

FutureFuel Corp.
Form S-3
February 10, 2011

As filed with the Securities and Exchange Commission on February 10, 2011.

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

FORM S-3

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

FUTUREFUEL CORP.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

20-3340900
(IRS Employer Identification Number)

8235 Forsyth Blvd., 4th Floor, Clayton, Missouri 63105 (805) 565-9800
(Address, including zip code, and telephone number, including area code,
of registrant's principal executive offices)

Douglas D. Hommert
Executive Vice President
8235 Forsyth Blvd., 4th Floor
Clayton, Missouri 63105
(314) 854-8520
(Name, address, including zip code, and telephone number, including
area code, of agent for service)

Copies to:
Leonard J. Essig
Lewis, Rice & Fingersh, L.C.
600 Washington Ave., Suite 2500
St. Louis, Missouri 63101
(314) 444-7651

Approximate date of commence of proposed sale to the public: from time to time after the effectiveness of this
Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment
plans, please check the following box.

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If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. T

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.

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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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerate 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 Smaller reporting company
 (Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (1)(2)	Proposed maximum offering price per share (1)(2)	Proposed maximum aggregate offering price (1)(3)	Amount of registration fee (4)
Common Stock, (\$0.0001 par value)				
Preferred Stock, (\$0.0001 par value)				
Warrants				
Rights				
Units				
Total			\$50,000,000	\$5,805.00

(1) There are being registered hereunder such indeterminate number of shares of common stock, such indeterminate number of shares of preferred stock, such indeterminate number of warrants to purchase common stock and/or preferred stock, such indeterminate number of rights representing rights to purchase any other securities registered hereby, and such indeterminate number of units, as may be sold by the registrant from time to time, which together will have an aggregate initial offering price not to exceed \$50 million. Any securities registered hereunder may be sold separately or as units with the other securities registered hereunder. The proposed maximum offering price per unit will be determined, from time to time, by the registrant in connection with the issuance by the registrant of the securities registered hereunder. The securities registered hereunder also include such indeterminate number of shares of common stock as may be issued upon conversion of or exchange for preferred stock that provide for conversion or exchange and upon exercise of warrants or pursuant to the anti-dilution provisions of any of such securities. In addition, pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), the shares being registered hereunder include such indeterminate number of shares of common stock as may be issuable with respect to

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the shares being registered hereunder as a result of stock splits, stock dividends, or similar transactions.

(2) The amount to be registered, the proposed maximum offering price per unit, and the proposed maximum aggregate offering price for each class of security will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities hereunder and is not specified as to each class of security pursuant to General Instruction II.D. of Form S-3 under the Securities Act.

(3) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act.

(4) Calculated pursuant to Rule 457(o) under the Securities Act.

The registrant hereby amends this registration statement on such 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 or until the registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion, dated February 10, 2011

PROSPECTUS

\$50,000,000

Common Stock, Preferred Stock, Warrants, Rights, and Units

FutureFuel Corp., a Delaware corporation (“we”, “us” or “our”), may from time to time, in one or more offerings, offer and sell one or any combination of the securities we describe in this prospectus, either individually or as units comprised of one or more of the offered securities. The aggregate initial offering price of the securities that we offer will not exceed \$50 million.

This prospectus describes the general terms that may apply to the securities described herein. The specific terms of our securities to be offered, including the specific amount, the price, the terms, and the plan of distribution for that offering, will be described in one or more supplements to this prospectus. The prospectus supplements may also add, update, or change information in this prospectus. You should read this prospectus and any applicable supplement carefully before you purchase any of our securities.

This prospectus may not be used to offer or sell any securities unless accompanied by a prospectus supplement.

We may offer and sell our securities in the same offering or in separate offerings to or through one or more underwriters, dealers, and agents, through underwriting syndicates managed or co-managed by one or more underwriters, or directly to purchasers, on a continuous basis or delayed basis. If any underwriters, dealers, or agents are involved, their names and information about any commissions, discounts, and any over-allotment options held by them will be set forth in a prospectus supplement.

