreciation expense on portion of purchase price allocated to building is recognized using the straight-line method and a 40-year life.
(g) Amortization of deferred leasing costs is recognized using the straight-line method over the lives of the respective leases.
(h) Represents interest expense on lines of credit used to acquire assets, which bore interest at approximately 3.45% for the year ended December 31, 2003.
(i) Represents interest expense on assumed mortgage that bears interest at 5.8% interest and matures on December 10, 2018.
(j) Represents imputed interest expense on an interest free note payable. Interest expense was calculated using an imputed interest rate of 3.45%, which approximated the interest rate of similar financing.

The accompanying notes are an integral part of this statement.