Our common stock currently is quoted on the Over-the-Counter (“OTC”) Bulletin Board under the symbol “FTFL”. The applicable prospectus supplement will contain information, where applicable, as to any other listing, if any, on the OTC Bulletin Board or any securities market or other exchange of the securities covered by the applicable prospectus supplement. On February 9, 2011, the last reported sale price of our common stock as quoted on the OTC Bulletin Board was \$9.75 per share.

Investing in our common stock involves a high degree of risk. See “Risk Factors” beginning on page 4, as well as those contained or referenced in the applicable prospectus supplement and under similar headings in the other documents that are incorporated by reference into this prospectus, for certain risks and uncertainties that you should consider.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this Prospectus. Any representation to the contrary is a criminal offense.

The date of this Prospectus is February __, 2011.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the United States Securities and Exchange Commission (“SEC”) utilizing a “shelf” registration process. Under this shelf registration statement, we may from time to time sell any combination of the securities referred to herein in one or more offerings for total gross proceeds of up to \$50 million. This prospectus provides you with a general description of the securities we may offer.

Each time we offer a type or series of securities under this prospectus, we will provide a prospectus supplement that will contain more specific information about the terms of the offered securities. We also may authorize one or more free writing prospectuses to be provided to you that may contain material information relating to these offerings. This prospectus, together with applicable prospectus supplements and any related free writing prospectuses, include all material information relating to these offerings. We also may add, update, or change, in the prospectus supplement or in any related free writing prospectuses that we may authorize to be provided to you, any of the information contained in this prospectus or in the documents that we have incorporated by reference into this prospectus. The prospectus supplement may add, update, or change information in this prospectus. If there is any inconsistency between the information in this prospectus and the prospectus supplement, you should rely solely on the information in the prospectus supplement. We urge you to read carefully this prospectus, any applicable prospectus supplement, and any related free writing prospectus, together with the information incorporated herein by reference as described under the section “Where You Can Find Additional Information” beginning at page 14 below, before buying any of our securities being offered. This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.

You should rely only on the information that we have provided or incorporated by reference in this prospectus, any applicable prospectus supplement, and any related free writing prospectus that we may authorize to be provided to you. We have not authorized any other person to provide you with different or additional information. No dealer, salesperson, or other person is authorized to give any information or to represent anything not contained in this prospectus, any applicable prospectus supplement, or any related free writing prospectus that we may authorize to be provided to you. You must not rely on any unauthorized information or representation. This prospectus, any applicable supplement to this prospectus, and any related free writing prospectus do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor does this prospectus, any applicable supplement to this prospectus, or any related free writing prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction.

You should assume that the information in this prospectus, any applicable prospectus supplement, or any related free writing prospectus is accurate only as of the date on the front of the document and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus, any applicable prospectus, or any related free writing prospectus, or any sale of a security. Our business, financial condition, results of operations, and prospects may have changed since those dates.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed, or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described in “Where You Can Find Additional Information” beginning at page 14 below.

You should read this entire prospectus carefully, including the risks of investing discussed under “Risk Factors” beginning at page 4 below, the information to which we refer you, and the information incorporated into this prospectus by reference, for a complete understanding of our business and this offering.

SUMMARY

This summary highlights selected information from this prospectus. It does not contain all of the information that is important to you. We encourage you to carefully read this entire prospectus and the documents to which we refer you. The following summary is qualified in its entirety by reference to the detailed information appearing elsewhere in this prospectus.

Our Company

We are a Delaware corporation, with our principal assets and operations in the United States and whose primary business is manufacturing diversified chemical products and biobased products comprised of biofuels and biobased specialty chemical products. The mailing address and telephone number of our principal executive offices are: FutureFuel Corp., 8235 Forsyth Blvd., 4th Floor, Clayton, Missouri 63105, (805) 565-9800.

We were formed to serve as a vehicle for the acquisition by way of an asset acquisition, merger, capital stock exchange, share purchase, or similar transaction of one or more operating businesses in the oil and gas industry. On July 12, 2006, we completed an offering of 22,500,000 units, each unit consisting of one share of our common stock and one warrant to acquire one share of our common stock. These units were issued at \$8.00 per unit. On July 21, 2006, we entered into an acquisition agreement with Eastman Chemical Company to acquire its wholly-owned subsidiary, Eastman SE, Inc., a chemical manufacturer which had just launched a biobased products platform. Our shareholders approved the acquisition of Eastman SE, Inc. on October 27, 2006. On October 31, 2006, the acquisition of Eastman SE, Inc. was consummated (effective after the close of business on that day) and Eastman SE, Inc. became our wholly-owned subsidiary. In connection with such closing, we changed our name to FutureFuel Corp. and Eastman SE, Inc. changed its name to FutureFuel Chemical Company.

FutureFuel Chemical Company is a Delaware corporation incorporated on September 1, 2005 under the name Eastman SE, Inc. It owns approximately 2,200 acres of land six miles southeast of Batesville in north central Arkansas fronting the White River. Approximately 500 acres of the site are occupied with batch and continuous manufacturing facilities, laboratories, and associated infrastructure, including on-site liquid waste treatment. The plant is staffed by approximately 486 non-union full-time employees. FutureFuel Chemical Company manufactures diversified chemical products and biobased products comprised of biofuels and biobased specialty chemical products.

The Securities We May Offer

We may offer shares of our common stock, preferred stock, warrants and/or rights, either individually or in units, with a total value of up to \$50 million from time to time under this prospectus, together with any applicable prospectus supplement, at prices and on terms to be determined by market conditions at the time of offering. This prospectus provides you with a general description of the securities we may offer. Each time we offer a type or series of securities, we will provide a prospectus supplement that will describe the specific amounts, prices, and other important terms of the securities, including, to the extent applicable:

- designation or classification;
- aggregate principal amount or aggregate offering price;
- maturity, if applicable, and original issue discount, if any;
- rates and times of payment of interest, dividends, or other payments, if any;
- redemption, conversion, exercise, exchange, settlement, or sinking fund terms, if any;

- conversion, exchange, or settlement prices or rates, if any, and, if applicable, any provisions for changes to or adjustments in the conversion, exchange, or settlement prices or rates and in the securities or other property receivable upon conversion, exchange, or settlement;

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ranking;

- restrictive covenants, if any;
- voting or other rights, if any; and
- certain federal income tax considerations.

A prospectus supplement and any related free writing prospectus may also add, update, or change information contained in this prospectus or in documents we have incorporated by reference into this prospectus. However, no prospectus supplement or free writing prospectus will offer a security that is not registered and described in this prospectus.

This prospectus may not be used to offer or sell any securities unless accompanied by a prospectus supplement.

We may sell the securities directly or through underwriters, dealers, or agents. We and our underwriters, dealers, or agents reserve the right to accept or reject all or part of any proposed purchase of securities. If we do offer securities through underwriters or agents, we will include in the applicable prospectus supplement:

- the names of those underwriters or agents;
- applicable fees, discounts, and commissions to be paid to them;
- details regarding over-allotment options, if any; and
- the net proceeds to us.

Common Stock. We may issue shares of our common stock from time to time. We currently have authorized 75,000,000 shares of our common stock, par value \$0.0001 per share. As of February 10, 2011, there were 39,983,849 shares of our common stock issued and outstanding. Our common stock is fully voting stock entitled to one vote per share with respect to all matters to be voted on by our shareholders. The holders of common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by our board of directors out of funds legally available, subject to preferences that may be applicable to preferred stock, if any, then outstanding. A holder of shares of our common stock will share ratably with the other holders of our common stock on a share-for-share basis in all distributions of assets pursuant to any voluntary liquidation, dissolution, or winding up of us. Our shareholders have no preemptive rights to acquire our un-issued shares or securities convertible into or carrying a right to subscribe to or acquire shares of our stock. There are no redemption or sinking fund provisions applicable to our common stock.

Preferred Stock. We currently have authorized 5,000,000 shares of preferred stock, par value \$0.0001 per share. Under our certificate of incorporation, the shares of each class or series of preferred stock are to have such designations and powers, preferences, rights, qualifications, limitations, and restrictions as are stated and expressed in our certificate of incorporation and in the resolution or resolutions providing for the issuance of such class or series adopted by our board of directors. The particular terms of each class or series of preferred stock will be more fully described in the applicable prospectus supplement relating to the preferred stock offered thereby. We will incorporate by reference into the registration statement of which this prospectus is a part the form of any certificate of designation that describes the terms of the series of preferred stock we are offering before the issuance of shares of that series of preferred stock. You should read any prospectus supplement and any free writing prospectus that we may authorize to be provided to you related to the series of preferred stock being offered, as well as the complete certificate of designation that contains the terms of the applicable series of preferred stock.

Warrants and Rights. We may create and issue warrants and rights entitling the holders thereof to purchase shares of our capital stock of any class or series or other securities authorized by us, and we may issue warrants or rights for the purchase of our preferred stock or common stock, or any combination thereof. The warrants may be attached to or separate from those securities. Each series of warrants or rights will be issued under a separate agreement to be entered into between us and the holder or a bank or trust company, as agent. In the event we engage an agent, the agent will act solely as our agent in connection with the warrants or rights, as applicable. The agent will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of

warrants or rights, as applicable. This summary of certain provisions of the warrants and rights is not complete. For the terms of a particular series of warrants or rights, you should refer to the prospectus supplement and the agreement for that particular series. The prospectus supplement relating to a particular series of warrants or rights to purchase our common stock or preferred stock will describe the terms of the warrants or rights, as applicable.

Units. We may issue units comprised of one or more of the other classes of securities described in this prospectus in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. In this prospectus, we have summarized certain general features of the units. We urge you, however, to read the prospectus supplement (and any free writing prospectus) related to the series of units being offered, as well as the complete unit agreement that contains the terms of the units. We will file as exhibits to the registration statement to which this prospectus relates, or will incorporate by reference from reports that we file with the SEC, the form of unit agreement and any supplemental agreements that describe the terms of the series of units we are offering before the issuance of the related series of units.

RISK FACTORS

An investment in our securities involves a high degree of risk and may result in the loss of all or part of your investment. The prospectus supplement applicable to each offering of our securities will contain a discussion of the risks applicable to an investment in our securities. Prior to making a decision about investing in our securities, you should consider carefully the specific factors discussed under the heading “Risk Factors” in the applicable prospectus supplement, together with all of the other information contained or incorporated by reference in the prospectus supplement or appearing or incorporated by reference in this prospectus. You should also consider the risks, uncertainties, and assumptions discussed under the heading “Risk Factors” in our most recent Annual Report on Form 10-K (as updated in our subsequent Quarterly Report on Form 10-Qs) which may be amended, supplemented, or superseded from time to time by other reports we file with the SEC in the future and any prospectus supplement.

In addition to the above, you should consider the following risks.

We may issue substantial amounts of additional shares without stockholder approval.

Our articles of incorporation authorize the issuance of 75,000,000 shares of common stock and 5,000,000 shares of preferred stock. We may issue either common stock or preferred stock, or warrants or rights, without any action or approval by our stockholders. As of the date of this prospectus, 39,983,849 shares of our common stock currently are outstanding. The issuance of any additional shares of our common stock or preferred stock would dilute the percentage ownership of our company held by existing stockholders.

The market price of our common stock is highly volatile and may increase or decrease dramatically at any time.

The market price of our common stock is highly volatile. Our stock price may change dramatically as the result of: (i) announcements of new products or innovations by us or our competitors; (ii) uncertainty regarding the viability of any of our product initiatives; (iii) significant customer contracts; (iv) significant litigation; or (v) other factors or events that would be expected to affect our business, financial condition, results of operations, and future prospects.

The market price for our common stock may also be affected by various factors not directly related to our business or future prospects, including the following:

- intentional manipulation of our stock price by existing or future shareholders;

- a reaction by investors to trends in our stock rather than the fundamentals of our business;
- a single acquisition or disposition, or several related acquisitions or dispositions, of a large number of our shares, including by short sellers covering their position;

- the interest of the market in our business sector, without regard to our financial condition, results of operations, or business prospects;
 - positive or negative statements or projections about us or our industry by analysts and other persons;
- the adoption of governmental regulations or government grant programs and similar developments in the United States or abroad that may enhance or detract from our ability to offer our products and services or affect our cost structure; and
- economic and other external market factors, such as a general decline in market price due to poor economic conditions, investor distrust, or a financial crisis.

The risks and uncertainties we have described herein are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations.

SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

This prospectus and the registration statement of which it forms a part, any prospectus supplement, any related free writing prospectus that we may authorize, and the documents incorporated by reference into these documents contain forward-looking statements. Forward-looking statements deal with our current plans, intentions, beliefs, and expectations, and statements of future economic performance. Statements containing such terms as “believe,” “do not believe,” “plan,” “expect,” “intend,” “estimate,” “anticipate,” and other phrases of similar meaning are considered to contain uncertainty and are forward-looking statements. In addition, from time to time we or our representatives have made or will make forward-looking statements orally or in writing. Furthermore, such forward-looking statements may be included in various filings that we make with the SEC, or in press releases, or in oral statements made by or with the approval of one of our authorized executive officers.

These forward-looking statements are subject to certain known and unknown risks and uncertainties, as well as assumptions that could cause actual results to differ materially from those reflected in these forward-looking statements. Factors that might cause actual results to differ include, but are not limited to, those set forth under the headings “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our most recent Annual Report on Form 10-K, in the corresponding sections in our most recent Quarterly Report on Form 10-Q, and in our future filings made with the SEC, including prospectus supplements. You should not place undue reliance on any forward-looking statements contained in this prospectus, any prospectus supplement, or any related free writing prospectus that we authorize, which reflect our management’s opinions only as of their respective dates. Except as required by law, we undertake no obligation to revise or publicly release the results of any revisions to forward-looking statements. The risks and uncertainties described in this prospectus, our annual report on Form 10-K, and in subsequent filings with the SEC are not the only ones we face. New factors emerge from time to time, and it is not possible for us to predict which will arise. There may be additional risks not presently known to us or that we currently believe are immaterial to our business. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. If any such risks occur, our business, operating results, liquidity, and financial condition could be materially affected in an adverse manner. You should consult any additional disclosures we have made or will make in our reports to the SEC on Forms 10-K, 10-Q, and 8-K, and any amendments thereto. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained in this prospectus, any prospectus supplement, or any related free writing prospectus authorized by us.

FINANCIAL RATIOS

If we offer preferred stock, we will set forth in the applicable prospectus supplement, if required, our historical consolidated ratio of our earnings to combined fixed charges and preferred stock dividends.

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USE OF PROCEEDS

We will retain broad discretion over the use of the net proceeds from the sale of the securities offered hereby. Except as otherwise provided in the applicable prospectus supplement, we intend to use the net proceeds from the sale of the securities covered by this prospectus for general corporate purposes, which may include working capital, capital expenditures, research and development expenditures, acquisitions of new businesses, and investments. Until the net proceeds have been used, they will be invested in short-term marketable securities in accordance with our investment policy. If we elect at the time of the issuance of the securities to make a different or more specific use of the proceeds other than as described in this prospectus, the change in the use of proceeds will be described in the applicable prospectus supplement.

DILUTION

If you invest in an offering of common stock by us, your interest will be diluted to the extent of the difference between the public offering price per share in an offering under this prospectus and the net tangible book value per share after the offering, except to the extent proceeds are applied to the repayment of debt. We will set forth in the applicable prospectus supplement or free writing prospectus the following information regarding any material dilution of the equity interests of investors purchasing shares in an offering by us under this prospectus:

- the net tangible book value per share of our equity securities before and after the offering;
- the amount of the increase in such net tangible book value per share attributable to the cash payments made by investors purchasing shares in the offering; and
- the amount of the immediate dilution from the public offering price to such investors.

DESCRIPTION OF THE SECURITIES TO BE REGISTERED

This prospectus contains summary descriptions of our common stock, preferred stock, warrants, rights, and units that we may offer from time to time. As further described in this prospectus, these summary descriptions are not meant to be complete descriptions of each security. The particular terms of any security will be described in the accompanying prospectus supplement and other offering material. The accompanying prospectus supplement may add, update, or change the terms and conditions of the securities as described in this prospectus.

Capital Stock

The total number of shares of all classes of stock which we have the authority to issue is 80,000,000 shares consisting of: (i) 5,000,000 shares of preferred stock, par value \$0.0001 per share; and (ii) 75,000,000 shares of common stock, par value \$0.0001 per share. The only equity securities we currently have outstanding are shares of common stock; we have not authorized or issued any preferred stock. As of February 10, 2011, there were 39,983,849 shares of our common stock issued and outstanding. The following is a summary of the material provisions of our common stock and preferred stock provided for in our certificate of incorporation and bylaws. For additional details about our capital stock, please refer to our certificate of incorporation and bylaws, each as amended, which are incorporated by reference into the registration statement to which this prospectus relates.

Common Stock. All shares of our common stock have identical rights and privileges in every respect. Except as specifically provided by our board in a resolution providing for any preferred stock, or series thereof, in no event will shares of our common stock have preferences over shares of our preferred stock with respect to payments of dividends or distributions of assets upon our liquidation and dissolution.

Our common stock is fully voting stock entitled to one vote per share with respect to all matters to be voted on by our shareholders. Except as expressly required by the Delaware General Corporation Law (which we may also refer to as the “DGCL”), our common stock will vote as a single class with respect to all matters to be voted on by our shareholders. Except as otherwise required by law or as otherwise provided by our board with respect to any preferred stock, the holders of our common stock exclusively possess all voting power with respect to us.

A holder of shares of our common stock will share ratably with the other holders of our common stock on a share-for-share basis in all distributions of assets pursuant to any voluntary liquidation, dissolution, or winding up of us.

Our shareholders have no preemptive rights to acquire our un-issued shares or securities convertible into or carrying a right to subscribe to or acquire shares of our stock.

There are no redemption or sinking fund provisions applicable to our common stock. The outstanding shares of our common stock are fully paid and non-assessable, and any shares of our common stock to be issued upon an offering pursuant to this prospectus and the related prospectus supplement will be fully paid and nonassessable upon issuance.

The transfer agent for our common stock is Computershare Trust Company N.A. Our common stock is quoted on the OTC Bulletin Board under the symbol "FTFL".

Preferred Stock. The following description of preferred stock and the description of the terms of any particular series of preferred stock that we choose to issue hereunder and that will be set forth in the related prospectus supplement are not complete. These descriptions are qualified in their entirety by reference to our certificate of incorporation and the certificate of designation relating to that series. The rights, preferences, privileges, and restrictions of the preferred stock of each series will be fixed by the certificate of designation relating to that series. The prospectus supplement also will contain a description of certain U.S. federal income tax consequences relating to the purchase and ownership of the series of preferred stock that is described in the prospectus supplement.

We currently have no shares of preferred stock outstanding. Preferred stock may be issued from time to time in one or more classes or series. The shares of each class or series are to have such designations and powers, preferences, rights, qualifications, limitations, and restrictions as are stated and expressed in our certificate of incorporation and in the resolution or resolutions providing for the issuance of such class or series adopted by our board of directors.

Authority is expressly granted to and vested in our board or directors to authorize the issuance of preferred stock from time to time in one or more classes or series, and with respect to each class or series of the preferred stock, to fix and state by the resolution or resolutions of our board from time to time adopted providing for the issuance thereof the following:

- whether the class or series is to have voting rights, full, special or limited, and whether such class or series is to be entitled to vote as a separate class either alone or together with the holders of one or more other classes or series of our stock;
 - the number of shares to constitute the class or series and the designations thereof;
- the preferences and relative, participating, optional, or other special rights, if any, and the qualifications, limitations, or restrictions thereof, if any, with respect to any class or series;
- whether the shares of any class or series are redeemable at our option or at the option of the holders thereof or upon the happening of any specified event and, if redeemable, the redemption price or prices (which may be payable in the form of cash, notes, securities, or other property), and the time or times at which, and the terms and conditions upon which, such shares are redeemable and the manner of redemption;
- whether the shares of a class or series are subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement and, if such retirement or sinking fund or funds are to be established, the annual amount thereof and the terms and provisions relative to the operation thereof;

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- the dividend rate, whether dividends are payable in cash, our stock, or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of dividends payable on any other class or classes or series of our stock, whether or not such dividends are cumulative or noncumulative and, if cumulative, the date or dates from which such dividends accumulate;